

**Torres Rojas, Genara**

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**From:** leonardogianella@gmail.com  
**Sent:** Saturday, March 19, 2011 4:02 PM  
**To:** Van Duyne, Sheree  
**Cc:** Torres Rojas, Genara; Duffy, Daniel  
**Subject:** Freedom of Information Online Request Form

**Information:**

**First Name:** Leonardo  
**Last Name:** Gianella  
**Company:** Leonardo Gianella LLC  
**Mailing Address 1:** 857 Ninth Ave  
**Mailing Address 2:** 2B  
**City:** New York  
**State:** NY  
**Zip Code:** 10019  
**Email Address:** [leonardogianella@gmail.com](mailto:leonardogianella@gmail.com)  
**Phone:** 917 279 2935  
**Required copies of the records:** Yes

**List of specific record(s):**

-Sheree Van Duyne Time period: 2010 I am looking for a lease agreement for floors 65-69 of 1 World Trade Center specifically the name of the tenant on the lease. I am also asking that when possible any and all addendums, riders given or any documents attached to this lease outlining any consideration given to the tenants including any given by city, State or federal agencies. Please include a date and time when physical records can be inspected.

**THE PORT AUTHORITY OF NY & NJ**

Daniel D. Duffy  
FOI Administrator

November 3, 2011

Mr. Leonardo Gianella  
Leonardo Gianella LLC  
857 Ninth Avenue, 2B  
New York, NY 10019

Re: Freedom of Information Reference No. 12210

Dear Mr. Gianella:

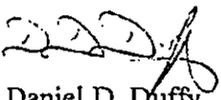
This is a response to your March 19, 2011 request, which has been processed under the Port Authority's Freedom of Information Policy (the "Policy") for copies of the lease agreements for the 65-69 floors of 1 World Trade Center specifically the name of the tenant on the lease, including addendums, riders given or any documents attached to the lease outlining any consideration given to the tenants by the city, state or federal agencies for 2008, 2009 and 2010.

Material responsive to your request and available under the Policy, which consists of 159 pages, will be forwarded to your attention upon receipt of a photocopying fee of \$39.75 (25¢ per page). Payment should be made in cash, certified check, company check or money order payable to "The Port Authority of New York & New Jersey" and should be sent to my attention at 225 Park Avenue South, 17<sup>th</sup> Floor, New York, NY 10003.

Certain material responsive to your request is exempt from disclosure pursuant to exemptions (3) and (6) of the Policy.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Sincerely,



Daniel D. Duffy  
FOI Administrator

225 Park Avenue South  
New York, NY 10003  
T: 212 435 3642 F: 212 435 7555

**EXECUTION COPY**

**LEASE NO. WA-002**

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**LEASE**

between

**1 WORLD TRADE CENTER LLC,**  
a Delaware limited liability company

as Landlord

and

**CHINA CENTER NEW YORK LLC,**  
a Delaware limited liability company

as Tenant

Dated as of: March 26, 2009

One World Trade Center  
New York, New York 10048

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## Exhibits

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| Exhibit A   | REBNY Recommended Method of Floor Measurement for Office Buildings |
| Exhibit B   | Fixed Rent                                                         |
| Exhibit C   | HVAC Specifications                                                |
| Exhibit D   | Description of Land                                                |
| Exhibit E   | Intentionally Omitted                                              |
| Exhibit F   | Premises Diagram                                                   |
| Exhibit G   | Building Rules and Regulations                                     |
| Exhibit H   | Work Letter                                                        |
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| Exhibit J   | Alterations Rules and Regulations                                  |
| Exhibit K   | Intentionally Omitted                                              |
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| Exhibit L.1 | Form of Security Letter of Credit (Pre-Delivery Date Only)         |
| Exhibit M   | QAD Letter                                                         |
| Exhibit N   | Form of Commencement Date Agreement                                |
| Exhibit O   | China Center Membership Requirements                               |
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This AGREEMENT OF LEASE (this "Lease"), dated as of the Effective Date (as hereinafter defined), is between 1 WORLD TRADE CENTER LLC, a Delaware limited liability company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue, 15<sup>th</sup> Floor, New York, New York 10003, as Landlord, and CHINA CENTER NEW YORK LLC, a Delaware limited liability company, having an office at One Battery Park Plaza, 5<sup>th</sup> Floor, New York, New York 10004, as Tenant.

**W I T N E S S E T H:**

**ARTICLE 1**

**DEFINITIONS; PREMISES; TERM**

**Section 1.01 Defined Terms.** As used in this Lease, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"AAA" means the American Arbitration Association or its successor.

"Abatement Notice" has the meaning set forth in Section 12.05.

"ADA" means The Americans with Disabilities Act, Title III, 42 U.S.C. § 12,101 et seq., and any amendments thereto.

"Additional Rent" means Tenant's Tax Payment and Tenant's Operating Expense Payment, Percentage Rent, and any and all other sums, other than Fixed Rent, payable by Tenant under this Lease or otherwise in connection with the use and occupancy of the Premises including, without limitation, sums payable under work orders issued by Landlord's managing agent.

"Adjustment Date" has the meaning set forth in the definition of "CPI Fraction."

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, whether or not through one or more intermediaries, Controls, is Controlled by or is under common Control with such first Person. For the purpose of this Lease, "Control" means (i) the ownership, directly or indirectly, of at least 50% of (x) the outstanding stock (if a corporation) or (y) the beneficial ownership interest (if not a corporation) and (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by statutory authority, by contract, or otherwise.

"Alterations" means alterations, installations, improvements, additions and other physical changes made by or on behalf of Tenant or a Tenant Party in or about the Premises, including, without limitation, Tenant's Initial Alterations, Material Alterations, or Decorative Alterations.

“Alteration Threshold” has the meaning set forth in Section 13.01(a).

“Antenna Area” has the meaning set forth in Section 34.01.

“Antenna” and “Antennae” have the respective meanings set forth in Section 34.01.

“Antennae Charge” has the meaning set forth in Section 34.02(b).

“Antennae Notice” has the meaning set forth in Section 34.01.

“Antennae Reservation Period” means from the Effective Date until the later of (i) December 31, 2009 and (ii) the date that is the first anniversary of the Effective Date.

“Assignment” has the meaning set forth in Section 8.01(b).

“Base Building Restoration” has the meaning set forth in Section 17.02(a).

“Base Building Specifications” has the meaning set forth in the Work Letter.

“Base Building Specification TSW Changes” has the meaning set forth in the Work Letter.

“Base Building Upgrade Condenser Water” has the meaning set forth in Section 6.02(d).

“Base Operating Expenses” has the meaning set forth in Section 4.02(a).

“Base Operating Year” has the meaning set forth in Section 4.02(b).

“Base Tax Year” has the meaning set forth in Section 4.02(c).

“Base Tax Amount” has the meaning set forth in Section 4.02(d).

“BID Charges” means all charges paid by Landlord with respect to the Real Property to any Governmental Authority or to Net Lessor on account of any business improvement district or similar charges or assessments, including, without limitation, all amounts payable under Section 6.8 of the Net Lease.

“Board of Stakeholders” has the meaning set forth in the REOA (and is sometimes referred to in the REOA as the “Net Lessee’s Association”).

“Broker” has the meaning set forth in Section 28.12.

“Building” means all the buildings, equipment and other improvements and appurtenances of every kind and description (but excluding Tenant’s Property) now or hereafter erected, constructed or placed upon the Land and any and all alterations, renewals, replacements, additions and substitutions thereto. For purposes of clarity only, and not by way of limitation or

further definition, the Building is also commonly and colloquially known as “One World Trade Center.”

“Building Area” means 2,119,739 calculated in accordance with the Building Measurement Standard, subject to final confirmation in accordance with the Work Letter.

“Building HVAC System” has the meaning set forth in Section 6.02(a).

“Building Measurement Standard” means a determination of usable areas in accordance with The Real Estate Board of New York Recommended Method of Floor Measurement for Office Buildings, effective January 1, 1987

“Business Center Uses” has the meaning set forth in Section 5.04(a).

“Business Days” means Monday through Friday exclusive of all legal holidays in the State of New York, including any additional days that are designated as holidays (other than employee birthdays) by any applicable Building service union contract or by any applicable operating engineers contract.

“Catering Area” has the meaning set forth in Section 5.04(a)(iv).

“Catering Facilities” has the meaning set forth in Section 5.04(a)(iv).

“CFM” or “cfm” means cubic feet per minute.

“China Center” shall mean the business operated in the Premises by the Named Tenant, including without limitation the Business Center Uses.

“City Agreement” means that certain Restated and Amended Agreement between Net Lessor and The City of New York, dated as of November 24, 2004, as the same has been and may hereafter be amended from time to time.

“Cleaning Specifications” means the cleaning specifications set forth in Exhibit I attached hereto.

“Commencement Date” means the date that is the later to occur of (i) the Effective Date, and (ii) the Delivery Date.

“Common Areas” means the core and shell of the Building, including, without limitation, (i) the Lobby and the skylobby located on the 64<sup>th</sup> floor, (ii) the roof of the Building (other than portions of the roof used exclusively by Landlord, Tenant, or other tenants of the Building), (iii) elevators, mechanical rooms, electrical closets, janitorial and telecommunication closets, (iv) elevator lobbies, common toilets and corridors and (iv) other areas, if any, shared by two (2) or more occupants on multi-tenant floors, the Building Systems and the public portions of the Building.

“Comparable Buildings” means first-class office buildings located in downtown Manhattan that are comparable in quality, character and service level to the Building.

“Conduit Risers” has the meaning set forth in Section 6.07.

“Conference Facilities” has the meaning set forth in Section 5.04(a)(ii).

“Core Business Licensee Lease Notice” has the meaning set forth in Section 5.06.

“Core Business Licensee Option Notice” has the meaning set forth in Section 5.06.

“CPI” means (i) The Consumer Price Index (New Series) (Base Period 1982-84=100) (all items for all urban consumers for New York-Northeastern New Jersey (CPI-U) Area) as published by the Bureau of Labor Statistics of the United States Department of Labor, or (ii) if the same is discontinued, a replacement index published by the Department of Labor or other applicable governmental authority, appropriately adjusted, or (iii) in the event that the CPI is converted to a different standard reference base or otherwise revised, such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics, or (iv) if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or any other nationally recognized publisher of similar statistical information selected by Landlord and reasonably approved by

Tenant, or (v) if the CPI ceases to be published, and there is no successor thereto, such other index as Landlord and Tenant shall agree upon in writing shall be substituted for the CPI, or (vi) if Landlord and Tenant are unable to agree as to such substituted index under clause (v) above, such matter shall be resolved by arbitration in accordance with the provisions of Article 25. Pending the resolution of such dispute under clause (vi) above, CPI-based increases provided for herein shall be determined in accordance with the substituted index selected by Landlord; subject to adjustment when finally determined with the appropriate party being entitled to a refund from the other party of any overpayment within twenty (20) days of written notice of such final determination.

"CPI Fraction" means as of each January 1st during the Term (each, an "Adjustment Date"), a fraction (i) the numerator of which is the CPI for the calendar month immediately preceding such Adjustment Date and (ii) the denominator of which is the CPI for the calendar month immediately preceding the Commencement Date.

"Decorative Alterations" has the meaning set forth in Section 13.01(a).

"Deficiency" has the meaning set forth in Section 20.04(a)(ii).

"Delivery Date" has the meaning set forth in the Work Letter.

"Effective Date" means March 26, 2009 (i.e., the date upon which a fully executed counterpart of this Lease has been delivered to each of Landlord and Tenant, which date Landlord shall insert in the blank above).

"Electric Inclusion Charge" has the meaning set forth in Section 7.01(d).

"Eligible Space" has the meaning set forth in Section 8.13.

"ESDC" has the meaning set forth in Section 3.05.

"Estimated Tenant's Operating Expense Payment" has the meaning set forth in Section 4.03(b).

"Excepted Specialty Alterations" has the meaning set forth in Section 13.04.

"Expense Estimate" has the meaning set forth in Section 4.03(b).

"Expense Statement" has the meaning set forth in Section 4.03(d).

"Event of Default" has the meaning set forth in Section 20.01.

"Event Space" has the meaning set forth in Section 5.04(b).

"Expiration Date" means (i) the Initial Expiration Date or any date to which the Term may be extended pursuant to any express amendment of this Lease or pursuant to the exercise of the First Extension Option pursuant to Article 35 or Second Extension Option pursuant to Article 36, or (ii) the date upon which the Term shall terminate sooner or later

pursuant to any of the terms, covenants or conditions of this Lease or pursuant to law, including, without limitation, as set forth in Article 20.

“Federal Bankruptcy Code” means Title 11 of the United States Code, as amended or superseded from time to time.

“Final Tax Statement” has the meaning set forth in Section 4.04(b).

“First Determination Date” shall have meaning set forth in Section 35.05.

“First Dispute Notice” shall have meaning set forth in Section 35.05.

“First Extension Exercise Notice” shall have meaning set forth in Section 35.01(a).

“First Extension Exercise Notice Date” shall have meaning set forth in Section 35.01(a).

“First Extension Minimum Rent” shall have meaning set forth in Section 35.06(e).

“First Extension Option” shall have meaning set forth in Section 35.01(a).

“First Extension Rent” shall have meaning set forth in Section 35.04(b).

“First Extension Term” shall have meaning set forth in Section 35.01(a).

“First Extension Term Commencement Date” shall have meaning set forth in Section 35.01(a).

“First Extension Term Expiration Date” shall have meaning set forth in Section 35.01(a).

“First FMV Agreement” shall have meaning set forth in Section 35.05.

“First FMV Amount” shall have meaning set forth in Section 35.04(b).

“First Increase” shall have the meaning set forth in Section 33.03.

“First Lease Year” shall have meaning set forth in the definition of “Lease Year.”

“First Rent Notice” shall have meaning set forth in Section 35.05.

“Fixed Rent” an annual fixed rent as set forth on Exhibit B attached hereto.

“Force Majeure” means any actual delays resulting from any causes beyond Landlord’s or Tenant’s reasonable control, as the case may be, including, without limitation, governmental regulation, governmental restriction, strike, labor dispute, unusual weather, riot, mob violence, malicious mischief, embargo, enemy action, civil commotion, inability to obtain

materials (giving due regard for the ability to substitute similar materials), acts of God, war, sabotage, hostilities, invasion, insurrection, terrorist acts, fire, earthquakes, flood or other casualty and other like circumstances to the extent not attributable to the acts or omissions of Landlord (and, for so long as Landlord is an Affiliate of Net Lessor, Net Lessor, except to the extent Net Lessor is acting in its capacity as a Governmental Authority) or Tenant, as applicable. Under no circumstances shall the financial inability to perform or a lack of funds be deemed to be (or to have caused) an event of Force Majeure.

“Freight Operating Hours” has the meaning set forth in Section 6.03(b).

“GAAP” means generally accepted accounting principles consistently applied.

“Gas Provider” has the meaning set forth in Section 6.08.

“Gas Riser” has the meaning set forth in Section 6.08.

“Governmental Authority” means any of the United States of America, the State of New York, the City of New York, and the Port Authority and any political subdivision, agency, department, commission, board, bureau or instrumentality thereof and any of any of the foregoing, now existing or hereafter created, having jurisdiction over the Building and/or the Land or any portion thereof or the curbs, sidewalks, and areas adjacent thereto, other than the Port Authority in its capacity as an occupant of the Building or as lessor under the Net Lease (as contrasted with its governmental capacity).

“Gross Sales” has the meaning set forth in Section 37.02.

“Gross Sales Statement” has the meaning set forth in Section 37.03.

“Gubernatorial Review Legislation” has the meaning set forth in Section 28.08.

“Hazardous Substances” has the meaning set forth in the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and applicable regulations.

“Holdover Amount” has the meaning set forth in Section 22.02(a).

“HVAC” means heating, ventilation and air-conditioning.

“HVAC Specifications” means the specifications with respect to the Building HVAC System attached hereto as Exhibit C, as the same may be modified pursuant to any Base Building Specification TSW Changes.

“Incoming Deliveries” has the meaning set forth in Section 39.03.

“Indemnified Party Notice” has the meaning set forth in Section 16.01(c).

“Initial Expansion Notice” means a written notice from Tenant to Landlord pursuant to which Tenant elects to lease the Initial Expansion Space.

“Initial Expansion Space Increase Percentage” has the meaning set forth in Section 2.05 hereof.

“Initial Term” means the initial term of this Lease commencing on the Commencement Date and ending on the Initial Expiration Date, or such sooner date as this Lease shall terminate pursuant to any of the terms, covenants, or conditions of this Lease or pursuant to law.

“Land” means the land described in Exhibit D attached hereto in the Borough of Manhattan, City, County and State of New York.

“Landlord” means 1 World Trade Center LLC, a Delaware limited liability company, and its successors and assigns, as construed by Article 23.

“Landlord Entity” means Landlord or any Affiliate of Landlord.

“Landlord Party” means any of Landlord, any Affiliate of Landlord, Landlord’s managing and leasing agents for the Building, each Mortgagee and Superior Lessor, and each of their respective direct and indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, employees, principals, contractors, licensees, agents and representatives.

“Landlord Repairs” has the meaning set forth in Section 12.01.

“Landlord’s Contribution” has the meaning set forth in Section 31.01(a).

“Landlord’s Work” means the Basic Construction (as defined in the Work Letter).

“Late Charge Amendment” has the meaning set forth in Section 3.04(b).

“Lease” has the meaning set forth in the Preamble.

“Lease Year” means the period commencing on the Rent Commencement Date and ending on the last day of the calendar month in which the first anniversary of the Rent Commencement Date occurs (the “First Lease Year”) and each subsequent twelve (12) month period commencing on the first day of the calendar month immediately following the end of the First Lease Year.

“Legal Requirements” means any and all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, executive orders, and any judicial interpretations thereof, extraordinary as well as ordinary, of all Governmental Authorities, including the Americans with Disabilities Act (42 U.S.C. § 12, 101 et seq.), the Port Authority Manual and any law of like import, and all rules, regulations and government orders with respect thereto and any of the foregoing relating to environmental matters, hazardous materials, public health and safety matters, and of the New York Board of Underwriters, the New York Fire Insurance Rating Organization or any other fire rating organizations or insurance entities performing similar functions, in each case, affecting the Real Property or the Premises or the maintenance, use or occupation thereof, or any street or sidewalk comprising a part of or in front thereof or any vault in or under the Real Property.

“Litigation Legislation” means the concurrent legislation of the State of New York and the State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§ 7101-7112), and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. §§ 32:1-157 to 168), as each of them may be amended from time to time.

“Lobby” means the ground floor lobby of the Building.

“Material Alterations” has the meaning set forth in Section 13.01(a).

“Media Center Facilities” has the meaning set forth in Section 5.04(a)(v).

“Messenger Center” has the meaning set forth in Section 39.01.

“Minimum Extension Block” has the meaning set forth in Section 35.01(b).

“Minor Alterations” has the meaning set forth in Section 13.01(a).

“Mortgage” means any mortgage or trust indenture that may now or hereafter affect the Real Property, the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

“Mortgagee” means any mortgagee, trustee or other holder of the mortgagee’s interest under a Mortgage, and any interest in the loan evidenced thereby.

“Named Tenant” shall mean the initial named Tenant (i.e., China Center New York LLC, a Delaware limited liability company) and its Permitted Transferees and any Affiliate of the Named Tenant or its Permitted Transferees to whom this Lease is assigned in accordance with Section 8.02(b).

“Net Lease” means that certain Amended and Restated Agreement of Lease dated as of July 16, 2001, executed November 16, 2006 by and between the Port Authority, as landlord, and Landlord, as tenant, as same has been or may hereafter be modified, amended, revised, restated or supplemented from time to time.

“Net Lessor” means the Port Authority, or any successor thereto, in either case in its capacity as lessor under the Net Lease.

“Net Lessor SNDA” means a subordination, attornment and non-disturbance agreement with respect to the Net Lease in Net Lessor’s customary form, a copy of which is attached hereto as Exhibit R.

“Non-Disturbance Agreement” means, with respect to any future Mortgage or Superior Lease, as the case may be, a subordination, attornment and non-disturbance agreement duly executed and acknowledged by a Superior Lessor (including a Successor Landlord) or Mortgagee, as the case may be, and Tenant, in recordable form, and on the Superior Lessor’s (including Successor Landlord’s) or Mortgagee’s (as the case may be) then-standard form of non-disturbance agreement, which shall, in each case, provide that so long as Tenant shall not be in default under this Lease beyond the expiration of any applicable grace or cure period provided for hereunder, Tenant’s right of peaceable and quiet use, occupancy, enjoyment and possession of the Premises shall not be disturbed by such Superior Lessor or Mortgagee (as the case may be).

“NYCBC” has the meaning set forth in Section 5.04(c).

“NYCDOB” has the meaning set forth in Section 5.04(c).

“NYPA” has the meaning set forth in Section 7.01(a).

“NYPA Rates” has the meaning set forth in Section 7.01(c).

“OFAC List” means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

“Office Suite Areas” has the meaning set forth in Section 5.04(a)(i).

“Office Suite Uses” has the meaning set forth in Section 5.04(a)(i).

“Office Suites” has the meaning set forth in Section 5.04(a)(i).

“Operating Expenses” has the meaning set forth in Section 4.02(e).

“Operating Hours” means between 8:00 A.M. and 6:00 P.M. New York City time on Business Days.

“Operating Year” has the meaning set forth in Section 4.02(f).

“Operator Agreement” has the meaning set forth in Section 5.07(a).

“Op Ex Gross Up” has the meaning set forth in Section 4.02(e).

“Other Office Space” has the meaning set forth in Section 8.12(b).

“Outgoing Deliveries” has the meaning set forth in Section 39.04.

“Overtime Periods” has the meaning set forth in Section 6.02(c).

“Percentage Rent” has the meaning set forth in Section 37.01.

“Percentage Rent Operations” has the meaning set forth in Section 37.02.

“Percentage Rent Year” has the meaning set forth in Section 37.01.

“Permitted Occupancy License” has the meaning set forth in Section 8.12(a)(iv).

“Permitted Office Occupants” has the meaning set forth in Section 8.12(a).

“Permitted Operators” has the meaning set forth in Section 5.07.

“Permitted RCD Extension” has the meaning set forth in the definition of “Rent Commencement Date.”

“Permitted Transferees” has the meaning set forth in Section 8.02(a).

“Permitted Uses” means use as executive, administrative and general offices, and the permitted lawful uses ancillary thereto described in Article 5, including the Business Center Uses, and for no other use or purpose.

“Person” means any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, joint venture, estate, trust, unincorporated association, business trust, tenancy-in-common or other entity or any Governmental Authority.

“PILOT” means such payments in lieu of Taxes as Landlord is required to make to New York City under the City Agreement, or to any Governmental Authority, or to the Net Lessor pursuant to Section 6.10 of the Net Lease.

“Port Authority” means The Port Authority of New York and New Jersey.

“Port Authority Captive” has the meaning set forth in Section 16.09(d).

“Port Authority Manual” shall mean, collectively, (i) the Tenant Construction Review Manual dated March 2003, (ii) the Architectural, Structural & MEP Tenant Requirement Manual, (iii) the Tenant Construction Application/Tenant Alteration Application Process & Procedures Guide dated September 20, 2006, (iv) World Trade Center Site Rules and Regulations effective January 1, 2006 and (v) the Security Guidelines, as such Port Authority Manual may be implemented, modified or supplemented from time to time, it being

acknowledged that items (ii) and (v) herein have not yet been promulgated by the Port Authority and will automatically become part of the Port Authority Manual upon promulgation by the Port Authority.

“Pre-Delivery Date LOC” has the meaning set forth in Section 33.02(e).

“Preliminary Tax Statement” has the meaning set forth in Section 4.04(a).

“Premises” means a portion of the 64th floor of the Building and the entire 65th through 69th floors of the Building (collectively, “Tenant’s Above Grade Space”), a portion of the building (“Tenant’s Below Grade Space”)

depicted on the diagrams attached hereto as Exhibit F. Tenant’s Above Grade Space, and each floor or portion thereof included in the Premises, shall be deemed to contain the USF and the RSF set forth below, subject to final confirmation in accordance with the Work Letter:

Tenant’s Below Grade Space shall be deemed to contain \_\_\_\_\_, subject to final confirmation in accordance with the Work Letter.

Tenant’s \_\_\_\_\_ shall be deemed to contain \_\_\_\_\_ (provided, however, that Tenant at its option may reduce the size of Tenant’s \_\_\_\_\_ by providing Landlord with written notice of such election no later than ninety (90) days following the Effective Date, which notice shall provide in reasonable detail the proposed new layout and USF and RSF of such smaller Tenant’s \_\_\_\_\_ which proposed new layout shall be subject to Landlord’s reasonable approval), subject to final confirmation in accordance with the Work Letter.

“Prime Rate” means an interest rate per annum equal to the prime rate established by Citibank, N.A., provided, however, if Citibank, N.A. shall cease to establish and publish a prime rate, the rate shall be the prime rate established by the commercial bank in New York City with the highest net worth then establishing and publishing a prime rate, and if no such commercial bank shall establish and publish a prime rate, the rate to be used for the purposes of this definition shall be a comparable rate for the purposes of establishing the cost of money as determined by Landlord, acting in a reasonable manner.

“Private Club Facilities” has the meaning set forth in Section 5.04(a)(iii).

“Quality Assurance Division” or “QAD” means that group within the Net Lessor’s Engineering Department responsible for all matters relating to the Port Authority Manual and code compliance.

“Real Property” means, collectively, the Building, the Land and the Appurtenances (as defined in Section 2.1.1 of the Net Lease).

“Rent” means all Fixed Rent, Tenant’s Operating Expense Payments, Tenant’s Tax Payments, and all other Additional Rent.

“Rent Subsidy” has the meaning set forth in Section 3.05.

“Rentable Square Feet/Foot/Footage”, “rentable square feet/foot/footage”, or “RSF” means rentable square feet/foot/footage of the Building or any portion thereof determined in accordance with the Building Measurement Standard.

“REOA” means that certain Reciprocal Easement and Operating Agreement of the West Portions of the World Trade Center dated as of November 16, 2006 by and among the Port Authority, Landlord, and WTC Retail LLC, as the same may be amended, modified, revised or supplemented from time to time.

“Requisite Net Worth” has the meaning set forth in Section 8.13(a).

“Resubmission Process” has the meaning set forth in Section 13.02(c).

“Revised Estimate” has the meaning set forth in Section 4.03(b).

“Risers” has the meaning set forth in Section 6.08.

“Rules and Regulations” means the rules and regulations attached hereto as Exhibit G, as same may be modified or supplemented from time to time in accordance with the provisions of this Lease.

“Second Determination Date” shall have meaning set forth in Section 36.05.

“Second Dispute Notice” shall have meaning set forth in Section 36.05.

“Second Extension Exercise Notice” shall have meaning set forth in Section 36.01(a).

“Second Extension Exercise Notice Date” shall have meaning set forth in Section 36.01(a).

“Second Extension Minimum Rent” shall have meaning set forth in Section 36.06(e).

“Second Extension Option” shall have meaning set forth in Section 36.01(a).

“Second Extension Rent” shall have meaning set forth in Section 36.04(b).

“Second Extension Term” shall have meaning set forth in Section 36.01(a).

“Second Extension Term Commencement Date” shall have meaning set forth in Section 36.01(a).

“Second Extension Term Expiration Date” shall have meaning set forth in Section 36.01(a).

“Second FMV Agreement” shall have meaning set forth in Section 36.05.

“Second FMV Amount” shall have meaning set forth in Section 36.04(b).

“Second Increase” shall have the meaning set forth in Section 33.03.

“Second Rent Notice” shall have meaning set forth in Section 36.05.

“Section 12.05 Tenant Delay” has the meaning set forth in Section 12.05.

“Secured Access Area” has the meaning set forth in Section 6.15(a).

“Security Letter” has the meaning set forth in Section 33.02(a).

“Self-Insured Retention” has the meaning set forth in Section 16.09(c).

“Specialty Alterations” means installations made in the Premises (or by Tenant elsewhere in the Building) that are not customary for typical office tenants, including, but not limited to, raised flooring, Supplemental AC Units, vaults, supplemental fire and pre-action systems, kitchen and cooking facilities (including ducts and flues), cafeteria, auditorium, child or health care facilities, print shop, conveyors, dumbwaiters, internal staircases, escalators and elevators, spa and fitness facilities, conference facilities (in excess of a standard number of conference rooms of standard size on each floor for a typical office occupant), media and broadcast facilities, private restrooms and showers, and any changes made by Tenant to standard Building conditions in core bathrooms. The term “Specialty Alterations” shall not include (i) reinforcements to strengthen floor slabs provided such reinforcements do not reduce the slab to

slab floor height, (ii) Upgraded Building Systems, or (iii) any widening of fire stair doorways performed as part of Tenant's Special Work.

"Stacking Plan" has the meaning set forth in Section 5.04(a).

"Subletting/Assignment Notice" has the meaning set forth in Section 8.03(a).

"Successor Landlord" has the meaning set forth in Section 9.03(a).

"Superior Lease" means any ground or underlying lease of the Real Property or any part thereof heretofore or hereafter made by Landlord, as tenant, and all renewals, extensions, supplements, amendments and modifications thereof (including, without limitation, the Net Lease).

"Superior Lessor" means the lessor under a Superior Lease.

"Superior Mortgage" means any mortgage which may now or hereafter affect the Real Property or the Building and any modifications, extensions or replacements thereof.

"Superior Mortgagee" means the holder or holders (including the agent for any lending syndicate or a trustee for the benefit of any such holder) of a Superior Mortgage.

"Supplemental AC Condenser Water" has the meaning set forth in Section 6.02(d).

"Supplemental AC Units" has the meaning set forth in Section 6.02(d).

"Supplemental Kitchen AC Unit" has the meaning set forth in Section 6.02(d).

"Taxes" has the meaning set forth in Section 4.02(g).

"Tax Year" has the meaning set forth in Section 4.02(h).

"Tenant" means China Center New York LLC, a Delaware limited liability company, and its successors and permitted assigns (including, without limitation, Permitted Transferees), provided that Tenant or any assignee shall not be released from liability under this Lease in the event of an assignment hereof, other than as expressly provided herein. *Notwithstanding anything to the contrary contained in this Lease, at all times during the Term, Tenant shall, in the opinion of Net Lessor, be eligible, suitable and qualified as a World Trade Center tenant, and in exercising its opinion with respect to a proposed tenant, Net Lessor shall apply criteria (x) no less favorable than the criteria used by it in making similar determinations with respect to tenants at the World Trade Center prior to July 16, 2001 (the date of a net lease transaction prior to which Net Lessor was landlord of the entire World Trade Center), as established in the context of the nature of the business conducted and the square footage occupied by tenants at the World Trade Center prior to said date, and (y) in a non-discriminatory manner as against Tenant (i.e., Landlord shall not enforce any such criteria against Tenant that it is not then enforcing generally against other tenants in the Building). Landlord acknowledges that, as of the date hereof, China Center New York LLC, a Delaware limited liability company,*

is qualified as a World Trade Center tenant within the meaning of the immediately preceding sentence.

“Tenant Party” means any of Tenant, any Affiliate of Tenant, any subtenant, assignee or other occupant of the Premises, and each of their respective direct and indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, employees, principals, contractors, licensees, agents and representatives.

“Tenant’s Above Grade Space” has the meaning set forth in the definition of “Premises.”

“Tenant’s Below Grade Space” has the meaning set forth in the definition of “Premises.”

“Tenant’s Operating Expense Payment” has the meaning set forth in Section 4.03(a).

“Tenant’s Operating Expense Share” has the meaning set forth in Section 4.02(i)(3).

“Tenant’s Special Work” has the meaning set forth in the Work Letter.

“Tenant’s Initial Alterations” has the meaning set forth in the Work Letter.

“Tenant’s Plans” has the meaning set forth in Section 13.02.

“Tenant’s Property” means Tenant’s movable fixtures and movable partitions, telephone and other communications equipment, computer systems, furniture, trade fixtures, kitchen and HVAC equipment that is not permanently affixed to the Premises, satellite dishes, furnishings, art work, decorations, specialty lighting fixtures and other items of personal property (excluding property that is built into the Premises and custom-fitted furniture or cabinetry) whether or not affixed to the Premises, that are removable without material damage to the Premises or Building. If the removal of any Tenant’s Property during the Term should result in any damage to the Premises or the Building, Tenant will repair any damage due to such removal and restore to standard office finish prior to the expiration or earlier termination of this Lease.

“Tenant’s Pro Rata Rent” has the meaning set forth in Section 8.13(d).

“Tenant’s Share” has the meaning set forth in Section 4.02(i)(1).

“Tenant’s Tax Payment” has the meaning set forth in Section 4.04(a).

“Tenant’s Tax Share” has the meaning set forth in Section 4.02(i)(2).

“Term” means the term of this Lease, which shall commence on the Commencement Date and shall expire on the Expiration Date.

“Three Month Average” has the meaning set forth in Section 7.01(d).

“Transaction Expenses” has the meaning set forth in Section 8.09(a)(ii).

“Transaction Profits” has the meaning set forth in Section 8.09(a)(i).

“TRIA” means The Terrorism Risk Insurance Act of 2002.

“U.C.C.” means the Uniform Commercial Code as in effect in the State of New York.

“Unavoidable Delay” has the meaning set forth in Section 15.02.

“Upgraded Building System” has the meaning set forth in the definition of “Building System.”

“Usable Square Feet/Foot/Footage”, “usable square feet/foot/footage”, or “USF” means usable square feet/foot/footage of the Building or any portion thereof determined in accordance with the Building Measurement Standard.

“Vantone” has the meaning set forth in Section 38.01(b).

“Work Letter” means the work letter attached hereto as Exhibit H.

“World Trade Center” means that certain facility of commerce commonly and colloquially known as the “World Trade Center” located in the Borough of Manhattan, City, County and State of New York, comprised of approximately 16 acres, substantially as depicted generally on Exhibit P attached hereto.

“World Trade Center Legislation” means the concurrent legislation of the State of New York and the State of New Jersey set forth at Chapter 209 of the Laws of New York of 1962, as amended by Chapter 1003 of the Laws of New York of 1972, by Chapter 318 of the Laws of New York of 1973 and by Chapter 993 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§ 6601-6618), as amended, and Chapter 8 of the Laws of New Jersey of 1962, as amended by Chapter 208 of the Laws of New Jersey of 1972 and by Chapter 25 of the Laws of New Jersey of 1974 (N.J.S.A. §§ 32:1-35.50-35.68), as amended.

**Section 1.02 Demise.** Landlord hereby leases the Premises to Tenant, and Tenant hereby hires the Premises from Landlord. The leasing of the Premises by Tenant shall include the right of Tenant (a) to use and access the Common Areas in common with other tenants in the Building and (b) to use all fixtures, improvements and betterments owned or leased by Landlord that, at any time during the Term, are attached to and serve the Premises or are installed in and serve the Premises, all subject to such restrictions, rules, regulations, security arrangements and charges (if any) as are provided for in this Lease.

TO HAVE AND TO HOLD unto Tenant, its successors and permitted assigns, for the Term, YIELDING AND PAYING the Rent and all rents hereinafter set forth, all on the covenants, conditions and agreements hereinbefore and hereinafter stated.

## ARTICLE 2

### **COMMENCEMENT OF TERM; CONDITION OF THE PREMISES**

#### **Section 2.01 Term; Delivery.**

(a) The Term shall commence on the Commencement Date and shall end on the Expiration Date. Except as expressly provided in the Work Letter, Tenant hereby waives any right to rescind this Lease and/or to recover any damages on account of any delay in the Commencement Date.

(b) Landlord will perform Landlord's Work substantially in compliance with all Legal Requirements and otherwise pursuant to the terms and provisions of this Lease, including the Work Letter, and shall complete the same, subject to any delay caused by Tenant, its agents, employees or contractors, to the extent required to deliver possession of the Premises to Tenant in accordance with the Work Letter. Tenant's rights and remedies in connection with Landlord's failure to comply with such obligations shall be governed solely by the terms of the Work Letter. The provisions of this Section 2.01 and the Work Letter are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law or any successor law or ordinance, and, except as expressly provided in the Work Letter, Tenant hereby waives any right to rescind this Lease that Tenant might otherwise have thereunder. Following the Commencement Date, Landlord shall complete in accordance with the Work Letter any portions of Landlord's Work that remain incomplete as of the Commencement Date.

**Section 2.02 "As-Is" Acceptance.** Subject to the completion by Landlord of Landlord's Work in accordance with this Lease, including the Work Letter, Tenant agrees to accept possession of the Premises in its "as-is" condition on the Commencement Date, as determined in accordance with the Work Letter. Except for the performance of Landlord's Work (including, without limitation, any Tenant's Special Work which Landlord and Tenant agree upon in accordance with the Work Letter) and the making of Landlord's Contribution as set forth in Article 31, Landlord shall have no obligation to perform any work, supply any materials, incur any expenses or make any installations in order to prepare the Premises for Tenant's occupancy.

**Section 2.03 Required Permits.** Upon the written request of Tenant, Landlord, at Tenant's sole cost and expense, shall execute any application for any permit, approval or certificate from any Governmental Authority reasonably required to be obtained by Tenant (including any special permits, public assembly permits or changes to the certificate of occupancy for the Building) in connection with Tenant's Initial Alterations, and shall sign such application within fifteen (15) Business Days after receipt of Tenant's request, provided that (i) the provisions of the applicable Legal Requirement shall require that Landlord join in such application and (ii) such application (x) relates to the performance by Tenant of Tenant's Initial Alterations in accordance with the terms of this Lease or (y) is otherwise reasonably acceptable

to Landlord; Landlord shall otherwise cooperate with Tenant in connection therewith, provided further that Tenant shall (i) reimburse Landlord for any actual, out-of-pocket cost or expense incurred by Landlord in connection therewith, including, but not limited to, reasonable attorneys' fees and disbursements, and any fees or expenses paid by Landlord to any Governmental Authority or as required by any Legal Requirement, and (ii) indemnify Landlord against any liability in connection therewith.

**Section 2.04 Commencement Date Agreement.** Landlord shall, in accordance with this Article 2 and the Work Letter, determine the Commencement Date and shall give written notice to Tenant of the date so determined. Upon the determination of the Commencement Date in accordance with the Work Letter, the parties shall execute and deliver to one another an instrument, in the form attached hereto as Exhibit N, confirming the Commencement Date, Rent Commencement Date and Expiration Date of this Lease, as well as the First Lease Year; provided, however, the failure of either party failure to execute and deliver such instrument shall not affect in any manner whatsoever the validity of the Commencement Date.

### **ARTICLE 3**

#### **RENT**

**Section 3.01 Payment of Rent.** Tenant hereby agrees to pay to Landlord Fixed Rent together with all Additional Rent provided for herein. Tenant agrees to pay to Landlord Fixed Rent and recurring Additional Rent, without offset, notice, demand, abatement, or deduction

whatsoever (except as otherwise expressly provided for in this Lease). Payment of Rent shall commence on the Commencement Date, subject to Section 3.02 and Article 37. All Fixed Rent shall be payable in equal monthly installments in advance (subject to Section 3.03) from and after the Rent Commencement Date and on the first (1st) day of each calendar month thereafter during the Term, at the office of Landlord or such other place as Landlord may designate. Unless another time period is specified in this Lease, all non-recurring Additional Rent shall be due and payable twenty (20) days after receipt of an invoice therefor from Landlord and as otherwise set forth above. All Fixed Rent and recurring Additional Rent shall be payable in lawful money of the United States by wire transfer of immediately available funds to the following account or such other account as Landlord may from time to time direct:

Name of Bank - Commerce Bank  
Bank ABA Number -  
Account Number -

Other amounts due and payable under this Lease (including non-recurring Additional Rent) shall be payable in lawful money of the United States by check drawn on a bank which is a member of the New York Clearinghouse Association and remitted to the following address or such address as Landlord may from time to time direct:

The Port Authority of New York & New Jersey  
P.O. Box 95000-1517  
Philadelphia, PA 19195-1517

**Section 3.03 Proration of Fixed Rent.** Notwithstanding anything contained in this Article 3 to the contrary, if the Rent Commencement Date shall occur on a date other than the first (1st) day of any calendar month, then the first monthly installment of Fixed Rent that becomes due on the Rent Commencement Date, prorated to the end of said calendar month based upon the actual number of days in such month, shall be payable on the Rent Commencement Date. If the Expiration Date or other date on which the Term expires or is terminated occurs on a date other than the last day of a calendar month, the Fixed Rent for such calendar month shall be prorated based upon the actual number of days in such month.

**Section 3.04 Late Charges.**

(a) If Tenant shall fail to pay any amount required under this Lease when due to Landlord, including without limitation any payment of Rent or if any such amount is found to

be due as the result of an audit, then, in such event, Landlord may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (described below) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (0.8%) of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to Landlord as the result of Landlord audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Lease. Each late charge shall be payable immediately upon demand therefor by Landlord. No acceptance by Landlord of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of Landlord to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be recoverable by Landlord in the same manner and with like remedies as if it were originally a part of the Fixed Rent or Additional Rent. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of Landlord under this Lease, including without limitation Landlord's rights set forth in Article 20 of this Lease or (ii) any obligations of Tenant under this Lease. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under the provisions of this Section shall be payable instead at such legal maximum. In the event that upon conducting an examination and audit as described in this Section Landlord determines that unpaid amounts are due to Landlord by Tenant, Tenant shall be obligated, and hereby agrees, to pay to Landlord a *service charge in the amount of five percent (5%) of each amount determined by Landlord audit findings to be unpaid*. Each such service charge shall be payable immediately upon demand therefor by Landlord (by notice, bill or otherwise). Such service charge shall be exclusive of, and in addition to, any and all other moneys or amounts due to Landlord by Tenant under this Lease or otherwise. No acceptance by Landlord of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of Landlord to payment of any late charge or other service charge payable under the provisions of this Section with respect to such unpaid amount. Each such service charge shall be recoverable by Landlord in the same manner and with like remedies as if it were originally a part of the Fixed Rent or Additional Rent to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of Landlord under this Lease, including, without limitation thereto, Landlord's rights to terminate this Lease or (ii) any obligations of Tenant under this Lease.

**Section 3.05 Rent Subsidy.** Pursuant to the Omnibus Act and the Guidelines for the World Trade Center Rent Reduction Program adopted on January 18, 2006, as the same has been and may hereafter be amended, modified, revised or supplemented from time to time, Landlord and Tenant will submit a joint application to the Empire State Development Corporation (“ESDC”) for a rent subsidy in the amount of \$5.00 per RSF of the Premises (the “Rent Subsidy”) to be provided by the State of New York, acting through ESDC. In the event that such application is approved by ESDC and the Rent Subsidy is paid directly to Landlord or any of its Affiliates in lieu of Tenant, Landlord shall promptly notify Tenant of such receipt pursuant to the notice provisions set forth in Article 24 and, at Landlord’s election, either (i) provide Tenant with a corresponding credit against the applicable installment of Fixed Rent due and payable hereunder in the amount of the Rent Subsidy as such Rent Subsidy may from time to time be received by Landlord or its Affiliates or (ii) promptly assign and pay over the entire amount of such Rent Subsidy to Tenant as such Rent Subsidy may from time to time be received by Landlord or its Affiliates.

#### **ARTICLE 4**

##### **TAXES; EXPENSE PAYMENTS; ADJUSTMENTS OF RENT**

**Section 4.01 General.** In addition to the Fixed Rent hereinbefore set forth, commencing on the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, at the times and in the manner hereinafter set forth, (a) Tenant’s Tax Payments, and (b) Tenant’s Operating Expense Payments. In connection with any reference in this Lease to a service being provided by Landlord to Tenant “without cost,” “without charge,” “without additional charge,” “at Landlord’s cost and expense,” or any similar reference, such reference shall not be deemed to exclude any costs applicable thereto from “Operating Expenses” to the extent such costs are otherwise includable therein pursuant to this Lease.

**Section 4.02 Certain Defined Terms.** For the purposes of this Article 4:

(e) “Operating Expenses” means, except as otherwise provided herein and without duplication, the total of all costs and expenses consistently determined and paid or incurred by or on behalf of Landlord with respect to the operation and maintenance of the Building and all appurtenances thereto, and under the REOA (including costs and expenses paid by Landlord to the Board of Stakeholders but subject to the provisions of Section 4.02(e)(5) below) with respect to the Building and the services provided to the tenants thereof, including, but not limited to, the costs and expenses incurred for and with respect to: electricity furnished to non-leasable and non-leased portions of the Building (but specifically excluding electricity purchased by or for individual tenants for consumption in such tenants’ space or by such tenants’ equipment); steam and any other fuel utilized by the Building for operation and maintenance of the Building, excluding any fuel for any tenant’s exclusive use; water rates and sewer rents; air conditioning, ventilation and heating to the non-leasable and non-leased portions of the Building and to tenants of the Building; metal, elevator and elevator cab, lobby, sidewalk and plaza maintenance; equipment, services and personnel for protection and security; Lobby decoration and interior and exterior landscape maintenance; sprinkler maintenance and alarm service; maintenance and repairs that are appropriate for the continued operation of the Building in a manner substantially similar to Comparable Buildings; painting and decoration of non-leasable areas; normal and customary testing and monitoring of air and water quality, antennae emissions and of all other similar types of environmental concerns in the Building; cleaning and window washing (interior and exterior) of the Building by contract or otherwise; garbage and trash removal; premiums for fire and extended coverage insurance, special extended coverage insurance, owner’s protective insurance, and other casualty insurance coverage, boiler and machinery insurance, sprinkler, apparatus insurance, public liability and umbrella liability insurance, property damage insurance, rent or rental value insurance as required under the Net Lease, plate glass insurance for the Lobby of the Building and any other insurance that is customarily carried by owners of Comparable Buildings or that is required by any Superior Lessor and/or any Superior Mortgagee; Building supplies; wages, salaries, disability benefits, pensions, hospitalization, retirement plans, and group insurance and other direct expenses respecting employees of the Landlord employed to provide direct services for the Building (or allocable to the Building) up to and including the grade of building manager; purchasing or renting uniforms and working clothes for such employees and the cleaning thereof; expenses imposed on Landlord pursuant to laws, orders, rules, regulations, and other legal requirements or pursuant to any collective bargaining agreement with respect to such employees; worker’s compensation insurance, pay-roll, social security, unemployment, and other similar taxes with respect to employees of Landlord employed at the Building up to and including the level of building manager; telephone and other Building office expenses (other than rent); auditing fees in connection with the preparation of annual audited operating expense statements; cleaning, security (provided, however, that with respect to any costs for security guards at the World Trade Center which are passed through to the Building under the REOA, it shall be assumed for purposes of calculating the amount included in Operating Expenses on account thereof that the number of such security guards employed during any Operating Year is no greater than the number of such security guards employed as of the last day of the Base Operating Year), messenger and delivery services; and management fees (which shall be deemed in all circumstances to be equal to the gross revenues derived from the Building determined in accordance with GAAP; provided, however, that (x) the amount included in Operating Expenses on account of management fees during the Base Operating Year shall, with

respect to any Building Office Space which is unleased for all or any portion of the Base Operating Year, be deemed to be \_\_\_\_\_ per RSF of such unleased Building Office Space for the Base Operating Year (prorated on a per diem basis for any such Building Office Space which is leased during the Base Operating Year), in lieu of applying the Op Ex Gross Up to the management fees for such year, and (y) the amount included in Operating Expenses on account of management fees with respect to any Building Office Space which is unleased for all or any portion of Operating Years following the Base Operating Year shall be subject to the Op Ex Gross Up). Any expenses that are incurred and charged to the Building and to other buildings or property owned by a Landlord Entity shall be fairly and equitably allocated to the Building and such other buildings or property as appropriate.

Anything to the contrary set forth above notwithstanding, Operating Expenses shall exclude or have deducted from them, as the case may be and as shall be appropriate:

(1) the cost of Landlord's Work or any other costs incurred in connection with the development, design or construction of the Building;

(2) any cost covered by a warranty that Landlord has on the Building or its equipment in the Building, or that would have been covered by a warranty had Landlord obtained warranties customarily maintained by prudent owners in constructing buildings comparable to Comparable Buildings;

(3) all leasing costs, including, without limitation, brokerage commissions, legal fees, concessions, marketing costs, obligations and similar costs as well as other expenses relating to the leasing of space;

(4) salaries, fringe benefits and other compensation of personnel above the grade of building manager;

(5) expenditures for capital improvements, except the following expenditures for capital improvements will, however, be included in the definition of Operating Expenses, as provided for herein below: (a) capital expenditures or expenses for equipment designed to result in savings or reduction of Operating Expenses (e.g., energy saving devices) and (b) capital expenditures required by Legal Requirements enacted after the Commencement Date (or by amendments enacted after the Commencement Date to any Legal Requirements enacted prior to the date hereof to the extent of such amendments or by Legal Requirements or amendments enacted before the Commencement Date but in respect of which enforcement of such Legal Requirements or amendments or any aspect thereof in respect of the Building shall first take place after the Commencement Date), in any of which cases the amortized cost thereof shall be included in Operating Expenses for the Operating Year in which the costs are incurred and subsequent Operating Years, on a straight line basis, depreciated over their useful life in accordance with GAAP with an interest factor equal to the Prime Rate at the time of Landlord's having incurred said expenditure; provided that the amount of any such capital expenditure under clause (a), above, relating to any particular Operating Year that may be included in Operating Expenses for such Operating Year shall not exceed the actual savings realized for such Operating Year as a result of such expenditure by Landlord, which actual savings shall be as determined by a reputable, independent licensed engineer having at least ten

(10) years experience; provided further, that any excess amount of the portion of any such capital expenditure that would otherwise have been included in such Operating Year above the actual savings realized for such particular Operating Year may be included in Operating Expenses for a future Operating Year to the extent there are actual savings realized for such future Operating Year as a result of such expenditure in excess of the amount of such capital expenditure otherwise to be included in such Operating Year pursuant to the amortization schedule herein provided for. (For example, if 10¢ per RSF would be the amount to be included in each Operating Year on account of an energy saving device, provided the actual savings in such year at least equaled such amount, and if in year 5 the actual savings were 8¢, but in year 6 they were 12¢, then only 8¢ could be included in year 5, but 12¢ could be included in year 6 because of the 2¢ “carry forward” from year 5.) If Landlord shall lease any such item of capital equipment designed to result in savings or reductions in Operating Expenses, then the rentals and other costs paid pursuant to such leasing shall be included in Operating Expenses for the Operating Year in which they are incurred; provided that the amount so included may not exceed the amount that would have otherwise been included pursuant to the preceding sentence had Landlord purchased the same. If Landlord receives any sales tax credits or other credits, refunds or abatements on account of any equipment installed by Landlord as to which Landlord is entitled to amortize the cost thereof as an Operating Expense under this clause (5), then such credits, refunds and abatements shall be applied to reduce the amount of the Operating Expenses permitted to be billed hereunder except to the extent such credits, refunds and abatements are already reflected in the computation of Operating Expenses;

(6) cost of repairs or replacements incurred by reason of (A) fire or other casualty for which Landlord is compensated by insurance proceeds or would have been compensated had Landlord maintained the insurance Landlord is required to maintain pursuant this Lease (other than the amount of any customary deductible to which Landlord is actually subject pursuant to the terms of its insurance policies, but including any Self-Insured Retention amounts in excess of such customary deductible), or (B) the exercise of the right of eminent domain to the extent Landlord is compensated by condemnation proceeds;

(7) intentionally deleted;

(8) legal or accounting fees, expenses or disbursements relating to disputes with Tenant and other tenants or other occupants of the Building, or the leasing, sale, *financing or refinancing of the Building or in connection with a financing or refinancing secured by the Net Lease*, provided that the following shall be included in Operating Expenses: (A) legal or accounting fees in connection with tax returns, tax reporting or accounting at the landlord entity level, and (B) accounting and auditing fees reasonably incurred in connection with the preparation of statements required pursuant to additional rent or rental escalation provisions;

(9) costs incurred in performing work or furnishing services to or for individual tenants (including Tenant), including, without limitation, overtime HVAC, other than work or services of a kind and scope that Landlord is obligated to furnish to Tenant and tenants generally in the Building without charge;

(10) the cost incurred by Landlord in performing work or furnishing any service to or for a tenant of space in the Building (including Tenant and including

Landlord if Landlord occupies space in the Building), for which a separate charge is paid or payable under such tenant's lease (other than charges on account of Operating Expense escalation payments in a manner similar to that set forth in this Article 4, whether with or without a base year or a base expense concept, or on account of other forms of escalation payments in lieu thereof (e.g., porter's wage escalation payments)), including, without limitation, the supply of over-time HVAC and extra cleaning services, regardless of the amount billed or received by Landlord for performing such work or furnishing such service;

(11) Taxes, including, without limitation, PILOT;

(12) any expenses incurred in connection with any mortgage or other financing secured by the Net Lease or any other ground or land lease or the Land or the Building, including, without limitation, mortgage interest or amortization, or in connection with any refinancing thereof, including, without limitation, legal, accounting, consultant, mortgage, brokerage or other expenses related thereto;

(13) incremental costs incurred by reason of any breach or default of Landlord under the Net Lease, the REOA, or any Superior Mortgage or Superior Lease and any penalties, late charges or interest incurred for late payments thereunder;

(14) depreciation, amortization and other non-cash expenses except as provided for herein;

(15) costs of acquiring or replacing (but not the costs of routine maintenance of) works of art of the quality and nature of "fine art" to the extent such costs exceed the costs of decorative art work (other than fine art) customarily found in Comparable Buildings;

(16) any cost incurred in connection with the preparation of any space in, or as part of, the Building for any tenant's (including Tenant's) occupancy and any other contribution by Landlord to the cost of tenant improvements;

(17) costs incurred with respect to removal or encapsulation or other treatment of Hazardous Materials, but excepting costs of normal and customary testing and monitoring;

(18) costs of placing the Building common areas in compliance with the ADA except as set forth in clause (5)(b) above and except for costs of placing the Building common areas in compliance with amendments to, or changes in (as opposed to a first interpretation of) governmental agency interpretations of or regulations governing the ADA after the Commencement Date;

(19) any amounts paid by Landlord to any other Landlord Entity to the extent in excess of then current market rates with respect to Comparable Buildings (it being agreed that Landlord shall specify in reasonable detail in its Expense Statement which fees and expenditures were payable to any such Landlord Entity);

(20) any fines, penalties or other incremental amounts resulting from Landlord's failure to meet its legal or contractual obligations (e.g., failure to pay taxes, defaults under non-occupancy leases or agreements, etc.), except to the extent that such failure is due to Force Majeure, any violation by Tenant of this Lease or Legal Requirements, or the negligence or any willful acts or omissions of Tenant;

(21) the rental cost of items that, if purchased, would be capitalized in accordance with GAAP and excluded from Operating Expenses;

(22) dues to professional and lobbying associations (except for the allocable dues for REBNY, BOMA or any successor or similar organization), and contributions to political or charitable organizations;

(23) costs resulting from the negligence or willful misconduct of any Landlord Entity or any such party's agents, contractors, employees or representatives;

(24) Landlord's overhead and general and administrative expenses other than the above management fees;

(25) transfer, gains, excise, franchise, inheritance, estate, occupancy, personal property, succession, gift, corporation, unincorporated business, gross receipts, profit and income taxes imposed upon Landlord;

(26) costs incurred with respect to a sale or transfer of all or any portion of the Building or Landlord's interest in the Net Lease, or any interest therein or in any person or entity of whatever tier owning an interest therein;

(27) lease takeover or take back costs incurred by Landlord in connection with leases in the Building;

(28) costs for which Landlord receives compensation through the proceeds of insurance or for which Landlord would have been compensated by insurance had it carried the coverage required under this Lease (including any Self-Insured Retention amounts) or for which Landlord receives compensation from any other source (other than through provisions similar to this Article 4);

(29) costs otherwise includable in Operating Expenses to the extent reimbursed to Landlord directly by Tenant or other tenants (other than through provisions similar to this Article 4 or on account of other forms of escalation payments in lieu thereof (e.g., porter's wage escalations)) and whether such reimbursement is accomplished by inclusion in base or fixed rent (if such cost is not customarily included therein) or by payments received under guaranties or warranties, or otherwise;

(30) the cost of any judgment, settlement, or arbitration award resulting from any liability of Landlord and all expenses incurred in connection therewith (other than a liability for amounts otherwise includable in Operating Expenses hereunder);

(31) the cost of providing any service customarily provided by a managing agent and the cost of which is customarily included in management fees (e.g., bookkeeping and accounting costs but not audit fees);

(32) the cost of acquiring or replacing any separate electrical meter, water meter or other utility meters Landlord may provide to any of the tenants in the Building;

(33) costs relating to withdrawal liability or unfunded pension liability under the Multi-Employer Pension Plan Act or similar law;

(34) the cost of installing, operating and maintaining any specialty facility such as an observatory, observation deck, broadcasting facilities, luncheon club, athletic or recreational club, child care facility, auditorium, public or private cafeteria, snack bar or dining facility, conference center or similar facilities, messenger center servicing the Building or the Building antenna rings and mast (unless such specialty facility is generally available to tenants at no additional cost), and any separate Building lobbies exclusively servicing any of the foregoing facilities;

(35) any compensation paid to clerks, attendants or other persons in commercial concessions operated by and for the benefit of Landlord;

(36) fines and penalties incurred because of violations of Legal Requirements that arise by reason of Landlord's failure to maintain or operate the Building or any part thereof in compliance with such Legal Requirements (but excluding the costs of permits and approvals required to comply with Legal Requirements in the ordinary course of the operation or maintenance of the Building);

(37) costs incurred in connection with the making of any additions to, or building additional stories on, the Building or its plazas, or adding buildings or other structures adjoining the Building, or connecting the Building to other structures adjoining the Building;

(38) costs incurred in connection with the acquisition or sale of air rights, transferable development rights, easements or other real property interests;

(39) to the extent not otherwise deducted, any payments received by Landlord for recyclable materials and waste paper for the Building shall be deducted from Operating Expenses;

(40) costs (including, without limitation, any taxes or assessments) allocable directly and solely to any revenue generating signs or other tenants' or occupants' signs and any signs designating the name of the Building (excluding any normal cleaning or maintenance of such signs other than revenue generating signs);

(41) costs or expenses incurred in connection with any parking garage servicing the Building or the World Trade Center or any portion thereof, including,

without limitation, any management or similar fees paid to the operator of any such parking garage; and

(42) rent payable pursuant to the Net Lease.

In determining the amount of Operating Expenses for any Operating Year and the Base Operating Year, if less than ninety-five percent (95%) of the RSF of the Building Office Space shall have been occupied by tenant(s) at any time during any such Operating Year, or if any Operating Year or the Base Operating Year, shall be less than a full calendar year, Operating Expenses shall be determined for such Operating Year or the Base Operating Year, as the case may be, to be an amount equal to the like expenses that would normally be expected to be incurred (including management fees) had ninety-five percent (95%) of the RSF of the Building Office Space been occupied through-out such Operating Year or the Base Operating Year, as the case may be. If in the Base Operating Year or any Operating Year Landlord is not furnishing any particular work or service (the cost of which if performed by Landlord would constitute an Operating Expense) to a tenant of the Building Office Space who has undertaken to perform such work or service in lieu of the performance thereof by Landlord or such work or service although customarily provided by Landlord is not required or desired by such tenant, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses that reasonably would have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. The provisions of the immediately preceding two (2) sentences are herein sometimes called the "Op Ex Gross Up."

If any services are provided by a Landlord Entity for which Operating Expenses are incurred in the Base Operating Year, then any increases in the Operating Expenses for such services in subsequent Operating Years shall not exceed the amounts by which such Operating Expenses would have (in Landlord's reasonable determination) increased had such services not been provided by a Landlord Entity except to the extent that the Operating Expenses for such services in the Base Operating Year were materially below the amount the Operating Expenses would otherwise have been in which case the increases shall not exceed a reasonable amount (as determined by Landlord in its reasonable determination) giving proper regard to the services provided and the reasonable costs incurred by Landlord in providing those services.

(f) "Operating Year" means each twelve (12) month period occurring immediately following the Base Operating Year.

(g) "Taxes" means (i) all real estate taxes and assessments (special or otherwise) and any other governmental levies, impositions or charges of a similar or dissimilar nature, whether general, special, ordinary, extraordinary, foreseen or unforeseen, that may be assessed, levied or imposed upon all or any part of the Real Property, whether or not the same constitute one or more tax lots, payable to any Governmental Authority or to the Net Lessor (it being acknowledged that, as of the date of this Lease, no amounts described in this clause (i) are payable with respect to the Real Property), (ii) PILOT, and (iii) any reasonable expenses (including legal, consultant and appraiser fees and/or disbursements, and experts' and other witnesses' fees) incurred in protesting or contesting any of the foregoing or the assessed valuation of all or any part of the Real Property); but "Taxes" shall not include (i) any succession, gains, recording, income, franchise, transfer, inheritance, capital stock, excise, excess

profits, occupancy or rent (except as permitted pursuant to the third (3<sup>rd</sup>) paragraph of this Section 4.02(g)), gift, estate, foreign ownership or control, mortgage recording, payroll or stamp tax, or any special assessments levied against another tenant or occupant in the Building due to improvements made by such other tenant or occupant, (ii) BID Charges, or (iii) any interest or penalty incurred by Landlord as a result of Landlord's late payment of Taxes, except for interest payable in connection with the installment payments of assessments pursuant to the next sentence.

If by law Taxes may be divided and paid in annual installments, then for purposes of this Article 4, (i) such Taxes shall be deemed to have been so divided and to be payable in the maximum number of annual installments permitted by law and (ii) there shall be deemed included in Taxes for each Tax Year the annual installment of such Taxes becoming payable during such Tax Year, together with interest on such annual installment and on all installments thereafter becoming due to the extent required by law, all as if such Taxes had been so divided.

If, because of any change in the taxation of real estate after the Effective Date, any other tax or assessment (howsoever denominated), including, without limitation, any franchise, income, profits, sales, use, occupancy, gross receipts or rental tax, is imposed upon Landlord or the owner of the Real Property, or the occupancy, rents or income therefrom, in express substitution for any of the foregoing Taxes (as evidenced by either the terms of the legislation imposing such tax or assessment, the legislative history thereof or other documents or evidence that reasonably demonstrate that such tax or assessment was intended to serve as a real estate tax or fulfill substantially the same function as existing real estate taxes), then such other tax or assessment, to the extent expressly substituted therefor, shall be deemed part of Taxes computed as if (a) Landlord's sole asset were the Building and (b) Landlord's only source of income were from rentals from tenants, including Tenant, and occupants of the Building. Except as provided in the immediately preceding sentence, Taxes shall not include the taxes (1) enumerated in said sentence or (2) imposed on Tenant or other tenants in the Building and payable by Tenant or such other tenants in the first instance.

For purposes of calculating the amount includible in "Taxes" on account of this Lease as a "Space Lease" (as defined in the Net Lease), with respect to payments to be made by Landlord to Net Lessor pursuant to Section 6.10.3 of the Net Lease, (i) such amounts shall be calculated as if the entire Building Area were subject to Space Leases on terms identical to this Lease, and (ii) no amounts shall be included in such calculation on account of any other Space Lease other than this Lease (it being the intention of the parties that such adjustment account only for the terms of this Lease, and not for the terms of any other leases in effect with respect to the Building).

In determining the amount of PILOT or real estate taxes, if applicable, for any Tax Year, including the Base Tax Year, if less than ninety-five percent (95%) of the RSF of the Building Office Space shall have been occupied by tenant(s) at any time during any such Tax Year, or if any Tax Year, including the Base Tax Year, shall be less than a full calendar year, PILOT or real estate taxes, if applicable, shall be determined for such Base Tax Year to be an amount equal to the PILOT or real estate taxes, if applicable, that would have been payable had ninety-five percent (95%) of the RSF of the Building Office Space been occupied through-out such Tax Year.

(h) “Tax Year” shall mean each period of twelve (12) months, commencing on the first day of July (or such other day as may be designated by the City of New York as the first day of its fiscal tax year) of each such period, in which occurs any part of the Term, or such other period of twelve (12) months occurring during the Term as hereafter may be duly adopted as the fiscal year for real estate tax purposes of the City of New York.

(i) (1) “Tenant’s Share” shall mean jointly, or individually as applicable, Tenant’s Tax Share (as defined below) and Tenant’s Operating Expense Share (as defined below).

#### **Section 4.03 Tenant’s Operating Expense Payments.**

(a) For each Operating Year following the Base Operating Year, all or a portion of which occurs in or during the Term, if the Operating Expenses for such Operating Year shall be greater than the Base Operating Expenses, Tenant shall pay to Landlord, as Additional Rent for such Operating Year, in the manner hereinafter provided, an amount equal to Tenant’s Operating Expense Share of the excess of the Operating Expenses for such Operating Year over the Base Operating Expenses (such amount being herein called the “Tenant’s Operating Expense Payment”). If the first day of the first Operating Year after the Base Operating Year is not the first day of a calendar year, then Tenant’s Operating Expense Payment for such Operating Year shall be prorated based upon the number of days of the first Operating Year compared to the number of days in a full calendar year.

(b) Landlord shall, prior to or following the commencement of the Base Operating Year and each Operating Year, deliver to Tenant a reasonably itemized statement of Landlord’s reasonable good faith estimate (an “Expense Estimate”) of the projected Operating Expenses for such Operating Year. Tenant shall pay on the first day of each month commencing in the first Operating Year following the Base Operating Year, as Additional Rent, together with payment of Fixed Rent, an “Estimated Tenant’s Operating Expense Payment,” which shall be equal to one-twelfth (1/12th) of Tenant’s Operating Expense Share of the amount by which such projected Operating Expenses exceed the Base Operating Expenses, which shall be credited toward Tenant’s Operating Expense Payment for such Operating Year. Landlord shall have the

right from time to time to deliver a revised estimate (a "Revised Estimate") of projected Operating Expenses to reflect, if Landlord can reasonably so estimate, known increases in Operating Expenses for the then current Operating Year applicable to the categories involved in computing Operating Expenses that would further increase the percentage increase in Operating Expenses for such Operating Year over Landlord's prior good faith estimate of such Operating Expenses (provided Landlord can reasonably document such known increases) and, as of the first day of the month following delivery of such Revised Estimate, Tenant shall pay the new amount for each subsequent month of the then current Operating Year (Tenant's monthly Estimated Tenant's Operating Expense Payment being deemed adjusted accordingly).

(c) To the extent that at the time of furnishing of any Revised Estimate the aggregate monthly payments made during the preceding months of the Operating Year in question are less than the amount that would have been paid if the installment required pursuant to such Revised Estimate had been made for such preceding months, the deficiency shall be due and payable in full as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's statement to Tenant therefor. To the extent that there is an overpayment of such aggregate monthly payments by Tenant, Landlord shall credit such overpaid amount against the Estimated Tenant's Operating Expense Payments next coming due. The provisions of this Section 4.03(c) shall survive the expiration or earlier termination of this Lease.

(d) Within one hundred eighty (180) days following the expiration of each Operating Year, Landlord shall submit to Tenant a statement (an "Expense Statement") certified as true and correct by Landlord or an officer of the managing agent of Landlord, setting forth in reasonable line item detail the Operating Expenses for the preceding Operating Year and the Tenant's Operating Expense Payment, if any, due to Landlord from Tenant for such Operating Year. In the event that Tenant's Operating Expense Payment due to Landlord shall be greater than the aggregate of Tenant's Estimated Tenant's Operating Expense Payments made by Tenant for such Operating Year, then, within twenty (20) days after receipt of such Expense Statement, Tenant shall make payment of any unpaid portion of the Tenant's Operating Expense Payment. In the event the aggregate of the Tenant's Estimated Tenant's Operating Expense Payments made by Tenant for such Operating Year shall be more than the Tenant's Operating Expense Payment, then, any such excess paid by Tenant shall be credited against the Estimated Tenant's Operating Expense Payments next coming due. Subject to Section 4.03(e), the failure by Landlord to deliver an Expense Statement within the time period set forth above shall not prejudice Landlord's right to deliver same to Tenant or to receive Tenant's Operating Expense Payments.

(e) Until a new Expense Estimate of projected Operating Expenses is rendered, Tenant's Estimated Tenant's Operating Expense Payment for any Operating Year shall be deemed to be one-twelfth (1/12th) of the total Estimated Tenant's Operating Expense Payment for the preceding Operating Year, if any.

(f) The Expense Statements (including the Expense Statement for the Base Operating Year) furnished to Tenant shall constitute a binding determination on Tenant of the Operating Expenses for the periods represented thereby, unless Tenant, within one hundred and eighty (180) days after same are furnished to Tenant, shall give a notice to Landlord that it disputes the accuracy or appropriateness of any of same, or requires further information in order

to do so. Pending the resolution of such dispute, Tenant shall pay any net debit balance due on account of the Operating Year in dispute and the Estimated Tenant's Operating Expense Payments to Landlord in accordance with the Expense Statements furnished by Landlord, subject to the provisions of Section 4.03(e) above and Section 4.06. Tenant and its accountants (which, if not the Tenant's own employees, shall be one of the "big 4" accounting firms or a nationally or regionally recognized accounting firm) shall have the right, during reasonable business hours and upon not less than fifteen (15) Business Days' prior written notice to Landlord, to examine, make abstracts and audit the relevant portions of Landlord's books and records with respect to the Expense Statement for which Tenant has delivered the notice required above, provided (X) such examination is commenced within one hundred eighty (180) days following the rendition of the Expense Statement in question as such date may be extended on a day for day basis to the extent Landlord delays Tenant's access to such books and records following Tenant's request therefor and the required fifteen (15) Business Days' Notice, provided that Tenant notifies Landlord in writing of any such delays; and (Y) Tenant shall comply with any confidentiality requirements reasonably imposed by Landlord (including, without limitation, the execution and delivery of a confidentiality agreement reasonably acceptable to Landlord). Tenant covenants and agrees that Tenant will not employ, in connection with such examination, any Person who is to be compensated, in whole or in part, on a contingency fee basis. Tenant shall conduct such examination with all commercially reasonable diligence and conclude same no later than ninety (90) days after the commencement thereof, as such ninety (90) day period may be extended on a day for day basis to the extent Landlord delays Tenant's access to such books and records following Tenant's request therefor and the required fifteen (15) Business Days' notice, provided that Tenant notifies Landlord in writing of any such delays.

(g) If the date of expiration or termination of this Lease, whether or not same is the Expiration Date or another date prior or subsequent thereto, falls so that only a fraction of the Operating Year is within the Term, then the Tenant's Operating Expense Payment shall be prorated based upon the number of days of the applicable Operating Year within the Term. With respect to the year in which the Term expires or terminates, such pro rata portion shall, within twenty (20) days of Tenant's receipt of an Expense Statement for that Operating Year become due and payable by Tenant to Landlord, if it has not theretofore already been paid. Prior to the receipt by Tenant of the aforementioned Expense Statement from Landlord, Tenant shall continue to make Estimated Tenant's Operating Expense Payments to Landlord through the end of the Term in accordance with the other applicable terms of this Article 4.

#### **Section 4.04 Tenant's Tax Payments.**

(a) For each Tax Year following the Base Tax Year all or a portion of which occurs in or during the Term, (i) if the Taxes for such Tax Year shall be greater than the Base Tax Amount, Tenant shall pay to Landlord, as Additional Rent for such Tax Year, in the manner hereinafter provided, an amount equal to Tenant's Tax Share of the excess of the Taxes for such Tax Year over the Base Tax Amount, and (ii) Tenant's Tax Share of any BID Charges for such Tax Year (such amounts in clauses (i) and (ii) of this sentence being herein collectively called the "Tenant's Tax Payment"). Tenant's said payment of Additional Rent shall be due and owing as hereinafter provided following presentation to Tenant of a preliminary tax statement (the "Preliminary Tax Statement") indicating Landlord's good faith reasonable estimate of Taxes and BID Charges to be paid for the then current Tax Year and Landlord's calculation of Tenant's Tax

Payment. Tenant shall pay equal monthly installments of Tenant's Tax Payment set forth on such Preliminary Tax Statement on the same dates and in the same manner as Fixed Rent hereunder. If Landlord receives a discount for early payment of Taxes or BID Charges, such discount shall accrue solely to the benefit of Landlord unless Tenant, at Landlord's request, makes an early payment of Tenant's Tax Payment to facilitate such early payment by Landlord, in which event Tenant shall share in such discount by paying Tenant's Tax Payment computed on the basis of the discounted Taxes. If the date of expiration or termination of this Lease, whether or not same is the Expiration Date or another date prior or subsequent thereto, falls so that only a fraction of a Tax Year is within the Term, then Tenant's Tax Payment shall be prorated based upon the number of days of the applicable Tax Year within the Term. With respect to the year in which the Term expires or terminates, such pro rata portion shall, within twenty (20) days after Tenant's receipt of a Final Tax Statement for that Tax Year, become due and payable by Tenant to Landlord, if it has not theretofore already been paid.

(b) Within sixty (60) days following the later to occur of (i) the expiration of each Tax Year, and (ii) receipt by Landlord of the applicable tax bill from the applicable authority to which Taxes are payable, Landlord shall submit to Tenant a statement (a "Final Tax Statement") from the applicable authority to which Taxes and BID Charges are payable together with a statement certified as true and correct by an officer of the managing agent of Landlord, setting forth in reasonable detail the Taxes and Bid Charges for such Tax Year and Tenant's Tax Payment due to Landlord from Tenant for the applicable Tax Year. In the event that Tenant's Tax Payment shall be greater or less than, respectively, the aggregate of the amounts Tenant has theretofore paid to Landlord for the applicable Tax Year, then, within twenty (20) days after Tenant's receipt of the Final Tax Statement, Tenant shall make payment of any unpaid portion of Tenant's Tax Payment, as Additional Rent, or any excess paid by Tenant shall be credited, at Tenant's option against the Estimated Tenant's Operating Expense Payments or payments of Tenant's Tax Payment next coming due.

(c) The Final Tax Statements furnished to Tenant shall constitute a binding determination on Tenant of the Taxes for the periods represented thereby, unless (i) the Taxes or BID Charges for any such period are subsequently adjusted by tax certiorari proceedings or otherwise, or (ii) Tenant, within one hundred and eighty (180) days after same are furnished to Tenant, shall give notice to Landlord that it disputes the accuracy or appropriateness of any of same, or requires further information in order to do so. Pending the resolution of such dispute, Tenant shall pay Tenant's Tax Payment to Landlord in accordance with the Final Tax Statements furnished by Landlord, subject to Section 4.06. Tenant shall have the right to receive a copy of any tax bill or statement from Net Lessor or the applicable authority to which such Taxes or BID Charges are to be paid upon which a Final Tax Statement is based within twenty (20) days after Landlord's receipt of Tenant's written request therefor, provided that Landlord has received such tax bill or statement. Landlord's failure to render a Final Tax Statement with respect to any Tax Year shall not prejudice Landlord's right to render a Final Tax Statement retroactively respecting the Taxes or BID Charges and/or with respect to any subsequent Tax Year and/or collect Tenant's Tax Payments.

(d) If, after Tenant shall have made any payments or installments of Tenant's Tax Payment for any Tax Year, as provided for hereinabove, Landlord shall receive a refund or credit of any portion of said Taxes or BID Charges for such Tax Year or said Taxes or BID

Charges shall be reduced prior to payment of all or part thereof, Landlord, promptly after Landlord or such predecessor-in-interest shall have received such refund or credit, and after deducting the reasonable expenses of obtaining such refund, credit or reduction (unless they have already been or will be included as an item of Taxes or BID Charges under this Article 4), shall (to the extent Tenant has theretofore made any Tax Payment allocable to the Taxes or BID Charges so refunded or reduced), at Landlord's election, either pay to Tenant or credit against the installment(s) of Fixed Rent and Additional Rent next becoming due a sum equal to Tenant's Tax Share of the resulting net refund, credit and/or reduction (not to exceed Tenant's Tax Payment for the Tax Year in question), together with a separate explanation and computation as to such payment to Tenant. The provisions in this Section 4.04(d) shall survive the expiration or termination of this Lease.

**Section 4.05 Survival.** The executory provisions of this Article 4 shall survive the expiration or earlier termination of the Term. In no event shall the Fixed Rent under this Lease be reduced by virtue of this Article 4 or any provision hereof.

**Section 4.06 Disputes.** Either party shall be permitted to submit disputes arising under this Article 4 to arbitration in accordance with the provisions of Article 25, provided that any such dispute shall not relieve Tenant of its obligation to continue to make all payments of Additional Rent billed by Landlord under this Article 4 as and when otherwise due (including the disputed amount). Any adjustments due to Tenant as a result of such arbitration proceeding shall be either paid or credited to Tenant, at Landlord's option, within twenty (20) days of any final determination in arbitration, together with interest at the Prime Rate on any such excess amounts paid by Tenant from the dates any such excess was paid by Tenant to the date so paid or credited. Tenant's payment of any Additional Rent billed by Landlord under this Article 4 shall not preclude Tenant from later disputing the correctness of any Expense Statement or Final Tax Statement if done in accordance with and within the time frames so set forth in this Article 4. Notwithstanding anything to the contrary contained herein, Tenant shall pay all fees and expenses relating to such contest, unless it is finally determined by arbitration under Article 25 that Landlord overstated Tenant's Operating Expense Payment by more than five percent (5%) for such Operating Year, in which event Landlord shall pay such fees and expenses.

**Section 4.07 Landlord's Records.** For the purpose of ascertaining the amount payable as Tenant's Operating Expense Payment and Tenant's Tax Payment, Landlord agrees to prepare and keep available, for a period of not less than one hundred and eighty (180) days following each of the dates upon which Landlord delivers to Tenant an Expense Statement or a Final Tax Statement, adequate records for the period reported upon by such statement that shall show such Operating Expenses and Taxes.

## ARTICLE 5

### USE

#### **Section 5.01 Permitted Uses and Limitations on Permitted Uses.**

(a) The Premises shall be used and occupied for the Permitted Uses consistent with a first-class downtown Manhattan office building and the provisions of the Net Lease and for no other use or purpose whatsoever.

(b) In connection with and ancillary to the primary use of the Premises for general offices and the other Permitted Uses as provided in this Article 5, Tenant may, subject to the provisions of this Lease and applicable Legal Requirements, use certain portions of the Premises for the following purposes, but only to the extent used solely by Tenant and Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) solely in connection with such Person's own business requirements: (i) a messenger and mail room facility; (ii) a reproduction and copying facility; (iii) a computer and communication system center; (iv) employee lounges; (v) file rooms and pantries (as provided in Section 5.01(c)); and (vi) meeting, training and conference centers and rooms.

(c) Tenant and Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons), incidental to the general office use of the Premises, shall, subject to the provisions of this Lease (including the provisions of Article 13), applicable Legal Requirements and such other reasonable regulations as Landlord may adopt from time to time in accordance with Article 26, have the right, at Tenant's sole cost and expense, to use a portion or portions of the Premises as a pantry or pantries for use solely by Tenant and its respective employees and business guests, which may contain reheating (for ordinary office use) but not cooking equipment, including items such as a microwave, coffee maker, sink, ice maker, soda machine, vending machines, tables and chairs, dishwasher, hot water heater and refrigerator, provided that (i) no cooking, and no other preparation of food that would require ventilation to the outside of the Building in connection therewith (other than the reheating of food by a microwave and the preparation of beverages), shall be done in any such pantry, (ii) no food or beverages will be kept or served in the Premises in a manner or under any conditions that result in fumes or odors being emitted from, or detectable outside of, the Premises such that same may unreasonably affect other tenants or occupants of the Building, (iii) such portion or portions of the Premises shall be at all times maintained by Tenant in a clean and sanitary condition and free of refuse, insects and rodents (including required use of extermination services) and (iv) subject to Section 5.04, no alcoholic beverages may be served in the Premises.

(d) Tenant acknowledges that it has read and understands the terms, conditions and obligations set forth in the Net Lease and the REOA. Each of Landlord and Tenant acknowledges and agrees that it will not take any action or fail to take any action (in the case of (i) Tenant, with respect to its obligations as a subtenant under this Lease and

(ii) Landlord, with respect to its obligations as a party to the Net Lease and the REOA) that will cause it or the other to be in breach of or violate any of the terms of the Net Lease or the REOA. Tenant hereby agrees that Tenant will at all times, at its sole cost and expense, (i) observe, be bound by and comply with all of the terms, provisions, covenants and conditions of the Net Lease affecting Tenant's operations under or in connection with this Lease and its occupancy of the Premises and the REOA, (ii) pay directly to Net Lessor under the Net Lease on demand any rental, fee, charge or other amount due to Landlord if Landlord shall be under an uncured notice of default under the Net Lease and (iii) cooperate in every reasonable manner with Landlord with regard to Landlord's obligations under the Net Lease and the REOA, provided that if Landlord shall have requested and received a waiver of any terms, covenants or conditions of the Net Lease or the REOA applicable to the Premises and the conduct of Tenant's business in the Building, Landlord shall not enforce such waived terms, covenants or conditions against Tenant. Landlord hereby represents and warrants that Landlord has delivered to Tenant true and correct copies of each of the Net Lease and the REOA.

(e) If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Premises, or any part thereof, then Tenant, at its expense, shall duly procure and thereafter maintain such license or permit and submit a copy to Landlord (and Landlord shall reasonably cooperate with Tenant at Tenant's sole cost and expense in connection therewith). Within fifteen (15) Business Days after receipt of Tenant's request therefor, Landlord shall execute applications for building permits and other applicable governmental filings, as necessary, prior to Landlord's approval of Tenant's plans and specifications pursuant to Article 13, provided that Tenant shall be solely responsible for all costs and expenses that may arise in connection with any revision or resubmission of such applications that may subsequently be necessary. Tenant shall at all times comply with the terms and conditions of each such license or permit, but in no event shall failure to procure and maintain same by Tenant affect Tenant's obligations hereunder.

**Section 5.02 Prohibited Uses.**

(a) Tenant shall not use or permit the Premises or any part thereof to be used (i) for the business of commercial printing or other manufacturing of any kind, except for the use of office equipment in connection with the normal operation of the Premises for a Permitted Use and except as otherwise set forth herein, (ii) as a retail branch of a bank or savings and loan association, or as a retail loan company, (iii) as a retail stock broker's or dealer's office, (iv) for the storage or sale of merchandise (other than merchandise sold to the normal and customary invitees of the occupants of the Premises (including merchandise incidental to the Business Center Uses)), (v) for the distribution, by mail-order or otherwise, of merchandise, (vi) except as provided in Section 5.04, as a restaurant or bar or for the sale of food or beverages (except the sale of snack food, beverages and other convenience items to occupants of the Premises and guests by vending machines), (vii) as a news or cigar stand, (viii) as an employment agency, labor union office, school, physician's or dentist's office, dance or music studio, (ix) as a barber shop or beauty salon (other than for a use which is ancillary to use of the Premises as a spa but in no event to off the street customers), (x) for the sale, at retail or otherwise, of any goods (other than merchandise sold to the normal and customary invitees of the occupants of the Premises (including merchandise incidental to the Business Center Uses)), (xi) by the United States Government, the City or State of New York, any other Governmental Authority, any foreign government, the United Nations or any agency or department of any of the foregoing, any Person having sovereign or diplomatic immunity or any Person not subject to the jurisdiction of the state and Federal courts located in the State of New York, unless such Person satisfies the criteria set forth in clause (iv) of the definition of "Core Business Licensee" herein, (xii) for the rendition of medical, dental or other therapeutic services (it being understood that Tenant may use or may permit the use of the Premises for certain diagnostic services in connection with health programs conducted from time to time for the benefit of Tenant's employees or for a use which is ancillary to use of the Premises as a spa but in no event to off the street customers), (xiii) for the conduct of an auction (other than private auctions that are incidental to the Business Center Uses) or (xiv) for the sale or licensing of lottery tickets or similar chances or devices or for the conduct or licensing of off-track or other wagering operations or activities at or from the Premises. Tenant agrees that no souvenir or souvenir type merchandise whether involving the World Trade Center or other Port Authority facilities (or depicting any aspect thereof) or bearing or carrying the World Trade Center legend or reproduction thereof shall be sold or displayed at or from the Premises without the prior consent of Landlord and Net Lessor under the Net Lease.

(b) Tenant shall not suffer or permit the Premises or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, that would in any way (i) violate any of the provisions of any of the Net Lease or any grant, lease or mortgage to which this Lease is subordinate to the extent applicable

to the Premises, (ii) violate any Legal Requirements (subject to the right to contest such Legal Requirements as provided in Article 11), (iii) make unobtainable from reputable insurance companies authorized to do business in New York State at standard rates any fire insurance with extended coverage, or liability, elevator or boiler or other insurance carried by Landlord in connection with the Building, (iv) cause, or in Landlord's reasonable opinion be likely to cause, physical damage to the Building or any part thereof, (v) constitute a public or private nuisance, (vi) impair, in the reasonable opinion of Landlord, the appearance, character or reputation of the Building, (vii) discharge objectionable fumes, vapors or odors into the Building air-conditioning system or into Building flues or vents not designated to receive such fumes, vapors, or odors, or otherwise discharge same, in such manner as may reasonably be anticipated to adversely affect other tenants or occupants of the Building or as may adversely affect space outside of the Premises, (viii) impair or interfere with any of the Building Services or the proper and economic heating, cleaning, air-conditioning or other servicing of the Building or the Premises, or impair or interfere with the use of any of the other areas of the Building by any other tenants or occupants of the Building, the determination of any such impairment or interference to be in the reasonable judgment of Landlord, (ix) result in the leakage of fluid or the growth of mold or the creation of any other condition that causes, or in Landlord's reasonable opinion would be likely to cause, an internal air quality problem in the Premises or the Building, (x) cause Tenant to default in any of its other obligations under this Lease or (xi) occasion any unreasonable annoyance or discomfort to any tenants or occupants of the Building or unreasonably interfere with the use or occupancy of other portions of the Building. The provisions of this Section 5.02(b), and the application thereof, shall not be deemed to be limited in any way to or by the provisions of Rules and Regulations referred to in Article 26.

**Section 5.03 Tenant's Use of Common Spaces.** Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use in common with others, subject to the Rules and Regulations and the other applicable provisions of this Lease, the Common Areas (limited, in the case of Common Areas that are located on multi-tenanted floors, to such Common Areas on those floors on which the Premises are located).



The Business Center Uses shall be permitted only on those floors of the Premises depicted on the stacking plan attached hereto as Exhibit Q (the "Stacking Plan"). Notwithstanding the foregoing, Tenant may relocate the Business Center Uses to other floors within the Premises with Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed provided that: (i) such relocation complies with all applicable Legal Requirements and all required approvals of Governmental Authorities have been obtained, (ii) Landlord may impose reasonable requirements that certain Business Center Uses be on the same or on contiguous floors and that Tenant provide sufficient internal staircases to accommodate such relocated Business Center Uses, and (iii) in no event shall the amount of RSF allocated to any Business Center Use exceed the RSF limits set forth in clauses (i) through (vi) of this Section 5.04(a).

(b) *The Conference Facilities and the Catering Facilities are hereinafter jointly referred to as the "Event Space."* Tenant shall comply with the following additional terms and conditions in connection with any use of the Event Space:

(i) All deliveries, set ups, knock downs, and removal of furniture, fixtures, and personal property required for the use of the Event Space, to the extent any of the foregoing activities involve the use of Building freight elevators or loading docks in excess of typical office use, shall be done outside of Operating Hours, and such use of the loading dock and freight elevators outside of Operating Hours will be reserved in advance. Notwithstanding the foregoing, although Tenant shall use reasonable efforts to arrange for food deliveries for use in the Premises generally to be made outside of Operating Hours, the foregoing shall not preclude the occasional delivery of food to the Premises during Operating Hours (Tenant hereby acknowledging that the use of the loading dock and freight elevators for such occasional deliveries during Operating Hours shall be on a first-come, first-served basis).

(ii) All guest services, including coat checks, guest name badges and other concierge services will be performed within the Premises.

(iii) Tenant shall be solely responsible for any actual, incremental, out-of-pocket costs incurred by Landlord for security, cleaning and other Building Services in connection with any use of the Event Space, together with a fee for overhead in the amount of of such actual, incremental, out-of-pocket costs (excluding any employment or contractual agreements that are entered into and paid for directly by Tenant for such services), and Tenant shall pay such amounts to Landlord as Additional Rent from time to time within twenty (20) days after receipt by Tenant of an invoice therefor. The administrative charge provided for herein shall not apply to overtime or supplemental services (e.g., overtime HVAC) for which a specific rate is charged pursuant to this Lease or which are provided to all tenants in the Building in accordance with Landlord's then-current rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

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(c) (i) Tenant shall be solely responsible for complying with all applicable *Legal Requirements in connection with all Business Center Uses*. Tenant acknowledges that the Business Center Uses shall at all times be subject to and governed by the Port Authority Manual (including, without limitation, any references to the then-current and prevailing building code of the City of New York ("NYCBC")), as reviewed for compliance by the Port Authority (per Memorandum of Understanding with the NYC Department of Buildings ("NYCDOB")). For uses expected to exceed floor occupancy restrictions per Port Authority Manual requirements associated with typical office uses, Landlord will cooperate with Tenant, to the extent possible but without any obligation on the part of Landlord to incur additional liability or expense, to lawfully accommodate assembly uses within portions of the Premises designed for office occupancy. All costs associated with lawfully accommodating assembly uses within the Premises and any subsequent appeals to the Port Authority (if undertaken) will be borne exclusively by Tenant and, to the extent incurred by Landlord, shall be reimbursed to Landlord within twenty (20) days after Tenant's receipt of an invoice therefor. Furthermore, all costs to plan, construct, implement, and remove improvements within the Premises installed for the purpose of meeting the Port Authority Manual requirements for lawful public assembly spaces on the designated floors, including but not limited to incremental egress capacity upgrades and the creation of areas of refuge, will be borne exclusively by Tenant.

(iii) Intentionally omitted.

(iv) Notwithstanding anything to the contrary contained in this Lease, Tenant's use of the Premises shall at all times avoid material, adverse impacts on Building operations, including unreasonable levels of lobby and elevator traffic during peak hours on Business Days or other material, adverse impacts on security and operations activities within the Building, including the Lobby, the skylobby located on the 64th floor, and all Building sub-grade levels; provided that the foregoing will not be deemed to prohibit the use of the Premises for the Permitted Uses; provided, further, that the foregoing requirements shall be applied against Tenant as if all other occupants in the elevator banks servicing the Premises used their premises solely for general and executive offices and ancillary uses thereto typical in Comparable Buildings; and provided, further, that all passenger elevators are in service and performing at the capacity and speed set forth in the Base Building Specifications.



**Section 5.07 Permitted Agreements with Permitted Operators.** Provided that (x) the Named Tenant is then the Tenant under this Lease and (y) no Event of Default has occurred and is continuing, Tenant shall be permitted to enter into license and/or management agreements with third party operators of the Business Center Uses ("Permitted Operators") without Landlord's prior written consent and without compliance with the provisions of Article 8, provided and on condition that:

(a) Tenant shall give Landlord not less than thirty (30) days' written notice prior to the date any Permitted Operator commences work at the Premises, which notice shall set forth the name and address of the Permitted Operator, the nature of the services such Permitted Operator will perform at the Premises, the number of anticipated employees such Permitted Operator will utilize at the Premises, reasonably detailed information regarding the background and experience of such Permitted Operator, a copy of all agreements between Tenant and the Permitted Operator regarding the provision of services at the Premises, with all financial and other confidential terms redacted (collectively, the "Operator Agreement"), and such other information as Landlord may reasonably request;

(b) the Operator Agreements shall be in the nature of licenses or personal services agreements and shall not create a tenancy or other interest in real property and shall be automatically terminated upon the Expiration Date or any earlier termination of this Lease, provided, however, that the foregoing shall not prohibit Tenant from subleasing to an operator which is an Affiliate of Tenant pursuant to Section 8.02(b); and

(c) the Permitted Operator (i) shall be in good standing under the laws of the jurisdiction of its formation, (ii) shall be subject to the service of process in, and the jurisdiction of the courts of, New York State, (iii) shall be engaged in a business or activity, and shall only use the Premises in a manner, that (A) is in keeping with the then standards of the Building as a first class office building and is in compliance with the terms of this Lease, and (B) is limited to the specified Business Center Use for which such Permitted Operator was engaged and to the portion of the Premises in which such Business Center Use is permitted under Section 5.04(a) of this Lease, (iv) does not have a reputation that is not in keeping with the standards of the Building, (v) is not (and does not have an Affiliate who is) identified on the OFAC List, (vi) is not in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time (and any successor thereto), (vii) is sufficiently qualified and experienced, in Landlord's reasonable judgment, for such Business Center Use, and (viii) is not a Person (or an

Affiliate of a Person) who has defaulted on any material obligation to Landlord or the Port Authority or who Landlord or Port Authority has barred from having access the Building.

## ARTICLE 6

### SERVICES AND EQUIPMENT

**Section 6.01 Building Services.** Landlord shall operate and maintain the Building and provide, at Landlord's expense, except as otherwise set forth herein, the services described in this Article 6 (the "Building Services") in conformance with the standards applicable to Comparable Buildings.

**Section 6.02 Heat, Ventilation and Air Conditioning.**

(a) Landlord shall provide HVAC to Tenant's Above Grade Space during Operating Hours, through systems installed in Tenant's Above Grade Space by Landlord in accordance with the Base Building Specifications, including cooling towers, pumps and associated equipment (collectively, sometimes referred to herein as the "Building HVAC System"), in accordance with the HVAC Specifications.

(b) Anything in this Section 6.02 to the contrary notwithstanding, Landlord shall not be responsible if the normal operation of the Building HVAC System shall fail to provide cooled or heated air at reasonable temperatures, pressures or degrees of humidity or any reasonable volumes or velocities in any parts of the Premises (i) that, solely by reason of any machinery or equipment installed by or on behalf of Tenant (other than any Tenant's Special Work) or any Person claiming through or under Tenant, shall have an electrical load in excess of the average electrical load and human occupancy factors for such air conditioning system as set forth in the HVAC Specifications, (ii) to the extent caused by any Alterations made or performed by or on behalf of Tenant (other than Tenant's Special Work) or any Person claiming through or under Tenant or (iii) because Tenant fails to comply with the Rules and Regulations or any other applicable provisions of this Lease. Tenant acknowledges that Tenant is solely responsible for the design of the ventilation and air-conditioning system within the Premises and the adequacy of such system to distribute air therein, and no approval by Landlord of any proposed or final plans for such work shall constitute a representation or warranty by Landlord that such system will function to achieve its intended purpose. Tenant at all times shall cooperate fully with Landlord and shall abide by the reasonable Rules and Regulations that Landlord may prescribe for the proper functioning and protection of the Building HVAC System.

(c) Landlord shall not be required to furnish Building HVAC System services during periods other than the hours and days set forth in this Section 6.02 for the furnishing and distributing of such services ("Overtime Periods"), unless Landlord has received advance notice from Tenant requesting such services (i) at least four (4) hours prior to the requested service in the case of Overtime Periods occurring on Business Days or (ii) no later than 2:00 p.m. on the Business Day immediately preceding any non-Business Day for Overtime Periods occurring on such non-Business Day. Accordingly, if Landlord shall furnish any such services to the Premises at the request of Tenant during Overtime Periods, Tenant shall pay Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of an invoice therefor, for such services at

Landlord's then-current rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

(d) Tenant shall have the right to install supplemental air conditioning units (each, a "Supplemental AC Unit") in the Tenant's Above Grade Space (or, in the case of an up-to-115-ton Supplemental AC Unit to be used for Tenant's kitchen (the "Supplemental Kitchen AC Unit"), in Tenant's Mechanical Space), subject to and in accordance with this Section 6.02(d). In addition to the condenser water required to service the base Building DX units which are to be furnished pursuant to the Base Building Specifications, Landlord shall make the following additional allocations of condenser water to each floor on which Tenant's Above Grade Space is located available for use by Tenant for its Supplemental AC Units ("Supplemental AC Condenser Water") on such floor or to service the increased capacity of any base Building DX units servicing such floor which are upgraded as part of Tenant's Special Work pursuant to the Work Letter ("Base Building Upgrade Condenser Water"), as more particularly set forth in the following chart:

Landlord shall not be obligated to reserve any Base Building Upgrade Condenser Water for Tenant's use except to the extent required for the increase in capacity in any Building DX units which are upgraded as part of Tenant's Special Work pursuant to the Work Letter. Landlord shall not be obligated to reserve the \_\_\_\_\_ tons of Supplemental AC Condenser Water for Tenant's Supplemental Kitchen AC Unit beyond the date which is eighteen (18) months after the Delivery Date except to the extent Tenant has installed and connected Tenant's Supplemental Kitchen AC Unit to the condenser water system on or before such date. The Supplemental AC Condenser Water allocated for the Premises as provided in the above chart may be reallocated by Tenant (at Tenant's sole cost and expense and in accordance with all applicable terms and conditions of this Lease governing Alterations) within and among the floors comprising the Premises provided that Tenant shall, on or before the expiration or earlier termination of this Lease, perform (at Tenant's sole cost and expense and in accordance with all applicable terms and conditions of this Lease

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\* Applicable only if Tenant leases as part of the Initial Expansion Space.

governing Alterations) all work necessary to restore the Supplemental AC Condenser Water allocations indicated in the above chart. Tenant shall pay, within twenty (20) days after Tenant's receipt of an invoice therefor from Landlord, the actual out-of-pocket costs and expenses reasonably incurred by Landlord in connection with such work, including, if necessary, the costs of shut down and draining of risers, but no charge shall be due for Tenant's initial tap in to the system. Tenant shall pay as Additional Rent, within twenty (20) days after Tenant's receipt of an invoice therefor from time to time, an annual charge for the aggregate amount of condenser water tonnage that Landlord reserves for Tenant hereunder (i.e., the sum of (i) the Base Building Upgrade Condenser Water used to service the increased capacity in any Building DX units upgraded as Tenant's Special Work, from and after the Commencement Date, plus (ii) the Supplemental AC Condenser Water for Tenant's Supplemental Kitchen AC Unit, from and after the connection of Tenant's Supplemental Kitchen AC Unit to the condenser water system, plus (iii) the remaining Supplemental AC Condenser Water capacity reserved for Tenant's Above Grade Space per the above chart) from and after the Commencement Date, irrespective of whether Tenant actually connects to or uses such reserved capacity; provided, however, that Tenant shall have the one-time right, exercisable at any time prior to the date which is eighteen (18) months after the Delivery Date, to reduce the amount of the remaining Supplemental AC Condenser Water capacity reserved for Tenant's Above Grade Space per the above chart. Such charge shall be computed at Landlord's then-current rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

**Section 6.03 Elevators; Loading Dock.**

(a) Landlord shall provide passenger elevator service to the Premises twenty-four hours per day, 365 days per year, subject to interruptions caused by Force Majeure. The passenger elevators shall perform at the capacity and speed set forth in the Base Building Specifications. At all times, subject to temporary stoppages for repairs and maintenance and Force Majeure, there shall be at least five (5) passenger elevators serving (A) the skylobby on the 64<sup>th</sup> floor and (B) the floors on which the Premises are located. Landlord represents and covenants that (i) passenger elevators serving the Premises will not also serve the observation deck or any restaurant that is located on or above the one hundredth (100th) floor of the Building, and (ii)

(b) Landlord shall provide freight elevator service to the Premises twenty-four hours per day, 365 days per year, subject to interruptions caused by Force Majeure and temporary stoppages for repairs and maintenance. Freight elevator service shall be provided during the hours of 7:00 a.m. to 5:00 p.m. New York City time on Business Days ("Freight Operating Hours") for use by all tenants of the Building in common, at no charge during Freight Operating Hours, on a first-come, first-served basis. All other freight elevator usage, and the use of freight elevators for transporting, lifting, and hoisting construction materials and personnel, including during Tenant's performance of its Tenant's Initial Alterations and fit-out work outside of Freight Operating Hours, will be on a reserved basis and in accordance with the reasonable

Rules and Regulations of Landlord in effect from time to time in accordance with Article 26. Landlord agrees to endeavor in good faith, subject to such Rules and Regulations, to accommodate Tenant's requirements for overtime access to freight elevators to remove trash for the operation of its business in the Premises. Tenant shall pay, as Additional Rent within twenty (20) days after receipt of an invoice from Landlord therefor, the charges for such use at Landlord's then-current standard rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services. Subject to the Work Letter, Tenant shall not use the freight elevators during Freight Operating Hours for moving in or out of the Premises. Notwithstanding the foregoing, Tenant shall be entitled to up to \_\_\_\_\_ hours of overtime (i.e., outside of Freight Operating Hours) freight elevator service without charge for Tenant's initial move-in to the Premises and/or construction of Tenant's Initial Alterations.

(c) Landlord shall provide loading dock facilities (or, prior to the completion of World Trade Center site improvements, other temporary reasonable means of access to the Building freight elevators) twenty-four hours per day, 365 days per year, subject to interruptions caused by Force Majeure and temporary unavailability for repairs and maintenance. Tenant shall have non-exclusive use of the Building's loading docks (or, prior to the completion of World Trade Center site improvements, other temporary reasonable means of access to the Building freight elevators) during Freight Operating Hours at no charge on a first-come, first-served basis. At all other times, Tenant shall have non-exclusive use of the Building's loading docks (or such other means of access) on a reserved basis in accordance with the reasonable Rules and Regulations of Landlord in effect from time to time in accordance with Article 26, and Tenant shall pay, as Additional Rent within twenty (20) days after receipt of an invoice from Landlord therefor, the charges for such use at Landlord's then-current standard rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

#### **Section 6.04 Cleaning.**

(a) Landlord shall cause Tenant's Above Grade Space to be cleaned on Business Days, substantially in accordance with the Cleaning Specifications. Notwithstanding the foregoing, Landlord reserves the right, from time to time, to make reasonable non-discriminatory changes to the Cleaning Specifications, upon written notice to Tenant; provided, however, that Landlord shall not adopt any such changes that affect only the Premises without Tenant's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) If Tenant requires services in excess of those contained in the Cleaning Specifications and/or any cleaning services in connection with the Business Center Uses, Tenant shall contract for same through the cleaning contractor engaged by Landlord and shall be responsible for paying the cost thereof; provided, however, that (i) Tenant may use its own employees or employees of a Permitted Operator (which Permitted Operator, in such capacity, shall comply with Section 13.07) to provide such additional cleaning services, and (ii) in the event that special cleaning services are required for the Event Space, the Private Club Facilities or the Media Center Facilities and such special cleaning services are not available from

Landlord's cleaning contractors at rates which are commercially reasonable (which for purposes of this sentence shall mean that the rates charged by Landlord's cleaning contractor for such special cleaning services are not more than 110% of the prevailing rates for such special cleaning services then generally being charged by the designated Building cleaning company at Comparable Buildings), then Tenant may retain, at Tenant's sole cost and expense, a cleaning contractor to provide such special cleaning services (which contractor shall be reasonably acceptable to Landlord and shall be subject to such rules and regulations as Landlord may from time to time reasonably adopt and shall comply with Section 13.07 of this Lease). Tenant shall reimburse Landlord on demand as Additional Rent for the costs incurred by Landlord for extra cleaning work in the Premises required by reason of (i) misuse or neglect on the part of Tenant, its agents, employees, contractors, invitees or subtenants, (ii) use of portions of the Premises for the preparation, serving or consumption of food or beverages, pantries, data processing or reproducing operations, non-core lavatories, private lavatories or toilets or other special purposes requiring greater or more difficult cleaning work than office areas, (iii) unusual quantities of interior glass surfaces or (iv) non-Building standard materials or finishes installed by Tenant or at its request.

(c) Landlord and its cleaning contractor and their employees shall have after hours access to the Premises and the use of Tenant's electricity and water in the Premises, without charge therefor, as may reasonably be required for the purpose of cleaning the Premises.

(d) Tenant shall have the one-time right, exercisable by written notice given to Landlord not later than twenty (20) days following delivery of the Twelve-Month Notice (as such term is defined in the Work Letter) to perform its own cleaning (using its own employees or employees of a Permitted Operator, provided that such Permitted Operator, in such capacity, shall comply with Section 13.07) on up to three (3) floors of the Premises which Tenant intends to use for Business Center Uses. If Tenant exercises such right, and until Tenant elects to again have Landlord perform cleaning on such floors (a right which Tenant may exercise only once as to each such floor being cleaned by Tenant, on a floor by floor basis, and only upon not less than thirty (30) days written notice to Landlord), there shall be deducted from Operating Expenses (including Base Operating Expenses) for purposes of calculating Tenant's Operating Expense Payment the cost which would have been incurred by Landlord to clean such floors in the Operating Year in question and the Base Operating Year.

**Section 6.05 Refuse and Rubbish Removal.** Landlord shall provide refuse and rubbish removal service at Tenant's Above Grade Space for ordinary office refuse and rubbish that includes boxes and other containers in which office supplies are commonly sold on Business Days at times reasonably specified by Landlord, and pursuant to Rules and Regulations established by Landlord from time to time in accordance with Article 26. Tenant shall reimburse Landlord within twenty (20) days after receipt of an invoice from Landlord for the actual out-of-pocket costs incurred by Landlord for removal from the Premises and the Building of so much of any of Tenant's refuse or rubbish as shall exceed that ordinarily accumulated daily in ordinary office occupancy (it being understood that, without limitation, garbage or other waste from any Event Space, lunchroom or other food preparation and/or consumption facilities in the Premises are in excess of ordinary office occupancy). Tenant shall be responsible for removing its refuse and rubbish accumulated from non-ordinary office uses, including the Event Space, to a point or points in the Building (including a centralized wet storage facility which Landlord shall provide

for wet garbage) designated by Landlord (and shall have the right to use its own employees or the employees of its Permitted Operators for such removal) for removal from the Building by the Building contractor, and Tenant shall pay as Additional Rent, within twenty (20) days after receipt by Tenant of an invoice therefor from time to time, Landlord's standard charges (which shall be commercially reasonable) for use of the Building's wet storage facility (provided, that such charges shall not be duplicative of the reimbursement provided for in the immediately preceding sentence).

**Section 6.06 Water.** Landlord shall furnish (i) cold water to Tenant's Above Grade Space in reasonable quantities for ordinary drinking, core bathrooms and up to two (2) pantries per floor, and (ii) hot water to Tenant's Above Grade Space in reasonable quantities for core bathrooms. If Tenant requires, uses or consumes water for any purpose in addition to core bathrooms, cleaning and drinking purposes or in amounts materially in excess of normal office usage (it being expressly understood that, without limitation, water required for use in connection with any kitchen, pantry (in excess of two (2) per floor), private bathroom or shower is in excess of normal office usage), (i) Tenant may access additional cold water from the Building for such purposes and (ii) Landlord may install a water meter or meters and thereby measure Tenant's consumption of water for such purposes. Tenant shall (i) pay to Landlord the cost of any such tap-in equipment and/or meters and their installation, (ii) at Tenant's sole cost and expense, keep any such tap-in equipment and/or meters in good working order and repair, and (iii) pay to Landlord, as Additional Rent, within twenty (20) days after Tenant's receipt of an invoice from Landlord for Landlord's actual cost for the water consumed (such charge to be at the rate charged Landlord by the public utility furnishing water to the Building). Subject to the foregoing provisions of this Section 6.06, Landlord shall provide (i) up to an aggregate of 95 gallons per minute of cold water to the Premises through multiple Building cold water risers, and (ii) sanitary waste and sanitary venting to floors on which the Premises are located sufficient to accommodate 100 gallons per minute in the aggregate through multiple Building waste stacks.

**Section 6.07 Telecommunications Equipment and Risers.** Tenant may install, operate and maintain, at Tenant's expense, telephone switching equipment and storage batteries within the Premises, but in no event in Landlord's telecommunication room(s) on any floors. Tenant shall comply with all applicable Legal Requirements with respect to the installation, maintenance and ventilation of such switching equipment and storage batteries. Tenant shall obtain and pay for telecommunications services to be supplied to the Premises by direct application to and arrangement with any telecommunications service provider approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Landlord shall furnish and install, at Landlord's sole cost and expense, conduits running from the Building's points of entry on the telecommunication rooms for Tenant's exclusive use, and slab opening in each of the two (2) Building telecommunication closets running from the telecommunication rooms for Tenant's exclusive use and in which Landlord shall, if requested by Tenant as Tenant's Special Work (which shall be at Tenant's expense and subject to and in accordance with the Work Letter), install telecommunications conduits (all such risers and conduits, together with all associated lines, wiring and cabling, collectively, the "Conduit Risers"). The Conduit Risers may be used solely for the installation, repair and replacement, at Tenant's sole expense, of Tenant's lines, wiring and cabling for its Landlord-approved telecommunications, broadcasting, voice and data requirements (such approval not to be unreasonably withheld, conditioned or

delayed). Tenant, at Tenant's sole cost and expense, shall be responsible for the installation of all telecommunications lines, wiring, cabling, connections and other systems and equipment necessary in order to provide telecommunications services to the Premises. Landlord hereby grants to Tenant an exclusive license (coterminous with the Term), subject to and in accordance with the provisions of this Section 6.07, to install such telecommunications lines, wiring, cabling, connections and other systems and equipment and use and access the Conduit Risers.

**Section 6.08 Gas.** Tenant may obtain gas for use in the Premises directly from the public utility serving the Building (the "Gas Provider"). Tenant shall make its own arrangements with the Gas Provider for the furnishing of gas consumed by Tenant in the Premises, and the costs of such service shall be paid by Tenant directly to the Gas Provider. Landlord shall, if requested by Tenant as Tenant's Special Work (which shall be at Tenant's expense and subject to and in accordance with the Work Letter), furnish and install ( ) gas pipe and riser (the "Gas Riser" and, together with the Conduit Risers, collectively, the "Risers")

to a location in the Premises jointly designated by Tenant and Landlord, for Tenant's exclusive use, to provide gas to the Premises. Landlord shall provide Tenant with reasonable access to such Gas Riser for maintenance purposes, unless such Gas Riser passes through another tenant's premises, in which event Landlord shall perform such maintenance and Tenant shall reimburse Landlord for expenses reasonably incurred therefor.

**Section 6.09 Conduits.** For the sole purpose of servicing or repairing the Risers and wiring and cabling located therein, Tenant and its approved contractors shall have access to such portions of the Building as may be necessary at reasonable times upon reasonable notice to Landlord upon and subject to the applicable terms of this Lease, the rights of any tenants pursuant to the terms of their respective leases and any other reasonable requirements imposed by Landlord in connection therewith. Tenant shall not be charged any Additional Rent in connection with the operation of the Risers.

**Section 6.10 Steam.** Tenant may, at its sole cost and expense, connect to the Building's low-pressure steam supply and return pipe risers located in the Building for Tenant's own use in connection with Tenant's kitchen. Landlord shall, if requested by Tenant as Tenant's Special Work (which shall be at Tenant's expense and subject to and in accordance with the Work Letter), install a valved outlet connector to connect to the Building's low-pressure steam supply and return pipe risers, in a location in the Premises determined as part of the design of Tenant's Special Work, and Tenant shall arrange, at its sole cost and expense, for (i) the installation of submeter(s) to measure Tenant's consumption of steam and (ii) from the tap located in the Premises, all steam lines and connections necessary in order to obtain such steam service. The steam risers shall be capable of supplying capacity to Tenant's kitchen. If Landlord is furnishing steam to Tenant pursuant to this Section 6.10, Tenant's total consumption shall be paid for by Tenant of the amount paid by Landlord to the public utility company therefor without any additional profit, mark-up or add on. Tenant shall pay such amounts to Landlord within twenty (20) days after Tenant's receipt of Landlord's invoice therefor as Additional Rent.

**Section 6.11 Class E System.** Landlord shall provide and operate a fire detection, smoke detection, elevator recall, alarm and voice communication, annunciation and floor warden

communication system as a part of the Building's "Class E System" for all base Building areas to the extent required by applicable Legal Requirements. Landlord shall provide local panels in the core area and points adequate to connect Tenant supplied fire alarm speaker/strobe devices for normal office occupancy (and a reasonable number of additional connection points required for Tenant's other Permitted Uses for which Tenant shall pay as Additional Rent within twenty (20) days after receipt by Tenant of an invoice therefor an amount equal to 110% of Landlord's actual cost for making such additional connection points available), in addition to all points required for core and shell connection and Tenant, at Tenant's sole cost and expense and subject to the provisions of this Lease, shall be permitted to so connect such devices to the Building's "Class E System." In addition, Tenant shall be responsible for all repairs and maintenance of its fire/smoke detection equipment (including, without limitation, all alarm devices, dispatchers, locks and safety devices or any other equipment that may be linked to a base Building operating system).

**Section 6.12 No Warranty of Landlord.** Landlord does not warrant that any of the services to be provided by Landlord to Tenant hereunder, or any other services that Landlord may supply (a) will be adequate for Tenant's particular purposes or as to any other particular need of Tenant or (b) will be free from interruption, and Tenant acknowledges that any one or more such services may be interrupted or suspended by reason of Unavoidable Delays. In addition, Landlord reserves the right to stop, interrupt or reduce service of the Building Systems by reason of Unavoidable Delays, or for repairs, additions, alterations, replacements, decorations or improvements that are, in the judgment of Landlord, necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. Landlord shall provide Tenant with such advance notice, if any, as is reasonable under the circumstances of any such stoppage, reduction or interruption. Landlord shall use commercially reasonable efforts to begin and diligently prosecute to completion such repairs as may be required to machinery or equipment within the Building to provide restoration of any service provided by Landlord hereunder as promptly as reasonably possible and in a manner so as to minimize interference with Tenant's ordinary use and enjoyment of the Premises, and, where the cessation or interruption of such service has occurred due to circumstances or conditions beyond the Real Property boundaries, to cause the same to be restored by diligent application or request to the relevant party or parties. To the extent reasonably possible, Landlord shall confine all such stoppages (other than a stoppage that would have an insubstantial effect on Tenant's ordinary use and enjoyment of the Premises) within Landlord's reasonable control to times that are not ordinary Operating Hours. Except to the extent expressly provided for in Section 12.05, neither any such interruption or discontinuance of service, nor the exercise of such right by Landlord to suspend or interrupt such service, shall entitle Tenant to any compensation or to any abatement or diminution of Fixed Rent or Additional Rent. Landlord shall use reasonable efforts to minimize interference with Tenant's access to and use and occupancy of the Premises in making any repairs, alterations, additions, replacements, decorations or improvements; provided, however, that Landlord shall have no obligation to employ contractors or labor at "overtime" or other premium pay rates or to incur any other "overtime" costs or additional expenses whatsoever, unless requested to do so by Tenant, in which case, Landlord shall, to the extent practicable, perform such work on an "overtime" basis (including, if so requested by Tenant, performing any shutdown or stoppage of Building Services between the hours of 12:00 a.m. and 6:00 a.m. New York City time), and Tenant will reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of an invoice from Landlord, for any such overtime or

similar costs incurred by Landlord at Tenant's request. Landlord shall not be required to furnish any services except as expressly provided in this Lease.

**Section 6.13 Access.** Tenant shall have access to the Premises and the Building twenty-four hours per day, 365 days per year, except in the event of emergency.

**Section 6.14 Building Security.** Landlord shall provide security services to the Building at the levels appropriate for Comparable Buildings, to the extent not prohibited by or inconsistent with the Net Lease. Without limiting the foregoing, Landlord shall provide a security system for access to the Building outside of Operating Hours. Tenant at its expense may install its own security system within the Premises, upon and subject to the other terms of this Lease, provided that any such system (i) is capable of being read by Landlord's Building-wide security system and (ii) will not decrease the security standards of the Building below the levels maintained by Landlord with respect thereto. Tenant shall at all times comply with, and cause its employees, contractors and invitees to the Premises to comply with, any security guidelines adopted by Landlord and/or the Port Authority for the Building and the World Trade Center. Such security guidelines shall be enforced as against Tenant in a non-discriminatory manner.

**Section 6.15 Secured Areas within Premises.**

(a) Tenant shall have the right to designate certain areas located entirely within the Premises (not to exceed five percent (5%) of the rentable area of the Premises in the aggregate) consisting of locked documentation rooms and those anterooms and interior offices wherein privacy is necessary to support the Tenant's intended use of the Premises (x) in accordance with the standard business practices within Tenant's business sector and (y) in accordance with the typical uses within Comparable Buildings (each Premises area so-designated, a "Secured Access Area"). Tenant shall notify Landlord of each such Secured Access Area as soon as reasonably practicable after reaching a decision to designate any area within the Premises as a Secured Access Area. In no event shall any area within the Premises be designated a Secured Access Area without at least ten (10) Business Days' prior written notice to Landlord. Each such notice shall include a copy of the floor plan clearly designating the Secured Access Area and be accompanied by a key, pass card, lock combination or similar access ability to the Secured Access Area. Each Secured Access Area so designated shall be clearly and fully marked "Secured Access Area" by signs posted within the Premises. Any installations or alterations within or on account of any Secured Access Area shall be subject to the applicable provisions of this Lease.

(b) Except in the event of an emergency or other out of the ordinary circumstances, Landlord shall not enter any Secured Access Area without prior notice to Tenant and unless accompanied by a representative of Tenant (whom Tenant shall make available immediately upon request of Landlord). Landlord shall not be required to provide cleaning services within any Secured Access Area, and Tenant shall be responsible for maintaining same in a clean and neat condition and for removing therefrom (to other non-secured areas of the Premises) any rubbish to be removed by Landlord in accordance with this Lease. Tenant shall pay, within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor, all costs incurred by Landlord in connection with Landlord's compliance with this Section 6.15(b), including, without limitation, any overtime or additional charges for services or repair work not

performed at the customary times or in the customary manner. In addition, Tenant shall reimburse Landlord for any costs, damages, claims, liabilities, and expenses (including reasonable attorneys' fees and disbursements) suffered by or claimed against Landlord indemnify resulting from Landlord's inability to gain access to or use of the Premises arising out of the limitation on Landlord's access set forth in this subsection.

**Section 6.16 Unarmed Security Guards and Other Attendants.** Provided Tenant shall have obtained the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed, and provided same can be accommodated in accordance with applicable Legal Requirements, insurance requirements and reasonable security requirements, Tenant shall have the right, at Tenant's sole cost and expense, to have (i) unarmed security guards stationed solely within the Premises (and not in any other portions of the Building) and (ii) during events only, one or more of Tenant's employees serving as translators/guest-relations coordinators roaming in the Lobby and/or the skylobby located on the 64th floor.

**Section 6.17 Additional Costs.** In the event that Tenant's use of the Building or the Premises creates an additional operating or security burden, Tenant shall reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor, for all reasonable incremental costs incurred by Landlord to accommodate the same; provided that (x) the foregoing shall not duplicate other costs paid by Tenant elsewhere in this Lease, and (y) Landlord shall provide prior notice to Tenant where practicable prior to incurring any such costs.

## ARTICLE 7

### ELECTRICITY

#### **Section 7.01 NYPA Power.**

(a) So long as the Net Lessor's agreement with the Power Authority of the State of New York ("NYPA") covering the furnishing of electricity by NYPA to the Building remains in effect, Tenant shall have the right to have furnished to the Premises, and to redistribute available electricity across the Premises, electricity at a level sufficient to accommodate a coincident demand load of \_\_\_\_\_ per RSF of the Premises, exclusive of base Building HVAC. Tenant covenants that, notwithstanding any other provision of this Lease, Tenant shall not charge any subtenant of the Premises any mark-up or profit on electrical power costs. Tenant covenants that Tenant's redistribution, use and consumption of electricity shall not at any time exceed such amount, nor exceed the capacity of any of the electrical facilities and installations in or otherwise serving or being used in the Premises and shall not diminish the capacity to other tenants served by the same bus distribution system.

\_\_\_\_\_ to be diminished). Such service shall be provided to the electric closets on each floor or part thereof of the Premises, transformed as provided for in the Base Building Specifications.

(b) Submeters reasonably acceptable to Landlord shall be installed by Tenant, at Tenant's cost and expense as soon as reasonably practicable after the Commencement Date (and thereafter Tenant shall maintain same, at Tenant's cost and expense), at such location or locations as Landlord shall reasonably select. Tenant shall pay the amounts due under this Section 7.01 to Landlord, in Landlord's capacity as the collection agent of Net Lessor for such purpose, for Tenant's time-of-use demand and total consumption of alternating current in the Premises as measured by such submeters, to be computed by using the NYPA Rates, within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor and the same shall be deemed Additional Rent. Notwithstanding anything herein to the contrary, Landlord's method of measuring demand shall be the same method used by the utility providing electricity. In the event that any such submeter fails to record such consumption and demand, the quantity of such electricity so supplied during any period that a submeter is out of service will be considered to be the same as the quantity supplied during a like period either immediately before or immediately after such interruption as mutually (and reasonably) designated by Landlord and Tenant, subject to seasonal or other equitable adjustment. Landlord shall, upon prior reasonable notice (except in the event of an emergency), be permitted access to the electric closets and the submeters, provided that Landlord shall be accompanied by a representative of Tenant (at Tenant's expense), which representative Tenant shall make available upon reasonable advance notice. Tenant's demand and total consumption for electricity shall not include any electricity consumed in connection with providing base Building HVAC equipment, as set forth in the Base Building Specifications. All submeters serving the Premises shall be summed electronically such that demand is registered as though all electricity were flowing through a single meter, and billed in the aggregate with coincident demand as if there were only one (1) submeter. Tenant may, from time to time (but in no event more than once every twelve (12) months), at Tenant's sole cost and expense, check the accuracy of each submeter, provided that (A) Tenant shall provide Landlord with at least thirty (30) days' prior written notice of any such testing, (B) Tenant shall engage the services of an independent testing agency/lab reasonably acceptable to Landlord and (C) an employee or agent of Landlord shall be present during any such testing. If such testing agency/lab shall find that any submeter is not accurate, Landlord shall be permitted to dispute such finding by employing another independent testing agency/lab at Landlord's sole cost.

(d) Prior to the date that the submeters to be installed by Tenant as set forth above are actually installed and operational, Tenant shall pay to Landlord within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor: (i) \_\_\_\_\_ per annum per RSF of the relevant portion of the Premises during the period that Tenant shall be performing Tenant's Initial Alterations in such portion of the Premises, and (ii) \_\_\_\_\_ per annum per RSF of the relevant portion of the Premises after Tenant shall have begun to occupy such portion of the Premises for the conduct of Tenant's business therein (the "Electric Inclusion Charge") for Tenant's consumption of electricity. The parties agree that although the charge for furnishing electrical energy is reflected in the Electricity Inclusion Charge on a so called "rent inclusion" basis, the value to Tenant of such service may not be accurately reflected in such Electricity Inclusion Charge. Accordingly, Landlord and Tenant agree that after the submeters are installed

and operational and electricity is being furnished to the Premises for a three (3) month period, the Electricity Inclusion Charge shall be adjusted based on the average of the electricity payments due under this Section 7.01(d) ("Three Month Average") payable by Tenant for such three (3) month period with respect to the Premises, with such Three Month Average to be annualized (i.e., adjusted so as to be normalized to account for typical seasonal fluctuations in the usage of electricity during a calendar year as reasonably agreed between Landlord and Tenant). If the Three Month Average shall exceed the Electricity Inclusion Charge, Tenant, within twenty (20) days after receipt of demand therefor, shall pay such excess to Landlord, and if the Electricity Inclusion Charge shall exceed the Three Month Average, Landlord, at its option, shall either promptly refund to Tenant such excess or shall credit such excess against immediately subsequent monthly installments of Fixed Rent next becoming due and payable hereunder.

(e) In the event that any tax shall be imposed upon Landlord's receipts from the sale, use or resale of electrical energy to Tenant, the pro rata share allocable to the electrical energy service received by Tenant shall be passed onto, included in the bill of, and paid by Tenant if and to the extent not prohibited by applicable Legal Requirements (it being agreed that Tenant shall not be obligated to pay any administrative or reading fee to Landlord with respect to such taxes or charges). Tenant acknowledges and agrees that a variable gross receipts tax is presently built into Landlord's electrical energy service, and such tax shall be paid by Tenant in accordance with this Section 7.01(e).

#### **Section 7.02 Termination of NYPA Agreement.**

(a) If Net Lessor's agreement with NYPA is terminated or is otherwise not in effect with respect to the provision of electricity to the Building then, subject to Section 7.05 and all other terms and provisions of this Lease, Landlord shall furnish to Tenant electricity to the electric closets on the floors or part thereof in which the Premises are located in the same manner as required under Section 7.01 above. Tenant shall pay for the time-of-day demand and total consumption of alternating current in the Premises, which demand and total consumption shall be measured by submeters. Such submeters shall be furnished, maintained, repaired or replaced (if necessary) by Tenant, at Tenant's cost and expense, for that purpose and in the event that any such submeter fails to record such consumption and demand, the quantity of such electricity so supplied during any period that a submeter is out of service will be considered to be the same as the quantity supplied during a like period either immediately before or immediately after such interruption as reasonably selected by Landlord and Tenant, subject to seasonal or other equitable adjustment. Tenant's demand and total consumption for electricity shall not include any electricity consumed in connection with the provision of base Building HVAC equipment, as provided in the Base Building Specifications.

(b) If Landlord is furnishing electricity to Tenant pursuant to this Section 7.02, Tenant's time-of-day demand and total consumption in the Premises shall be paid for by Tenant at \_\_\_\_\_ of the rates applicable to Tenant's demand and consumption without any additional profit, mark-up or add on. Tenant shall pay the cost of such demand and total consumption to Landlord within twenty (20) days after Tenant's receipt of Landlord's invoice therefor as Additional Rent. Notwithstanding anything herein to the

contrary, Landlord's method of measuring demand shall be the same method used by the utility providing electricity.

**Section 7.03 Maintenance of Equipment; Landlord's Contractors.** Tenant, at Tenant's expense, shall maintain, service, and repair all such electrical equipment furnished or installed by Tenant. Tenant shall supply, at Tenant's cost, adequate electric lighting and electric power (subject to power outages and failures beyond Tenant's control) to Landlord or Landlord's vendor's and contractors for such time as is reasonably necessary to clean or make repairs in the Premises; provided, however, that Landlord shall pay for the cost of such electricity in any case where it is making repairs or restorations arising from a fire or other casualty for which it is responsible hereunder to make such repairs or restorations unless Tenant is then using the applicable portion of the Premises for the ordinary conduct of its business.

**Section 7.04 Bulbs, Ballasts, Etc.** At Landlord's option, Landlord shall furnish, install and replace, as required, all Building standard lighting tubes, lamps, bulbs and ballasts required in the Premises (other than specialty lighting required by Tenant in connection with any Business Center Use) at Tenant's sole cost and expense provided that Landlord's charges therefor shall be in accordance with Landlord's regular rates in effect from time to time, and not materially in excess of the rates for similar materials and services provided by landlords in other first class office buildings. All lighting tubes, lamps, bulbs and ballasts so installed by Landlord shall become Landlord's property upon the expiration or sooner termination of this Lease. Tenant shall pay such charges as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice therefor.

**Section 7.05 Termination of Service.** Subject to this Section 7.05, Landlord reserves the right to terminate the furnishing of electrical energy at any time, upon at least thirty (30) days' notice (provided that such longer notice as is reasonably feasible under the circumstances shall be given) to Tenant unless a shorter period of notice is required or necessitated by Legal Requirements, but Landlord shall exercise such right only if required to do so by applicable Legal Requirements. If Landlord shall so discontinue the furnishing of electrical energy, (a) Tenant shall arrange to obtain electrical energy directly from the public utility company or other service provider then furnishing electrical energy to the Building and, unless required by such Legal Requirements and/or insurance requirements, Landlord shall not terminate such service until Tenant shall have obtained such direct service, (b) Landlord shall permit the existing feeders, risers, wiring and other electrical facilities serving the Premises to be used by Tenant for such purpose, (c) from and after the effective date of such discontinuance Landlord shall not be obligated to furnish electric energy to Tenant, (d) Landlord shall not have liability to Tenant on account of such discontinuance and (e) Tenant shall, at Tenant's sole cost and expense and in accordance with the provisions of this Lease governing Alterations, install and maintain at locations in the Building reasonably selected by Landlord any necessary electrical meter equipment, panel boards, feeders, risers, wiring and other conductors and equipment that may be required to obtain electrical energy directly from the public utility company or other service provider supplying the same including all equipment necessary to supply such power to the existing electric closets serving the Premises.

**Section 7.06 Limitation on Liability.** Notwithstanding anything to the contrary contained herein and subject to Section 12.05, Landlord shall not in any way be liable or

responsible to Tenant for any loss, damage or expense that Tenant may sustain or incur as a result of the unavailability of or interruption in the supply of electricity to the Premises or a change in the quantity or character or nature of such current and such change, interruption or unavailability 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 of its obligations under this Lease, or impose any liability upon Landlord or any Landlord Party, by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

**Section 7.07 Electrical Capacity.** Tenant's use of electricity and Tenant's equipment shall in no event exceed a coincident demand load of \_\_\_\_\_ exclusive of base Building HVAC. If (i) in Landlord's reasonable opinion Tenant's installation overloads the electrical vaults/feeders or any riser(s) and/or switch(es) in or servicing the Building or (ii) Tenant requests additional power in addition to that being supplied by Landlord on the date of initial occupancy, then if and to the extent allocated power is available in the Building for use by Tenant without resulting in allocation to Tenant of a disproportionate amount of allocated power, Landlord shall, at Tenant's cost and expense, provide and install in conformity with law any additional riser or risers and/or any and all switch or switches to connect additional power to the Premises, and Tenant agrees to pay Landlord its then established connection charge for each additional amp of power or portion hereof so supplied to the Premises, together with the cost of installing such additional risers, switches and related equipment.

**Section 7.08 Intentionally Omitted.**

**Section 7.09 Emergency Power for Fire and Life Safety.** Landlord will furnish and install emergency power capacity of 0.25 watt per usable square foot from the Building's emergency generators for connection of Tenant's emergency egress lighting. Tenant shall, at its sole cost and expense and using the contractor designated for such work by Landlord, connect all of Tenant's life and fire safety systems to the Building's emergency generators.

## ARTICLE 8

### **ASSIGNMENT, SUBLETTING, MORTGAGING**

**Section 8.01 No Assignment or Subletting Without Consent.**

(a) Except as otherwise expressly provided herein, Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors, subtenants and assigns, expressly covenants that it shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, nor sublet (nor underlet), nor suffer, nor permit, nor license the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without the prior written consent of Landlord in each instance, and any such assignment, mortgage, pledge, encumbrance, transfer, sublet, underlet, license or use, whether occurring voluntarily, by operation of law or otherwise, shall be and hereby is expressly prohibited.

(b) “Assignment” shall include, without limitation, (i) a sale of all or substantially all of Tenant’s assets, (ii) a transfer of the Premises for the entire or substantially the entire remaining Term or (iii) the merger or consolidation of Tenant into or with any other entity. If and so long as Tenant is a corporation with fewer than five hundred (500) shareholders or a partnership (whether general, limited or limited liability) or other legal entity, an Assignment, within the meaning of this Article 8, shall be deemed to include a change in Control of Tenant (whether by one or more transactions or by operation of law or otherwise or the issuance of new stock, partnership or other ownership interests); provided, however, that the initial public offering of the shares of Tenant or any member of Tenant (or any affiliate of any member of Tenant) on a nationally recognized stock exchange shall not be deemed to be an Assignment. For the purpose of this Section 8.01, ownership of stock or partnership interests shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent law.

(c) If, whether by operation of law or otherwise, (i) this Lease is Assigned, (ii) the Premises or any part thereof are sublet or occupied by any Person other than Tenant or (iii) this Lease or the Premises are encumbered, then Landlord may, after default by Tenant beyond applicable grace or notice periods, (i) collect rent from the assignee, subtenant or occupant and (ii) apply the net amount collected to Fixed Rent and Additional Rent, provided, however, that (i) no Assignment, subletting, occupancy or collection shall be deemed (x) a waiver by Landlord of the provisions hereof, (y) the acceptance by Landlord of the assignee, subtenant or occupant as a tenant, or (z) a release by Landlord of Tenant from the further performance by Tenant of its obligations under this Lease, and (ii) Tenant shall remain fully liable therefor. The consent by Landlord to any Assignment or subletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further Assignment or subletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others (subject to Section 8.13), except in accordance with this Lease. Any Assignment, sublease, mortgage, pledge, encumbrance, underlet, license or transfer in contravention of the provisions of this Article 8 shall be void and shall constitute a default hereunder. The limitations set forth in this Section 8.01 shall be deemed to apply to subtenant(s), assignee(s) and guarantor(s) of this Lease.

#### **Section 8.02 Permitted Transfers.**

(a) Anything in the foregoing Section 8.01 to the contrary notwithstanding, transactions with an entity (i) into or with which Tenant is merged or consolidated or created by a reorganization or recapitalization, (ii) to which substantially all of the stock in Tenant or Tenant’s assets are transferred as a going concern or (iii) that results in a change in Control of Tenant (“Permitted Transferees”), shall not require the consent of Landlord, provided that, in the event of any of such transfers (whether effectuated through a single transaction or a series of transactions), (i) either (x) such successor has a tangible net worth, determined in accordance with GAAP, equal to or greater than the tangible net worth of Tenant immediately prior to such transaction, and proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction or (y) such successor shall provide an additional letter of credit (in amount, form and substance reasonably satisfactory to Landlord) which will secure all of Tenant’s obligations under this Lease and shall

be held and drawn down (if applicable) in accordance with the terms of Section 33.01), (ii) the business and activities of such successor to Tenant shall not diminish the value of the Building and such business and activities constitute Permitted Uses in accordance with the provisions of Article 5, (iii) the successor to Tenant agrees, by written instrument in form reasonably satisfactory to Landlord, to be bound by all the obligations of Tenant hereunder, including, without limitation, the limitations relating to Assignment and subletting, it being understood that Landlord shall be specifically named as a third-party beneficiary under such written agreement, (iv) in no event shall Tenant be released from its obligations under this Lease other than as expressly hereinafter provided, (v) any such transfer or transaction is for a legitimate, regular business purpose of Tenant (other than a transfer of Tenant's interest in this Lease or avoiding the obligations under this Lease, including Section 8.09), (vi) a duplicate original of the instrument of transfer shall be delivered to Landlord within ten (10) Business Days after the effective date thereof and (vii) Tenant shall reimburse Landlord within twenty (20) days after receipt of demand for any reasonable out-of-pocket costs, including, without limitation, reasonable legal costs, actually incurred by Landlord in connection with such transaction. Notwithstanding the foregoing, a transfer of all or substantially all of Tenant's assets that does not include this Lease or Tenant's operations in the Premises, shall be an Assignment for purposes of this Article 8 and shall be subject to this Section 8.01(a).

(b) Anything in the foregoing Section 8.01(a) to the contrary notwithstanding, an Assignment or subletting to an Affiliate of Tenant shall not require the consent of Landlord, provided that (i) the assignee or subtenant agrees directly with the Landlord, by written instrument in form reasonably satisfactory to Landlord, to be bound by all the obligations of Tenant hereunder (except that in case of a sublease, such obligations shall be limited to the Rent payable thereunder and to those obligations under this Lease that apply to the portion of the Premises being sublet), (ii) in no event shall Tenant be released from its obligations under this Lease, (iii) any such transfer or transaction is for a legitimate business purpose of Tenant and not principally for the purpose of effectuating a transfer of Tenant's interest in this Lease, (iv) appropriate evidence that such Person is an Affiliate is delivered to Landlord, (v) the business and activities of such Affiliate shall not diminish the value of the Building and such business and activities constitute Permitted Uses in accordance with the provisions of Article 5 and (vi) Tenant shall reimburse Landlord within twenty (20) days after Tenant's receipt of Landlord's invoice for any reasonable out-of-pocket costs, including, without limitation, reasonable legal costs actually incurred by Landlord in connection with such transaction.

(c) If any Person to whom Tenant shall have assigned this Lease or sublet all or any portion of the Premises pursuant to and in accordance with this Section 8.02, shall thereafter cease to be an Affiliate of Tenant, then the continuation of such Person's tenancy or subtenancy, as applicable, after the date such Person shall cease to be an Affiliate of Tenant shall be subject to Landlord's consent pursuant to Section 8.06. In the event Tenant shall assign this Lease or sublet all or any part of the Premises to an Affiliate of Tenant in accordance with this Section 8.02, the parties agree that if such Affiliate desires to assign this Lease or sublet all or any part of the Premises to a Person other than an Affiliate of Tenant or a Permitted Transferee, then (i) the provisions of this Article 8 shall apply with respect thereto and (ii) for purposes of calculating profits, Sections 8.09(a)(i) and (ii) shall apply, but the sums to be paid to Landlord shall be calculated as if the sublet or Assignment to an Affiliate of Tenant had not occurred and the sublease and Assignment were made directly by Tenant. The provisions of the immediately

preceding sentence shall not be deemed to (x) limit the right of Tenant, an Affiliate of Tenant or a Permitted Transferee to enter into any transaction with a Core Business Licensee, Permitted Office Occupant or Permitted Operator otherwise permitted under this Lease or (y) make Section 8.09 applicable to any transaction as to which it would not otherwise apply.

**Section 8.04** Intentionally Omitted.

**Section 8.05** Intentionally Omitted.

**Section 8.06 Terms and Conditions of Approved Subleases.**

(a) Provided that no Event of Default shall have occurred and be continuing under this Lease as of the time Landlord's written consent is requested by Tenant, then Landlord agrees not to unreasonably withhold or delay its consent (which must be in writing) to the proposed Assignment or sublease described in the Subletting/Assignment Notice. Notwithstanding anything to the contrary contained herein, as a condition to the effectiveness of any such Assignment or sublease each of the following clauses (i) through (xi) must be true:

(i) The proposed assignee or subtenant is engaged in a business or activity, and the Premises, or the relevant part thereof, will be used in a manner that (x) is in keeping with the then standards of the Building, and (y) is limited to Permitted Uses in accordance with Article 5 and otherwise complies with the provisions of this Lease;

(ii) The business and activities of such proposed assignee or subtenant shall not diminish the value of the Building, and such proposed assignee or subtenant shall have sufficient financial worth considering the responsibility involved, and Landlord has been furnished with reasonable evidence of such financial worth;

(iii) The proposed assignee or subtenant is not then a tenant or occupant in the Building or a Person with whom Landlord or Landlord's agent is then actively negotiating in connection with the rental of space in the Building or has negotiated in connection with the rental of space in the Building at any time during the immediately preceding six (6) month period, in each case to the extent Landlord then has space available for lease in the Building;

(iv) The form of the proposed sublease or instrument of Assignment shall be reasonably satisfactory to Landlord and shall comply with the applicable provisions of this Article 8, and Tenant shall have delivered a true and complete original, fully executed counterpart of such sublease or other instrument to Landlord promptly after the execution and delivery thereof;

(v) Tenant and its proposed subtenant or assignee, as the case may be, shall execute and deliver to Landlord an agreement in a form reasonably acceptable to Landlord setting forth the terms and conditions upon which Landlord shall have granted its consent to such Assignment or subletting, and the agreement of Tenant and such subtenant or assignee, as the case may be, to be bound by the provisions of this Article 8;

(vii) Tenant shall reimburse Landlord, as Additional Rent within thirty (30) days after receipt of demand, for (x) the reasonable, actual out-of-pocket costs and expenses incurred by Landlord in connection with the Assignment or sublease, including the costs of making investigations as to the acceptability of the proposed assignee or subtenant and

the cost of reviewing plans and specifications relating to any Alterations proposed to be made in connection therewith and (y) Landlord's reasonable out-of-pocket legal fees and disbursements actually incurred in connection with the granting of any requested consent and the preparation of Landlord's consent to the sublease or Assignment;

(viii) Tenant shall not have advertised or publicized in any way the rental rate for the Premises without prior notice to and approval of Landlord, which approval may be withheld by Landlord in its sole and absolute discretion;

(ix) The proposed occupancy shall not (w) materially increase the office cleaning requirements, (x) impose an extra burden upon services to be supplied by Landlord to Tenant (except to a *de minimis* extent), (y) increase the burden on the elevators that serve the Premises (except to a *de minimis* extent) or (z) increase Operating Expenses with respect to the Premises;

(x) The proposed subtenant or assignee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in, and the jurisdiction of the courts of, New York State, or shall agree to consent thereto; and

(xi) no subletting shall be for a term of less than twelve (12) months.

(b) Each sublease pursuant to this Section 8.06 shall be subject to all of the covenants, agreements, terms, provisions and conditions contained in this Lease. Notwithstanding any such sublease or any acceptance of Fixed Rent or Additional Rent by Landlord from any subtenant, Tenant will remain fully liable for the payment of the Fixed Rent and Additional Rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on Tenant's part to be observed and performed, and for all acts and omissions of any licensee or subtenant or anyone claiming under or through any subtenant that are in violation of any of the obligations of this Lease, and any such violation shall be deemed to be a violation by Tenant. If Landlord shall decline to give its consent, pursuant to the provisions of this Lease, to any proposed Assignment or sublease, Tenant shall indemnify, defend and hold harmless Landlord against and from any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and disbursements) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant arising from or in connection with such proposed Assignment or subletting, or by any brokers or other Persons (with whom Tenant or its proposed assignee or subtenant may have dealt) claiming a commission or similar compensation in connection with the proposed Assignment or sublease.

**Section 8.07 Changes to Approved Subleases.** If Landlord grants its consent to a proposed Assignment or subletting under Section 8.06 and (x) such Assignment or sublease has not been executed for any reason not caused by a default by Landlord under this Lease within four (4) months after the granting of such consent or (y) the economic terms of such Assignment or sublease is modified or amended prior to its becoming effective such that the economic terms in the aggregate are less than ninety-five percent (95%) of the value of the economic terms in the approved Subletting/Assignment Notice, then and in any such event Landlord's consent shall be deemed to have been withdrawn and Tenant shall not have the right to assign this Lease or to

sublease all or any portion of the Premises without once again complying with all of the provisions and conditions of this Article 8. In no event shall Tenant modify or amend the economic terms of any Assignment or sublease or materially modify or amend any other material terms of any Assignment or sublease to which Landlord has consented under Section 8.06 without Landlord's prior written consent, such consent not to be unreasonably withheld or delayed.

**Section 8.08 Further Conditions of Subleases.** With respect to each and every sublease authorized by Landlord under the provisions of this Lease (whether or not requiring Landlord's approval), the following conditions apply:

(a) No sublease shall be for a term ending later than one day prior to the Expiration Date of this Lease;

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

(c) Each sublease shall contain the condition and restriction that the sublease shall not be assigned, encumbered or otherwise transferred or the subleased premises further sublet by the sublessee in whole or in part, or any part thereof suffered or permitted by the sublessee to be used or occupied by others, without the prior written consent of Landlord in each instance; and

(d) Each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and each subtenant by entering into a sublease is deemed to have agreed that in the event of termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublandlord, under such sublease, and such subtenant shall, at Landlord's option, (i) attorn to Landlord as sublandlord under such sublease for the balance of the term and on all of the then-executory provisions of such sublease, except that Landlord shall not (r) be liable for any previous act or omission of Tenant under such sublease, (s) be subject to or liable for any credit, counterclaim, offset or defense that theretofore accrued to such subtenant against Tenant, (t) be bound by any rent that such subtenant might have paid for more than the current month to Tenant, (u) be required to account for any security deposit other than the security deposit actually delivered to Landlord, (v) be liable for any brokerage commission payable in connection with such sublease or any renewal thereof, (w) be bound by any amendment, modification or surrender of such sublease made without Landlord's prior written consent, such consent not to be unreasonably withheld or delayed, other than modifications that do not increase Landlord's obligations, decrease Tenant's obligations or increase Tenant's rights, (x) be liable for any claim for damages of any kind whatsoever as the result of any breach by Tenant that occurred before the date of attornment, (y) be bound by any obligation to restore the Building, such subtenant's premises or any portion thereof or any property located therein in the event of a casualty or condemnation of the Building except as required by this Lease, or (z) be obligated to perform, or be liable for any payment to such subtenant of any sums or the granting to such subtenant of any credit in the nature of a contribution toward the cost of any work in the subleased space or to prepare it for occupancy beyond Landlord's obligations under this Lease, and (ii) in connection

with such attornment, execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such attornment. Each subtenant or licensee of Tenant shall be deemed, automatically upon and as a condition of its occupying or using the Premises or any part thereof, to have agreed to be bound by the terms and conditions set forth in this Article 8. The provisions of this Article 8 shall be self-operative and no further instrument shall be required to give effect to this provision.

**Section 8.09 Transaction Profits.**

(a) If Landlord shall consent to any Assignment of this Lease or to any sublease, or if Tenant shall enter into any other Assignment or sublease permitted hereunder, Tenant shall, in consideration therefor, pay to Landlord, as Additional Rent, Transaction Profits, after first deducting therefrom (but not below zero) Transaction Expenses incurred by Tenant in connection with such Assignment or subletting. For purposes of this Section 8.09:

(i) "Transaction Profits" means, (i) in the case of an Assignment, an amount equal to fifty percent (50%) of all sums and other consideration payable to or for the benefit of Tenant by the assignee for or by reason of such Assignment (including sums paid for Tenant's Property, fixtures or leasehold improvements calculated as if such items were sold in an arm's-length transaction and for services provided or to be provided to such assignee or to the space assigned), and, (ii) in the case of a sublease, an amount equal to fifty percent (50%) of all rents, additional charges or other consideration payable to or for the benefit of Tenant under or by reason of the sublease in excess of the Fixed Rent and Additional Rent payable during the term of the sublease in respect of the subleased space (at the rate per square-foot payable by Tenant hereunder) pursuant to the terms hereof (including sums paid for the sale or rental of Tenant's Property, fixtures or leasehold improvements calculated as if such items were sold in an arm's-length transaction); and

(ii) "Transaction Expenses" means, to the extent actually paid by Tenant to unrelated third parties, (i) the reasonable out-of-pocket costs and expenses of Tenant in entering into the Assignment or sublease (such as customary real estate brokerage commissions, legal and architectural fees, and advertising fees paid to unrelated third parties), (ii) free rent, rent concessions or rent abatements solely to the extent of any Rent payable by Tenant to Landlord for the portion of the Term during which the free rent or rent abatement period under the sublease occurs, (iii) the cost of improvements, construction contributions or alterations made by Tenant expressly and solely for the purpose of preparing the space for such tenancy, (iv) the actual hard and soft costs (other than to the extent funded by Landlord as part of Landlord's Contribution) paid by Tenant in connection with Tenant's Initial Alterations (and, in the case of a subletting, reasonably allocated to the sublet space), amortized on a straight line basis over the Term, to the extent such amortization is allocable to the period during the term of such assignment or sublease; provided, however, if, in connection with such subletting or Assignment, the alterations to which such hard costs relate are substantially altered or demolished prior to such subletting or Assignment or within the six (6) month period following the rent commencement date of any such sublease or the effective date of such Assignment, such hard costs shall not be permitted to be so deducted, and (iv) any work allowance or other monetary concession actually paid to the assignee or subtenant as the case may be (i.e., exclusive of Landlord's Contribution). Notwithstanding anything contained in this paragraph to the contrary,

in the event Tenant shall assign this Lease or sublet the Premises or any portion thereof prior to Tenant's occupying the Premises, construction allowances and other out-of-pocket concessions shall only be includable as Transaction Expenses to the extent that such concessions exceed, on an RSF basis, the amount of construction allowances and concessions provided by Landlord to Tenant under this Lease.

(iii) The sums payable under this Section 8.09 shall be paid by Tenant to Landlord as Additional Rent as and when paid by the subtenant or assignee to Tenant. In the case of a sublease, Transaction Expenses shall be amortized on a straight line basis over the term of the sublease, and may be deducted from amounts that otherwise would be payable to Landlord under this Section 8.09, without interest, as and when actually expended.

(b) Notwithstanding anything to the contrary set forth in Section 8.09(a) above, Tenant shall not be obligated to pay Transaction Profits to Landlord with respect to transactions for which Landlord's consent is not required under Sections 8.02(a) or (b).

#### **Section 8.10 Tenant's Liability.**

(a) Each permitted assignee or transferee (i) shall assume and be deemed to have assumed the obligations of Tenant under this Lease to be performed, or arising or accruing, on and after the effective date of such Assignment or transfer and (ii) shall be and remain liable jointly and severally with Tenant for the payment of Rent and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the remainder of the Term. With respect to any Assignment or transfer, whether made with Landlord's consent pursuant to Section 8.01 or without Landlord's consent to the extent permitted under Section 8.02, Landlord shall have the right to require that the assignee execute and deliver to Landlord within thirty (30) days after such Assignment or transfer an agreement in a form reasonably acceptable to Landlord (i) whereby the assignee shall assume the obligations of this Lease on the part of Tenant to be performed or observed from and after the effective date of such Assignment or transfer, and (ii) whereby the assignee shall agree that the provisions in Article 8 shall, notwithstanding such Assignment or transfer, continue to be binding upon it in respect of all future Assignments and transfers. In connection with any Assignment of this Lease by operation of law, Tenant shall provide Landlord with a written instrument confirming such Assignment in form and substance reasonably satisfactory to Landlord within ten (10) days after the effective date of such Assignment.

(b) The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant and the due performance of the obligations of this Lease on Tenant's part to be performed or observed shall not be discharged, released or impaired in any respect (i) by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord by way of mortgage or otherwise, extending the time, or modifying any of the obligations of this Lease, or (ii) by any waiver or failure of Landlord, or any grantee or assignee of Landlord by way of mortgage or otherwise, to enforce any of the obligations of this Lease.

(c) The listing of any name other than that of Tenant, whether on the doors of the Premises or the Building directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Premises, nor shall it be deemed to be the consent of Landlord to any

Assignment or transfer of this Lease or to any sublease of Premises or to the use or occupancy thereof by others.

**Section 8.11 No Security Agreement.** Tenant covenants and agrees that no security agreement, whether by way of conditional bill of sale, chattel mortgage or instrument of similar import, shall be placed upon any improvement at the Premises that is affixed to the Real Property.



**Section 8.13 Subtenant Recognition Agreements.** Landlord shall furnish a subtenant recognition agreement, in a form reasonably acceptable to the Port Authority Law Department, for any subtenant leasing Eligible Space, provided and on condition that:

(a) Landlord is reasonably satisfied with the financial condition of the proposed subtenant or the proposed subtenant either (i) has a net worth (exclusive of good will and general intangibles) equal to or greater than at least the aggregate of the annual Fixed Rent then reserved hereunder plus all of the recurring Additional Rent for the preceding calendar year in each case allocable to the portion of the Premises that is the subject of the subletting (the "Requisite Net Worth") or (ii) agrees to provide Landlord with either a reasonably acceptable security deposit at the time the proposed subtenant attorns to Landlord;

(b) the proposed sublease demises Eligible Space, for a term of at least five (5) years (inclusive of any extension options of such subtenant that are conditioned upon Tenant's exercise of its extension rights in accordance with this Lease), with no right of cancellation (other than those customarily provided in the event of casualty or condemnation) prior to the expiration of such minimum term (but in no event extending beyond the then current stated Expiration Date of this Lease, as that date may have been theretofore, or may thereafter be, extended in accordance with the terms of this Lease);

(c) the proposed sublease is a bona fide arm's length sublease with a Person not Affiliated with Tenant or any other Tenant Entity;

(e) the proposed sublease does not give the subtenant any right to extend or renew the term of its sublease beyond the then current stated Expiration Date, as that date may have been theretofore, or may thereafter be, extended in accordance with the terms of this Lease unless such rights are conditioned upon Tenant's exercise of its extension rights pursuant to Article 35 or 36, as the case may be;

(f) the proposed sublease imposes no obligations on Landlord to do any work (other than is otherwise required to be done by Landlord hereunder) or provide any landlord contribution, work allowance or free rent period to the subtenant (that would be binding on Landlord); and

(g) the proposed sublease gives no greater rights to the subtenant than Tenant has under this Lease nor imposes any greater obligations on the sublandlord that would be binding on Landlord (or provides that any such greater rights or obligations shall be null and void if the subtenant becomes the direct tenant of Landlord).

The term "Eligible Space" as used herein shall mean space constituting not less than one full floor of the Building comprised of full floors which constitute (i) the "top floor" or "bottom floor" (i.e., the then highest or lowest full floor of the Premises as constituted at the time in question) together with any one or more full floors that are contiguous to such "top floor" or "bottom floor" and (ii) any full floor (together with any one or more full floors contiguous thereto) that is contiguous to one or more floors that are then the subject of a sublease with respect to which Landlord previously entered into a subtenant recognition agreement.

**Section 8.14 Additional Requirements.** Notwithstanding anything to contrary contained in this Lease (including, without limitation, the provisions of Sections 5.07 and 8.12), Tenant may not permit occupancy by any proposed user (A) engaged in a business, or use of the Premises in a manner that is inconsistent with the permitted uses or the first class status of the Building or (B) in the case of a subtenant or assignee, if such party is not qualified as a World Trade Center tenant in the opinion of Net Lessor (in accordance with the provisions of the definition of "Tenant" in Section 1.01). Without limiting Landlord's rights and remedies in such event, Landlord shall have the right to require the removal of any Person occupying the Premises in violation of the immediately preceding sentence, and upon written request from Landlord, Tenant shall use its best efforts (at Tenant's sole cost and expense) to terminate the occupancy of such Person and evict such Person from the Premises.

**Section 8.15 Tenant's Below Grade Space.** In no event shall Tenant be permitted to sublease Tenant's Below Grade Space to, or permit occupancy thereof by, any Person other than Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants of the Premises during such Person's continued occupancy of the Premises.

## ARTICLE 9

### **SUBORDINATION, NON-DISTURBANCE, ESTOPPEL CERTIFICATE**

**Section 9.01 Subordinate to Superior Leases.** This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to the terms, covenants, conditions and provisions of all Mortgages and Superior Leases (including the Net Lease) and all rights of the Mortgagees and Superior Lessors thereunder, and no further instrument of subordination shall be required. Tenant shall promptly execute and deliver any instrument that Landlord or any Superior Lessor or Mortgagee or Governmental Authority may reasonably request to evidence such subordination. This Lease is subject to the rights of The City of New York pursuant to the City Agreement.

#### **Section 9.02 Rights of Superior Parties.**

(a) In the event of any act or omission of Landlord that would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease (other than pursuant to Sections 17.02 or 18.02), or to claim a partial or total eviction, Tenant shall give each Mortgagee and Superior Lessor whose name and address shall previously have been furnished to Tenant in writing, notice of such act or omission. If Landlord fails to cure such act or omission within the time provided for in this Lease, then each such Mortgagee or Superior Lessor shall have an additional thirty (30) days after receipt of such notice within which to cure such act or omission or if such act or omission cannot be cured, using diligent efforts, within that time, then such additional time as may be reasonably necessary if, within such thirty (30) days, such Mortgagee or Superior Lessor has notified Tenant of its intention to cure such act or omission and has commenced and is diligently pursuing the remedies necessary to cure such act or omission (including, without limitation, commencement of foreclosure proceedings or eviction proceedings, if necessary, to effect such cure), in which event this Lease shall not be terminated and Tenant shall not exercise any other rights or remedies under this Lease or otherwise while such remedies are being so diligently pursued.

(b) Tenant shall not withhold its consent to any reasonably requested modifications to this Lease, upon request of a Mortgagee, provided that such Lease modification shall not decrease Landlord's obligations or decrease Tenant's rights under this Lease (except to a *de minimis* extent), modify the definition of Permitted Uses herein or increase Tenant's monetary obligations under this Lease (to any extent) or non-monetary obligations under this Lease (except to a *de minimis* extent).

#### **Section 9.03 Attornment to Successor Landlord.**

(a) If a Mortgagee or Superior Lessor (other than Net Lessor under the Net Lease for so long as Net Lessor and Landlord are the same person or are Affiliates of one another, under which circumstances Net Lessor shall be subject to the terms of Section 9.03(b) below) shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such Mortgagee or Superior Lessor, Tenant shall attorn to and recognize such Mortgagee, such Superior Lessor, the designee of such Mortgagee or Superior Lessor or a purchaser at foreclosure or otherwise, in

each case acquiring Landlord's interest under this Lease (a "Successor Landlord") as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment this Lease shall continue in full force and effect as, or as if it were, a direct lease between such Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment except that such Successor Landlord, unless such Successor Landlord shall be an Affiliate of Landlord, shall not:

(i) be liable for any acts, omissions, events or conditions arising prior to the time such Successor Landlord acquired Landlord's interest under this Lease;

(ii) except to the extent set forth in the Non-Disturbance Agreement entered into by such Successor Landlord, be subject to any offset or defenses that Tenant may have against Landlord, that shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any previous material modification of this Lease entered into after Tenant has been notified of the existence and identity of such Successor Landlord and of its address for notices, not expressly provided for in this Lease, or by any previous prepayment of more than one month's Fixed Rent, unless such material modification or prepayment shall have been expressly approved in writing by such Successor Landlord; or

(iv) except to the extent set forth in the Non-Disturbance Agreement entered into by such Successor Landlord, be bound by any obligation to perform any work or to make improvements to the Premises except for normal repairs and maintenance to the extent required to be made by Landlord pursuant to this Lease.

(b) Subject to the terms of the applicable Non-Disturbance Agreement to be delivered pursuant to Section 9.04, Tenant covenants and agrees that if, whether (i) by reason of a default on the part of Landlord who is the lessee under the Net Lease in the performance of any of the terms or provisions of such Net Lease or (ii) for any other reason of any nature whatsoever, such Net Lease and the leasehold estate of the lessee thereunder are terminated by summary dispossession proceeding or otherwise, then Tenant shall attorn to and recognize such landlord as Tenant's landlord under this Lease. Tenant covenants and agrees to execute and deliver, at any time and from time to time upon request of the landlord under such Net Lease, any instrument that may be reasonably necessary or appropriate to evidence such attornment. Tenant further waives the provisions of any statute or rule of law now or hereafter in effect that may terminate this Lease or give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises demised hereby in the event such Net Lease terminates or in the event any such proceeding is brought by the landlord under such Net Lease, and in that circumstance Tenant agrees that this Lease shall not be affected in any way whatsoever by any such proceeding or termination.

#### **Section 9.04 Non-Disturbance Agreements.**

(a) Concurrently with the execution of this Lease, Tenant and Landlord are entering into a Net Lessor SNDA.

(b) Anything in this Article 9 to the contrary notwithstanding, this Lease shall not be subordinate to any future Mortgage or future Superior Lease, unless and until there shall first be delivered to Tenant, for execution, a Non-Disturbance Agreement executed by such Mortgagee or Superior Lessor. Landlord shall use commercially reasonable efforts to obtain and deliver to Tenant a Non-Disturbance Agreement from any future Mortgagee or Superior Lessor within a reasonable time after the execution of such applicable Mortgage or Superior Lease.

(c) Tenant shall have the right to record any Non-Disturbance Agreement and Net Lessor SNDA in the appropriate Register's Office, provided that Tenant shall pay all costs, taxes and expenses necessary for the recordation of such Non-Disturbance Agreement and Net Lessor SNDA.

**Section 9.05 Estoppel Certificates.** Each party agrees, at any time and from time to time, as reasonably requested by the other party, upon not less than fifteen (15) days' prior notice, to execute and deliver to the other a written statement executed and acknowledged by an appropriate individual representing such party (i) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the then-Fixed Rent and Additional Rent, (iii) setting forth the date to which the Fixed Rent and Additional Rent have been paid, (iv) stating whether or not, to the best knowledge of the signatory, the other party is in default under this Lease, and if so, setting forth the specific nature of all such defaults, (v) stating the amount of the security deposit, if any, held by Landlord under this Lease, (vi) stating whether there are any subleases affecting the Premises, (vii) stating the address of the person to which all notices and communication under this Lease shall be sent, (viii) stating the Commencement Date, the Rent Commencement Date and the Expiration Date, (ix) stating whether or not there are any amounts of Landlord's Contribution not yet advanced to Tenant, (x) stating whether or not (to Tenant's knowledge, in the case of any statement by Tenant) there are any items of Landlord's Work that have not been completed, and if so, describing such work in a reasonable manner, (xi) stating what portion of the Premises Tenant is in possession and occupancy of pursuant to this Lease, and (xii) as to any other matters reasonably requested by the party requesting such certificate. The parties acknowledge that any statement delivered pursuant to this Section 9.05 may be relied upon by (i) any purchaser or owner (x) of the Real Property or the Building or (y) of Landlord's interest (directly or indirectly) in the Real Property or the Building or any Superior Lease, or (ii) any Mortgagee or Superior Lessor, or (iii) any purchaser of the interest of any Mortgagee or Superior Lessor (directly or indirectly) in the Real Property or the Building, or (iv) any prospective or actual sublessee of the Premises or assignee of this Lease, or (v) any permitted transferee of or successor to Tenant.

**Section 9.06 Net Lease Acknowledgements.** Tenant acknowledges and agrees that, notwithstanding any provision to the contrary anywhere in this Lease:

(a) in accordance with Sections 9.3(i) and 41.1 of the Net Lease, this Lease is subject to the terms, covenants, conditions and provisions of the REOA and the Net Lease;

(b) in accordance with Section 9.3(ii) of the Net Lease, (x) this Lease shall terminate and expire, without notice to Tenant, on the day preceding the "Expiration Date" (as defined in the Net Lease) or on such earlier date as Landlord and Tenant may agree upon, or (y) in the event the Net Lease shall terminate prior to the "Expiration Date" (as defined in the Net

Lease), subject to the provisions of this Article 9, Tenant shall attorn to, or enter into a direct lease on identical terms with, Net Lessor for the balance of the unexpired Term;

(c) in accordance with Section 9.4 of the Net Lease, upon the occurrence of an "Event of Default" (as defined in the Net Lease) by Landlord, Net Lessor may collect Rent and any other sums due under this Lease directly from Tenant;

(d) in accordance with Section 9.5 of the Net Lease, Landlord hereby presently assigns to Net Lessor any Rents or other sums due it under this Lease, such assignment to be effective immediately upon the occurrence of any "Event of Default" (as defined in the Net Lease) by Landlord under the Net Lease,

(e) in accordance with Sections 11 and 19.13 of the Net Lease, all Tenant's Property that constitute fixtures shall become the sole property of Net Lessor upon installation, provided, however, that all Tenant's Property shall be governed in accordance with this Lease, and provided further that nothing contained in this subsection 9.06(e) shall be deemed to modify Tenant's obligations set forth elsewhere in this Lease with respect to the removal of Alterations at the expiration of the Term;

(f) in accordance with Sections 6.4.6, 13.3 and 13.4 of the Net Lease, Net Lessor and QAD may, (x) upon reasonable prior notice, inspect the Premises for health code violations and (y) police the Building for any other violations of applicable Legal Requirements, said policing and inspections to be conducted in accordance with the Port Authority Manual guidelines; and

(g) in accordance with Section 9.3(iii) of the Net Lease, to the extent Net Lessor provides electrical power pursuant to Section 7.01 of this Lease, Landlord is deemed the agent of Net Lessor to collect any payments therefor.

## ARTICLE 10

### **ENTRY; RIGHT TO CHANGE PUBLIC PORTIONS OF THE BUILDING**

**Section 10.01 Landlord's Right to Repair Building; Access During Repairs.** Subject to the provisions of this Article 10, Tenant shall permit Landlord to erect, use and maintain pipes, ducts, cabling and conduits in and through the Premises in concealed locations beneath floors, behind core or perimeter walls or within existing column enclosures and above ceilings. Subject to the provisions of this Article 10, Landlord, Net Lessor or Landlord's or Net Lessor's agents or designees shall have the right to enter the Premises, at any time upon prior reasonable notice (except in an emergency), for the purpose of (i) in the case of Landlord or its agents or designees, making or inspecting such repairs or alterations as Landlord shall be required or shall have the right to make by the provisions of this Lease and, (ii) in the case of Net Lessor or its agents or designees, inspecting and reviewing such repairs or alterations as to their compliance with Legal Requirements and the Superior Lease. Landlord shall promptly repair any damage caused by such repairs or alterations, including, without limitation, repair (or replacement as necessary) of all Tenant finishes in substantially the same condition existing prior to such damage except to the extent such damage is caused by Tenant's acts or omissions. Landlord shall be allowed to take

such material as shall reasonably be required for such work into and upon the Premises during periods when work is in progress (it being expressly understood and agreed that Landlord shall not store any materials in the Premises during the performance of such work except to the extent that such storage does not unreasonably interfere with Tenant's business and use of the Premises), without the same constituting an actual or constructive eviction of Tenant in whole or in part, and the Rent reserved shall in no wise abate while said repairs or alterations are being made. Landlord shall clean up all work areas at the end of each day or block off such work areas in a manner that does not unreasonably interfere with Tenant's business and use of the Premises.

**Section 10.02 Landlord's Right to Show the Premises to Others.** Landlord may, on reasonable prior notice to Tenant, during Operating Hours, enter the Premises for the purposes of inspecting the Premises and/or showing the Premises to prospective purchasers or lessees of the Building (other than space tenants) or prospective mortgagees or prospective assignees of any such mortgagees for such prospective transaction. During the twenty-four (24) months prior to the expiration of the Term, Landlord may exhibit the Premises to prospective tenants, upon prior reasonable notice to Tenant and in coordination with Tenant so as not to unreasonably disrupt Tenant's business.

**Section 10.03 Landlord's Use of Contractors in the Premises.** Landlord shall use its commercially reasonable efforts to minimize interference with Tenant's access to and use or occupancy of the Premises for Permitted Uses (including Business Center Uses) in making any repairs, alterations, additions or improvements and in inspecting and exhibiting the Premises, and all of the foregoing shall be performed by Landlord with all reasonable diligence, provided, however, that Landlord shall have no obligation to employ contractors or labor at so-called overtime or other premium pay rates or to incur any other overtime costs or expenses whatsoever, unless Landlord is requested to do so by Tenant, in which event (i) such overtime labor shall be reasonable and feasible in both cost and efficacy under the circumstances and (ii) Tenant will reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for any such overtime or similar costs incurred by Landlord at Tenant's request. In making any repairs, alterations, additions or improvements, Landlord shall use reasonable efforts to cause its contractors or labor to cover and secure such repair areas and equipment in such a manner as to minimize interference with Tenant's business operations and to minimize any damage that might result to the appearance or function of the affected areas of the Premises.

**Section 10.04 Landlord's Right to Alter the Building.** Subject to Landlord's obligation to perform Landlord's Work pursuant to, and in accordance with, the Work Letter, Landlord shall have the right from time to time to alter the Building and, without the same constituting an actual or constructive eviction, to change the arrangement or location of entrances or passageways, doors and doorways, and corridors, stairs, toilets, or other public parts of the Building, provided that such alterations or changes do not materially interfere with Tenant's layout, use or enjoyment of the Premises, or access to the Building or Premises and provided, further, that the Building's plaza, Lobby and elevator lobbies, including the skylobby located on the 64<sup>th</sup> floor, shall, following the completion of such alterations or changes, be of a quality of finish and utility at least comparable to other first class office buildings.

## ARTICLE 11

### LAWS, ORDINANCES, REQUIREMENTS OF PUBLIC AUTHORITIES

**Section 11.01 Tenant's Obligations.** If Tenant receives written notice of any violation or alleged violation of any Legal Requirements applicable to the Premises, Tenant shall give prompt notice thereof to Landlord. Tenant, at its sole expense, shall comply with all Legal Requirements applicable to the Premises or the use and occupancy thereof by Tenant to the extent in each case arising from (i) Tenant's particular manner of use or the manner of conduct of Tenant's business in the Premises or the operation by Tenant of its installations, equipment or other property therein, it being agreed that to the extent any Legal Requirement becomes applicable to any Event Space or to any ancillary use, then the obligation to comply with such Legal Requirements shall be deemed to have arisen by reason of Tenant's particular manner of use of the Premises, or (ii) any Alterations performed by or on behalf of Tenant; and Tenant shall make all repairs or Alterations required thereby, whether structural or non-structural, ordinary or extraordinary, in which event such repair or Alteration shall be performed by Tenant in accordance with all of the terms of this Lease governing the performance of Alterations, provided, however, that in the event of any such structural or extraordinary Alterations or repairs that are the obligation of Tenant hereunder, at Landlord's option, such repairs or Alterations may be performed by Landlord, in which event the reasonable cost thereof shall be paid by Tenant as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice therefor).

**Section 11.02 Tenant's Right to Contest.** Tenant, at its expense, after notice to Landlord, may contest by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Premises or Tenant, of any Legal Requirement, provided that: (a) Landlord shall not be subject to criminal penalty or to prosecution for a crime, or any other fine or charge (unless Tenant pays such fine or charge and any interest accrued thereon, in each case, on or prior to the due date therefor), nor shall the Premises or any part thereof or the Real Property or any part thereof be subject to being condemned, forfeited, defeased, encumbered or vacated by reason of non-compliance or otherwise by reason of such contest; (b) no unsafe or hazardous condition, relating to such contest, then exists in the Premises that remains unremedied; (c) such non-compliance or contest shall not constitute or result in any default under any Superior Lease or Mortgage, or if any such Superior Lease and/or Mortgage shall permit such non-compliance or contest on condition of the taking of action or furnishing of security by Landlord, and the applicable Mortgagee or Superior Lessor shall so require, then such action shall be taken and such security shall be furnished at the expense of Tenant; (d) such non-compliance or contest shall not prevent Landlord from obtaining any and all permits and licenses then required under applicable Legal Requirements in connection with the operation of the Building; (e) no insurance policy carried in respect of the Building by Landlord is cancelled and no premium for any such policy is increased by reason of such non-compliance or such contest; (f) if Landlord so requires (but Landlord may only so require in instances where Landlord (x) would be subject to civil fines or penalties, (y) would be liable to an independent third party or (z) otherwise reasonably requires), Tenant furnishes to Landlord the bond of a surety company, in form and substance satisfactory to Landlord, in an amount equal to at least one hundred ten percent (110%) of the cost of such compliance (as reasonably estimated by Landlord), or such other security reasonably satisfactory in all respects to Landlord; and (g) Tenant shall keep Landlord advised as to the status of such proceedings, including any settlement thereof. Tenant agrees to indemnify, defend

and save Landlord and all Landlord Parties harmless, in accordance with the provisions of Article 16, from and against any loss, liability, damage or expense arising out of any such deferral of compliance or contest, including, without limitation, reasonable attorneys' fees and disbursements and other expenses reasonably incurred by Landlord. Landlord agrees to execute any documents reasonably required by Tenant in order to permit Tenant effectively to carry on any such contest, provided Landlord is not thereby subjected to any cost or expense not reimbursed by Tenant or exposed to any material liability or material obligation on account thereof.

**Section 11.03 Landlord's Compliance.** Landlord shall, at its expense to the extent same are not the responsibility of Tenant under Section 11.01 (but subject to recoupment as Operating Expenses to the extent permitted under Article 4), comply with all Legal Requirements with respect to the Common Areas (including, but not limited to, the Americans with Disabilities Act of 1992, as amended), to the extent, as between Landlord and Tenant, failure to do so would have a material adverse effect on Tenant but may defer compliance so long as Landlord shall be diligently contesting the validity or applicability thereof in good faith so long as such contest does not unreasonably interfere with Tenant's access to or use of the Premises and such non-compliance or contest shall not prevent Tenant from obtaining any and all permits and licenses then required under applicable Legal Requirements in connection with Tenant's use and occupancy of the Premises.

**Section 11.04 Hazardous Substances.** Neither Landlord nor Tenant shall cause or permit any Hazardous Substances to be used, transported, stored, released, removed and/or disposed of, handled, produced or installed in, on or from the Premises or the Building other than in connection with (i) materials and supplies typically and lawfully used in connection with the performance of Alterations of the type being undertaken by Tenant as part of the Tenant's Initial Alterations or any Alterations thereafter performed by Tenant and by Landlord as part of Landlord's Work or any Alterations thereafter performed by Landlord, and (ii) the use, operation, and maintenance of the Premises for the Permitted Uses, provided in each case that the same are used, handled, removed, disposed of and stored in compliance with all applicable Legal Requirements. In the event of a violation of any of the foregoing provisions of this Section 11.04, Landlord may, without notice and without regard to any grace or cure period contained elsewhere in this Lease, take all remedial action deemed necessary to correct such condition, and Tenant shall reimburse Landlord for the cost thereof, within twenty (20) days after Tenant's receipt of Landlord's invoice therefor.

**Section 11.05 Window Cleaning.** Tenant will not clean, nor require, permit, suffer or allow any window in the Premises to be cleaned from the outside in violation of Section 202 of the New York Labor Law or of the rules of the New York City Board of Standards and Appeals or of any other board or body having or asserting jurisdiction.

## ARTICLE 12

### REPAIRS

**Section 12.01 Landlord and Tenant Repairs.** Landlord, at Landlord's expense, shall diligently maintain, replace and repair the Common Areas and the Building Systems (except as

otherwise set forth herein), the Lobby, the skylobby located on the 64<sup>th</sup> floor and the other public portions of the Building, both exterior and interior, and the structural elements thereof, including, without limitation, the roof, foundation and curtain wall, footings, exterior walls, load bearing columns, floor slabs, window sashes, elevators, corridors, core electrical closets, core telecommunications closets, core janitor closets, mechanical rooms, curbs and sidewalks adjacent to the Building, and the plumbing, electrical, mechanical, Building HVAC System, fire protection, life safety and sprinkler systems of the New Tower Building in conformance with standards applicable to Comparable Buildings (all of the foregoing, "Landlord Repairs"). Tenant, at Tenant's expense, shall keep the Premises and the fixtures, systems, equipment and appurtenances in good condition, except for reasonable wear and tear, obsolescence and damage for which Tenant is not responsible pursuant to the provisions of Articles 17 and 18. Tenant, at Tenant's expense, shall repair and keep in good working order those portions of the Building Systems located within and exclusively serving the Premises, from the point of connection on each floor of the Premises; provided, however, that in no event shall Tenant repair the Building HVAC System. By way of example only, Tenant shall be responsible for the maintenance and repair of (i) the electrical system serving the Premises from (but not including) the bus duct disconnect switch on each floor, (ii) the plumbing and sanitary systems and installations serving the Premises from the points of connection to (but not including) the main vertical risers and stacks of the Building, including any private bathrooms and shower facilities, but excluding, on multi-tenanted floors, the core bathrooms (including all fixtures therein), which shall be maintained and repaired by Landlord, at Landlord's expense, and (iii) the sprinkler system serving the Premises from the point of connection to (but not including) the tamper and flow valves. In no event may Tenant have access to or the right to use, modify or repair telephone or electrical closets, provided, however, that Tenant may have access to such closets so long as a representative of Landlord is present.

**Section 12.02 Damage caused by Tenant.** Notwithstanding anything to the contrary set forth in Section 12.01, all damage or injury to the Building Systems, the Building or the Premises caused by or resulting from the negligence, willful misconduct, breach of contract or violation of law of, or from Alterations made by, Tenant or any Tenant Party, shall be repaired at Tenant's expense (i) by Tenant, subject to Article 13, to the reasonable satisfaction of Landlord (if the required repairs are non-structural and do not affect any Building System) or (ii) by Landlord at Tenant's sole cost and expense (if the required repairs are structural or affect any Building System). All of such repairs shall be of quality or class equal to the original work or construction. If Tenant fails after twenty (20) days' notice to commence, and thereafter to proceed with due diligence to complete repairs required to be made by Tenant, the same may be made by Landlord upon not less than five (5) days' prior written notice to Tenant (except in an emergency) at the sole cost and expense of Tenant. Tenant shall pay to Landlord the actual, reasonable out-of-pocket costs and expenses thereof incurred by Landlord as Additional Rent within twenty (20) days after Tenant's receipt of a bill or statement therefor setting forth, in reasonable detail, a description of the repairs performed and attaching invoices therefor.

**Section 12.03 Floor Loads.** Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry (unless suitable reinforcement has been installed, subject to the provisions of Article 13 and in accordance with the Port Authority Manual). If any safe, heavy equipment, business machines, freight, bulky matter or fixtures to be moved into or out of the Building requires special handling, Tenant shall

give Landlord reasonable prior notice thereof and shall employ only persons holding a Master Rigger's license to do such work.

**Section 12.04 No Liability.** Except as may be expressly provided in this Lease, there shall be no allowance to Tenant for a diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord making, or failing to make, any repairs, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances or equipment thereof. Landlord shall use reasonable efforts (which shall not include the use of overtime or premium labor (A) other than in the case of imminent danger to life or property, or (B) unless requested to do so by Tenant, in which event (i) such overtime labor shall be reasonable and feasible in both cost and efficacy under the circumstances and (ii) Tenant will reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for any such overtime or similar costs incurred by Landlord at Tenant's request) to minimize interference with Tenant's access to and use and occupancy of the Premises in making any repairs, alterations, additions or improvements and shall perform all work and repairs diligently and in a workerlike manner and in compliance with Legal Requirements.

**Section 12.05 Rent Abatement for Untenantability.** Notwithstanding anything to the contrary contained in any other provision of this Lease, but subject to the provisions of Articles 17 and 18, in the event that (a) Tenant is unable to use seven thousand five hundred (7,500) or more contiguous RSF of the Premises for the ordinary conduct of Tenant's business due to Landlord's breach of an obligation under this Lease to provide services or perform repairs, in each case other than as a result of Unavoidable Delays or any delay caused by Tenant, its agents, employees or contractors ("Section 12.05 Tenant Delay"), and such condition continues for a period in excess of seven (7) consecutive days, subject to Section 12.05 Tenant Delay or Unavoidable Delays, after Tenant gives a notice to Landlord (the "Abatement Notice") stating that Tenant's inability to use the Premises or such portion thereof is solely due to such condition, (b) Tenant does not actually use the Premises or such portion thereof during such period, and (c) such condition has not resulted from the negligence, willful misconduct, breach of contract, violation of the provisions of this Lease beyond any applicable notice and cure period or violation of law of Tenant or any Tenant Party, then, unless Landlord shall have either (i) advised Tenant that it disputes the matters set forth in the Abatement Notice, in which case no abatement of Fixed Rent, Tenant's Tax Payment or Tenant's Operating Expense Payment shall occur until such dispute is resolved (but such abatement will be retroactive in the event Tenant prevails in such dispute) or (ii) cured such condition within such seven (7) day period (subject to any Section 12.05 Tenant Delay or Unavoidable Delays) after delivery of the Abatement Notice and thereafter proceeds with due diligence to cure such condition, Fixed Rent, Tenant's Tax Payment and Tenant's Operating Expense Payment shall be abated as to the Premises or such affected portion of the Premises on a per diem basis for the period commencing on the seventh (7th) day (subject to any Section 12.05 Tenant Delay) after Tenant gives the Abatement Notice, and ending on the earlier of (A) the date Tenant reoccupies the Premises or such portion thereof for the ordinary conduct of its business, or (B) the date on which such condition is substantially remedied such that Tenant is able to use the Premises or such portion thereof for the ordinary conduct of its business and Landlord has notified Tenant in writing thereof.

**Section 12.06 Removal of Tenant Wiring and Cabling.** If at any time during the Term, Tenant ceases using any wiring or cabling installed by or on behalf of Tenant in any portion of the Premises or in any other portions of the Building (other than a cessation that is temporary and where Tenant intends to resume using such wiring or cables within a reasonable period of time after such cessation), Tenant shall promptly give written notice to Landlord of such cessation and, subject to the applicable requirements of this Lease, Tenant shall, at Landlord's election, promptly remove such unused wiring and cabling at Tenant's sole cost and expense. In order for Landlord and Tenant to (a) identify any wiring or cabling installed by or on behalf of Tenant in any portion of the Premises or in any other portions of the Building and/or (b) trace the starting and terminating points of such wiring and cabling, Tenant shall cause such wiring and cabling to be labeled and tagged, when installed, with appropriate identification marks and shall maintain, during the Term for all then existing wiring and cabling, "as built" drawings containing a guide or key to such marks and showing the routing of such wiring and cabling. Upon Landlord's request, Tenant shall provide to Landlord and Landlord's representatives and contractors reasonable access to such "as built" drawings for inspection and copying.

## ARTICLE 13

### ALTERATIONS; FIXTURES

#### **Section 13.01 Landlord Consent Requirement.**

(a) Except as otherwise provided in this Article 13, Tenant shall not make any Alterations without Landlord's prior consent in each instance. Landlord's consent shall not be required for any Alterations that are (i) decorative or cosmetic Alterations (and that are not Material Alterations), such as painting and the installation of wall coverings and of movable fixtures and ordinary office business equipment (collectively, "Decorative Alterations"), or (ii) are not Material Alterations and do not for any one project cost in excess of One Hundred Thousand Dollars (\$100,000) (the "Alteration Threshold"; Alterations which are not Material Alterations and which for any one project do not cost in excess of the Alteration Threshold are herein called "Minor Alterations"), provided that with respect to any such Decorative Alteration or Minor Alteration, the Net Lessor has consented thereto (if such consent is required under the Net Lease) and such Alteration complies with all Legal Requirements and the Net Lease (including, without limitation, the Port Authority's requirements for fire safety with respect to any wall coverings or carpeting). The Alteration Threshold shall be increased annually on January 1<sup>st</sup> of each year during the Term by the CPI Fraction. For those Alterations for which Landlord's consent is required hereunder (i.e., Alterations other than Decorative Alterations or Minor Alterations), Landlord's consent shall not be unreasonably withheld, conditioned or delayed, provided such Alterations are not Material Alterations. "Material Alterations" means Alterations that (i) affect the outside appearance of the Building or the structural integrity of the Building, including the structural elements of the walls, floors, ceiling or columns of the Building, (ii) would physically affect any components of the exterior of the Building, (iii) affect the Building Systems or the Building Services, (iv) would affect the provision of services to other Building tenants, (v) would include work that requires the removal of a portion of the floor slab in any portion of the Premises, or access to, or penetration of the floor slab adjacent to, any space occupied by any other tenant or occupant of the Building (other than Tenant's subtenants) or (vi) require that a governmental permit be filed in connection therewith. In the event that an

Alteration is deemed a Material Alteration solely for the reason given in clause (vi) above (and not for any of the reasons given in clauses (i) through (v) above), Landlord's consent shall not be unreasonably withheld, conditioned or delayed with respect to the making of such Material Alteration, if such consent is required pursuant to the provisions of this Article 13.

(b) If Tenant intends to perform Alterations for which Tenant believes Landlord's consent is not required hereunder, Tenant shall nonetheless be required to give Landlord prior notice of such intention and belief and reasonable information concerning the nature of such proposed Alterations, the start date and expected duration thereof, and Tenant shall be permitted to perform such Alterations without Landlord consent so long as (A) such Alterations shall be performed only by contractors and subcontractors approved by Landlord to the extent approval of such contractor or subcontractor is required by Section 13.03, (B) the performance of such Alterations does not affect areas outside the Premises, (C) such Alterations do not violate the certificate of occupancy then in effect for the Building, (D) Tenant shall have provided Landlord with plans and specifications for such Alterations if and as required by Section 13.02, and (E) Tenant otherwise complies with the requirements of this Article 13.

(c) Notwithstanding anything to the contrary contained herein, Tenant shall comply with the provisions of the Net Lease (including, without limitation, Section 19.4 thereof) with respect to the performance of any Alterations and shall not commence any work until a "Tenant Alteration Application" (as described in the Port Authority Manual) with respect to such Alterations, and the plans and specifications forming a part thereof, covering such work have been finally approved by the QAD. Landlord shall cooperate as is reasonably necessary in connection therewith and shall execute all reasonably necessary consents and applications and perform other reasonable ministerial and non-ministerial requirements as and to the extent required, all at Tenant's sole cost and expense.

(e) In the event of any conflict between this Article 13 and the Work Letter regarding Tenant's Initial Alterations, the terms and provisions of the Work Letter shall govern.

(f) Tenant shall have the right, as part of Tenant's Initial Alterations, subject to the terms of this Article 13, including Landlord's approval of specific location, at Tenant's sole cost and expense, to install a fiber loop in a location reasonably designated by Landlord in the Building for Tenant's telecommunications and fiber systems. Such fiber loop shall be deemed to be a Specialty Alteration for all purposes of this Lease. Tenant may use the fiber loop solely for Tenant's own use, except that Tenant may (i) sell such fiber loop services to Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) or (ii) allow Tenant and Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) to use such fiber loop so long as Tenant does not charge any fee or rent for the use thereof, in the case of each of clauses (i) and (ii) above, solely in connection with their use of the Premises.

#### **Section 13.02 Plan Approval.**

(a) Prior to making any Alterations (other than (x) Decorative Alterations and (y) Minor Alterations for which Tenant is not required by applicable Legal Requirements to, and does not in fact, prepare plans and specifications), Tenant shall submit to Landlord a Tenant Alteration Application and detailed plans and specifications therefor in form reasonably satisfactory to Landlord, which shall comply with all Port Authority Manual requirements and Legal Requirements (which detailed plans and specifications shall be subject to Landlord's approval only with respect to Alterations that are subject to Landlord's consent as provided herein) ("Tenant's Plans"). The data to be supplied by Tenant with the Tenant Alteration Application shall describe the fixtures, equipment and systems, if any, to be installed by Tenant, including those for the emission, handling and distribution of heat, air conditioning, domestic hot and cold water and electricity, in sufficient detail as shall enable QAD to determine whether the Port Authority Manual requirements have been complied with, and as shall enable Tenant's contractor to perform the work described and shown in such plans and specifications and shall show the proposed method of tying in such fixtures, equipment and systems to the utility lines or connections provided by Landlord in the electric closets located on the various floors on which each portion of the Premises is located. If such Alterations require a filing with a Governmental Authority or require the consent of such Governmental Authority, then (a) such plans and specifications shall be prepared and certified by a registered architect or licensed engineer, to the extent necessary for such governmental filing or consent, (b) Tenant, at its expense, shall obtain and deliver to Landlord true copies of all required permits, approvals and certificates, and (c) Tenant shall provide evidence that it carries all required insurance as well as worker's compensation insurance (covering all persons to be employed by Tenant and all contractors and subcontractors supplying materials or performing work in connection with such Alterations) and comprehensive public liability (including property damage coverage) and Builder's Risk coverage (issued on a completed value basis). All insurance required under clause (c) of the immediately preceding sentence shall be in such form, with such companies, for such periods and in such amounts and types of coverage as would be required by prudent landlords of Comparable Buildings, or as required by the terms of any Superior Lease (including the Net Lease) or any Mortgage, naming Landlord and its employees and agents, and any Superior

Lessor and any Mortgagee as well as any other Person required pursuant to the terms of the Net Lease as additional insureds. All Alterations including, but not limited to, Decorative Alterations shall be performed by Tenant, at Tenant's sole cost and expense, (A) in a good and workerlike manner, (B) in compliance with all Legal Requirements and with the Alteration Rules and Regulations attached hereto as Exhibit J, (C) except for Decorative Alterations and Minor Alterations, in accordance in all material respects with the plans and specifications previously approved by Landlord (as such plans and specifications may be revised from time to time in accordance herewith), and (D) under the supervision of a licensed architect or engineer, if such Alterations are projected by Tenant to cost in excess of the Alteration Threshold or if such Alterations constitute Material Alterations. Notwithstanding the foregoing provisions of this Section 13.02(a), for so long as Net Lessor is an affiliate of Landlord, Landlord shall coordinate distribution of Tenant's Plans for approval by QAD and by Net Lessor, as applicable (i.e., Tenant shall submit information required for approval of Alterations to Landlord's designated contact for construction in such number of multiple copies as Landlord may require and such designated contact shall then coordinate review by QAD and by Net Lessor, as applicable, such that Tenant shall receive a single response consolidating the results of each entity's review).

(b) Tenant shall promptly commence all Alterations after receipt of all consents and permits required hereunder and shall diligently prosecute same to completion. Tenant shall promptly reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for any and all reasonable, actual out-of-pocket costs and expenses incurred by Landlord in connection with the review of Tenant's plans and specifications for any such Alteration by any third-party architect, engineer or other consultant retained by Landlord or the review by any Superior Lessor or Mortgagee or any third-party architect, engineer or other consultant retained by any of them.

(c) In the event that Landlord, QAD and/or Net Lessor (so long as Net Lessor is an affiliate of Landlord) shall not approve any request for approval of Tenant's Plans, Tenant shall receive a single notice of such non-approval indicating the reasons for such non-approval, in sufficient detail so as to reasonably permit Tenant to make changes. Landlord, QAD and/or Net Lessor (so long as Net Lessor is an affiliate of Landlord), as applicable, may, at its election, approve with (and conditioned upon) modifications to Tenant's Plans. Tenant, subject to dispute resolution pursuant to Article 25 of this Lease, shall make such changes and additions as Landlord, QAD and/or Net Lessor (so long as Net Lessor is an affiliate of Landlord), as applicable, requires and shall resubmit the affected portion of Tenant's Plans as expeditiously as possible for approval in accordance with this Article 13. The foregoing resubmission process shall be repeated until all approvals for Tenant's Plans are received. The process described in this Section 13.02(c) is hereinafter referred to as the "Resubmission Process."

(d) If, after Tenant's Plans have been approved by Landlord, QAD and/or Net Lessor, as applicable, Tenant shall desire any material changes to be made in Tenant's Plans, Tenant shall so notify Landlord in writing, such notification to include any plans, specifications or information in sufficient detail as to permit Landlord to make a determination with respect thereto. Any change in Tenant's Plans that shall have a material impact on the Building Systems, the core and shell of the Building, Basic Construction or the project schedule, shall be subject to Landlord's approval which shall not be unreasonably withheld, conditioned or delayed. No party shall disapprove any matter previously submitted and approved by such party, except to the

extent that the proposed modification affects, other than incidentally or to a de minimis extent, the matter so approved or deemed approved. In the event that Landlord, QAD and/or Net Lessor, as applicable, shall object to such change, Tenant shall resubmit Tenant's Plans pursuant to the Resubmission Process.

**Section 13.03 Approval of Architects, Engineers and Contractors.** Tenant shall be fully responsible at its sole cost and expense for retaining all architectural, engineering and other technical consultants as QAD shall determine are necessary to prepare Tenant's Plans in accordance with this Article 13. The plans and specifications required to be submitted by Tenant to Landlord under this Lease shall bear the seal of a licensed architect or professional engineer licensed in the State of New York who shall be responsible for the administration of the work, and shall be in sufficient detail for Tenant's contractor to perform the work. Prior to engaging or retaining an architect or architects for any Alterations (other than Decorative Alterations), Tenant shall submit the name or names of said architect or architects to Landlord for its approval. The Landlord shall have the right to approve any such architect, such approval not to be unreasonably withheld. Prior to entering into any contracts for any part of the Alterations (other than Decorative Alterations), Tenant shall submit to Landlord for its approval the name or names of the contractors to whom Tenant proposes to award said contracts. The Landlord shall have the right to approve any such contractors, such approval not to be unreasonably withheld. Tenant shall include in all such contracts such provisions and conditions as Landlord may reasonably require. *Without limiting the generality of the foregoing, all of the Tenant's construction contracts shall provide as follows: "If (i) the Contractor fails to perform any of its obligations under the Contract, including its obligation to the Tenant to pay any claims lawfully made against it by any materialman, subcontractor or workman or other third party that arises out of or in connection with the performance of the Contract or (ii) any claim (just or unjust) that arises out of or in connection with the Contract is made against the Tenant or (iii) any subcontractor under the Contract fails to pay any claims lawfully made against it by any materialman, subcontractor, workman or other third party that arise out of or in connection with the Contract or if in the Tenant's opinion any of the aforesaid contingencies is likely to arise, then the Tenant shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payments have already been certified as due) such sums as the Tenant may deem necessary to protect it against delay or loss or to assume the payment of just claims of third parties, and to apply such sums in such manner as the Tenant may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Failure by the Tenant to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Tenant does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Tenant to withhold and apply monies, nor any exercise, or attempted exercise of, or omission to exercise, such rights by the Tenant shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third parties. Until actual payment is made to the Contractor, its right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of Tenant under this provision."*

**Section 13.04 Property of Landlord.** Except as otherwise provided in this Section 13.04, all work, construction, repairs, Alterations, other improvements or installations made to or upon the Premises, other than Tenant's Property, whether or not at the expense of Tenant, shall

become part of the Premises and, upon the expiration or earlier termination of the Term, shall become the property of Landlord and remain upon and be surrendered with the Premises as a part thereof upon the Expiration Date or earlier termination of the Term; provided, however, that Tenant shall remove from the Premises any or all Specialty Alterations (except those Specialty Alterations so designated in writing by Landlord not less than ninety (90) days prior to the Expiration Date or with reasonable promptness following any earlier expiration or termination of the Term, hereinafter called "Excepted Specialty Alterations"). If Tenant so requests in writing in connection with requesting Landlord's consent to any proposed Alteration, Landlord shall identify, at the time it approves Tenant's Plans, any Specialty Alterations contained in such Tenant's Plans as to which Landlord retains the right to require Tenant to remove upon the expiration or sooner termination of this Lease. On the Expiration Date (unless this Lease has been terminated due to the occurrence of a casualty pursuant to Article 17) (i) Tenant shall have removed Tenant's Property from the Premises, and (ii) Tenant shall have removed the Specialty Alterations (other than Excepted Specialty Alterations) from the Premises, at Tenant's sole cost and expense in accordance with the provisions of this Article 13 and repaired and restored in a good and workerlike manner any damage to the Premises and the Building caused by removal of Tenant's Property and Specialty Alterations in accordance with the provisions of this Article 13 and to the condition existing prior to the installation of same. In the case of any changes made by Tenant to the base Building conditions in core bathrooms, such restoration work shall include, if required by Landlord, the reinstallation of Building standard fixtures and finishes. Any of the Specialty Alterations or Tenant's Property not so removed by Tenant at or prior to the Expiration Date shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or be removed from the Premises by Landlord, and Tenant shall (unless Landlord shall have directed Tenant not to remove such items) reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for Landlord's reasonable, actual out-of-pocket costs incurred in connection with such removal and restoration. The covenants and agreements set forth in this Section 13.04 shall survive the expiration or earlier termination of this Lease.

**Section 13.05 Permits and Consents of Governmental Authorities; "As Built Plans."** Landlord shall cooperate with Tenant, at Tenant's sole cost and expense, as is reasonably necessary for Tenant to obtain all permits and approvals required to be issued by any Governmental Authority in connection with Tenant's Alterations, and Landlord shall execute necessary consents and applications and perform other reasonable ministerial requirements as and to the extent required. Tenant shall pay, as Additional Rent, Landlord's actual out-of-pocket review and approval costs and other costs and expenses payable by Landlord to any Governmental Authority in connection with any Alterations (to the extent not paid directly by Tenant to such Governmental Authority). Upon completion of any Alterations, Tenant, at its expense, shall promptly obtain certificates of final approval of such Alterations as may be required by any Governmental Authority (including any new or amended certificate of occupancy required by any Governmental Authority), and shall furnish Landlord with copies thereof, together with copies of the final "as-built" plans and specifications (other than for Decorative Alterations or Minor Alterations for which no such plans or specifications were actually produced or required to be produced) prepared by or on behalf of Tenant in connection with such Alterations (which plans and specifications must include final, marked record drawings which incorporate all bulletins issued from each of Tenant's HVAC, electrical, plumbing, fire safety and sprinkler subcontractors, as applicable) prepared on an AutoCAD

Computer Assisted Drafting and Design System (or such other system or medium as Landlord may reasonably specify or accept at its request) using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming conventions as Landlord may reasonably accept) and magnetic computer media of such record drawings and specifications, translated into in a format compatible with AutoCAD Release 2000 or later or another format reasonably acceptable to Landlord. Without limiting the generality of the foregoing, with reasonable promptness but in no event later than thirty (30) days following the completion of any Alterations, Tenant shall deliver to Landlord (i) proof of the issuance of any required approvals, permits and sign-offs for the Alterations by all Governmental Authorities having jurisdiction thereover and (ii) final lien waivers issued by all contractors, subcontractors and material suppliers covering all of the Alterations.

**Section 13.06 Liens.**

(a) If, because of any act or omission of a Tenant Party, its suppliers or subcontractors, any mechanic's lien, U.C.C. financing statement or other lien, charge or order for the payment of money shall be filed against Landlord, or against all or any portion of the Premises, the Building or the Real Property, Tenant shall, at its own cost and expense, cause the same to be discharged of record, by bonding or otherwise, within thirty (30) days after Tenant has received notice thereof. Tenant shall indemnify, defend and save Landlord and all Landlord Parties harmless against and from all costs, expenses, liabilities, suits, penalties, claims and demands (including reasonable attorneys' fees and disbursements) resulting from any such liens, charges or orders.

(b) Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in and to the Premises.

**Section 13.07 Labor.** Tenant shall not directly or indirectly, engage any third-party contractor, mechanic or laborer in the Premises, whether in connection with any Alteration or otherwise, or use any materials in connection with such Alteration in a manner that would disturb harmony with any trade engaged in performing any other work in the Building (including, without limitation, the creation of any work slowdown, sabotage, strike, picket or jurisdictional dispute) or create any actual interference with the operation of the Building or performance of Landlord's Work or the work of any other tenant or increase the cost of any of the foregoing. Tenant shall immediately stop the performance of any Alteration, or the use of any materials in connection with such Alteration or use of any third-party contractor, mechanic or laborer if Landlord notifies Tenant that continuing such Alteration or employing such third-party contractor, mechanic or laborer would so disturb harmony with any trade engaged in performing any other work in the Building or create any actual or perceived interference with the operation of the Building. Landlord and Tenant shall cooperate with one another in all reasonable respects to avoid any such labor disharmony.

**Section 13.08 Miscellaneous Requirements.**

(a) All work to be performed by Tenant shall be done in a manner that will not unreasonably interfere with or disturb other tenants or occupants of the Building. Landlord shall not enforce this Section 13.08(a) as against Tenant in a discriminatory manner (i.e., Landlord shall not enforce such provision against Tenant unless it is then generally enforcing such requirement against other tenants in the Building).

(b) All actual out-of-pocket fees, costs and expenses reasonably incurred by Landlord in obtaining approvals or reviews required or contemplated by the Net Lease or by any Mortgagee in connection with any Alterations shall be payable by Tenant as Additional Rent, within twenty (20) days after Tenant's receipt of Landlord's invoice therefor (unless, solely in the case of any Governmental Authority, Tenant pays the same directly to such Governmental Authority).

(c) Landlord's review and approval of Tenant's plans and specifications and consent to the performance of the work described therein shall not be deemed an agreement by Landlord that such plans, specifications and work conform with applicable law and insurance requirements, nor shall it be deemed a waiver by Landlord of compliance by Tenant with any provisions of this Lease, nor shall it impose upon Landlord any liability or obligation with respect to such work, including without limitation, its completeness, design sufficiency or the performance thereof.

(d) Before proceeding with any Alteration that will cost more than \$100,000 (exclusive of the costs of the Tenant's Initial Alterations, decorating work and items constituting Tenant's Property), as estimated by a reputable contractor designated by Landlord, Tenant shall furnish to Landlord one of the following: (i) a cash deposit, or (ii) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in New York reasonably satisfactory to Landlord), or (iii) an irrevocable, unconditional, negotiable letter of credit, issued by and drawn on a bank or trust company that is a member of the New York Clearing House Association in a form reasonably satisfactory to Landlord; each to be in an amount equal to one hundred twenty five (125%) percent of the cost of the Alteration, estimated as set forth above. Any such letter of credit shall be for one year and shall be renewed by Tenant each and every year until the Alteration in question is completed and shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the then-current letter of credit. Failure to deliver such new letter of credit on or before said date shall be a material breach of this Lease and Landlord shall have the right, inter alia, to present the then-current letter of credit for payment. Upon (i) the completion of the Alteration in accordance with the terms of this Article 13 and (ii) the submission to Landlord of proof evidencing the payment in full for said Alteration, the security deposited with Landlord (or the balance of the proceeds thereof, if Tenant has furnished cash or a letter of credit and if Landlord has drawn on the same) shall be returned to Tenant. Upon Tenant's failure to properly perform, complete and fully pay for the said Alteration, which failure continues after the giving of notice and the expiration of applicable grace period, Landlord shall be entitled to draw on the security deposited under this Article 13 to the extent Landlord deems necessary in connection with the said Alteration, the restoration and/or protection of the Premises or the Real Property and the payment or satisfaction of any

costs, damages or expenses in connection with the foregoing and/or Tenant's obligations under this Article 13.

## ARTICLE 14

### **LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS**

**Section 14.01 Landlord's Right to Perform Tenant's Obligations.** If Tenant shall default in the observance or performance of any term or covenant on its part to be observed or performed under or by virtue of any of the terms or provisions in any Article of this Lease, and such default shall continue beyond any applicable notice and grace period, Landlord, without being under any obligation to do so and without thereby waiving such default, may, upon ten (10) days' prior written notice to Tenant and a reasonable opportunity for Tenant to cure (or such shorter period, if any, as may be feasible in the case of an emergency), remedy such default for the account and at the reasonable expense of Tenant. If Landlord makes any such expenditures in connection therewith, including, but not limited to, reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid with interest at five percent (5%) in excess of the Prime Rate shall be deemed to be Additional Rent hereunder and shall be paid to it by Tenant within twenty (20) days after Tenant's receipt of Landlord's invoice therefor, and if such Additional Rent shall not have been paid prior to the expiration or termination of the Term, same shall be recoverable by Landlord after the expiration or termination of the Term.

## ARTICLE 15

### **NO LIABILITY OF LANDLORD; FORCE MAJEURE**

**Section 15.01 No Implied Warranties.** Tenant acknowledges that neither Landlord nor Landlord's agents, employees, and representatives have made any representations, warranties, or promises with respect to the Building, the Land or the Premises except as expressly set forth in this Lease.

**Section 15.02 Unavoidable Delay.** Except as otherwise expressly provided in this Lease, this Lease and the obligation of Tenant to pay Rent hereunder, and perform all of the other covenants and agreements hereunder on the part of Tenant to be performed, shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease or is unable to supply or is unable to make, or is delayed in making, any repairs, additions, alterations or decorations or is unable to supply, or is delayed in supplying, any equipment or fixtures, if Landlord is prevented or delayed from so doing by reason of Force Majeure or delays resulting from a failure of any Superior Mortgagee or Superior Lessor (including, without limitation, the Port Authority in its capacity as a Governmental Authority, but not, for so long as Net Lessor is an affiliate of Landlord, in its capacity as Net Lessor) to grant a required consent (collectively, "Unavoidable Delay"). Except as otherwise expressly provided in this Lease, this Lease and the obligation of Landlord to perform all of the covenants and agreements hereunder on the part of Landlord to be performed, shall in no way be affected, impaired or excused because Tenant is unable to fulfill any of its obligations under this Lease or is unable to supply or is unable to make, or is delayed in making, any repairs, additions,

alterations or decorations or is unable to supply, or is delayed in supplying, any equipment or fixtures, if Tenant is prevented or delayed from so doing by reason of Unavoidable Delay.

Landlord and Tenant each shall notify the other as promptly as is reasonably practicable after learning of an Unavoidable Delay which prevents such party from fulfilling any of its obligations under this Lease, and after such initial notification promptly after request of the other party, Landlord or Tenant (as the case may be) shall notify the other party of the status of such delay. Each party shall use all commercially reasonable efforts to mitigate the delay caused by any Unavoidable Delay to the extent reasonably commercially practicable, but without the necessity of employing overtime labor unless such party elects to do so within its sole discretion or unless the other party elects to pay for such overtime labor.

**Section 15.03 Landlord's Liability; Window Closure.** Landlord and its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the Building, nor for the loss of or damage to any property of Tenant by theft. Landlord and its agents shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain or snow, but the foregoing shall not limit Tenant's rights or decrease Landlord's obligations under this Lease; provided, however, that this sentence shall not be deemed to exculpate Landlord or its agents from their respective own negligence. If at any time any windows of the Premises are temporarily darkened or bricked up for any reason whatsoever outside of Landlord's reasonable control, or by Landlord in connection with the performance of repairs, maintenance or improvements to the Building, or if required by any Legal Requirements, Landlord shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement of Rent, nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Landlord shall use commercially reasonable efforts to (i) minimize any unreasonable interference with Tenant's use of the Premises, (ii) close as few windows as possible, and (iii) proceed with due diligence to re-open any such closed windows. If any windows of the Premises are permanently blocked, darkened or bricked-up due to any illegal actions by third parties, Landlord shall use commercially reasonable efforts to enforce Landlord's rights against such third parties.

## ARTICLE 16

### INDEMNIFICATION; INSURANCE

#### **Section 16.01 Indemnity.**

(a) To the maximum extent permitted by law, but subject to Section 16.08, Tenant shall indemnify, defend and hold harmless Landlord and all Landlord Parties from and against any and all claims against any of such parties arising from (i) the use or occupancy of the Premises or any business therein, (ii) any work or thing whatsoever done, or any condition created (other than by Landlord, its employees, agents or contractors) in or about the Premises or (iii) any negligent act or omission, or willful misconduct of Tenant or any Tenant Party, licensees or invitees, whether resulting in injury or death to persons or damage to property or otherwise; *except, in each case, to the extent that any such claim results from the negligence or willful misconduct of Landlord or any other Landlord Party; together with all costs, expenses*

and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon, including all reasonable attorneys' fees and expenses.

(b) To the maximum extent permitted by law, but subject to Section 16.08, Landlord shall indemnify, defend and hold harmless Tenant and all Tenant Parties from and against any and all claims against any of such parties arising from (i) the performance or non-performance by Landlord of any alterations, improvements, repairs, maintenance or other work in the Building or the Premises and (ii) any gross negligence or willful misconduct of Landlord or any Landlord Party, or any of their respective partners, officers, shareholders, directors, members, trustees, beneficiaries, employees, principals, contractors, licensees, agents or representatives, whether resulting in injury or death to persons or damage to property or otherwise, except, in each case, to the extent that any such claim results from the negligence or willful misconduct of Tenant or any Tenant Party; together with all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon, including all reasonable attorneys' fees and expenses.

(c) If any claim that is within the scope of any indemnity set forth in this Lease is asserted against any indemnified party, then the indemnified party shall give prompt notice (each, an "Indemnified Party Notice") thereof to the indemnifying party (i.e., within a time period so as not to prejudice the indemnifying party's or its insurer's ability to defend effectively any action or proceeding brought on such claim) and the indemnifying party shall have the right to defend and control the defense of any action or proceeding brought on such claim with counsel chosen by the indemnifying party, subject to the approval of the indemnified party (such approval not to be unreasonably withheld), or by the indemnifying party's insurance company. If the indemnified party fails promptly to deliver the Indemnified Party Notice, the indemnifying party shall continue to be liable within the scope of the indemnity provided herein, provided, however, the indemnifying party shall not be liable for such loss sustained by any indemnified party as a result of the failure by the indemnified party to promptly deliver to the indemnifying party the Indemnified Party Notice. If the indemnified party shall not afford the indemnifying party the right to defend and control the defense of any such action or proceeding then the indemnifying party shall have no obligation under the applicable indemnity set forth in this Lease with respect to such action or proceeding or other actions or proceedings involving the same or related facts. *If the indemnifying party shall defend any such action or proceeding, then:*

(i) the indemnified party shall cooperate with the indemnifying party (or its insurer) in the defense of any such action or proceeding in such manner as the indemnifying party (or its insurer) may from time to time reasonably request and the indemnifying party shall not be liable for the costs of any separate counsel employed by the indemnified party;

(ii) the indemnified party shall not be liable for any settlement made without the indemnified party's consent;

(iii) if such action or proceeding can be settled by the payment of money and without the need to admit liability on the indemnified party's part, then the indemnifying party shall have the right to settle such action or proceeding without the indemnified party's consent and the indemnifying party shall have no obligation under the

applicable indemnity set forth in this Lease with respect to such action or proceeding or other actions or proceedings involving the same or related facts if the indemnified party refuses to agree to such a settlement; and

(iv) if such action or proceeding cannot be settled merely by the payment of money and without the need to admit liability on the indemnified party's part, then the indemnifying party shall not settle such action or proceeding without the indemnified party's consent (which consent shall not be unreasonably withheld, conditioned or delayed) and if the indemnified party unreasonably withholds, conditions or delays its consent to any such settlement, then the indemnifying party shall have no obligation under the applicable indemnity set forth in this Lease with respect to such action or proceeding or other actions or proceedings involving the same or related facts.

(d) If an indemnifying party shall, in good faith, believe that a claim set forth in an Indemnified Party Notice is not or may not be within the scope of the indemnifying party's indemnity set forth in this Lease then, pending determination of that question, the indemnifying party shall not be deemed to be in default under this Lease by reason of its failure or refusal to indemnify and hold harmless any indemnified party therefrom or to pay such costs, expenses and liabilities, but if it shall be finally determined by a court of competent jurisdiction or by arbitration in accordance with Article 25 that such claim was within the scope of such indemnifying party's indemnity set forth in this Lease, then such indemnifying party shall be liable for any judgment or reasonable settlement or any reasonable legal fees incurred by the party entitled to indemnity hereunder. The provisions of this Section 16.01 shall survive the expiration or earlier termination of this Lease.

(e) Notwithstanding any provisions of this Lease to the contrary, neither Landlord nor Tenant (except, in the case of Tenant, pursuant to Section 22.02), shall be liable to the other for consequential damages of any kind or nature (including, without limitation, consequential damages in respect of (i) any loss of use of the Premises or any Alterations or otherwise or (ii) any loss of use of, or rents from, the Building or any part thereof) in any event whatsoever, even if arising from any act, omission or negligence of Landlord or Tenant or from the breach by Landlord or Tenant of their respective obligations under this Lease.

(f) In connection with any claim or demand with respect to which Tenant is the indemnifying party in accordance with Section 16.01(a) (even if such claim or demand is groundless, false or fraudulent), Tenant shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise, assert or maintain any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority; the immunity of the Port Authority, its Commissioners, officers, agents or employees; the governmental nature of the Port Authority; or the provisions of any statutes regarding suits against the Port Authority.

**Section 16.02 Tenant's Liability Insurance.** Tenant agrees to maintain in full force and effect from the date upon which Tenant first enters the Premises or any portion thereof for the conduct of its business or for the performance of any Alterations, throughout the Term and thereafter, so long as Tenant is in occupancy of any part of the Premises, (A) a policy of commercial general liability insurance (including (i) a contractual liability endorsement for such coverage as may reasonably be required from time to time by Landlord, covering Tenant's

operations within the Building, unless already covered by the policy, (ii) coverage for international and domestic terrorist acts if available at commercially reasonable rates, and (iii) Liquor Law Legal Liability Coverage and Personal Injury Liability Coverages) under which Tenant is the named insured and Landlord, Landlord's managing agent and Net Lessor (and such other Persons as Landlord may reasonably request by notice to Tenant from time to time) are named as additional insureds (but not loss payees), in the broadest form of such coverage from time to time generally available and utilized in New York City for office tenants in Comparable Buildings, and under which policy the insurer agrees to indemnify and hold Landlord, and those designated by Landlord as additional insureds having an insurable interest as aforesaid, harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims for which provision is made in Section 16.01, including non-owned and hired cars coverage to the full policy limit, and (B) Statutory Workers Compensation Coverage with Employers Liability limits of not less than \$1,000,000 each accident and disease. Each such policy shall be issued by one or more insurers in a financial size category of not less than X and with general policy holders ratings of not less than A-, as rated in the most current available insurance reports published by A.M. Best & Company, Inc., or the then-equivalent thereof, and licensed to do business in the State of New York and authorized to issue such policies. Each policy of insurance procured by Tenant shall (i) contain endorsements providing that (w) such policy shall not be cancelled or amended with respect to Landlord and Landlord's said designees without thirty (30) days' prior notice to Landlord and such designees, (x) Tenant shall be solely responsible for the payment of premiums therefor notwithstanding that Landlord or any such designee is or may be named as an additional insured, (y) no insurer shall, without the express permission of Landlord and Net Lessor, raise any defense involving in any way the jurisdiction of any tribunal over Landlord or Net Lessor, if any, or any sovereign immunity of Landlord or Net Lessor, to the extent applicable; and (z) the protection afforded Tenant under any policy of commercial general liability insurance maintained by Tenant pursuant to this Section 16.02 with respect to any claim or action against Tenant by a third Person shall pertain and apply with like effect with respect to any claim or action against Tenant by Landlord or Net Lessor and by Tenant against Landlord or Net Lessor, provided, however, that such endorsement shall not limit, vary, change or affect the protections afforded to Landlord and Net Lessor as additional insureds under the contractual liability endorsement required pursuant to this Section 16.02 or the protections afforded to Landlord as loss payee under Section 16.03; and (ii) not prohibit the release of claims given under Section 16.07, nor shall any of them be limited, terminated or materially affected thereby. As of the Commencement Date, the limits of liability of such insurance shall be (i) \$25,000,000 per occurrence for commercial general liability insurance and excess liability insurance and, from time to time during the Term, such limits shall be increased to the prevailing level customarily carried by tenants with respect to Comparable Buildings (which coverage may be a combination of commercial general liability insurance and excess liability policies for Tenant).

### **Section 16.03 Tenant's Casualty Insurance.**

(a) Tenant shall take out on or prior to the Commencement Date with respect to the Premises and keep in force during the Term fire and extended coverage or all risk insurance in an amount insuring the full replacement value of all Alterations, personal property, trade fixtures, furniture, furnishings, equipment and other Tenant's Property, Tenant's Initial Alterations, and any paneling or other wall finishes or coverings other than normal painting, to

include a replacement cost endorsement. Such policies shall be written by an insurer of the A.M. Best & Company, Inc. financial size category and general policy holders rating, and include the required policy provisions, each as specified in Section 16.02, licensed to do business in the State of New York and authorized to issue such policies, and Landlord and Landlord's managing agent shall be named loss payees, as their interests may appear under each of such policies.

(b) In addition to the foregoing, so long as TRIA or a similar statute relating to acts of terrorism on behalf of foreign individuals or interests, as contemplated by TRIA, is in effect, or terrorism insurance is commercially available, Tenant shall carry terrorism insurance, covering domestic and international terrorist acts, for property damage throughout the Term, on a per-occurrence basis, in an amount equal to one hundred percent (100%) of the full replacement cost of the furniture, fixtures, equipment and other property situated within the Premises from time to time. With respect to such terrorism insurance, Landlord and Landlord's managing agent shall be named as loss payees, as their interests may appear. If TRIA is not renewed and no such similar statute is in effect, Tenant shall carry terrorism insurance covering terrorist acts in full compliance with the requirements of this Lease, but only if the premium for such terrorism insurance is commercially reasonable.

**Section 16.04 Certificates of Insurance.** On or before the Commencement Date, Tenant shall furnish Landlord with certificates evidencing the aforesaid insurance coverage, and renewal certificates shall be furnished to Landlord at a maximum of seven (7) days from the expiration date of each policy for which a certificate was theretofore furnished evidencing no interruption in coverage. Each such certificate shall evidence, with respect to each required policy (i) that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to Landlord and Net Lessor, (ii) each insurer shall not, without express advance permission of Landlord, raise any defense involving in any way (x) the jurisdiction of any tribunal over Landlord or Net Lessor, if any, or (y) any sovereign immunity of Landlord or Net Lessor, to the extent applicable, (iii) Tenant shall be solely liable for the payment of premiums therefor (notwithstanding that Landlord is named as an additional insured) and (iv) the protection afforded Tenant under any policy of commercial general liability insurance maintained by Tenant pursuant to Section 16.02 with respect to any claim or action against Tenant by a third Person shall pertain and apply with like effect with respect to any claim or action against Tenant by Landlord or Net Lessor and by Tenant against Landlord or Net Lessor, provided, however, that such endorsement shall not limit, vary, change or affect the protections afforded to Landlord and Net Lessor as additional insureds under the contractual liability endorsement required pursuant to Section 16.02 or the protections afforded to Landlord as loss payee under Section 16.03.

**Section 16.05 Blanket Policies.** Tenant shall have the right to insure and maintain the insurance coverage required by Sections 16.02 and 16.03 under blanket insurance policies covering other premises occupied or owned by Tenant so long as such blanket policies comply as to terms and amounts with the insurance provisions set forth in this Lease, provided that, upon request, Tenant shall deliver to Landlord a certificate of Tenant's insurer evidencing the portion of such blanket insurance allocated exclusively to the Premises (which amount shall comply with the terms of this Lease). If Tenant shall fail to maintain insurance in effect as required by this Article 16, the obligations of Tenant to reimburse set forth at Section 16.01 shall be in full force and effect, as if such required insurance (containing a waiver of subrogation) were in effect.

Notwithstanding anything to the contrary contained in this Lease, the carrying of insurance by Tenant in compliance with this Article 16 shall not modify, reduce, limit or impair Tenant's obligations and liability under this Lease.

**Section 16.06 No Violation of Building Policies.** Tenant shall not commit or permit any violation of the public liability or "all risk" property policies covering the Building and/or the fixtures, equipment and property therein carried by Landlord (provided such policies contain terms and conditions that are customary in policies for Comparable Buildings and Tenant is given notice, or provided copies, of same), or do or permit anything to be done, or keep or permit anything to be kept, in the Premises, that in case of any of the foregoing (i) would result in termination of any such policies, (ii) would give rise to any defense by the insurer to claims under any policy of insurance in respect of the Building, or (iii) would result in reputable and independent insurance companies refusing to insure the Building or the property of Landlord in amounts reasonably satisfactory to Landlord.

**Section 16.07 Premium Increases.** If (i) Tenant's knowing failure to comply with any term or provision of this Lease, or (ii) any use required by Tenant or any Tenant Party in connection with the Premises, causes the rates for liability and property insurance (with all extended coverage) on the Building or on the property and equipment of Landlord to be higher than they otherwise would be, then Landlord shall furnish Tenant with evidence of such increase and specify the cause thereof and Tenant shall, to the extent caused by (i) or (ii) above, reimburse Landlord for the additional insurance premiums thereafter actually paid by Landlord or by the other tenant(s) and subtenant(s) in the Building (to the extent that Landlord has paid for same) that shall have been charged because of the aforesaid reasons, such reimbursement to be made from time to time on Landlord's demand. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make up" of insurance rates for the Building or Premises issued by the New York Fire Insurance Exchange, or other body establishing fire insurance rates for said Building, shall be presumptive evidence of the facts therein stated and of the several items and charges in the insurance rates then applicable to the Building or the Premises.

**Section 16.08 Waiver of Liability and Subrogation.** Landlord and Tenant shall each endeavor to secure an appropriate clause in, or an endorsement upon, each fire or extended coverage or all risk policy obtained by it and covering the Building, the Alterations, the Premises or the personal property, fixtures and equipment or Tenant's Property or any other items specified in Section 16.03 located therein or thereon, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. The waiver of subrogation or permission for waiver of any claim hereinbefore referred to shall extend to the agents of each party and its members, partners, officers and employees and, in the case of Tenant, shall also extend to all other Persons occupying or using the Premises in accordance with the terms of this Lease. If and to the extent that such waiver or permission can be obtained only upon payment of an additional charge, then the party benefiting from the waiver or permission shall pay such charge upon demand, and if such party shall fail or refuse to pay such charge within twenty (20) days after Tenant's receipt of Landlord's invoice therefor, such party shall be deemed to have agreed that the party obtaining the insurance coverage in question shall be free of any further obligations under the provisions hereof relating to such waiver or permission. In the event that either Landlord or Tenant shall be unable at any time to obtain one of the provisions referred to

above in any of its insurance policies, Landlord or Tenant, as the case may be, shall promptly notify the other and promptly obtain a replacement policy, identical in form and substance to that which is required by this Lease, from another qualified insurance company.

In the event that Landlord elects to provide Self-Insured Retention or to the extent Landlord satisfies its obligations under this Article 16 on a retained basis, Landlord hereby releases Tenant from any claim (including a claim for negligence) that it might otherwise have against Tenant for loss, damages or destruction with respect to its property by fire or other casualty (including rental value) occurring during the Term that would have been covered under Landlord's liability or property insurance policies, whether or not actually obtained.

Subject to the foregoing provisions of this Section 16.08, and insofar as may be permitted by the terms of the insurance policies carried by it, each party hereby releases the other and its partners, members, agents, officers and employees (and in the case of Tenant, all other Persons occupying or using the Premises in accordance with the terms of this Lease) with respect to any claim (including a claim for negligence) that it might otherwise have against the other party for loss, damages or destruction with respect to its property by fire or other casualty (including rental value or business interruption, as the case may be) or otherwise occurring during the Term to the extent of the limits of coverage under such insurance policies.

#### **Section 16.09 Landlord's Insurance.**

(a) (i) The Port Authority has established and will maintain an owner-controlled insurance program during the period of the construction of the Building continuing at least until the Commencement Date under which the Landlord's interest in the Building will be covered. The owner-controlled program will include, but not be limited to, Builder's Risk coverage in the amount of \$1,000,000,000.

(ii) Landlord agrees to maintain in full force and effect from the Commencement Date throughout the Term "all risk" property insurance, inclusive of fire coverage, with respect to the Building, its systems, fixtures, equipment and property and the Premises (including Landlord's Work, but excluding Tenant's Property, Tenant Initial Alterations, other Tenant Alterations and any property that is not Landlord's obligation to restore pursuant to the provisions of Article 17), in an amount insuring the full replacement value of the Building and in such amount as will avoid co-insurance; provided, however, that if (A) such insurance coverage ceases to be available, or (B) the cost of such insurance coverage increases so that owners of Comparable Buildings generally cease to carry such insurance, then Landlord shall notify Tenant of such fact and Landlord shall maintain such insurance coverage as is customarily maintained by owners of Comparable Buildings.

(b) Landlord agrees to maintain in full force and effect from the Commencement Date and throughout the Term, so long as this Lease is in full force and effect, a policy of commercial general liability insurance under which Landlord, Landlord's managing agent (if any) and Net Lessor are the insured. Each such policy shall be issued by one or more insurers in a financial size category of not less than X and with general policy holders ratings of not less than A-, as rated in the most current available insurance reports published by A.M. Best & Company, Inc., or the then-equivalent thereof, and licensed to do business in the State of New

York and authorized to issue such policies. Each policy of insurance procured by Landlord shall contain endorsements providing that (i) such policy shall be not be cancelled or amended without thirty (30) days' notice to Net Lessor and (ii) Landlord shall be solely responsible for the payment of premiums therefor. As of the Commencement Date, the limits of liability of such insurance shall be \$25,000,000 per occurrence for commercial general liability insurance.

(c) Notwithstanding anything contained in Sections 16.09 (a) and (b) above, Landlord shall be permitted to provide up to a \$5,000,000-per-occurrence limit of the above-depicted coverages on a retained basis ("Self-Insured Retention"). If Landlord elects to provide such Self-Insured Retention, Landlord shall (i) act in all respects (and be fully liable and responsible) as the insurance company that would otherwise be providing the insurance Landlord is required to have in effect for the Self-Insurance Retention amounts pursuant to the terms of this Lease, (ii) implement a claims-handling mechanism (such as a third-party administrator) to handle all claims within the Self-Insured Retention and (iii) timely report all claims to the insurance carriers that provide excess insurance above the Self-Insured Retention, if required by such excess insurance carriers. Tenant may review and inspect the financials associated with the Self-Insured Retention on a semi-annual basis. Without limiting the generality of the foregoing and notwithstanding anything herein to the contrary, if Landlord elects to provide the Self-Insured Retention, (A) Tenant's rights and remedies against Landlord shall not be less extensive than the rights and remedies Tenant would have in the event Landlord had effectuated all insurance required hereunder without a Self-Insured Retention and (B) Landlord's obligations under this Lease shall not be less extensive than the obligations Landlord would have in the event Landlord had effectuated all insurance required hereunder without a Self-Insured Retention. Landlord shall furnish a certificate to Tenant that shall confirm Landlord's obligations hereunder and the extent to which Landlord has elected to provide a Self-Insured Retention (it being understood, however, Landlord's failure to furnish such certificate shall not limit or impair Landlord's obligations and liabilities under this Lease). In no event shall Landlord seek to collect any premium, contribution, or other monies from Tenant to fund the exposures of the Self-Insured Retention.

(d) Notwithstanding anything to the contrary contained in this Section 16.09, with respect to insurance coverage to be maintained by Landlord pursuant to this Section 16.09, the Port Authority Insurance Captive Entity L.L.C., a District of Columbia limited liability company (the "Port Authority Captive"), shall be an acceptable insurer for all purposes under this Lease, so long as (i) the policy issued by the Port Authority Captive has (x) a per-occurrence limit of no less than one million dollars (\$1,000,000); and (y) a deductible of no greater than that contemplated by the actuarial data approved by the Department of Insurance, Banking and Securities/Risk Bureau located in Washington, D.C., (ii) the Port Authority Captive is not the subject of a bankruptcy or similar insolvency proceeding and (iii) no statement, finding, or decree issued under any Legal Requirement states captive insurers arranged similar to the Port Authority Captive are no longer allowable providers of insurance in the coverage types and amounts required by this Lease. The portion of such insurance that is not reinsured by TRIA shall either be reinsured by an insurance carrier rated no less than A-X (or its equivalent) by A.M. Best & Company, Inc., or shall carry reserves sufficient to sufficiently address any loss covered by the Port Authority Captive. In no instance shall the Port Authority Captive seek to collect any premium, contribution, or other monies from Tenant to fund the exposures of the Port

Authority Captive. Landlord represents that the insurance premiums for the insurance coverages provided to Landlord by the Port Authority Captive are fair market value insurance premiums.

## ARTICLE 17

### **DAMAGE BY FIRE OR OTHER CAUSE**

#### **Section 17.01 Termination Upon Casualty.**

(a) Tenant shall give prompt notice to Landlord in case of fire or other casualty in the Premises. If (i) so much of the Building is damaged or rendered untenable (whether or not the Premises or a portion thereof shall be damaged) by fire or other cause that in Landlord's reasonable opinion, substantial alteration, demolition or reconstruction of the Building is required (i.e., damage that would cost more than twenty-five (25%) of the replacement cost of the Building to repair and restore) or (ii) the Premises shall suffer damage or be rendered untenable by fire or other casualty and Landlord shall reasonably determine that (x) such portion of the Premises cannot be reasonably expected to be restored or rendered tenable under a normal working schedule within a period of twelve (12) months after the occurrence of such damage or destruction or (y) any Mortgagee will not permit Landlord to apply the net proceeds of Landlord's insurance to the restoration of the Building or the Premises, then and in any such event Landlord shall (i) notify Tenant of such determination within ninety (90) days after such casualty and (ii) have the right to terminate this Lease by notice to Tenant given within one-hundred twenty (120) days of the occurrence of such fire or other casualty; provided that in any such case Landlord terminates the leases of at least twenty-five percent (25%) of the tenants similarly affected.

(b) If either (i) the Premises shall be totally or substantially damaged or rendered wholly or substantially untenable (whether or not any other portions of the Building shall be damaged) or (ii) the Building shall be substantially damaged, so that Tenant's access to and use and enjoyment of the Premises shall be rendered inaccessible, whether or not the Premises shall be damaged, and (iii) in case of either (i) or (ii) Landlord reasonably determines that the same cannot reasonably be expected to be restored or rendered tenable under a normal working schedule within a period of eighteen (18) months after the occurrence of such damage or destruction, then Landlord shall promptly notify Tenant of such fact, and within thirty (30) days thereafter either Landlord or Tenant may terminate this Lease by notice to the other party.

(c) If (i) during the last eighteen (18) months of the Term (including any exercised renewal or extension thereof) the Building or the Premises shall be damaged by fire or casualty, and (ii) such fire or casualty damage, whether to the Premises or the Building, cannot, in Landlord's reasonable determination, be expected to be repaired or restored within one hundred eighty (180) days from the time that repair or restoration work would commence or prior to the Expiration Date, whichever would first occur, then Landlord shall promptly notify Tenant of such fact, and within thirty (30) days thereafter Landlord or Tenant shall have the right to terminate this Lease.

(d) If either Landlord or Tenant shall give notice of termination pursuant to this Section 17.01, the Term shall expire by lapse of time upon the date that is thirty (30) days

after such notice is given and Tenant shall vacate the Premises and surrender the same to Landlord. Upon the termination of this Lease under the conditions provided for in this Section 17.01, Tenant's liability for Rent and all other obligations hereunder (except to the extent expressly stated to survive) shall cease as of the date of such termination, subject, however, to abatement thereof between the date of such casualty and the date of such termination pursuant to Section 17.03 below.

(e) Tenant hereby expressly waives the provisions of Section 227 of the Real Property Law or any like law that may hereafter be enacted and agrees that the foregoing provisions of this Article shall govern and control in lieu thereof, this Article 17 being an express agreement governing any case of damage or destruction of the Premises by fire or other casualty.

**Section 17.02 Repair and Restoration; Termination Upon Delay.**

(a) If the Premises or the Building shall be damaged by fire or other casualty and this Lease is not terminated pursuant to Section 17.01, the damage (i) to the Building shall be repaired by and at the expense of Landlord so that (x) access to the Premises and (y) the common areas of the Building serving the Premises shall be substantially the same as prior to the damage, (ii) to the Premises shall be repaired (x) by Landlord as to the core, shell, floors, roof, curtain wall, windows, Building Systems and all other structural elements of the Building located in the Premises including all of Landlord's Work, and (y) by Tenant as to Tenant's Initial Alterations and all other Alterations and Tenant's Property, and (iii) to the Building Systems shall be repaired by Landlord up to and including the point of delivery to each floor of the Premises (the work to be performed pursuant to the foregoing clauses (i), (ii)(x) and (iii) is referred to collectively as the "Base Building Restoration"). Notwithstanding the foregoing, Landlord shall not be obligated to expend for such repairs and restoration any amount in excess of the net insurance proceeds made available to Landlord after deduction therefrom of Landlord's actual out-of-pocket expenses in obtaining such proceeds and any amounts applied by any Superior Lessor or Mortgagee to obligations other than restoration of the Building (provided, however, that if Landlord shall elect not to perform the Base Building Restoration because the cost thereof exceeds such net insurance proceeds, then Landlord shall give written notice thereof to Tenant and Tenant may, within thirty (30) days thereafter, terminate this Lease on written notice to Landlord, in which event the Term shall expire by lapse of time upon the date that is thirty (30) days after Tenant's notice is given and Tenant shall vacate the Premises and surrender the same to Landlord). In no event shall Landlord be obligated to repair or restore Tenant's Initial Alterations, other Alterations, Tenant's Property or paneling or other finishes, carpeting or wall coverings.

(b) Where Landlord is obligated or otherwise elects to effect restoration of the Premises, unless such restoration is completed within eighteen (18) months from the date of the casualty, or within the one hundred eighty (180) day period applicable during the last eighteen (18) months of the Term (each such period to be subject, however, to extension by one (1) day for each day of Unavoidable Delay (but in no event beyond twenty-four (24) months from the date of the casualty, or during the last eighteen (18) months of the Term, two hundred and ten (210) days from the date of the casualty)), Tenant shall have the right to terminate this Lease (i) within thirty (30) days after the expiration of such eighteen (18) month period or one hundred eighty (180) day period, as applicable (as each such period may be extended), but

(ii) prior to the time that the restoration is substantially completed, such termination to take effect as of the thirtieth (30th) day after such notice is given, with the same force and effect as if such date were the date originally established as the Expiration Date unless, within such thirty (30) day period, such restoration is substantially completed, in which case Tenant's notice of termination shall be of no force and effect and this Lease and the Term shall continue in full force and effect. If Tenant shall not have exercised Tenant's termination right within the time periods aforesaid, Tenant shall have no further right to exercise such termination right thereafter in respect of the casualty in question.

**Section 17.03 Abatement of Rent; Insurance Proceeds.** Until this Lease is terminated pursuant to Sections 17.01 or 17.02 or, if this Lease is not so terminated, until the completion of Landlord's restoration work pursuant to Section 17.02, Fixed Rent, Tenant's Tax Payment and Tenant's Operating Expense Payment shall be abated in the proportion by which the RSF of the affected portion of the Premises bears to the total RSF of the Premises. Except as otherwise provided herein, no damages of any type, compensation or claims shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building. If Rent abates in respect of all or any portion of the Premises and Tenant reoccupies the Premises or such portion thereof, or any part thereof, for the conduct of Tenant's business operations during the period in which restoration work is taking place and prior to the date that the same is made completely tenantable, Fixed Rent allocated to the space so reoccupied shall be payable, and Tenant's Tax Payment and Tenant's Operating Expense Payment shall increase by the portion thereof allocable to such space, from the date that is five (5) Business Days after notice from Landlord that such space is ready for reoccupancy for the conduct of Tenant's business. Notwithstanding anything in this Section 17.03 to the contrary, if Landlord shall be unable to collect all of the insurance proceeds (including rent insurance proceeds) payable by reason of any damage to the Building or the Premises under Landlord's insurance policies by reason of any action or inaction by Tenant or failure by Tenant to comply with any of the provisions of this Lease, then without prejudice to any other remedy that may be available against Tenant, the abatement of Rent provided for in this Section 17.03 shall not be effective to the extent of the uncollected insurance proceeds, and the amount of any abatement theretofore taken by Tenant shall be immediately payable to Landlord on demand. Nothing contained in this Section 17.03 is intended to contravene the provisions of Section 16.07.

## ARTICLE 18

### CONDEMNATION

**Section 18.01 Total Condemnation.** If the whole of the Building or of the Premises shall be taken by condemnation or in any other manner for any public or quasi-public use or purpose (other than for temporary use or occupancy), the Term shall forthwith cease and terminate as of the date of vesting of title by reason of such taking (which date is hereinafter referred to as the "date of the taking"), and Rent shall be apportioned as of such date. If such portion of the Building shall be so taken such that substantial structural alterations or reconstruction of the Building shall be necessary as a result of such taking (whether or not the Premises be affected), which alterations or reconstruction Landlord reasonably determines will take at least one hundred eighty (180) days to complete, Landlord may, at its option, terminate this Lease and the

Term and estate hereby granted as of the date of such vesting of title by notifying Tenant in writing of such termination within sixty (60) days following the date of the taking.

**Section 18.02 Partial Condemnation.** If any part, but less than all, of the Premises shall be so taken and this Lease shall not be terminated pursuant to Section 18.01, then the part so taken shall no longer constitute part of the Premises but this Lease shall otherwise remain unaffected by such taking, provided, however, that Tenant may elect to terminate the Term in the event of either:

(a) a taking of more than fifteen percent (15%) of the total RSF of the Premises, or

(b) a taking that deprives Tenant of reasonable access to the Building or the Premises, if Landlord determines that it will be unable to provide or in fact fails to provide adequate alternative access to the Building and the Premises within sixty (60) days thereafter,

by giving notice of such election to Landlord not later than sixty (60) days after Tenant's receipt from Landlord of notice of such taking (describing the nature and extent of such taking) or the date of such taking, whichever first occurs, or not later than thirty (30) days after such sixtieth (60<sup>th</sup>) day, as the case may be. If notice of termination of this Lease shall be given pursuant to this Section 18.02, then upon such date as may be specified by Tenant by notice to Landlord, which date shall be not earlier than thirty (30) and not later than sixty (60) days after the date of Tenant's notice, the Term shall terminate as of the date specified in such notice and Rent shall be apportioned as of such date of termination. Upon a partial taking, and this Lease continuing in force as to any part of the Premises, (i) Fixed Rent, Tenant's Tax Payment and Tenant's Operating Expense Payment shall be equitably reduced for the remainder of the Term, according to the nature and extent of the loss of use of the Premises suffered by Tenant, and (ii) Landlord shall, at its expense, restore with reasonable diligence the remaining portions of the Premises as nearly as practicable to the same condition as it was in prior to such condemnation or taking, provided, however, that Landlord shall not be obligated to expend for such restoration and for restoration of the remainder of the Building any amount in excess of the net condemnation proceeds actually received by Landlord. Proceeds of any award applied by any Mortgagee to reduction of the indebtedness secured thereby or retained by any Superior Lessor as compensation for the taking shall not be deemed to have been received by Landlord.

**Section 18.03 Condemnation Compensation.** In the event of any condemnation or taking hereinabove mentioned of all or a part of the Building (whether or not the Premises be affected) Landlord shall be entitled to receive the entire award in the condemnation proceeding, including any award made for the value of the estate vested by this Lease in Tenant, and Tenant hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, and Tenant shall be entitled to receive no part of such award. The foregoing, however, shall not be deemed to preclude Tenant from recovering a separate award for Tenant's moving expenses, Tenant's Property and the unamortized value of Alterations paid by Tenant, provided that any such award does not reduce and is not payable out of the amount for the Land and the Building.

**Section 18.04 Temporary Takings.** If all or any part of the Premises shall be taken for a limited period, Tenant shall be entitled, except as hereinafter set forth, to that portion of the award for such taking that represents compensation for the use and occupancy of the Premises, for the taking of Tenant's Property and for moving expenses, and Landlord shall be entitled to that portion that represents reimbursement for the cost of restoration of the Premises. This Lease shall remain unaffected by such taking and Tenant shall continue to be responsible for all of its obligations under this Lease (except if prevented from doing so by the condemning authority) and shall continue to pay in full all Rent when due. If the period of temporary use or occupancy shall extend beyond the Expiration Date, that part of the award that represents compensation for the use and occupancy of the Premises shall be apportioned between Landlord and Tenant as of the Expiration Date.

## ARTICLE 19

### **BANKRUPTCY**

**Section 19.01 Transfer Pursuant to Bankruptcy.** If pursuant to the Federal Bankruptcy Code, Tenant is permitted to assign or otherwise transfer this Lease (whether in whole or in part in disregard of the restrictions contained in this Article 19 and Article 8), Tenant agrees that adequate assurance of future performance by the assignee or transferee permitted under the Federal Bankruptcy Code shall mean the deposit of cash security (or a letter of credit) with Landlord in an amount equal to the sum of one year's Fixed Rent then payable hereunder plus an amount equal to all Additional Rent payable to Landlord for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord for the balance of the Term as security for the full and faithful performance of all of the obligations under this Lease on the part of Tenant yet to be performed. If Tenant receives or is to receive any valuable consideration for such assignment or transfer (in part or in whole) of this Lease, Landlord shall receive the same fifty percent (50%) of such consideration as Landlord would receive had the assignment or transfer (and the calculation thereunder) been made pursuant to Article 8. Nothing contained in this Lease shall limit or prejudice the right of Landlord to present proof for and obtain, in proceedings for the termination of this Lease by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

## ARTICLE 20

### **DEFAULTS AND REMEDIES; WAIVER OF REDEMPTION**

**Section 20.01 Event of Default.** Each of the following events shall be an "Event of Default" hereunder:

(a) If Tenant defaults in the payment when due of (i) any installment of Fixed Rent or recurring Additional Rent and such default continues for a period of five (5) Business Days after receipt by Tenant from Landlord of a notice of default in respect thereof or (ii) any other installment of Additional Rent and such default continues for a period of eight (8) Business

Days after receipt by Tenant from Landlord of a notice of default in respect thereof; provided that in the event that Tenant shall fail to pay when due any three (3) installments of Fixed Rent (such failures need not be consecutive) in any twelve (12) month period, any subsequent failure of Tenant within such twelve (12) month period to pay Fixed Rent when due shall constitute an Event of Default without the giving of written notice or the expiration of a cure period);

(b) If Tenant abandons all or substantially all of the Premises and such abandonment continues for more than thirty (30) days after notice from Landlord; or

(c) If:

(i) Tenant admits in writing its inability to pay its debts as they become due; or

(ii) Tenant commences or institutes any case, proceeding or other action (x) seeking relief as a debtor, or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (y) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or

(iii) Tenant makes a general assignment for the benefit of creditors; or

(iv) Any case, proceeding or other action is commenced or instituted against Tenant (x) seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (y) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, in each case that remains undismissed for a period of ninety (90) days; or

(v) Any case, proceeding or other action is commenced or instituted against Tenant seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property that results in the entry of an order for any such relief that has not been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or

(vi) Tenant takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (ii), (iii), (iv) or (v) of this Section 20.01(c); or

(vii) A trustee, receiver or other custodian is appointed for any substantial part of the assets of Tenant or any guarantor, which appointment is not vacated or effectively stayed within five (5) Business Days, or if any such vacating or stay does not thereafter remain in effect; or

(d) If Tenant fails to maintain any of the insurance required to be maintained by Tenant hereunder or to deliver certificates or copies thereof when required hereunder and Tenant fails to remedy such default within five (5) Business Days after notice by Landlord to Tenant specifying such default; or

(e) If an assignment or subletting shall occur or if Tenant's interest in this Lease or the Premises shall devolve upon or pass to any Person, whether by operation of law or otherwise, and whether directly or indirectly, except as expressly permitted by Article 8; or

(f) If Tenant shall fail to perform or observe any term or condition of this Lease that, because of its character, would immediately (i) jeopardize Landlord's interest in the Real Property or the health or safety of any person, (ii) have a material and adverse affect on the operation of the Building or any Building System, or (iii) have a material and adverse affect on the business operations of any occupant, and such failure continues for three (3) Business Days after notice from Landlord to Tenant specifying such default, or, if such default is of such a nature that it cannot be completely remedied within said period of three (3) Business Days, if Tenant fails to commence to remedy such default within such three (3) Business Day period, or fails thereafter to diligently prosecute to completion all steps necessary to remedy such default, which such remedy in all events will be completed within ten (10) days after notice by Landlord to Tenant of such default; or

(g) If Tenant defaults in the observance or performance of any other term, covenant or condition of this Lease on Tenant's part to be observed or performed and Tenant fails to remedy such default within (i) fifteen (15) days after notice by Landlord to Tenant specifying such default, or, (ii) if (x) such default is of such a nature that it cannot be completely remedied within said period of fifteen (15) days, (y) Tenant fails to commence to remedy such default within such fifteen (15) day period, or (z) fails thereafter to diligently prosecute to completion all steps necessary to remedy such default, which such remedy in all events will be completed within sixty (60) days after notice by Landlord to Tenant of such default, as such sixty (60) day period shall be extended by an additional thirty (30) days so long as Tenant has provided Landlord with a certification from an authorized officer of Tenant within fifteen (15) days prior to the expiration of such sixty (60) day period requesting such extension and attaching evidence showing to Landlord's reasonable satisfaction that Tenant has made significant progress in curing such default, provided, however, that if any Governmental Authority having jurisdiction requires that such default be remedied in less than ninety (90) days, then Tenant's time to remedy such default shall be shortened so that such default must be remedied at least five (5) days before the last date of the shorter period of time to remedy such default provided by such Governmental Authority.

If, at any time, (i) Tenant shall comprise two (2) or more Persons, (ii) Tenant's obligations under this Lease shall have been guaranteed by any Person other than Tenant, or (iii) Tenant's interest in this Lease shall have been assigned, then the word "Tenant," as used in Section 20.01(c), shall be deemed to mean any one or more of the Persons primarily or secondarily liable for Tenant's obligations under this Lease. Any monies received by Landlord from or on behalf of Tenant during the pendency of any proceeding of the types referred to in Section 20.01(c) shall be deemed paid as compensation for the use and occupancy of the Premises, and the acceptance of

any such compensation by Landlord shall not be deemed an acceptance of Rent or a waiver on the part of Landlord of any rights hereunder.

**Section 20.02 Conditions of Limitation.** If an Event of Default occurs, Landlord may serve a written three (3) day notice of termination of this Lease upon Tenant, and, upon the expiration of said three (3) day period, this Lease and the Term and all rights of Tenant under this Lease shall end, expire and terminate as fully and completely as if the expiration of said three (3) day period were the date set forth herein as the Expiration Date and Tenant immediately shall quit and surrender the Premises, but Tenant shall remain liable as hereinafter provided. If the notice provided for in this Section 20.02 shall have been given and the Term shall expire as aforesaid, then Landlord may, without notice (i) re-enter the Premises either by force or otherwise (but only if permitted under Legal Requirements), dispossess Tenant and recover possession of the Premises by summary proceedings and in such manner as set forth in Sections 20.03, 20.04 and 20.05 against the legal representative of Tenant or other occupant of the Premises and remove its/their effects and (ii) hold the Premises as if this Lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. Anything contained herein to the contrary notwithstanding, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Section 20.01(c), or by federal or state statute, then, following the expiration of any such stay (i) if the trustee appointed in any such proceeding, Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, and (ii) if said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, may serve a written three (3) day notice of the termination of this Lease upon Tenant, Tenant as debtor-in-possession or said trustee, and upon the expiration of said three (3) day period this Lease shall cease and expire as set forth above and Tenant, Tenant as debtor-in-possession or said trustee shall immediately quit and surrender the Premises as aforesaid.

**Section 20.03 Landlord's Right to Re-Enter and Relet.**

(a) If an Event of Default shall occur, and this Lease and the Term shall expire and come to an end as provided in Section 20.02, then

(i) Tenant shall quit and peacefully surrender the Premises to Landlord, and Landlord and its agents may at any time after the date upon which this Lease and the Term shall expire and come to an end, re-enter the Premises or any part thereof, without further notice, either by summary proceedings, or by any other applicable legal action or proceeding, and may repossess the Premises and dispossess Tenant and any other Persons from the Premises and remove any and all of their property and effects from the Premises; and

(ii) Landlord, at Landlord's option, may relet the whole or any part or parts of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Expiration Date, at such

rental or rentals and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole discretion, may determine, provided, however, that Landlord (x) shall have no obligation to relet the Premises or any part thereof and shall in no event be liable (1) for refusal or failure to relet the Premises or any part thereof, or, (2) in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise affect any such liability, and, (y) at Landlord's option, may make such repairs, replacements, alterations, additions, improvements, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(b) Tenant, on its own behalf and on behalf of all Persons claiming through or under Tenant, including all creditors, hereby waives any and all rights that Tenant and all such Persons might otherwise have under any present or future law to redeem the Premises, or to re-enter or repossess the Premises, or to restore the operation of this Lease, after (i) Tenant shall have been dispossessed by a judgment or by warrant of any court or judge, or (ii) any expiration or termination of this Lease and the Term, whether such dispossession, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

#### **Section 20.04 Tenant Liabilities Upon Termination.**

(a) If this Lease and the Term shall expire and come to an end as provided in Section 20.02, or if Landlord shall re-enter by or under any summary proceeding or any other legal action or proceeding, then, in any of such events,

(i) Tenant shall pay to Landlord an amount equal to all Rent due and payable under this Lease by Tenant to Landlord to the date upon which (x) this Lease and the Term shall have expired and come to an end or (y) Landlord shall have re-entered or taken possession of the Premises;

(ii) Tenant also shall be liable for and shall pay to Landlord, as liquidated damages, any deficiency (the "Deficiency") between (x) Rent for the period that otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding such termination or re-entry increased by an amount to take into account an increase in the CPI), and (y) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 20.03(a)(ii) for any part of such period (first deducting from the rents collected under any such reletting all of Landlord's expenses in connection with the termination of this Lease, Landlord's re-entry upon the Premises and with such reletting, including all repossession costs, brokerage commissions, legal expenses, attorneys' fees and disbursements, alteration costs and other expenses of keeping the Premises in good order or for preparing the Premises for such reletting), provided that if the Premises or any part thereof should be relet in combination with other space or for a term that extends beyond the Expiration Date, then proper apportionment (on a per Rentable Square Foot basis in the case of a reletting in combination with

other space) shall be made of the rent received from such reletting and of the expenses of reletting. Tenant shall pay the Deficiency in monthly installments on the days specified in this Lease for payment of installments of Fixed Rent, and Landlord shall be entitled to recover from Tenant each monthly Deficiency as the same shall arise. No suit to collect the amount of the Deficiency for any month shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(iii) whether or not Landlord shall have collected any monthly Deficiency as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency as and for liquidated and agreed final damages, an amount equal to (x) Rent for the period that otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding increased each year by the CPI Fraction), less (y) the then-fair and reasonable rental value of the Premises, including Additional Rent for the same period, both discounted to present value at six percent (6%), less (z) the aggregate amount of Deficiencies previously collected by Landlord pursuant to the provisions of Section 13.04(a)(ii) for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, Landlord shall have relet the Premises or any part thereof on an arm's-length basis for the period that otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of net rents collected in connection with such reletting shall be deemed, *prima facie*, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) If Landlord shall relet the Premises, or any part thereof, together with other space in the Building, the net rents collected under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this Section 20.04. Tenant shall in no event be entitled to any rents collected or payable under any reletting, whether or not such rents shall exceed the Fixed Rent reserved in this Lease. Nothing contained in this Article 20 shall be deemed to limit or preclude the recovery by Landlord from Tenant of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this Section 20.04 (it being agreed, however, that the only damages that Landlord is entitled to in respect of Tenant's failure to pay Rent for the remainder of the Term in the event of the termination of this Lease by reason of Tenant's default are as set forth in this Section 20.04).

**Section 20.05 Additional Rights Upon Certain Monetary Defaults.** Landlord reserves the right in connection with monetary Event(s) of Default that, in the aggregate, exceed(s) twenty-five thousand dollars (\$25,000), without liability to Tenant and without constituting any claim of constructive eviction, to suspend furnishing or rendering to Tenant any overtime Building services, in the event that (but only for so long as) such monetary Event(s) of Default in excess of twenty-five thousand dollars (\$25,000) exist(s).

**Section 20.06 Waiver of Trial by Jury.** THE RESPECTIVE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER (EXCEPT FOR PERSONAL INJURY OR PROPERTY DAMAGE) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S

USE OR OCCUPANCY OF THE PREMISES, OR FOR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE. IF LANDLORD COMMENCES ANY SUMMARY PROCEEDING AGAINST TENANT, TENANT WILL NOT INTERPOSE ANY COUNTERCLAIM OF WHATEVER NATURE OR DESCRIPTION IN ANY SUCH PROCEEDING (UNLESS FAILURE TO IMPOSE SUCH COUNTERCLAIM WOULD PRECLUDE TENANT FROM ASSERTING IN A SEPARATE ACTION THE CLAIM THAT IS THE SUBJECT OF SUCH COUNTERCLAIM), AND WILL NOT SEEK TO CONSOLIDATE SUCH PROCEEDING WITH ANY OTHER ACTION THAT MAY HAVE BEEN OR WILL BE BROUGHT IN ANY OTHER COURT BY TENANT.

**Section 20.07 Other Waivers.**

(a) Tenant, for itself and any and all Persons claiming through or under Tenant, including its creditors, upon the termination of this Lease or expiration of the Term in accordance with the terms hereof, or in the event of entry of judgment for the recovery of the possession of the Premises in any action or proceeding, or if Landlord shall reenter the Premises by process of law, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges that it or they may or might have under and by reason of any present or future law or decision, to redeem the Premises or for a continuation of this Lease for the Term after having been dispossessed or ejected therefrom by process of law.

(b) If Tenant is in default (subject to any applicable notice and cure period), in the payment of any Rent, Tenant waives its right, if any, to designate the item against which any payments made by Tenant are to be credited and Tenant agrees that Landlord may apply any payment made by Tenant to any items as Landlord may see fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payment shall be credited.

**ARTICLE 21**

**COVENANT OF QUIET ENJOYMENT**

**Section 21.01 Quiet Enjoyment by Tenant.** Provided this Lease is in full force and effect and there is no Event of Default that has occurred and is continuing, Tenant shall quietly enjoy the Premises without hindrance or molestation by Landlord or by any other person lawfully claiming the same, subject to the covenants, agreements, terms, provisions and conditions of this Lease and to any Superior Leases (including the Net Lease) and any Mortgages to which this Lease is subject and subordinate, as hereinbefore set forth.

**ARTICLE 22**

**SURRENDER OF PREMISES**

**Section 22.01 Tenant's Obligations at End of Term.** Upon the expiration or other termination of this Lease, Tenant shall (i) quit and surrender to Landlord the Premises, vacant, broom-clean and in good condition, excepting ordinary wear and tear, damage caused by fire or

other casualty or condemnation and damage for which Tenant is not responsible under the terms of this Lease, and (ii) remove all of Tenant's Property and any Specialty Alterations (except as otherwise expressly set forth in this Lease) from the Premises and perform any required repair and restoration, all to the extent required under Section 13.04. Tenant's obligations pursuant to this Article 22 shall survive the expiration or sooner termination of the Term. If the last day of the Term or any renewal thereof falls on Saturday or Sunday, this Lease shall expire on the Business Day next preceding such day. Tenant expressly waives, for itself and for any Person claiming through or under Tenant, any rights that Tenant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings that Landlord may institute to enforce the foregoing provisions of this Article 22.

**Section 22.02 Holdover Tenant.**

(a) Tenant agrees that if for any reason Tenant or any subtenant of Tenant shall fail to vacate and surrender possession of the Premises or any part thereof on or before the expiration or earlier termination of this Lease and the Term, then Tenant's continued possession of the Premises shall be as a month-to-month tenancy, during which time, without prejudice and in addition to any other rights and remedies Landlord may have hereunder or at law, Tenant shall (i) pay to Landlord an amount per month (the "Holdover Amount") equal to

of an amount equal to the total monthly amount payable hereunder, immediately prior to such termination, of (1) Fixed Rent, plus (2) Additional Rent on account of Tenant's Tax Payment and Tenant's Operating Expense Payment, and (ii) comply with all other terms and conditions of this Lease. The provisions of this Section 22.02 shall not in any way be deemed to (i) permit Tenant to remain in possession of the Premises after the Expiration Date or sooner termination of this Lease or (ii) imply any right of Tenant to use or occupy the Premises upon expiration or termination of this Lease and the Term, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of the Term shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Article 22. Landlord waives no rights against Tenant by reason of accepting any holding over by Tenant, including without limitation (i) the right to terminate such month-to-month tenancy as provided by law at any time after the expiration of the Term and (ii) any right to damages in the event that Tenant's holding over causes Landlord to suffer any loss.

(b) Notwithstanding anything herein to the contrary, Tenant shall indemnify and save Landlord harmless (in accordance with the procedures set forth in Sections 16.01(c) and (d)) against all costs, claims, loss or liability resulting from delay by Tenant in surrendering the Premises upon expiration or sooner termination of the Term, including, without limitation, any claims made by any succeeding tenant founded on such delay or any lost profits, losses, costs, expenses or liability payable to such tenant or otherwise incurred by Landlord as a result thereof.

(c) Tenant's obligations under this Article 22 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 23

### DEFINITION OF LANDLORD

**Section 23.01 Transfer of Net Lease.** Subject to the other terms of this Lease, the term "Landlord" wherever used in this Lease shall be limited to mean and include only the owner or owners at the time in question of the lessee's interest under the Net Lease and any person to whom this Lease may be assigned, or a leasehold mortgagee thereof in possession, so that in the event of any sale, assignment or transfer of Landlord's interest as a lessee under the Net Lease to an unrelated third party, such transferor owner or mortgagee in possession shall thereupon be released and discharged from all covenants, conditions and agreements of Landlord hereunder, but such covenants, conditions and agreements shall thereupon be deemed assumed by and binding upon each new lessee under the Net Lease or mortgagee in possession for the time being, until the Landlord's interest as a lessee under the Net Lease is further sold, assigned or transferred to an unrelated third party.

## ARTICLE 24

### NOTICES

**Section 24.01 Method of Delivery.** Except as otherwise expressly provided in this Lease, any bills, statements, consents, notices, demands, requests or other communications given or required to be given under this Lease shall be in writing and shall be given or rendered if by (i) hand delivery, (ii) certified or registered United States mail, postage prepaid, return receipt requested, or (iii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of delivery or attempted delivery required, in the case of (i), (ii) or (iii) above, in each case, addressed as shown below:

If to Tenant, (a) until the date Tenant first occupies the Premises for the ordinary conduct of business, as follows:

China Center New York LLC  
One Battery Park Plaza  
Fifth Floor  
New York, New York 10004  
Attention: Xue Ya

with copies to (except for Expense Statements, Final Tax Statements, electricity bills and all other Rent bills, as well as other routine, non-material communications and correspondence):

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Attention: Peter W. Herman, Esq.  
Facsimile number: (212) 822-5742

and (b) after the date Tenant first occupies the Premises for the ordinary conduct of business:

China Center New York LLC  
One World Trade Center  
New York, New York \_\_\_\_\_  
Attention: Xue Ya

with copies to (except for Expense Statements, Final Tax Statements, electricity bills and all other Rent bills, as well as other routine, non-material communications and correspondence):

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Attention: Peter W. Herman, Esq.  
Facsimile number: (212) 822-5742

If to Landlord, as follows:

The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: Executive Director – 15<sup>th</sup> Floor

with copies to:

The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: General Counsel

and a copy of any default or termination notice to Landlord's Mortgagee and all Superior Lessors at an address to be provided by Landlord.

**Section 24.02 Change of Addresses.** Such address may be changed by any party in a written notice to the other parties hereto in the manner provided for in this Article 24. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery or refusal to accept delivery; in the case of registered or certified mail or expedited prepaid delivery, upon delivery or refusal to accept delivery; or in the event of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, as of the date of such failure or refusal. A party receiving a notice that does not comply with the technical requirements for notice under this Article 24 may elect to waive any deficiencies and treat the notice as having been properly given. Any notice to be given by any party may be given by such party's attorney.

## ARTICLE 25

### ARBITRATION

**Section 25.01 Procedure.** Landlord and Tenant shall have the right to submit disputes where arbitration is specifically provided for in this Lease to arbitration in the City of New York under the Expedited Procedures provisions of the Commercial Arbitration Rules of the AAA; provided, however, that with respect to any such arbitration (i) the list of arbitrators shall be returned within five (5) days from the date of mailing, (ii) the parties shall notify the AAA within four (4) days of any objections to the arbitrator appointed and will have no right to object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to within such four (4) day time period, (iii) the Notice of Hearing shall be four (4) days in advance of the hearing, (iv) the hearing shall be held within five (5) days after the appointment of the arbitrator, (v) the arbitrator shall have no right to award damages except with respect to a successful claim by one party that the other party has unreasonably withheld its consent in bad faith, (vi) the decision and award of the arbitrator shall be final and conclusive on the parties and, (vii) with respect to disputes under this Lease in which three (3) arbitrators are required pursuant to the express provisions of this Lease, each party shall, on the date it submits such dispute to arbitration, select and appoint (in its sole and absolute discretion) one (1) arbitrator to act as its designee and a third (3<sup>rd</sup>) arbitrator shall be chosen by the first two (2) arbitrators so chosen; and provided, further, that Work Letter Disputes (as defined in the Work Letter) shall be resolved in accordance with Section K of the Work Letter. The time periods set forth in this Section 25.01 are of the essence.

**Section 25.02 Scope, Rights and Qualifications.** The arbitrator(s) conducting any arbitration shall be bound by the provisions of this Lease and shall not have the power to add to, subtract from, or otherwise modify such provisions. Landlord and Tenant agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder which shall be binding and conclusive on the parties and shall constitute an "award" by the arbitrator(s) within the meaning of the AAA rules and applicable law. Judgment may be had on the decision and award of the arbitrator(s) so rendered in any court of competent jurisdiction. The arbitrator(s) shall be a qualified, disinterested and impartial person(s) who shall have had at least ten (10) years' experience in New York City in a calling connected with the matter of the dispute. Landlord and Tenant shall each have the right to appear and be represented by counsel before said arbitrator(s) and to submit such data and memoranda in support of their respective positions in the matter in dispute as may reasonably be necessary or appropriate in the circumstances. Each party hereunder shall pay its own costs, fees and expenses in connection with any arbitration or other action or proceeding brought under this Article 25, and the expenses and fees of the arbitrator selected shall be shared equally by Landlord and Tenant (provided, however, that where the arbitration is conducted by three (3) arbitrators pursuant to the terms of this Lease, each party shall pay the expenses and fees of its designee and share equally the expenses and fees of the third (3<sup>rd</sup>) arbitrator). Notwithstanding any contrary provisions of this Article 25, Landlord and Tenant agree that (i) the arbitrator(s) may not award or recommend any damages to be paid by either party and (ii) in no event shall

either party be liable for, nor be entitled to recover, any damages. This Article 25 shall survive the expiration or sooner termination of this Lease.

## ARTICLE 26

### RULES AND REGULATIONS

**Section 26.01 Right to Change Rules and Regulations.** Landlord shall have the right, from time to time during the term of this Lease, upon reasonable notice to Tenant, to make changes in, and additions to, the Rules and Regulations, provided that (i) such changes or additions are applicable to all other office tenants in the Building, (ii) Landlord in good faith deems that such changes or additions are necessary or desirable for the safety, care or appearance of the Building or the preservation of good order therein, or the operation or maintenance of the Building, or the equipment thereof, or the comfort of tenants or other occupants in the Building, and (iii) such changes or additions do not unreasonably affect the conduct of Tenant's business in the Premises, including, without limitation, the use of the Premises for the Permitted Uses (subject, however, to Building security requirements). In the case of any conflict or inconsistency between the provisions of this Lease and any of said Rules and Regulations as originally promulgated or as changed, the provisions of this Lease shall control.

**Section 26.02 Enforcement of Rules and Regulations.** Nothing in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other tenant. Landlord shall not be liable to Tenant for violation of the Rules and Regulations or of any other lease by other tenants or occupants of the Building, or their servants, agents, visitors or licensees. Notwithstanding the foregoing, Landlord shall not enforce against Tenant any Rules and Regulations that Landlord shall not then be enforcing generally against a majority of other office tenants in the Building.

## ARTICLE 27

### CONSENTS

**Section 27.01 Consents and Approvals.** Wherever in this Lease Landlord's consent or approval is required, if Landlord shall refuse such consent or approval, then (unless Landlord is determined by a court of competent jurisdiction after final appeal to have acted with malice or in bad faith in withholding such consent or approval), Tenant shall not be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld, unreasonably conditioned or *unreasonably delayed its consent or approval*. In such event, Tenant's sole remedies shall be, at Tenant's option, (i) an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment, or (ii) to the extent Landlord has specifically agreed that it will not unreasonably withhold its consent or approval under this Lease, an arbitration in accordance with Article 25. Where Landlord has not so specifically agreed that it will not unreasonably withhold its consent or approval under this Lease, it is the express intent of the parties that any such consent shall be given or required only in the sole, absolute and

unfettered discretion of Landlord, and may be withheld for any reason whatsoever. In no event shall Landlord's withholding consent or approval be deemed to be unreasonable if such withholding of consent is due to Landlord's inability to obtain the consent of a Mortgagee or Superior Lessor.

## ARTICLE 28

### MISCELLANEOUS

**Section 28.01 Noise; Vibration.** Business machines and mechanical equipment belonging to Tenant, Landlord or other tenants of the Building that may cause noise, vibration or any other nuisance that may be transmitted to other portions of the Building to such a degree as to interfere with the use or enjoyment by Tenant or other tenants of their premises or the public portions of the Building or that adversely affect the Building's structure, shall be placed and maintained by the party owning such machines and/or equipment at such party's cost and expense, in settings of cork, rubber or spring type vibration eliminators sufficient to eliminate any such noise or vibration, but Tenant shall not be entitled to any Rent diminution resulting from such annoyance or interference (unless otherwise expressly provided herein).

**Section 28.02 No Implied Waivers.** The failure of Landlord or Tenant to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease or, as applicable, any of the Rules and Regulations attached hereto or hereafter adopted by Landlord, shall not prevent a subsequent act that would have originally constituted a violation from having all the force and effect of an original violation. The delivery of keys to any employee of Landlord or of Landlord's agent shall not operate as a termination of this Lease or a surrender of the Premises. The receipt or acceptance by Landlord, or payment by Tenant, of Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver be in writing signed by such party. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent required to be paid shall be deemed to be other than on account of the earliest such Rent, nor shall the acceptance of any wire transfer of funds or any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such wire transfer, check or payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy provided in this Lease.

**Section 28.03 No Oral Modification.** Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought. All references in this Lease to the consent or approval of either party shall be deemed to mean the written consent or approval of such party, and no consent or approval of such party shall be effective for any purpose unless such consent or approval is set forth in a written instrument executed by such party. This Lease may not be orally waived, terminated, changed or modified.

**Section 28.04 Amendments.** This Lease with its exhibits, schedules and annexes (and all other documents being executed by the parties in connection with this Lease) contain the entire

agreement between Landlord and Tenant, and any agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless such agreement is signed by the parties hereto.

**Section 28.05 Headings.** The captions of Articles and Sections in this Lease and its Table of Contents and Index are inserted only as a convenience and for reference and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Sections are to those in this Lease unless otherwise noted.

**Section 28.06 Severability.** If any term, covenant, condition or provision of this Lease or the application thereof to any circumstance or to any Person shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Lease or the application thereof to any circumstances or to any Person other than those as to which any term, covenant, condition or provision is held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, condition and provision of this Lease shall be valid and shall be enforceable to the fullest extent permitted by law.

**Section 28.07 Internal References; Attachments and Appendices.** All references to "Section," "Subsection" and "Exhibit" refer to such Section, Subsection or Exhibit of this Lease, unless explicitly noted otherwise. Each of the schedules and exhibits appended to this Lease is incorporated by reference herein as if set out in full herein. If, and to the extent that, any of the provisions of the main body of this Lease conflict, or are otherwise inconsistent, with any of the schedules and exhibits appended to this Lease, other than the Work Letter, then, whether or not such inconsistency is expressly noted in this Lease, the provisions of the main body of this Lease shall prevail. If, and to the extent that, any of the provisions of the main body of this Lease conflict, or are otherwise inconsistent, with the Work Letter, then, whether or not such inconsistency is expressly noted in this Lease, the provisions of the Work Letter shall prevail.

**Section 28.08 Authority of Parties.** Landlord and Tenant each represent and warrant to the other that, except as hereinafter provided in this Section 28.08, (i) this Lease (x) has been duly authorized, executed and delivered by such party and (y) constitutes the legal, valid and binding obligation of such party and (ii) the execution and delivery of this Lease is not prohibited by, nor does it conflict with, or constitute a default under, any agreement or instrument to which such party may be bound or any Legal Requirement applicable to such party. Notwithstanding the preceding sentence, Landlord and Tenant acknowledge that Landlord's representations and warranties provided in this Section 28.08 are subject to the satisfaction of the requirements of the Gubernatorial Review Legislation without the occurrence of a gubernatorial veto, and the satisfaction of such requirements without the occurrence of a gubernatorial veto shall be a condition precedent to the effectiveness of the terms and conditions of this Lease and this Lease shall be of no force and effect unless and until such requirements have been satisfied without the occurrence of a gubernatorial veto. Accordingly, in the event of a gubernatorial veto pursuant to the Gubernatorial Review Legislation, (i) this Lease shall automatically terminate ab initio, (ii) Landlord shall promptly notify Tenant of such termination and return to Tenant any Security Letter previously delivered by Tenant to Landlord hereunder and (iii) this Lease shall be null and void and neither party shall have any obligations or liability hereunder.

**“Gubernatorial Review Legislation”** means Chapter 333 of the Laws of New Jersey of 1927, as amended by Chapter 20 of the Laws of New Jersey of 1972 (N.J.S.A. 32:2-6 to 9), and Chapter 700 of the Laws of New York of 1927, as amended by Chapter 215 of the Laws of New York of 1956 and Chapter 602 of the Laws of New York of 1972 (McK. Unconsol. Laws §§ 7151-7154).

**Section 28.09 No Smoking.** Smoking shall be prohibited at all times within the Premises. This policy shall apply to all employees, officers, clients, contractors and visitors of Tenant in the Premises and shall cover all common work areas, conference and meeting rooms, private offices, elevators, hallways, cafeterias, employee lounges, stairways, rest rooms, locker rooms, shops, stockrooms, and other areas within the Premises not specifically listed above. Tenant acknowledges that smoking is prohibited in the Lobby and other common areas of the Building and that designated exterior smoking areas (if any) will be adequately signed and located at least twenty-five (25) feet from all entries to the Building and outdoor air intakes, but Tenant shall have no responsibility to prevent smoking in any areas outside of the Premises.

**Section 28.10 Confidentiality.** Neither Landlord nor Tenant nor any of any their respective employees, representatives, agents or consultants shall publicize, advertise or otherwise disclose to third parties any of the economic terms (including, but not limited to, the Fixed Rent or other Rent payable hereunder) nor any of the material terms of this Lease without the prior written consent of the other party except to the extent such disclosure of such information is required to be made (i) to any actual or prospective purchasers, equity investors, partners, mortgagees (including participants or syndicate members), overlessors, assignees or subtenants (or any of their respective employees, representatives, agents or consultants), (ii) by Legal Requirement (including to the extent required with respect to any disclosure requirements under applicable Legal Requirement), (iii) in any arbitration or litigation between the parties, (iv) to any Governmental Authority providing to Landlord and/or Tenant business incentives, or to any Governmental Authority that is a party to an agreement pursuant to which such business incentives are being provided to Landlord and/or Tenant, or (v) to such parties’ advisors, consultants, auditors, accountants, attorneys, officers or employees for a valid business purpose provided such parties agree to keep such information confidential. No party shall be required to keep confidential information that is generally known to the public other than by reason of a breach by such party (or its agents, employees or Affiliates) of its obligations under this Section 28.10.

**Section 28.11 Partnership Tenant.** If Tenant is a partnership on the date of this Lease, or if Tenant should assign this Lease to a partnership, whether with or without the consent of Landlord, the individuals constituting the partnership from and after the said date or the effective date of such assignment, as the case may be, shall be and continue to be jointly and severally liable for performing and observing the obligations of Tenant hereunder except as expressly provided in this Section. Furthermore, any new partners of Tenant shall, by their admission as partners, be deemed to have assumed liability jointly and severally with the then partners for the obligations of Tenant under this Lease, and neither the admission of new partners nor the withdrawal of partners shall be a violation of Section 8.01 of this Lease if the conditions hereinafter stated in this Section are satisfied. Tenant shall notify Landlord of the admission of each new partner and shall supply to Landlord a written agreement executed by each new partner confirming assumption of liability as described above. Notwithstanding any provisions of this Lease, or any law to the contrary, or the provisions of any agreement executed by Tenant during

the term of the letting, if any partner of Tenant shall die during the unexpired portion of the term of this Lease, or if any partner of Tenant shall complete his or her retirement from Tenant, or sever his or her connection with Tenant for reasons other than death or retirement, during the unexpired portion of the term of this Lease, such partner and his or her estate shall be relieved of all liability for performance of Tenant's obligations under this Lease accruing after such death, retirement or severance, provided that in order to obtain such release with respect to any such partner Tenant shall give notice to Landlord on behalf of the deceased, retiring or withdrawing partner of such death, retirement or severance, and provided, further, that the total partnership assets available to meet the obligations of Tenant under this Lease immediately after such death, retirement or severance shall not be materially less than the total partnership assets available to meet the obligations of Tenant under this Lease immediately prior to such death, retirement or severance.

**Section 28.12 Brokers.** Each of Tenant and Landlord covenants, warrants and represents that no broker except Jones Lang LaSalle Americas, Inc. (herein called the "Broker") was instrumental in bringing about or consummating this Lease and that such party had no conversations or negotiations with any broker except the Broker concerning the leasing of the Premises. Each of Tenant and Landlord agrees to indemnify and hold harmless the other party against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, arising out of any dealings or communications that occurred or are claimed to have occurred between the indemnifying party and the claimant in connection with this Lease, or arising from a breach by such party of the representation and warranty set forth in this Section 28.12. Landlord agrees to pay the Broker a commission in connection with the negotiation of this Lease in accordance with a separate agreement between Landlord and the Broker. The provisions of this Section 28.12 shall survive the expiration or earlier termination of this Lease.

**Section 28.14 Tenant's Incentive Programs.** Upon Tenant's request, Landlord shall cooperate in all reasonable respects with Tenant with respect to Tenant's efforts to negotiate and implement an incentive package with various governmental entities (including the Port Authority) pursuant to the Omnibus Act and otherwise, existing now or in the future, for rent subsidies, the abatement of commercial rent tax, sales tax or other similar taxes or impositions and any additional rate reductions with respect to electricity provided to the Premises that may be available to Tenant, including the execution and delivery of any estoppel and other certificates or documentation reasonably and customarily required by such entities, the execution and delivery of joint applications and the making of any reasonably required modifications to this Lease in connection therewith, provided that no such certificate, documentation or Lease modification shall (a) increase any obligation of Landlord under this Lease, (b) adversely affect any right of or benefit to Landlord under this Lease or (c) relieve Tenant of any of its obligations under this Lease. Any and all fees, costs and expenses imposed by such governmental entities or other third parties in connection with any such incentive package to be obtained by Tenant shall be borne solely by Tenant. In no event shall this Lease or Tenant's obligations hereunder be conditioned upon Tenant obtaining any such incentives or additional benefits (whether or not same have been offered to Tenant as of the Effective Date), and by its execution of this Lease, Tenant hereby confirms that it has obtained all necessary incentives and benefits required to induce Tenant to enter into this Lease.

**Section 28.15 Signage.** Tenant shall not have the right to install signage anywhere on the exterior of the Building. Landlord shall provide the following signage benefits to Tenant:

(a) Tenant may install signage with the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed, containing the full name of any business occupying the Premises (provided such occupancy is permitted under this Lease) in the elevator lobby on each floor of the Premises and at Tenant's entrance on each floor of the Premises, including standard directional signage in common areas of the sixty-fourth (64th) floor of the Building and any other multi-tenanted floors on which any part of the Premises is located, all in accordance with Landlord's standard signage policy which shall apply to all tenants in the Building in a non-discriminatory manner. Such signage shall be professionally designed and manufactured. Tenant shall maintain such signage in good order and repair throughout the Term and shall remove the same on or before the Expiration Date or earlier termination of this Lease and shall repair any damage to and restore the area where such signage was installed.

Landlord will be responsible for furnishing and installing, as part of Landlord's Work, ADA-compliant signs to indicate base Building toilets, closets, stairways, and elevators.

**Section 28.16 No Individual Liability.**

(a) Neither the Commissioners of the Port Authority, nor any of them, nor any officer or employee thereof, shall be charged personally by the Tenant with any liability or be held liable under any term or provision of this Lease or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

(b) Landlord agrees that in pursuing its rights and remedies against Tenant under or with respect to this Lease, Landlord will not have recourse or otherwise look to the individual or personal assets of any partner, member, officer or director of Tenant.

**ARTICLE 29**

**SUCCESSORS AND ASSIGNS**

**Section 29.01 Successors and Assigns.** The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and, except as otherwise provided herein, their assigns.

**ARTICLE 30**

**SUBMISSION TO JURISDICTION**

**Section 30.01 Jurisdiction; Venue; Governing Law.** Landlord and Tenant each hereby (i) irrevocably consents and submits to the jurisdiction of any Federal, state, county or municipal court sitting in the County of New York in respect to any action or proceeding concerning any matters arising out of or in any way relating to this Lease, (ii) irrevocably waives all objections as to venue and any and all rights it may have to seek a change of venue with respect to any such action or proceedings if the same is brought in New York City, (iii) agrees that the laws of the State of New York shall govern in any such action or proceeding and waives any defense to any action or proceeding granted by the laws of any other country or jurisdiction unless such defense is also allowed by the laws of the State of New York and (iv) agrees that any final judgment rendered against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Landlord and Tenant further agree that any action or proceeding with respect to any matters arising out of or in any way relating to this Lease shall be brought only in the State of New York, County of New York. As of the date hereof, Tenant's address for notices given by Landlord and service of process under this Lease shall be Tenant's address as set forth in Article 24.

**Section 30.02 Compliance with the Litigation Legislation.** Notwithstanding the foregoing nor anything to the contrary contained in this Lease, Tenant hereby expressly acknowledges that any litigation instituted by Tenant against the Port Authority must be brought in accordance with the requirements of the Litigation Legislation and nothing contained in Section 30.01 above or any other provisions of this Lease shall be deemed a waiver by the Port Authority of any provisions, rights or requirements thereunder.

## ARTICLE 31

### LANDLORD'S CONTRIBUTION

#### **Section 31.01 Landlord's Contribution for Initial Alterations.**

(a) Provided that this Lease shall be in full force and effect and no material default shall have occurred and be continuing hereunder at the time of any progress payment, Landlord shall contribute toward the actual hard costs and design costs incurred by Tenant in connection with Tenant's Initial Alterations an amount ("Landlord's Contribution") equal to the lesser of (i) (i.e., per Rentable Square Foot of Tenant's Above Grade Space), which amount shall be increased in the event Tenant exercises the Initial Expansion Option by an amount equal to multiplied by the number of RSF in the Initial Expansion Space leased by Tenant, or (ii) the aggregate amount of all hard costs and design costs actually incurred by Tenant in connection with Tenant's Initial Alterations.

(b) Tenant shall pay any cost of Tenant's Initial Alterations in excess of Landlord's Contribution. Tenant shall not be entitled to receive any portion of Landlord's Contribution not actually expended by Tenant in the performance of Tenant's Initial Alterations, nor shall Tenant have any right to apply any unexpended portion of Landlord's Contribution as a credit against Rent or any other obligation of Tenant hereunder. Tenant may not assign any part of Landlord's Contribution prior to actual payment thereof by Landlord to Tenant. The provisions of this Article 31 shall apply during the Initial Term only.

(c) Tenant's Initial Alterations for which Tenant has received payments from the Landlord's Contribution shall be the property of, and for federal income tax purposes shall be owned by, Landlord.

(d) Notwithstanding anything to the contrary contained in this Article 31, in the event that this Lease is terminated, Landlord shall have no further obligation to pay to Tenant the Landlord's Contribution.

#### **Section 31.02 Progress Payments.**

(a) From and after the date Landlord approves Tenant's Plans with respect to Tenant's Initial Alterations and provided that no Event of Default shall then exist and be continuing, Landlord shall make progress payments for Landlord's Contribution to Tenant, on a monthly basis, for the work performed during the previous month or, if not previously paid, an earlier month, less any retainages provided for in Tenant's construction contracts. Tenant's *construction contracts will provide for retainages in the amount of* (which percentage may be decreased to after substantial completion of Tenant's Initial Alterations).

(b) Each of Landlord's progress payments will be limited to an amount equal to the aggregate amounts theretofore paid or then payable by Tenant (as certified by an authorized officer of Tenant and by Tenant's independent, licensed architect) to Tenant's contractors, subcontractors, material suppliers or others that have not been the subject of a previous disbursement from Landlord's Contribution, multiplied by a fraction (i) the numerator

of which is the amount of Landlord's Contribution, and (ii) the denominator of which is the total contract price (or, if there is no specified or fixed contract price for Tenant's Initial Alterations, then a reasonable estimate thereof in the opinion of Tenant's architect, construction manager or general contractor) for the performance of all of Tenant's Initial Alterations shown on all plans and specifications approved by QAD. Provided that Tenant delivers to Landlord, on or prior to the first (1st) day of any month, a requisition for a progress payment, signed by an authorized officer of Tenant, setting forth the names of each contractor, subcontractor, material supplier or other party to whom payment is due, and the amount thereof, and accompanied by, (i) with the exception of the first requisition, copies of partial waivers of lien from all contractors, subcontractors, material suppliers and others covering all work and materials that were the subject of previous progress payments by Landlord and Tenant, (ii) a written certification from Tenant's architect that the work for which the requisition is being made has been completed substantially in accordance with the plans and specifications approved by QAD and (iii) such other documents and information as Landlord or any Superior Mortgagee requests (in the case of Landlord, such requests shall be reasonable), then Landlord shall make such progress payment on or before the last day of such month. Any requisitions made following the (1st) day of any month shall be paid no later than the last day of the month following the month in which such requisitions are made. At the request of any Superior Mortgagee, the requisition date and the payment date may be altered to accommodate such Superior Mortgagee's schedule so long as the period between submission to payment shall not be extended beyond the requisition date and payment date that applies to Landlord's construction manager.

(c) All requisitions for Landlord's Contribution (other than for retainages withheld pursuant hereto) must be submitted within twenty-four (24) months after the Rent Commencement Date.

**Section 31.03 Additional Credit against Certain Fees and Expenses.** Provided that this Lease shall be in full force and effect and no material Event of Default shall have occurred and be continuing hereunder, Tenant shall receive a credit in the amount of \$300,000, which may be applied against any fees payable to Landlord by Tenant associated with any Tenant's Initial Alterations and the costs of any Building utilities or services used by Tenant or its contractors during the course of the Tenant's Initial Alterations.

**Section 31.04 Right to Apply a Portion of Landlord's Contribution to Tenant's Special Work.** Tenant shall have the right to apply up to \$2,862,150 of Landlord's Contribution (i.e., \$15 per RSF) to any Change Costs incurred with respect to Tenant's Special Work, by written notice given to Landlord on or before the date payment is due from Tenant with respect to any such Change Costs. Any amounts so applied shall be a direct credit against Change Costs billed by Landlord, and shall not be subject to the progress payment procedures under Section 31.02.

## ARTICLE 32

### MEMORANDUM OF LEASE

**Section 32.01 Execution of Memorandum.** Upon request by Tenant, Landlord shall execute, acknowledge and deliver to Tenant a short form or memorandum of this Lease in recordable form and otherwise in form reasonably satisfactory to Landlord and Tenant, together

with such other instruments as may reasonably be necessary to record such short form or memorandum. Tenant may record such short form or memorandum of this Lease in the appropriate Register's Office, and shall be responsible for all recording fees, charges and taxes (if any) in connection therewith. Contemporaneously with the execution by Tenant of such memorandum, Tenant shall execute a termination of memorandum of Lease in recordable form and otherwise in form reasonably satisfactory to Landlord and Tenant, which Landlord shall hold in escrow until the Expiration Date (at which point Landlord may record same in the appropriate Register's Office and Tenant shall reimburse Landlord for the costs thereof as Additional Rent within thirty (30) days after receipt of an invoice therefor from Landlord). The provisions of this Article 31 shall expressly survive the Expiration Date.

## ARTICLE 33

### SECURITY DEPOSIT/LETTER OF CREDIT

**Section 33.01 Required Security.** Subject to Section 33.02 below, Tenant has, upon execution of this Lease by Tenant, deposited with Landlord and shall maintain throughout the Term the sum of \_\_\_\_\_ (which amount shall be (i) increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space, (ii) increased as and when provided in Section 33.03, and (iii) decreased as and when provided in Section 33.04) as security for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Lease. If Tenant defaults in the full and prompt payment and performance of any of Tenant's covenants and obligations under this Lease beyond the expiration of any applicable notice and grace period, including, but not limited to, the payment of Fixed Rent and Additional Rent, Landlord shall use, apply or retain the whole or any part of the security so deposited and the interest accrued thereon, if any, to the extent required for the payment of any Fixed Rent and Additional Rent or any other sums as to which Tenant is in default beyond the expiration of any applicable notice and grace period or for any sum that Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease beyond the expiration of any applicable notice and grace period, including, but not limited to, any damages or deficiency in the reletting of the Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the security or the interest accrued thereon, if any, Tenant shall, within five (5) days after receipt by Tenant from Landlord of a demand therefor, deposit with Landlord a sum equal to the amount so used, applied or retained, as security as aforesaid, failing which Landlord shall have the same rights and remedies as for the non-payment of Fixed Rent beyond the applicable grace period. Tenant's timely tendering of such sum shall be deemed to cure the default. If Tenant shall fully and faithfully comply with all of Tenant's covenants and obligations under this Lease, the security or any balance thereof to which Tenant is entitled, shall be returned or paid over to Tenant after the date fixed as the expiration of this Lease and after delivery to Landlord of possession of the entire Premises. In the event of any sale, transfer or leasing of Landlord's interest in the Building or the Net Lease whether or not in connection with a sale or transfer of the Net Lease or leasing of the Building to a vendee, transferee or lessee, Landlord shall have the right to transfer the unapplied part of the security and the interest thereon, if any, to which Tenant is entitled, to the vendee, transferee or lessee, and Landlord shall thereupon be released by Tenant from all liability for the return or

payment thereof, provided such vendee, transferee or lessee shall be deemed to have assumed any responsibilities of Landlord with respect to such security, and Tenant shall look solely to the new landlord for the return or payment of the same. The provisions of the preceding sentence shall apply to every subsequent sale, transfer or leasing of the Building, and any successor of Landlord may, upon a sale, transfer, leasing or other cessation of the interest of such successors in the Building, whether in whole or in part, pay over any unapplied part of said security to any vendee, transferee or lessee of the Building and shall thereupon be relieved of all liability with respect thereto. Except in connection with a permitted assignment of this Lease, Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security or any interest thereon to which Tenant is entitled, and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In any event, in the absence of evidence satisfactory to Landlord of an assignment of the right to receive the security, or the remaining balance thereof, Landlord may return the security to the original Tenant regardless of one or more assignments of this Lease.

**Section 33.02 Letter of Credit.**

(a) In lieu of the cash security deposit provided for in Section 33.01, Tenant shall maintain the required security deposit by delivering to Landlord and maintaining in effect at all times during the Term an irrevocable letter of credit, in the form attached hereto as Exhibit L (subject to Section 33.02(e) below), in the amount of the security required pursuant to this Lease issued by a banking corporation reasonably satisfactory to Landlord and having its principal place of business within the Port of New York District (generally speaking, the area encompassed within a 25-mile radius of the Statue of Liberty). Such letter of credit shall have an expiration date no earlier than the first anniversary of the date of issuance thereof and shall be automatically renewed from year to year unless terminated by the issuer thereof by notice to Landlord given not less than 60 days prior to the expiration thereof. Except as otherwise provided herein, Tenant shall, throughout the term of this Lease deliver to Landlord, in the event of the termination of any such letter of credit, replacement letters of credit in lieu thereof (each such letter of credit and such extensions or replacements thereof, as the case may be, is hereinafter referred to as a "Security Letter") no later than 60 days prior to the expiration date of the preceding Security Letter. The term of each such Security Letter shall be not less than one year and shall automatically be renewable from year to year as aforesaid. If Tenant shall fail to obtain any replacement of a Security Letter within the time limits set forth in this Section 33.02(a), Landlord may draw down the full amount of the existing Security Letter and retain the same as security hereunder, provided, however, that so long as no Event of Default has occurred and is continuing, Landlord shall promptly return to Tenant any cash remaining on deposit with Landlord in the event that Tenant subsequently delivers a replacement Security Letter to Landlord which is in compliance with the terms hereof.

(b) In the event Tenant defaults in the full and prompt payment and performance of any of Tenant's covenants and obligations under this Lease beyond the expiration of any applicable notice and grace period, including, but not limited to, the payment of Fixed Rent and Additional Rent, Landlord shall use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Fixed Rent and Additional Rent or any other sum as to which Tenant is in default beyond the expiration of any applicable notice and grace period or for any sum that Landlord may expend or may be required to expend

by reason of Tenant's default in respect of any of the terms, provisions, covenants, and conditions of this Lease beyond the expiration of any applicable notice and grace period, including but not limited to, any damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. Subject to Section 33.02(e) below, to insure that Landlord may utilize the security represented by the Security Letter in the manner, for the purpose, and to the extent provided in this Article 33, each Security Letter shall provide that the full amount thereof may be drawn down by Landlord upon the presentation to the issuing bank of Landlord's draft drawn on the issuing bank without accompanying memoranda or statement of beneficiary.

(c) In the event Landlord applies or retains any portion or all of the security delivered hereunder, Tenant shall, within five (5) days after receipt by Tenant from Landlord of a demand therefor, restore the amount so applied or retained so that at all times the amount deposited shall be not less than the security required by this Article 33. Tenant's timely restoration of such amount shall be deemed to cure the default.

(d) If Tenant shall fully and faithfully comply with all of Tenant's covenants and obligations under this Lease, the Security Letter shall be returned to Tenant after the date fixed as the expiration of this Lease and after delivery of possession of the entire Premises to Landlord. In the event of a sale of the Land and Building or leasing of the Building, Landlord shall have the right to transfer any interest it may have in the Security Letter to the vendee, transferee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Letter, provided such vendee, transferee or lessee assumes any responsibilities of Landlord with respect to such Security Letter, and Tenant agrees to look solely to the new landlord for the return of said Security Letter; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Letter to a new landlord. Except in connection with a permitted assignment of this Lease, Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In the event of a sale of the Building Landlord shall have the right to require Tenant to deliver a replacement Security Letter naming the new landlord as beneficiary and, if Tenant shall fail to timely deliver the same, to draw down the existing Security Letter and retain the proceeds as security hereunder until a replacement Security Letter is delivered.

(e) Notwithstanding Sections 33.02(a) or 33.02(b) above, in lieu of the letter of credit in the form of Exhibit L attached hereto, during the period between the Effective Date and the Delivery Date, Landlord shall accept a Security Letter in the form attached hereto as Exhibit L.1 (the "Pre-Delivery Date LOC"); provided that, on or before the Delivery Date, Tenant shall deliver to Landlord either an amendment to the Pre-Delivery Date LOC in form satisfactory to Landlord or a new Security Letter, such that the Security Letter on deposit with Landlord from and after the Delivery Date conforms in all respects to Exhibit L.

(f) In the event the issuer of any Security Letter held by Landlord is declared by the Federal Deposit Insurance Corporation, or any successor or similar entity ("FDIC"), to be insolvent, or is placed into receivership or conservatorship by the FDIC, or has been identified by the FDIC as an institution for which the FDIC will not honor letters of credit or is otherwise

closed for any other reason, or if a trustee, receiver or liquidator is appointed for the issuer, then, effective as of the date of such occurrence, said Security Letter shall be deemed to not meet the requirements of this Section 33.02, and, within ten (10) Business Days of receipt by Tenant of notice thereof, Tenant shall replace such Security Letter with cash security in the amount of the security required under this Article 33 or another Security Letter drawn on an issuer acceptable to Landlord in its sole and absolute discretion (and Tenant's failure to do so shall, notwithstanding anything in this Lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid ten (10) Business Day period).

**Section 33.03 Increases in Required Security.** The amount of security required to be maintained hereunder shall (i) be increased to Twenty-Five Million (\$25,000,000) Dollars (which amount shall be increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space) on the Commencement Date (the "First Increase"), and (ii) be increased to Forty-Six Million (\$46,000,000) Dollars (which amount shall be increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space) on the date which is nine (9) months following the Commencement Date (the "Second Increase"). Each such increase shall be effectuated by the delivery of either an amendment to the Security Letter then being held by Landlord, which amendment shall be in form and substance satisfactory to Landlord, or by a replacement Security Letter in the amount of the security required hereunder as so increased. Each such replacement Security Letter shall otherwise be in the form required under Section 33.02. Tenant acknowledges that its obligation to increase the amount of its security deposit is a material inducement to Landlord executing this Lease. Accordingly, except as expressly provided in this Lease or the Work Letter to the contrary, in the event Tenant shall fail to deliver either of the increases in the required security deposit in accordance with the preceding sentence, and such failure continues for a period of ten (10) days after written notice from Landlord, then, (i) with respect to the First Increase, Landlord shall have the right in its sole and absolute discretion to terminate this Lease effective upon written notice to Tenant and to draw upon the Security Letter then on deposit with Landlord and to retain the balance thereof as liquidated damages on account of such default, whereupon this Lease shall be terminated and neither party shall have any further obligations to the other party hereunder (it being acknowledged that in no event shall Landlord be obligated to deliver possession of the Premises to Tenant prior to the delivery by Tenant of the First Increase), and (ii) with respect to the Second Increase, such failure shall, notwithstanding anything in this Lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid ten (10) day period. The provisions herein contained for liquidated and agreed upon damages are bona fide provisions for such and are not a penalty, the parties agreeing that Landlord will sustain damages if Tenant defaults in such obligation, which damages will be substantial and will have increased with the passage of time but will not be capable of determination with mathematical precision, and therefore, as aforesaid, this provision for liquidated and agreed upon damages has been incorporated in this Section 33.03 as a provision beneficial to both parties.

**Section 33.04 Decreases in Required Security.** Notwithstanding anything to the contrary contained herein, provided that no Event of Default (and no circumstance which, with the giving of notice or the passage of time, would constitute an Event of Default) shall exist as of the date of the reduction, the amount of security required under Section 33.01 shall be reduced on the 5th anniversary of the Rent Commencement Date to Twenty Million (\$20,000,000.00) Dollars (which amount shall be increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space).

Each such reduction shall be effectuated by the delivery of an amendment to the Security Letter delivered to Landlord pursuant to Section 33.02, which amendment shall be in form and substance satisfactory to Landlord, or by a replacement Security Letter in the amount of the security required hereunder as so decreased.

## ARTICLE 34

### ROOF ANTENNA

**Section 34.01 Tenant's Antennae Option.** Subject to the provisions of this Article 34 Landlord shall reserve, until the end of the Antennae Reservation Period sufficient space (as determined by Landlord in its sole discretion) at a location reasonably determined by Landlord on one or more of the rings encircling the broadcast mast installed on the roof of the Building (collectively, the "Antenna Area") for Tenant's own use insofar as such use is related to the business of Tenant (and not for resale purposes, provided that Tenant may allow Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) to use Tenant's Antennae solely in connection with their use of the Premises so long as Tenant does not charge any fee or rent for the use of such roof space) for whip antenna(e), satellite dishes, microwave dish antenna(e) and communications equipment and related equipment (each, an "Antenna" and collectively, the "Antennae"). Tenant's use of the ring(s) shall be on a non-exclusive basis. Prior to the expiration of the Antennae Reservation Period, Tenant shall provide Landlord with its written notice of intent to install any Antennae (the "Antennae Notice"), which Antennae Notice shall set forth in reasonable detail the quantity and specifications of all of Antennae and related equipment Tenant proposes to install. In the event Tenant does not timely provide Landlord with the Antennae Notice on or before the expiration of the Antennae Reservation Period, no Antenna Area shall be reserved for use by Tenant, and Landlord makes no representation as to the availability of telecommunications capacity at the Building for Tenant use.

### **Section 34.02 License Agreement.**

(a) Subject to Tenant's providing the Antennae Notice and the satisfaction of all applicable provisions of this Lease (including this Article 34), (i) Landlord shall provide reasonably sufficient space in the Building for wiring the Antennae from the Premises to a common mechanical room on the \_\_\_\_\_ and (ii) Tenant shall have a non-exclusive, non-transferable, revocable license, at Tenant's sole risk, cost and expense, (x) to \_\_\_\_\_

maintain those Antennae reserved by Tenant within the Antennae Reservation Period, in the Antenna Area, and (y) to install and maintain the cables (including electrical cables, Tenant acknowledging that Landlord shall not supply any separate electricity to the Antenna Area, the mechanical room, or any other areas relating to the Antennae) extending from the Antennae to the Premises through plenums, risers, mechanical room(s) and/or electrical closets, ducts or pipes on or serving the floors on which the Premises is located (other than those installed for another tenant's exclusive use and provided Tenant shall have utilization of each such facility or area in no greater proportion than Tenant's Operating Expense Share), such license of (x) and (y) above to be exercised all in accordance with the plans and specifications approved by Landlord. The quantity, location, size, weight, height and all other features and specifications of the Antennae and the manner of the initial installation of the Antennae shall be subject to Landlord's prior written approval, which approval may be granted or withheld in Landlord's sole and absolute discretion. The installation of the Antennae and all related wiring and equipment shall be performed during Operating Hours and under the supervision of Landlord's designated representative at Tenant's cost. Notwithstanding the foregoing, the installation of any Antenna shall be deemed to be a Material Alteration for all purposes of this Lease, subject to the provisions of Article 13. Any failure to complete the installation of the Antennae and related equipment shall not delay the Commencement Date or the Rent Commencement Date. Tenant shall have no right to any abatement or reduction in Rent if for any reason Tenant is unable to obtain any required approval for installation of any Antenna, or is thereafter unable to use any Antenna for any reason.

(b) Throughout the Term, Tenant shall pay as Additional Rent to Landlord, on the first day of each month following a month wherein any Antenna was installed or pre-existing, a monthly license fee of \_\_\_\_\_ per Antenna per month (the "Antennae Charge"). The Antenna Charge payable for any period less than a month shall be apportioned based upon the number of days in that month any Antenna was installed. On the first day of each Lease Year after the Rent Commencement Date, the Antenna Charge shall be increased to equal the product of (i) the Antenna Charge in effect during the immediately preceding Lease Year multiplied by (ii) \_\_\_\_\_.

(c) Tenant shall not have access to any Antenna without Landlord's prior written consent, which consent shall be granted (i) to the extent necessary for Tenant to perform its maintenance and repair obligations hereunder only and (ii) only if Tenant is accompanied by Landlord's representative (if Landlord so requests), it being expressly understood, however, that such access may be delayed or denied due to circumstances beyond Landlord's control (such as any approval required by Legal Requirements or the Net Lease). All Tenant personnel, subcontractors and agents requiring access to the Antenna Area shall have current training in Radio Frequency site safety awareness or otherwise qualify as "Occupational" per FCC OET Bulletin-65 and be pre-approved by Landlord, in its reasonable discretion. Any such access by Tenant or Tenant's personnel shall be subject to the Rules and Regulations relating thereto, including without limitation rules and regulations prohibiting such access unless Tenant is accompanied by Landlord's representative. Landlord and Net Lessor shall have the right to access the Antenna Area without prior notice to Tenant. Landlord shall promptly repair any damage caused by such entry and restore the Antenna Area to substantially the same condition existing prior to such damage except to the extent such damage is caused by Tenant's acts or omissions.

(d) At all times during the Term, Tenant shall (i) maintain all said equipment in clean, good and safe condition and in a manner that avoids interference with or disruption to Landlord and other tenants and wireless rooftop users of the Building, including full compliance with the Objectionable Interference Protocol (ii) comply with all Legal Requirements and requirements of insurers that shall impose any order or duty upon Landlord with respect to or affecting the Antenna or wiring arising out of Tenant's use or manner of use thereof, (iii) comply with FCC and OSHA rules and guidelines with respect to limiting human exposure to radio frequency emissions (including, but not limited to, proper labeling of antennae and equipment) as articulated in the RF Protocol and (iv) register the equipment, if required, with appropriate Governmental Authorities and keep same current. All repairs and maintenance shall be performed by an approved contractor pursuant to Section 13.03. All repairs and maintenance to the Building made necessary by reason of the furnishing, installation, maintenance, operation or removal of the Antennae or any replacements thereof (including, without limitation, any invalidation of the roof or broadcast mast warranty due to the Antennae or Tenant's actions) shall be at Tenant's sole cost. If the operation of the Antennae shall require electrical power, Landlord may, at its sole option, install a separate meter, at Tenant's sole expense, to measure such electrical consumption, and Tenant shall pay for such consumption in accordance with Article 7. At the expiration or earlier termination of the Term, or upon termination of the operation of the Antennae and related equipment as provided in Subsection (f) below, Tenant shall remove the Antennae and related equipment from the Building and surrender the Antenna Area in good condition, ordinary wear and tear and unavoidable damage by the elements excepted. If Tenant fails to so remove the Antennae and equipment in accordance with the foregoing, Landlord shall have the right to remove and dispose of any of the Antennae and equipment, at Tenant's sole cost and expense, and Landlord shall have no liability therefor.

(e) Upon at least ten (10) days' prior written notice to Tenant, Landlord shall have the right to require relocation of the Antennae, if in Landlord's opinion such relocation is necessary or desirable, and Landlord shall perform such relocation, at Landlord's sole cost and expense, which relocation shall occur outside of Operating Hours; provided that such relocation of Tenant's Antennae does not cause the transmission or reception of communication signals to be materially interrupted or impaired other than temporarily during the process of relocating such Antennae. Upon at least ninety (90) days' prior written notice to Tenant, Landlord shall have the right to require Tenant to relocate the Antennae, if in Landlord's opinion such relocation is necessary or desirable, and Tenant shall perform such relocation, at Landlord's sole cost and expense, provided that such relocation of Tenant's Antennae does not cause the transmission or reception of communication signals to be materially interrupted or impaired other than temporarily during the process of relocating such Antennae. Nothing in this Article 34 shall be construed as granting Tenant any line of sight easement with respect to any Antenna, provided, however, that if Landlord requires that any Antenna be relocated in accordance with the preceding two (2) sentences, then Landlord shall provide either (i) the same line of sight for such Antenna as was available prior to such relocation, or (ii) a line of sight for such Antenna that is functionally equivalent to that available prior to such relocation.

(f) It is expressly understood that by granting Tenant a license hereunder, Landlord makes no representation as to the legality of the Antennae or their installation. In the event that any federal, state, county, regulatory or other authority requires the removal or relocation of any Antenna, Tenant shall remove or relocate such Antenna at Tenant's sole cost

and expense, and Landlord shall under no circumstances be liable to Tenant therefor. In addition, at Landlord's sole option and discretion, Landlord may require Tenant, at any time prior to the expiration or earlier termination of this Lease, to terminate the operation of the Antennae and related equipment if it is (i) causing physical damage to the structural integrity of the Building, (ii) interfering with any other service provided to the Building, (iii) interfering with any other tenant's business or (iv) causing the violation of any condition or provision of this Lease, the Net Lease or any Legal Requirement. Landlord may require Tenant to take any of the foregoing actions even if any or all other tenants in the Building are permitted to continue any similar use or operation. The right granted to Tenant under this Section 34.02 constitute a non-exclusive, non-transferable, revocable license to use the Antenna Area solely in accordance with terms and conditions of this Article 34.

(g) Tenant agrees to reimburse Landlord for any costs, damages, claims, liabilities, and expenses (including reasonable attorneys' fees and disbursements) suffered by or claimed against Landlord, directly or indirectly, based on, arising out of or resulting from any act or omission by Tenant or Tenant's employees, agents, assignees, subtenants, contractors, clients, guests, licensees, customers or invitees with respect to the installation, use, operation, maintenance, repair, removal or disassembly of the Antennae and related equipment (including, without limitation, any damage to other wires or equipment of the Building or other tenants/occupants of the Building).

**Section 34.03 Additional Insurance; No Warranty.** Tenant shall maintain such insurance (in addition to that required by Article 16 of this Lease) as is appropriate with respect to the installation, operation and maintenance of the Antennae. Landlord shall have no liability on account of any damage to or interference with the operation of the Antennae, except for physical damage caused by Landlord's negligence or willful misconduct not covered by Tenant's insurance carried or required to be carried by Article 16, and Landlord expressly makes no representations or warranties with respect to the capacity for any Antenna placed in the Antenna Area to receive or transmit signals. The operation of the Antennae shall be at Tenant's sole and absolute risk at all times. Tenant shall in no event interfere with the use of any other communications equipment located on the roof of or anywhere else in the Building.

## ARTICLE 35

### **FIRST EXTENSION OPTION**

#### **Section 35.01 Exercise of First Extension Option.**

(a) Tenant shall have the option (hereinafter referred to as the "First Extension Option") to extend the Term for a term (hereinafter referred to as the "First Extension Term") of \_\_\_\_\_ to commence on the date (hereinafter referred to as the "First Extension Term Commencement Date") following the Initial Expiration Date and to expire on the date (hereinafter referred to as the "First Extension Term Expiration Date") that is the \_\_\_\_\_ of the Initial Expiration Date, which First Extension Option shall be exercised only by Tenant giving to Landlord notice thereof (hereinafter referred to as the "First Extension Exercise Notice") on or before the date (hereinafter referred to as the "First Extension Exercise

Notice Date") that is no later than  
time being of the essence.

prior to the Initial Expiration Date,

(b) Tenant may exercise the First Extension Option as to either (i) the entire Premises, or (ii) a portion of the Premises consisting of at least the entire floors of the Building and the entire portion of the of the Building then included within the Premises (the "Minimum Extension Block") and such additional space then included within the Premises as Tenant may elect, provided such additional space shall consist of one or more full floors that are contiguous to (i.e., immediately above or immediately below, without intervening floors) the Minimum Extension Block. Tenant's election pursuant to this Section 35.01(b) shall be set forth in the First Extension Exercise Notice, and if Tenant fails to make such election in the First Extension Exercise Notice, the delivery of the First Extension Exercise Notice shall be deemed an election to extend the Term as to the entire Premises. All references hereinafter contained in this Article 35 to "Premises" shall be deemed to refer to such portion of the Premises as to which the First Extension Option has been exercised in accordance with this Section 35.01(b). On or before the Initial Expiration Date, the portion of the Premises as to which the First Extension Option has not been exercised, if any, shall be surrendered to Landlord in accordance with all of the terms and conditions of this Lease governing the surrender of the Premises on the Expiration Date.

**Section 35.02 No Default.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall not have the First Extension Option if on the date Tenant gives to Landlord the First Extension Exercise Notice an Event of Default shall have occurred and is continuing.

**Section 35.03 Other Conditions.** In addition to the provisions of Section 35.02 above, and notwithstanding anything contained in this Lease to the contrary, the First Extension Option shall be deemed revoked, null and void, and of no further force or effect, and the First Extension Exercise Notice (or purported First Extension Exercise Notice) given in connection with Tenant's attempt to exercise the First Extension Option shall be ineffective and void ab initio as a First Extension Exercise Notice (a) if Tenant fails to timely give the First Extension Exercise Notice to Landlord in the manner provided in Section 35.01, or (b) if as of the First Extension Term Commencement Date, this Lease is not in full force and effect, or an Event of Default shall have occurred and is continuing. Notwithstanding anything contained in this Lease that may be deemed to the contrary, if Tenant exercises the First Extension Option, but prior to the First Extension Term Commencement Date, this Lease or the Term hereof has ended, expired or is not otherwise in full force and effect as a result of any default by Tenant under this Lease, then, solely for the purposes of calculating the damages to which Landlord is entitled under Article 20 of this Lease, the Term shall be deemed to have been extended by the First Extension Term.

**Section 35.04 First Extension Term Covenants and Conditions.** The First Extension Term, if any, shall be upon, and subject to, all of the terms, covenants and conditions provided in this Lease for the Initial Term, except that:

(a) any terms, covenants, or conditions hereof that are expressly or by their nature inapplicable to the First Extension Term (including, without limitation, Article 31 and this Article 35, and the Work Letter) shall not apply during the First Extension Term; and

**Section 35.05 Determination of First FMV Amount.** The initial determination of the First FMV Amount shall be made by Landlord. Landlord shall give notice (hereinafter referred to as a "First Rent Notice") to Tenant of the proposed First FMV Amount on or before the date that is fourteen (14) months prior to the First Extension Term Commencement Date. The First FMV Amount so determined by Landlord shall be deemed conclusive and binding upon Tenant unless on or before the date that is thirty (30) days after Landlord gives to Tenant the First Rent Notice (a) Tenant gives to Landlord notice (hereinafter referred to as the "First Dispute Notice") that Tenant disputes the First FMV Amount so determined by Landlord, or (b) Landlord and Tenant agree in writing (which agreement (hereinafter referred to as a "First FMV Agreement") shall be duly executed and delivered by Landlord and Tenant) upon the First FMV Amount on or before the date that is twelve (12) months prior to the First Extension Term Commencement Date (hereinafter referred to as the "First Determination Date"). If Tenant sends to Landlord a First Dispute Notice within the time and in the manner hereinbefore provided, and if Landlord and Tenant fail to so agree upon the First FMV Amount on or before the First Determination Date, the First FMV Amount for the First Extension Term shall be determined by arbitration pursuant to Section 35.06 below.

**Section 35.06 Dispute Regarding First FMV Amount.** If Tenant gives to Landlord a First Dispute Notice in respect of the First FMV Amount so determined by Landlord as provided in Section 35.05 above, and Landlord and Tenant fail to execute and deliver a First FMV Agreement on or before the First Determination Date, then the First FMV Amount for the First Extension Term shall be determined by arbitration as follows:

(a) Landlord and Tenant shall each appoint an arbitrator by written notice given to the other party hereto not later than thirty (30) days after the First Determination Date, which arbitrators may then be regularly employed or engaged by Landlord or Tenant, but shall be unaffiliated with such party. If either Landlord or Tenant fail to appoint an arbitrator within such period of time and thereafter fail to do so by written notice given within a period of five (5) days after notice by the other party requesting the appointment of such arbitrator, then such arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York), upon request of either Landlord or Tenant, as the case may be;

(b) the two (2) arbitrators appointed as above provided shall attempt to reach an agreement as to the First FMV Amount, and in the event that they are unable to do so within

thirty (30) days after their joint appointment, then the two (2) arbitrators shall appoint a third (3<sup>rd</sup>) arbitrator and give written notice of such designation to both Landlord and Tenant, and, if they fail to do so by written notice given within sixty (60) days after their joint appointment, such third (3<sup>rd</sup>) arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York). Such third (3<sup>rd</sup>) arbitrator shall not then be employed or engaged by either Landlord or Tenant or any of their respective affiliates;

(c) all of such arbitrators shall be New York State licensed real estate brokers having not less than ten (10) years' experience in representing owners or tenants in commercial leasing transactions in respect of Comparable Buildings; and

(d) the arbitrators, selected as aforesaid, shall convene and render their decision in accordance with the then-applicable rules of the AAA, which decision shall be strictly limited to a determination of the First FMV Amount, within thirty (30) days after the appointment of the second (2<sup>nd</sup>) arbitrator or the third (3<sup>rd</sup>) arbitrator, as the case may be. The decision of such arbitrators shall be in writing. If the first two (2) arbitrators appointed as above provided reach an agreement as to the First FMV Amount, said agreement shall be the decision of the arbitrators. If a third (3<sup>rd</sup>) arbitrator is appointed as above provided, then such third (3<sup>rd</sup>) arbitrator's decision shall be limited to a choice that is either the determination of the First FMV Amount made by the first (1<sup>st</sup>) arbitrator or the determination of the First FMV Amount made by the second (2<sup>nd</sup>) arbitrator. Insofar as the same is in compliance with the provisions and conditions of this Article, the decision of the arbitrators shall be binding upon Landlord and Tenant. Duplicate original counterparts of such decision shall be sent forthwith by the arbitrators by certified mail, return receipt requested, to both Landlord and Tenant. The arbitrators, in arriving at their decision (including the third (3<sup>rd</sup>) arbitrator, notwithstanding the fact that the third (3<sup>rd</sup>) arbitrator's decision is limited as hereinbefore provided), shall be entitled to consider all testimony and documentary evidence that may be presented at any hearing, as well as facts and data that the arbitrators may discover by investigation and inquiry outside such hearings. If, for any reason whatsoever, a written decision of the arbitrators shall not be rendered within sixty (60) days after the appointment of the third (3<sup>rd</sup>) arbitrator, then, at any time thereafter before such decision shall have been rendered, either party may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, by action, proceeding or otherwise (but not by a new arbitration proceeding) as may be proper, to determine the question in dispute consistently with the provisions of this Lease. The cost and expense of such arbitration, action, proceeding, or otherwise shall be borne equally by Landlord and Tenant, but Landlord and Tenant shall each pay their own arbitrators' and attorneys' fees and disbursements and witnesses fees.

(e) FMV Pending Resolution of Dispute. If Tenant gives to Landlord a First Dispute Notice in respect of the First FMV Amount so determined by Landlord as provided in Section 35.05, and the Fixed Rent for the First Extension Term shall not be finally determined pursuant to the terms of Section 35.05 or 35.06 on or before the First Extension Term Commencement Date, then, pending such resolution, the Fixed Rent payable by Tenant during the First Extension Term, subject to adjustment as herein provided, shall be equal to the annual rate of Fixed Rent in effect on the last day of the Initial Term, without giving effect to any abatement, credit or reduction that may then be applicable (hereinafter collectively referred to as the "First Extension Minimum Rent"), and once the Fixed Rent for the First Extension Term is

finally determined pursuant to the terms of Section 35.06, there shall be a retroactive adjustment between the parties. If the Fixed Rent for the First Extension Term, as so determined, shall be greater than the First Extension Minimum Rent, Tenant, within twenty (20) days after Tenant's receipt of Landlord's invoice therefor, shall pay to Landlord an amount equal to the difference between (x) the sum of the actual Fixed Rent payments paid to Landlord during the First Extension Term before such final determination and (y) the sum of the Fixed Rent payments that would have been payable by Tenant if the Fixed Rent for the First Extension Term had been finally determined prior to the First Extension Term Commencement Date. If the Fixed Rent for the First Extension Term, as so determined, shall be less than the First Extension Minimum Rent, Landlord, within thirty (30) days after Tenant's demand therefor, shall, at Landlord's election, either pay or credit against the next Rent payable hereunder, the amount of such overpayment by Tenant.

**Section 35.07 Miscellaneous.** If, in accordance with and subject to, all of the terms, covenants and conditions contained in this Article, the Term is extended for the First Extension Term, then "Expiration Date," as such term is used in this Lease, shall mean the "First Extension Term Expiration Date," and "Term" (and comparable words), shall mean the Initial Term, as extended by the First Extension Term. Notwithstanding anything that may be contained in this Lease to the contrary, Landlord shall have no obligation or duty, nor shall Landlord be required, to make any installations, alterations or improvements to the Premises or any portion thereof (including, without limitation, painting, finishing, plastering or decorating) with respect to the First Extension Term; provided, however, that nothing contained in this sentence shall affect Landlord's obligations to perform the repairs that Landlord is expressly required to make under this Lease. Except as expressly set forth in this Article and Article 36, Tenant shall not have any option or right to extend or renew the Term.

## ARTICLE 36

### SECOND EXTENSION OPTION

#### **Section 36.01 Exercise of Second Extension Option.**

(a) If Tenant exercises the First Extension Option and this Lease is extended for the First Extension Term, Tenant shall have an additional option (hereinafter referred to as the "Second Extension Option") to extend the Term for an additional term (hereinafter referred to as the "Second Extension Term") of ten (10) years to commence on the date (hereinafter referred to as the "Second Extension Term Commencement Date") next succeeding the First Extension Term Expiration Date and to expire on the date (hereinafter referred to as the "Second Extension Term Expiration Date") that is the tenth (10th) anniversary of the First Extension Term Expiration Date, which Second Extension Option shall be exercised only by Tenant giving to Landlord notice thereof (hereinafter referred to as the "Second Extension Exercise Notice") on or before the date (hereinafter referred to as the "Second Extension Exercise Notice Date") that is no later than \_\_\_\_\_ prior to the First Extension Term Expiration Date, time being of the essence.

(b) Tenant may exercise the Second Extension Option as to either (i) the entire Premises, or (ii) the Minimum Extension Block and such additional space then included

within the Premises as Tenant may elect, provided such additional space shall consist of one or more full floors that are contiguous to (i.e., immediately above or immediately below, without intervening floors) the Minimum Extension Block. Tenant's election pursuant to this Section 36.01(b) shall be set forth in the Second Extension Exercise Notice, and if Tenant fails to make such election in the Second Extension Exercise Notice, the delivery of the Second Extension Exercise Notice shall be deemed an election to extend the Term as to the entire Premises. All references hereinafter contained in this Article 36 to "Premises" shall be deemed to refer to such portion of the Premises as to which the Second Extension Option has been exercised in accordance with this Section 36.01(b). On or before the First Extension Term Expiration Date, the portion of the Premises as to which the Second Extension Option has not been exercised, if any, shall be surrendered to Landlord in accordance with all of the terms and conditions of this Lease governing the surrender of the Premises on the Expiration Date.

**Section 36.02 No Default.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall not have the Second Extension Option if on the date Tenant gives to Landlord the Second Extension Exercise Notice an Event of Default shall have occurred and is continuing.

**Section 36.03 Other Conditions.** In addition to the provisions of Section 36.02 above, and notwithstanding anything contained in this Lease to the contrary, the Second Extension Option shall be deemed revoked, null and void, and of no further force or effect, and the Second Extension Exercise Notice (or purported Second Extension Exercise Notice) given in connection with Tenant's attempt to exercise the Second Extension Option shall be ineffective and void ab initio as a Second Extension Exercise Notice (a) if Tenant fails to timely give the Second Extension Exercise Notice to Landlord in the manner provided in Section 36.01, or (b) if as of the Second Extension Term Commencement Date, this Lease is not in full force and effect, or an Event of Default shall have occurred and is continuing. Notwithstanding anything contained in this Lease that may be deemed to the contrary, if Tenant exercises the Second Extension Option, but prior to the Second Extension Term Commencement Date, this Lease or the Term hereof has ended, expired or is not otherwise in full force and effect as a result of any default by Tenant under this Lease, then, solely for the purposes of calculating the damages to which Landlord is entitled under Article 20 of this Lease, the Term shall be deemed to have been extended by the Second Extension Term.

**Section 36.04 Second Extension Term Covenants and Conditions.** The Second Extension Term, if any, shall be upon, and subject to, all of the terms, covenants and conditions provided in this Lease for the First Extension Term, except that:

(a) any terms, covenants, or conditions hereof that are expressly or by their nature inapplicable to the Second Extension Term (including, without limitation, Article 31, Article 35, this Article 36, and the Work Letter) shall not apply during the Second Extension Term; and

(b) the Fixed Rent payable by Tenant during the Second Extension Term (hereinafter referred to as the "Second Extension Rent") shall be an amount equal to of the fair market rent for the Premises determined in accordance with Section 36.05 as of the Second Extension Term Commencement Date on the basis of a new letting of the Premises

for the Second Extension Term for a term equal to the number of years in the Second Extension Term (but taking into account that, for purposes of the Second Extension Term, the Base Tax Year will be the Tax Year in which occurs the first day of the Second Extension Term and the Base Operating Year will become the calendar year in which occurs the first day of the Second Extension Term (so that no Additional Rent will be payable during the Base Tax Year on account of Taxes or during the Base Operating Year on account of Operating Expenses), and taking into account all other then relevant factors (the Fixed Rent for the period covered by the Second Extension Term is herein referred to as the "Second FMV Amount").

**Section 36.05 Determination of Second FMV Amount.** The initial determination of the Second FMV Amount shall be made by Landlord. Landlord shall give notice (hereinafter referred to as a "Second Rent Notice") to Tenant of the proposed Second FMV Amount on or before the date that is fourteen (14) months prior to the Second Extension Term Commencement Date. The Second FMV Amount so determined by Landlord shall be deemed conclusive and binding upon Tenant unless on or before the date that is thirty (30) days after Landlord gives to Tenant the Second Rent Notice (a) Tenant gives to Landlord notice (hereinafter referred to as the "Second Dispute Notice") that Tenant disputes the Second FMV Amount so determined by Landlord, or (b) Landlord and Tenant agree in writing (which agreement (hereinafter referred to as a "Second FMV Agreement") shall be duly executed and delivered by Landlord and Tenant) upon the Second FMV Amount on or before the date that is twelve (12) months prior to the Second Extension Term Commencement Date (hereinafter referred to as the "Second Determination Date"). If Tenant sends to Landlord a Second Dispute Notice within the time and in the manner hereinbefore provided, and if Landlord and Tenant fail to so agree upon the Second FMV Amount on or before the Second Determination Date, the Second FMV Amount for the Second Extension Term shall be determined by arbitration pursuant to Section 36.06 below.

**Section 36.06 Dispute Regarding Second FMV Amount.** If Tenant gives to Landlord a Second Dispute Notice in respect of the Second FMV Amount so determined by Landlord as provided in Section 36.05 above, and Landlord and Tenant fail to execute and deliver a Second FMV Agreement on or before the Second Determination Date, then the Second FMV Amount for the Second Extension Term shall be determined by arbitration as follows:

(a) Landlord and Tenant shall each appoint an arbitrator by written notice given to the other party hereto not later than thirty (30) days after the Second Determination Date, which arbitrators may then be regularly employed or engaged by Landlord or Tenant, but shall be unaffiliated with such party. If either Landlord or Tenant fail to appoint an arbitrator within such period of time and thereafter fail to do so by written notice given within a period of five (5) days after notice by the other party requesting the appointment of such arbitrator, then such arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York), upon request of either Landlord or Tenant, as the case may be;

(b) the two (2) arbitrators appointed as above provided shall attempt to reach an agreement as to the Second FMV Amount, and in the event that the two (2) arbitrators are unable to do so within thirty (30) days after their joint appointment, then they shall appoint a third (3<sup>rd</sup>) arbitrator and give written notice of such designation to both Landlord and Tenant,

and, if they fail to do so by written notice given within sixty (60) days after their joint appointment, such third (3<sup>rd</sup>) arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York). Such third (3<sup>rd</sup>) arbitrator shall not then be employed or engaged by either Landlord or Tenant or any of their respective affiliates;

(c) all of such arbitrators shall be New York State licensed real estate brokers having not less than ten (10) years' experience in representing owners or tenants in commercial leasing transactions in respect of Comparable Buildings; and

(d) the arbitrators, selected as aforesaid, shall convene and render their decision in accordance with the then-applicable rules of the AAA, which decision shall be strictly limited to a determination of the Second FMV Amount, within thirty (30) days after the appointment of the second (2<sup>nd</sup>) arbitrator or the third (3<sup>rd</sup>) arbitrator, as the case may be. The decision of such arbitrators shall be in writing. If the first two (2) arbitrators appointed as above provided reach an agreement as to the Second FMV Amount, said agreement shall be the decision of the arbitrators. If a third (3<sup>rd</sup>) arbitrator is appointed as above provided, then such third (3<sup>rd</sup>) arbitrator's decision shall be limited to a choice that is either the determination of the Second FMV Amount made by the first (1<sup>st</sup>) arbitrator or the determination of the Second FMV Amount made by the second (2<sup>nd</sup>) arbitrator. Insofar as the same is in compliance with the provisions and conditions of this Article, the decision of the arbitrators shall be binding upon Landlord and Tenant. Duplicate original counterparts of such decision shall be sent forthwith by the arbitrators by certified mail, return receipt requested, to both Landlord and Tenant. The arbitrators, in arriving at their decision (including the third (3<sup>rd</sup>) arbitrator, notwithstanding the fact that the third (3<sup>rd</sup>) arbitrator's decision is limited as hereinbefore provided), shall be entitled to consider all testimony and documentary evidence that may be presented at any hearing, as well as facts and data that the arbitrators may discover by investigation and inquiry outside such hearings. If, for any reason whatsoever, a written decision of the arbitrators shall not be rendered within sixty (60) days after the appointment of the third (3<sup>rd</sup>) arbitrator, then, at any time thereafter before such decision shall have been rendered, either party may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, by action, proceeding or otherwise (but not by a new arbitration proceeding) as may be proper, to determine the question in dispute consistently with the provisions of this Lease. The cost and expense of such arbitration, action, proceeding, or otherwise shall be borne equally by Landlord and Tenant, but Landlord and Tenant shall each pay their own arbitrators' and attorneys' fees and disbursements and witnesses fees.

**Section 36.07 FMV Pending Resolution of Dispute.** If Tenant gives to Landlord a Second Dispute Notice in respect of the Second FMV Amount so determined by Landlord as provided in Section 36.05, and the Fixed Rent for the Second Extension Term shall not be finally determined pursuant to the terms of Section 36.05 or 36.06 on or before the Second Extension Term Commencement Date, then, pending such resolution, the Fixed Rent payable by Tenant during the Second Extension Term, subject to adjustment as herein provided, shall be equal to the annual rate of Fixed Rent in effect on the last day of the First Extension Term, without giving effect to any abatement, credit or reduction that may then be applicable (hereinafter collectively referred to as the "Second Extension Minimum Rent"), and once the Fixed Rent for the Second







## ARTICLE 39

### **MESSENGER CENTER**

**Section 39.01 Messenger Center.** Throughout the Term, Landlord shall operate a package intercept/messenger center (the "Messenger Center") in accordance with the standards of a first class office building for the benefit of Tenant and Permitted Occupants of the Premises for all deliveries made to and from the Building. The Messenger Center shall be operated in accordance with the terms set forth in this Article 39, provided, however, Landlord may alter the location of and procedures to be followed with respect to the Messenger Center so long as Landlord provides substantially equivalent services. Tenant acknowledges that Landlord may, at its option, cease to operate the Messenger Center at any time.

**Section 39.02 Hours.** Subject to Section 39.05 and Force Majeure, the Messenger Center shall be operated during Operating Hours. Tenant shall advise all messenger services delivering or picking up packages at the Building that all deliveries must be made to and picked-up from the Messenger Center.

**Section 39.03 Incoming Deliveries.** Promptly after receipt by the Messenger Center from messenger services of deliveries addressed to Tenant ("Incoming Deliveries"), Landlord shall contact Tenant, at a number designated by Tenant, and Tenant will be responsible for retrieving the Incoming Deliveries at the Messenger Center. In no event shall Landlord's employees or Building staff be obligated to deliver Incoming Deliveries to Tenant.

**Section 39.04 Outgoing Deliveries.** During Operating Hours, Tenant may deliver to the Messenger Center deliveries from Tenant that are, in turn, to be picked up at the Messenger Center by messenger services for delivery outside the Building ("Outgoing Deliveries"), and such Outgoing Deliveries shall be held at the Messenger Center until picked up by such messenger services.

**Section 39.05 Non-Business Hours.** Landlord shall make the Messenger Center available to Tenant during periods other than Operating Hours upon not less than twenty-four (24) hours' prior request by Tenant (and subject to other reasonable Building requirements), and Tenant shall pay Landlord's reasonable out-of-pocket costs and expenses for overtime hours of personnel therefor as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice therefor.

**Section 39.06 No Liability.** Landlord shall not have liability to Tenant for accepting or failing to accept or for providing or not providing or for requesting or failing to request receipts or evidence of delivery for any mail or packages or for the handling of, or damage to, such mail or packages.

**Section 39.07 Sole Method.** Tenant acknowledges that all courier, messenger and mail services are required to use the Messenger Center and may not deliver or retrieve packages directly to or from the Premises.

[REMAINDER OF PAGE BLANK – SIGNATURE PAGE FOLLOWS]

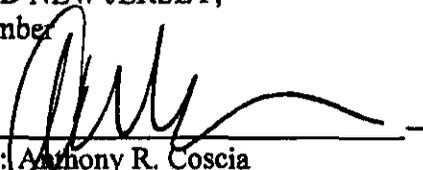
IN WITNESS WHEREOF, Landlord and Tenant have respectively executed and delivered this Lease as of the date first above written.

**LANDLORD:**

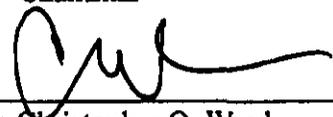
1 WORLD TRADE CENTER LLC,  
a Delaware limited liability company

By: THE PORT AUTHORITY OF NEW  
YORK AND NEW JERSEY,  
its sole member

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

  
Name: Anthony R. Coscia  
Title: Chairman

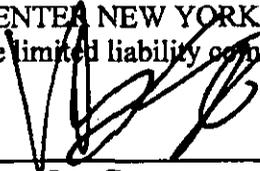
By: \_\_\_\_\_

  
Name: Christopher O. Ward  
Title: Executive Director

**TENANT:**

CHINA CENTER NEW YORK LLC,  
a Delaware limited liability company

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

  
Name: Lun Feng  
Title: Manager

## EXHIBIT A

### **BUILDING MEASUREMENT STANDARD**

\* \* \* \* \*

#### **THE REAL ESTATE BOARD OF NEW YORK, INC. RECOMMENDED METHOD OF FLOOR MEASUREMENT FOR OFFICE BUILDINGS**

*Effective January 1, 1987*

In order to facilitate a comparison of the cost of space among buildings, The Real Estate Board of New York, Inc. recommends that owners use a standard definition of usable area and that they clearly explain how rentable area is calculated based upon such usable area. Architectural plans and calculations should be made available to the tenant if requested.

The Real Estate Board of New York, Inc. recommends the following definitions and methods as the Standard Method of Floor Measurements in office buildings. Any Board member who advertises office space for rent is expected to follow these guidelines in determining any rentable area count mentioned in the advertisement.

#### **RENTABLE AREA:**

Because of dissimilarities among buildings, calculations of rentable area may vary. If requested, owners should disclose to prospective tenants the loss factor used for spaces under consideration.

#### **USABLE AREA, SINGLE TENANT FLOORS:**

Measure the floor to the outside surface of the building. Subtract from this area the following, including the nominal four inch enclosing walls:

Public elevator shafts and elevator machines and their enclosing walls.

Public stairs and their enclosing walls.

Heating, ventilating, and air-conditioning facilities (including pipes, ducts and shafts) and their enclosing walls, unless such equipment, mechanical room space, or shafts serve the floor in question.

Fire towers and fire tower courts and their enclosing walls.

Main telephone equipment rooms and main electric switchgear rooms, except that telephone equipment, and electric switchgear rooms serving the floor exclusively shall not be subtracted.

#### **USABLE AREA, MULTIPLE TENANT FLOOR:**

First, calculate the usable area as if for a single tenant floor.

Then deduct corridor areas, including toilets, supply room, etc., but do not deduct the enclosing walls of such corridor.

Measure the net usable area of each space on the floor by measuring each enclosing wall that is a building exterior wall to the outside surface of the exterior wall, or to the outside surface of the glass as the case may be. Measure demising walls to the center and walls that abut corridors to the corridor side of the finished surface of the corridor wall.

To determine the usable area on a multiple tenant floor, apportion the corridor area to each space by multiplying the corridor area by a fraction, whose numerator is the net usable area of the space and whose denominator is the total of the net usable areas of all the spaces on the floor, and add the result to the net usable area of the space.

#### **BELOW-GRADE, CELLAR AND SUB-CELLAR SPACE:**

To determine the usable area of below grade, cellar and sub-cellar areas, follow the same procedures as are appropriate for single or multiple tenant floors except that the following additional areas should be deducted from usable area:

Machine rooms and pump rooms and their enclosing walls.

Electric switchgear rooms and their enclosing walls.

Telephone equipment rooms and their enclosing walls.

All space devoted to servicing the operation of the building, i.e., cleaning contractors, storage, building maintenance shop, building engineer's office, etc.

#### **RECOMMENDED METHOD OF FLOOR MEASUREMENT FOR STORES:**

The rentable area of a store shall be computed by measuring from the building line in the case of street frontages, and from the inside surface of the outer building walls to the finished surface of the corridor side of the corridor partition and from the center of the partitions that separate the premises from adjoining rentable area.

No deductions shall be made for column and projections necessary to the building.

Rentable area of a store shall include all area within the outside walls, less the following, with their enclosing walls, if serving more than one tenant: building stairs, fire towers, elevator shafts, flues, vents, stacks, pipe shafts and vertical ducts.

The following area shall be included in rentable area, if such areas exclusively serve a store, together with their enclosing walls: private stairs, private elevators, toilets, air conditioning facilities, janitors' closets, slop sinks, electrical closets and telephone closets. When air conditioning facilities serve more than one tenant area, they shall be apportioned in the same manner as that used for single tenancy floors.

Where a store fronts on a plaza or arcade that is intended for use by the general public and is not for the exclusive use of the store tenant, its customers, etc., the area of the plaza or arcade shall not be included in determining the rentable area of the store.

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| FOR THE LESSOR                                                                        |
|  |
| FOR THE LESSEE                                                                        |

**EXHIBIT B**

**EXHIBIT C**



**EXHIBIT D**

**DESCRIPTION OF LAND**

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, being more particularly bounded and described as follows:

- A. Commencing the corner formed by the intersection of the northerly side of Vesey Street (width varies) with the westerly side of Washington Street, said corner being the northeast corner of the Vesey Street Arcade parcel in Block 84, and said corner having the Borough President of Manhattan coordinates of North 5263.62 West 10392.22;
  
- B. Running hence, South 11 degrees 57 minutes 41 seconds West, a distance of 79.75 feet to the Place and Point of BEGINNING, said point having the Borough President of Manhattan coordinates of North 5185.60 West 10408.75;
  - 1. Running thence South 89 degrees 59 minutes 54 seconds East a distance of 357.12 feet to a point;
  - 2. Running thence South 16 degrees 41 minutes 48 seconds East a distance of 214.25 feet to a point;
  - 3. Running thence North 89 degrees 59 minutes 54 seconds West a distance of 365.90 feet to a point;
  - 4. Running thence North 16 degrees 29 minutes 29 seconds West a distance of 58.83 feet to a point of curve;
  - 5. Running thence along the arc of a curve bearing to the right having a radius of 1231.85 feet a central angle of 03 degrees 15 degrees 30 seconds and a distance of 70.05 to a point of tangent;
  - 6. Running thence North 12 degrees 35 minutes 29 seconds West a distance of 83.11 feet to the point and Place of Beginning.

The coordinates and bearings set forth in the above description refer to the 10th Avenue Meridian as established by the Borough of Manhattan Topographical Bureau with Grid north being 28 degrees 59 minutes 13.5 seconds East of true north.

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| INITIALED          |
| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

**EXHIBIT E**

**INTENTIONALLY OMITTED**

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| <i>MM</i>      |
| FOR THE LESSOR |
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| FOR THE LESSEE |

## EXHIBIT G

### BUILDING RULES AND REGULATIONS

1. Tenant shall not obstruct or encumber the sidewalks, entrances, passages, courts, elevators, vestibules, corridors and halls, nor shall such areas be used for any purpose other than ingress and egress to and from the Premises and for delivery of merchandise and equipment, which deliveries shall be completed in a prompt and efficient manner using elevators and passageways designated for such deliveries by Landlord.

2. No awnings, air-conditioning units, fans or other projections shall be attached to or project through the outside walls or windows of the Building. Tenant shall not attach, hang or use any curtains, blinds, shades or screens, other than either mylar shades or other curtains, blinds, shades or screens that conform to Building standards agreed to by Landlord and Tenant from time to time, without the prior written consent of Landlord. Tenant may not, under any circumstances apply mylar or other like films directly to Building glass. All electrical fixtures hung in offices or spaces along the perimeter of the Premises must be of a quality, type, design and bulb color agreed to by Landlord and Tenant.

3. Except for signage required by Legal Requirements or as otherwise provided in the Lease, Tenant shall not, exhibit, inscribe, paint or affix any sign, advertisement, notice or other lettering (collectively, "Tenant Advertisement") on any part of the inside of the Premises if the same can be seen from the outside of the Premises. In no event may any Tenant Advertisement be exhibited, inscribed, painted or affixed to any part of the outside of the Premises or the Building.

4. Tenant shall not permanently or materially cover, blackout or obstruct the exterior windows that reflect or admit light and air into the Premises.

5. Tenant shall not, without Landlord's prior written consent, place any showcases or other articles in front of or affix such articles to any part of the exterior of the Building, nor place such articles in the halls, corridors or vestibules (other than within the Premises but in all events Tenant shall comply with Code), nor shall any article obstruct any air-conditioning supply or exhaust.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, acids or other substances shall be deposited therein. All damages resulting from any misuse of such fixtures shall be borne by Tenant unless caused by a Landlord Party.

7. Except as otherwise approved by Landlord or as otherwise permitted in accordance with the provisions of the Lease, Tenant shall not mark, paint, drill into, or in any way deface any part of the Premises or the Building, and no boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord.

8. Tenant, or any of Tenant's servants, employees, agents, sublessees, visitors or licensees, shall not at any time bring or keep upon the Premises any inflammable,

combustible or explosive fluid, chemical or substance except such as are incidental to usual office occupancy and are properly safeguarded.

9. Tenant shall not install any additional locks or bolts of any kind upon any of the doors or windows, nor shall Tenant change existing locks or the mechanism thereof, unless Tenant promptly provides Landlord with the key or combination thereto (except with respect to security areas). Tenant must, upon the termination of its tenancy, return to Landlord all keys to offices and toilet rooms and in the event of the loss of any keys furnished at Landlord's expense, pay the cost thereof. All Tenant entrance doors shall utilize the base Building key cylinders as specified by Landlord.

10. Tenant shall not bring into or store any bicycles, vehicles or animals of any kind except for seeing eye dogs in or about the Premises or the Building.

11. Tenant shall remove and bring any safes, freight, furniture or bulky matter of any description into or out of the Premises in the manner and during the hours (which must be scheduled in advance) that are agreed to by Landlord and Tenant. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles that violate any of these Rules and Regulations or the Lease. Landlord shall have the right to prescribe the weight and position of safes and other objects of excessive weight, and no safe or other object whose weight exceeds the lawful load for the area upon which it would stand shall be brought into or kept in the Premises. If, in the judgment of Landlord, it is necessary to distribute the concentrated weight of any heavy object, Landlord shall so advise Tenant.

12. Landlord reserves the right to exclude from the Building all persons who do not present a pass signed or approved by Landlord or Tenant or who otherwise do not comply with Building security procedures. Landlord may require any person leaving the Building with any package or other object to exhibit a pass from Tenant. Tenant shall comply with the security procedures implemented following the mutual agreement of Landlord and Tenant including provisions for approving companies delivering food and the manner of delivery.

13. No delivery persons or messengers shall be permitted to use the Building passenger elevators. Tenant shall utilize Landlord's package intercept/messenger center for all messenger deliveries and pick-ups in accordance with this Lease.

14. Tenant shall, at its expense, provide artificial light for the Landlord's employees doing janitor service or other cleaning, and making repairs or alterations in the Premises.

15. Tenant's requirements for above-standard services will be addressed only upon written notice delivered to Landlord's office at the Building. Building employees shall not perform any work or do anything outside of their regular duties unless under special instruction from the Landlord's office.

16. Canvassing, soliciting and peddling in the Building is prohibited and Tenant shall cooperate to prevent the same.

17. Tenant shall use commercially reasonable efforts to prevent the use in any space, or in the public halls of the Building, either by Tenant or by jobbers or others in the delivery or receipt of merchandise, of any hand trucks or food carts except those equipped with rubber tires and side guards. There shall be no food carts that are visible at any time to the public or other tenants in the Lobby of the Building.

18. Tenant shall control access to the Premises in accordance with reasonable security procedures implemented by Landlord.

19. Tenant shall use reasonable efforts to keep all blinds and shades in the Premises, if any, closed and lowered when and as reasonably required because of the position of the sun, during the operation of the Building HVAC System to cool or ventilate the Premises.

20. Tenant shall not install or permit the installation or use of any food, beverage, cigarette, cigar or stamp dispensing machine other than for the exclusive use of Tenant's employees and invitees.

21. Any person whose presence in the Building at any time shall, in the judgment of the Landlord, be prejudicial to the safety of the Building or of its tenants may be denied access to the Building or may be ejected therefrom. In case of invasion, riot, dangerous public excitement or other dangerous commotion, the Landlord may prevent all access to the Building during the continuance of same, by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building.

22. Smoking is prohibited at all times throughout the Building.

23. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Building by the use of any equipment, machinery, musical instrument, radio, television or in any other way.

24. Landlord shall have the right to prohibit any advertising that refers to the Building that, in Landlord's reasonable judgment, tends to impair the reputation of the Building and upon notice from Landlord, Tenant shall discontinue such advertising. The use of the Building address in the ordinary course of Tenant's business shall not constitute an advertisement.

25. In the event any of Tenant's contractors require access to the base Building electrical closets, Tenant shall notify the Building's management office in writing no later than 3:00 P.M. on the day before such contractors require such access, which notice must be signed by an authorized representative of Tenant.

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| INITIALED          |
| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

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**From:** Leonardo Gianella <leonardogianella@gmail.com>  
**To:** Buchbinder, Darrell  
**Cc:** Duffy, Daniel  
**Sent:** Thu Nov 17 12:37:19 2011  
**Subject:** RE: FOIL Request #12210 appeal for redacted information and a "certified copy"

Mr. Darrell Buchbinder

This is my formal appeal to obtain the withheld portion of my Freedom of Information request.

I was provided a 159 Page redacted copy of the lease in response to my Freedom of Information Lawsuit. Unfortunately the lease provided me does not fulfill my original request #12210 for a "certified copy" of the lease between Beijing Vantone Industrial and the Port Authority of New York and New Jersey. I am also led to believe that this is not a final executed copy because there are inconsistencies between the lease's restrictions regarding assignment, subletting and mortgage(section 8.01)and China centers website which states plainly that part of its business model is to sublet office space temporarily including virtual business presences etc (notice the "Business center" on the 68-69th floor) [http://www.chinacenter.com/facility\\_and\\_locations](http://www.chinacenter.com/facility_and_locations) this lease

was negotiated by a professional real estate firm for a professional real estate firm suggesting that this inconsistency could not be the final lease.

The lease provided me has omitted the following information that I know about.

1. Price paid per square foot. This was widely reported to be 85dollars per square foot and I do not see how the reasons provided for withholding this information qualify under 3 or 6 of your Freedom of Information policy. The amount paid was widely reported in many real estate trade publications.

2. Lease provided omits information on the letter of credit, its terms and how much.

3. Page 3 is missing definitions after "Building Measurement Standard"

4. Page 4 is missing definition after "China Center"

5. Page 5 is missing definitions for almost whole page

6. Page 9 is missing definition

7. Page 13. is missing definition

8. Page 14 is missing definition

9. Page 17 is missing definition

10. Page 20 is missing information under commencement of term: Condiotn of the premissis

11. Page 21 is missing information after landlords rights to terminate lease.

12. Page 23 is short

13. Page 32 is missing language after (i) Tenant Share or tax share for operating expense.

14. Page 36 is short after section 4.07 "landlords records"

15. Page 38 is short after (e) of Permitted Uses and Limitations on permitted Uses

16. Page 40 is short after "Tenants Use of Common Spaces"

17. Page 41 is left Blank

18. Page 43 is half gone

19. Page 44 is almost completely redacted

20. Page 45 is omitted altogether

21. Page 48 is missing language after (d)

22. Page 63 has information that is omitted

23. Page 64 part (vi) has been omitted

24. Page 69 language omitted after 8.11

25. Page 70 is omitted

26. Page 71 first half is omitted

27. Page 83 (d) is omitted

28. Page 138 completely omitted

29. Page 139 completely omitted

30. Page 140 Completely omitted

31. Page 141 Completely omitted

32. Page 142 half page omitted

33. top half of page 143 before signature page left blank

34. Exhibit B omitted fixed rent

35. Exhibit C omitted HVAC specifications

36. Exhibit C-2 omitted

37. Exhibit E omitted Topic Omitted

38. Exhibit F omitted premises Diagram

39. Exhibits h- work letter

40. Exhibits I omitted cleaning specifications

41. Exhibit J omitted alteration rules and regulations

42. Exhibit K omitted Intentionally omitted

43. Exhibit L omitted form of security letter of credit
44. Exhibit L.1 Form of security letter of credit (pre delivery date only)
45. Exhibit M QAD letter
46. Exhibit N. Form of Commencement Date Agreement
47. Exhibit O China center membership requirements
48. Exhibit P Depiction of the world trade center
49. Exhibit Q Stacking Plan
50. Exhibit R Form of net lessor SNDA
51. Exhibit S Determination of converted restaurant space

If the lease provided me is in fact the final lease I ask for you to review this information withheld as well as the additional 150 pages that were not provided me. I was told in my response by Mr Duffy that information was held pursuant to exemptions (3) and (6) of the Port Authorities freedom of information policy. Specifically that if disclosed would impair present or future awards or negotiations including collective bargaining or negotiations of leases, permits, contracts or others agreements and if disclosed could endanger the life of safety of any person or jeopardize the safety and or security of any facility or information technology system. I am not interested in building diagrams, floor plans electric closet locations etc.

The main terms of this lease including the price per square foot were announced when it was signed back in 2009 very publicly and by multiple sources <http://www.greenbuildingsnyc.com/2009/03/27/vantone-finalizes-1-wtc-lease/> including the Port Authorities own online press release ( [http://www.panynj.gov/press-room/press-item.cfm?headline\\_id=1137](http://www.panynj.gov/press-room/press-item.cfm?headline_id=1137) ) which announces a lease negotiated at 80dollars per square foot. Since this is supposedly an executed agreement I am confused how revealing what they have contractually agreed to pay will influence further negotiations. I am also not clear how the redacted portion of "use of space" on page 38 is in anyway relevant to future negotiations or security issues. or the tenants use of common spaces. I respectfully request that you review all redacted portions and provide me all portions that should not be withheld. Furthermore I do not see why the table of contents was redacted. Even if the details of a subject may qualify to be redacted I do not see how the name of the content could in anyway influence further negotiations contracts or be a security issue. I realize that the price per square foot has come down and that early signers to the world trade center may wish to renegotiate their original terms even so the public has a right to know what the original amount was negotiated for especially in executed documents.

Thank you for looking into this matter I eagerly await your response.

Sincerely,

Leonardo Gianella



**THE PORT AUTHORITY OF NY & NJ**

December 14, 2011

*Darrell Buchbinder*  
General Counsel

Mr. Leonardo Gianella  
857 Ninth Avenue, Apt. 2B  
New York, NY 10019

RE: FOI Reference No. 12210 - Appeal

Dear Mr. Gianella:

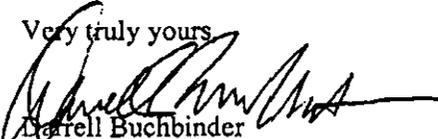
This is a response to your letter transmitted to my office by electronic mail on November 17, 2011 (the Letter). You characterize the Letter as a "formal appeal to obtain the withheld portion of [your] Freedom of Information request."

I am advised that a redacted copy of the lease between China Center New York LLC and the Port Authority (the Lease) was provided to you on November 16, 2011, in response to your request under The Port Authority of New York and New Jersey's policy on Freedom of Information (the Policy, a copy of which was previously made available to you).

The FOI Administrator, acting on behalf of the Secretary of the Port Authority, determined that certain information contained in the Lease was not available for public disclosure under exemptions 3 and/or 6 of the Policy. The FOI Administrator applied exemption 3 to protect information that "if disclosed, would impair present or future awards or negotiations \* \* \* of leases, permits, contracts or other agreements." The FOI Administrator also applied exemption 6 to protect disclosure of information that "if disclosed, could endanger the life or safety of any person or jeopardize the safety and/or security of any facility or information technology system."

Upon a review of the file on this matter, it is my determination that certain information redacted by the FOI Administrator pursuant to exemptions 3 and/or 6 of the Policy should have been disclosed. The FOI Administrator will provide you with a copy of the Lease without those redactions, within approximately five business days.

Very truly yours,

  
Darrell Buchbinder  
General Counsel

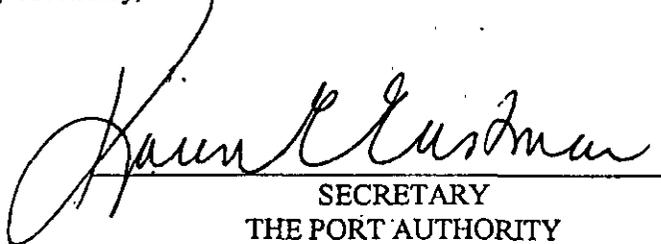
cc: Karen E. Eastman, Secretary  
Daniel D. Duffy, FOI Administrator  
Kathleen M. Collins, Esq.

225 Park Avenue South  
New York, NY 10003  
T: 212 435 3515

[dbuchbin@panynj.gov](mailto:dbuchbin@panynj.gov)

I, KAREN E. EASTMAN, Secretary of The Port Authority of New York and New Jersey (hereinafter called the "Port Authority"), a body corporate and politic and a municipal corporate instrumentality of the States of New York and New Jersey created and existing by virtue of the Compact of April 30, 1921, made by and between said States and thereafter consented to by the Congress of the United States, hereby certify that annexed hereto is a true and correct copy of Lease No. WA-002 between 1 World Trade Center, LLC, a Delaware limited liability company and China Center New York, LLC, a Delaware limited liability company, dated March 26, 2009, which is maintained in the files of the Port Authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Port Authority this 13<sup>th</sup> day of January, 2012.

A handwritten signature in cursive script, reading "Karen E. Eastman", written over a horizontal line.

SECRETARY  
THE PORT AUTHORITY  
OF NEW YORK AND NEW JERSEY

**EXECUTION COPY**

**LEASE NO. WA-002**

---

**LEASE**

between

**1 WORLD TRADE CENTER LLC,**  
a Delaware limited liability company

as Landlord

and

**CHINA CENTER NEW YORK LLC,**  
a Delaware limited liability company

as Tenant

Dated as of: March 26, 2009

One World Trade Center  
New York, New York 10048

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## Torres Rojas, Genara

---

**From:** leonardogianella@gmail.com  
**Sent:** Saturday, March 19, 2011 4:02 PM  
**To:** Van Duyne, Sheree  
**Cc:** Torres Rojas, Genara; Duffy, Daniel  
**Subject:** Freedom of Information Online Request Form

### Information:

First Name: Leonardo  
Last Name: Gianella  
Company: Leonardo Gianella LLC  
Mailing Address 1: 857 Ninth Ave  
Mailing Address 2: 2B  
City: New York  
State: NY  
Zip Code: 10019  
Email Address: [leonardogianella@gmail.com](mailto:leonardogianella@gmail.com)  
Phone: 917 279 2935  
Required copies of the records: Yes

### List of specific record(s):

-Sheree Van Duyne Time period: 2010 I am looking for a lease agreement for floors 65-69 of 1 World Trade Center specifically the name of the tenant on the lease. I am also asking that when possible any and all addendums, riders given or any documents attached to this lease outlining any consideration given to the tenants including any given by city, State or federal agencies. Please include a date and time when physical records can be inspected.

---

**From:** Leonardo Gianella <leonardogianella@gmail.com>  
**To:** Buchbinder, Darrell  
**Cc:** Duffy, Daniel  
**Sent:** Thu Nov 17 12:37:19 2011  
**Subject:** RE: FOIL Request #12210 appeal for redacted information and a "certified copy"

Mr. Darrell Buchbinder

This is my formal appeal to obtain the withheld portion of my Freedom of Information request.

I was provided a 159 Page redacted copy of the lease in response to my Freedom of Information Lawsuit. Unfortunately the lease provided me does not fulfill my original request #12210 for a "certified copy" of the lease between Beijing Vantone Industrial and the Port Authority of New York and New Jersey. I am also led to believe that this is not a final executed copy because there are inconsistencies between the lease's restrictions regarding assignment, subletting and mortgage(section 8.01)and China centers website which states plainly that part of its business model is to sublet office space temporarily including virtual business presences etc (notice the "Business center" on the 68-69th floor) [http://www.chinacenter.com/facility\\_and\\_locations](http://www.chinacenter.com/facility_and_locations) this lease

was negotiated by a professional real estate firm for a professional real estate firm suggesting that this inconsistency could not be the final lease.

The lease provided me has omitted the following information that I know about.

1. Price paid per square foot. This was widely reported to be 85dollars per square foot and I do not see how the reasons provided for withholding this information qualify under 3 or 6 of your Freedom of Information policy. The amount paid was widely reported in many real estate trade publications.

2. Lease provided omits information on the letter of credit, its terms and how much.

3. Page 3 is missing definitions after "Building Measurement Standard"

4. Page 4 is missing definition after "China Center"

5. Page 5 is missing definitions for almost whole page

6. Page 9 is missing definition

7. Page 13. is missing definition

8. Page 14 is missing definition

9. Page 17 is missing definition

10. Page 20 is missing information under commencement of term: Condiotn of the premissis

11. Page 21 is missing information after landlords rights to terminate lease.

12. Page 23 is short

13. Page 32 is missing language after (i) Tenant Share or tax share for operating expense.

14. Page 36 is short after section 4.07 "landlords records"

15. Page 38 is short after (e) of Permitted Uses and Limitations on permitted Uses

16. Page 40 is short after "Tenants Use of Common Spaces"

17. Page 41 is left Blank

18. Page 43 is half gone

19. Page 44 is almost completely redacted

20. Page 45 is omitted altogether

21. Page 48 is missing language after (d)

22. Page 63 has information that is omitted

23. Page 64 part (vi) has been omitted

24. Page 69 language omitted after 8.11

25. Page 70 is omitted

26. Page 71 first half is omitted

27. Page 83 (d) is omitted

28. Page 138 completely omitted

29. Page 139 completely omitted

30. Page 140 Completely omitted

31. Page 141 Completely omitted

32. Page 142 half page omitted

33. top half of page 143 before signature page left blank

34. Exhibit B omitted fixed rent

35. Exhibit C omitted HVAC specifications

36. Exhibit C-2 omitted

37. Exhibit E omitted Topic Omitted

38. Exhibit F omitted premises Diagram

39. Exhibits h- work letter

40. Exhibits I omitted cleaning specifications

41. Exhibit J omitted alteration rules and regulations

42. Exhibit K omitted Intentionally omitted

43. Exhibit L omitted form of security letter of credit
44. Exhibit L.1 Form of security letter of credit (pre delivery date only)
45. Exhibit M QAD letter
46. Exhibit N. Form of Commencement Date Agreement
47. Exhibit O China center membership requirements
48. Exhibit P Depiction of the world trade center
49. Exhibit Q Stacking Plan
50. Exhibit R Form of net lessor SNDA
51. Exhibit S Determination of converted restaurant space

If the lease provided me is in fact the final lease I ask for you to review this information withheld as well as the additional 150 pages that were not provided me. I was told in my response by Mr Duffy that information was held pursuant to exemptions (3) and (6) of the Port Authorities freedom of information policy. Specifically that if disclosed would impair present or future awards or negotiations including collective bargaining or negotiations of leases, permits, contracts or others agreements and if disclosed could endanger the life of safety of any person or jeopardize the safety and or security of any facility or information technology system. I am not interested in building diagrams, floor plans electric closet locations etc.

The main terms of this lease including the price per square foot were announced when it was signed back in 2009 very publicly and by multiple sources <http://www.greenbuildingsnyc.com/2009/03/27/vantone-finalizes-1-wtc-lease/> including the Port Authorities own online press release ( [http://www.panynj.gov/press-room/press-item.cfm?headLine\\_id=1137](http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1137) ) which announces a lease negotiated at 80dollars per square foot. Since this is supposedly an executed agreement I am confused how revealing what they have contractually agreed to pay will influence further negotiations. I am also not clear how the redacted portion of "use of space" on page 38 is in anyway relevant to future negotiations or security issues. or the tenants use of common spaces. I respectfully request that you review all redacted portions and provide me all portions that should not be withheld. Furthermore I do not see why the table of contents was redacted. Even if the details of a subject may qualify to be redacted I do not see how the name of the content could in anyway influence further negotiations contracts or be a security issue. I realize that the price per square foot has come down and that early signers to the world trade center may wish to renegotiate their original terms even so the public has a right to know what the original amount was negotiated for especially in executed documents.

Thank you for looking into this matter I eagerly await your response.

Sincerely,

Leonardo Gianella



**THE PORT AUTHORITY OF NY & NJ**

December 14, 2011

*Darrell Buchbinder*  
General Counsel

Mr. Leonardo Gianella  
857 Ninth Avenue, Apt. 2B  
New York, NY 10019

RE: FOI Reference No. 12210 - Appeal

Dear Mr. Gianella:

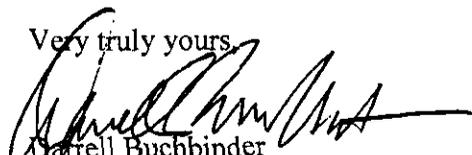
This is a response to your letter transmitted to my office by electronic mail on November 17, 2011 (the Letter). You characterize the Letter as a "formal appeal to obtain the withheld portion of [your] Freedom of Information request."

I am advised that a redacted copy of the lease between China Center New York LLC and the Port Authority (the Lease) was provided to you on November 16, 2011, in response to your request under The Port Authority of New York and New Jersey's policy on Freedom of Information (the Policy, a copy of which was previously made available to you).

The FOI Administrator, acting on behalf of the Secretary of the Port Authority, determined that certain information contained in the Lease was not available for public disclosure under exemptions 3 and/or 6 of the Policy. The FOI Administrator applied exemption 3 to protect information that "if disclosed, would impair present or future awards or negotiations \* \* \* of leases, permits, contracts or other agreements." The FOI Administrator also applied exemption 6 to protect disclosure of information that "if disclosed, could endanger the life or safety of any person or jeopardize the safety and/or security of any facility or information technology system."

Upon a review of the file on this matter, it is my determination that certain information redacted by the FOI Administrator pursuant to exemptions 3 and/or 6 of the Policy should have been disclosed. The FOI Administrator will provide you with a copy of the Lease without those redactions, within approximately five business days.

Very truly yours,

  
Darrell Buchbinder  
General Counsel

cc: Karen E. Eastman, Secretary  
Daniel D. Duffy, FOI Administrator  
Kathleen M. Collins, Esq.

225 Park Avenue South  
New York, NY 10003  
T: 212 435 3515

[dbuchbin@panynj.gov](mailto:dbuchbin@panynj.gov)

**THE PORT AUTHORITY OF NY & NJ**

Daniel D. Duffy  
FOI Administrator

November 3, 2011

Mr. Leonardo Gianella  
Leonardo Gianella LLC  
857 Ninth Avenue, 2B  
New York, NY 10019

Re: Freedom of Information Reference No. 12210

Dear Mr. Gianella:

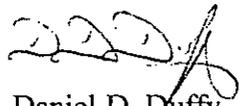
This is a response to your March 19, 2011 request, which has been processed under the Port Authority's Freedom of Information Policy (the "Policy") for copies of the lease agreements for the 65-69 floors of 1 World Trade Center specifically the name of the tenant on the lease, including addendums, riders given or any documents attached to the lease outlining any consideration given to the tenants by the city, state or federal agencies for 2008, 2009 and 2010.

Material responsive to your request and available under the Policy, which consists of 159 pages, will be forwarded to your attention upon receipt of a photocopying fee of \$39.75 (25¢ per page). Payment should be made in cash, certified check, company check or money order payable to "The Port Authority of New York & New Jersey" and should be sent to my attention at 225 Park Avenue South, 17<sup>th</sup> Floor, New York, NY 10003.

Certain material responsive to your request is exempt from disclosure pursuant to exemptions (3) and (6) of the Policy.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Sincerely,



Daniel D. Duffy  
FOI Administrator

I, KAREN E. EASTMAN, Secretary of The Port Authority of New York and New Jersey (hereinafter called the "Port Authority"), a body corporate and politic and a municipal corporate instrumentality of the States of New York and New Jersey created and existing by virtue of the Compact of April 30, 1921, made by and between said States and thereafter consented to by the Congress of the United States, hereby certify that annexed hereto is a true and correct copy of Lease No. WA-002 between 1 World Trade Center, LLC, a Delaware limited liability company and China Center New York, LLC, a Delaware limited liability company, dated March 26, 2009, which is maintained in the files of the Port Authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Port Authority this 13<sup>th</sup> day of January, 2012,

A handwritten signature in cursive script, reading "Karen E. Eastman", written over a horizontal line.

SECRETARY  
THE PORT AUTHORITY  
OF NEW YORK AND NEW JERSEY

**EXECUTION COPY**

**LEASE NO. WA-002**

---

**LEASE**

between

**1 WORLD TRADE CENTER LLC,**  
a Delaware limited liability company

as Landlord

and

**CHINA CENTER NEW YORK LLC,**  
a Delaware limited liability company

as Tenant

Dated as of: March 26, 2009

One World Trade Center  
New York, New York 10048

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## Exhibits

|             |                                                                    |
|-------------|--------------------------------------------------------------------|
| Exhibit A   | REBNY Recommended Method of Floor Measurement for Office Buildings |
| Exhibit B   | Fixed Rent                                                         |
| Exhibit C   | HVAC Specifications                                                |
| Exhibit D   | Description of Land                                                |
| Exhibit E   | Intentionally Omitted                                              |
| Exhibit F   | Premises Diagram                                                   |
| Exhibit G   | Building Rules and Regulations                                     |
| Exhibit H   | Work Letter                                                        |
| Exhibit I   | Cleaning Specifications                                            |
| Exhibit J   | Alterations Rules and Regulations                                  |
| Exhibit K   | Intentionally Omitted                                              |
| Exhibit L   | Form of Security Letter of Credit                                  |
| Exhibit L.1 | Form of Security Letter of Credit (Pre-Delivery Date Only)         |
| Exhibit M   | QAD Letter                                                         |
| Exhibit N   | Form of Commencement Date Agreement                                |
| Exhibit O   | China Center Membership Requirements                               |
| Exhibit P   | Depiction of the World Trade Center                                |
| Exhibit Q   | Stacking Plan                                                      |
| Exhibit R   | Form of Net Lessor SNDA                                            |
| Exhibit S   | Determination of Converted Restaurant Space FMV                    |

This AGREEMENT OF LEASE (this "Lease"), dated as of the Effective Date (as hereinafter defined), is between 1 WORLD TRADE CENTER LLC, a Delaware limited liability company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue, 15<sup>th</sup> Floor, New York, New York 10003, as Landlord, and CHINA CENTER NEW YORK LLC, a Delaware limited liability company, having an office at One Battery Park Plaza, 5<sup>th</sup> Floor, New York, New York 10004, as Tenant.

**WITNESSETH:**

**ARTICLE 1**

**DEFINITIONS; PREMISES; TERM**

**Section 1.01 Defined Terms.** As used in this Lease, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"AAA" means the American Arbitration Association or its successor.

"Abatement Notice" has the meaning set forth in Section 12.05.

"ADA" means The Americans with Disabilities Act, Title III, 42 U.S.C. § 12,101 et seq., and any amendments thereto.

"Additional Rent" means Tenant's Tax Payment and Tenant's Operating Expense Payment, Percentage Rent, and any and all other sums, other than Fixed Rent, payable by Tenant under this Lease or otherwise in connection with the use and occupancy of the Premises including, without limitation, sums payable under work orders issued by Landlord's managing agent.

"Adjustment Date" has the meaning set forth in the definition of "CPI Fraction."

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, whether or not through one or more intermediaries, Controls, is Controlled by or is under common Control with such first Person. For the purpose of this Lease, "Control" means (i) the ownership, directly or indirectly, of at least 50% of (x) the outstanding stock (if a corporation) or (y) the beneficial ownership interest (if not a corporation) and (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by statutory authority, by contract, or otherwise.

"Alterations" means alterations, installations, improvements, additions and other physical changes made by or on behalf of Tenant or a Tenant Party in or about the Premises, including, without limitation, Tenant's Initial Alterations, Material Alterations, or Decorative Alterations.

"Alteration Threshold" has the meaning set forth in Section 13.01(a).

"Antenna Area" has the meaning set forth in Section 34.01.

"Antenna" and "Antennae" have the respective meanings set forth in Section 34.01.

"Antennae Charge" has the meaning set forth in Section 34.02(b).

"Antennae Notice" has the meaning set forth in Section 34.01.

"Antennae Reservation Period" means from the Effective Date until the later of (i) December 31, 2009 and (ii) the date that is the first anniversary of the Effective Date.

"Assignment" has the meaning set forth in Section 8.01(b).

"Base Building Restoration" has the meaning set forth in Section 17.02(a).

"Base Building Specifications" has the meaning set forth in the Work Letter.

"Base Building Specification TSW Changes" has the meaning set forth in the Work Letter.

"Base Building Upgrade Condenser Water" has the meaning set forth in Section 6.02(d).

"Base Operating Expenses" has the meaning set forth in Section 4.02(a).

"Base Operating Year" has the meaning set forth in Section 4.02(b).

"Base Tax Year" has the meaning set forth in Section 4.02(c).

"Base Tax Amount" has the meaning set forth in Section 4.02(d).

"BID Charges" means all charges paid by Landlord with respect to the Real Property to any Governmental Authority or to Net Lessor on account of any business improvement district or similar charges or assessments, including, without limitation, all amounts payable under Section 6.8 of the Net Lease.

"Board of Stakeholders" has the meaning set forth in the REOA (and is sometimes referred to in the REOA as the "Net Lessee's Association").

"Broker" has the meaning set forth in Section 28.12.

"Building" means all the buildings, equipment and other improvements and appurtenances of every kind and description (but excluding Tenant's Property) now or hereafter erected, constructed or placed upon the Land and any and all alterations, renewals, replacements, additions and substitutions thereto. For purposes of clarity only, and not by way of limitation or

further definition, the Building is also commonly and colloquially known as "One World Trade Center."

"Building Area" means 2,119,739 USF, calculated in accordance with the Building Measurement Standard, subject to final confirmation in accordance with the Work Letter.

"Building HVAC System" has the meaning set forth in Section 6.02(a).

"Building Measurement Standard" means a determination of usable areas in accordance with The Real Estate Board of New York Recommended Method of Floor Measurement for Office Buildings, effective January 1, 1987 (as shown on Exhibit A attached hereto) and a determination of rentable areas utilizing a loss factor from rentable to usable (i.e., the rentable square footage less of such rentable square footage equals the usable square footage).

"Building Office Space" shall mean floors 20 through 89 of the Building.

"Building Services" has the meaning set forth in Section 6.01.

"Building Systems" means, collectively, the electrical, HVAC, mechanical, chilled water, sanitary, sprinkler, utility, power, plumbing, cleaning, fire protection, alarm and prevention systems, elevator, escalator, window washing, waste compacting and removal, lighting, life safety and security systems of the Building (together with all related equipment), brought to (and including), but not beyond, the point of distribution to the Premises or the point of connection to Tenant's Special Work, Tenant's Initial Alterations or other Alterations, provided that all components of the Building's common HVAC systems, including the units and controls located in the Premises (but excluding all Supplemental AC Units or related equipment installed by or for the exclusive use of Tenant), all components of the Building's sprinkler system up to and including the main sprinkler loop on each floor and all components of the Building's plumbing system in or serving any common area lavatories shall be deemed to be part of the Building Systems, as well as all other facilities and equipment that are used for the provision of Building Services (whether or not located within the Premises); excluding, however, in all events, Tenant's Special Work (except as provided in the next sentence), Tenant's Initial Alterations, any subsequent Alterations, and Tenant's Property, as well as the improvements and betterments, and the moveable personal property, of other tenants of the Building. Notwithstanding the foregoing, the term "Building Systems" shall include any fixtures or equipment which are upgraded or replaced as part of Tenant's Special Work, provided such fixtures and equipment would have constituted Building Systems in the absence of such replacement or upgrade ("Upgraded Building Systems"). By way of example, (i) if a base-Building DX unit is replaced with a larger capacity DX unit as part of Tenant's Special Work, the larger capacity DX unit shall constitute an Upgraded Building System and, therefore, a Building System, and (ii) if a new conduit or utility line is installed as part of Tenant's Special Work (i.e., not in replacement of a conduit or utility line which is a Building System), such new conduit or utility line would not constitute an Upgraded Building System or a Building System.

"Business Center Uses" has the meaning set forth in Section 5.04(a).

"Business Days" means Monday through Friday exclusive of all legal holidays in the State of New York, including any additional days that are designated as holidays (other than employee birthdays) by any applicable Building service union contract or by any applicable operating engineers contract.

"Catering Area" has the meaning set forth in Section 5.04(a)(iv).

"Catering Facilities" has the meaning set forth in Section 5.04(a)(iv).

"CFM" or "cfm" means cubic feet per minute.

"China Center" shall mean the business operated in the Premises by the Named Tenant, including without limitation the Business Center Uses.

"China Center Member" shall mean a Core Business Licensee who shall have been admitted as a member of the China Center in accordance with the membership standards and requirements of Tenant set forth on Exhibit O attached hereto. In no event shall Tenant allow any Person to become a China Center Member on a discounted or subsidized basis for the sole purpose of using the Premises for any Business Center Use for which such Person is required under this Lease to be a China Center Member.

"City Agreement" means that certain Restated and Amended Agreement between Net Lessor and The City of New York, dated as of November 24, 2004, as the same has been and may hereafter be amended from time to time.

"Cleaning Specifications" means the cleaning specifications set forth in Exhibit I attached hereto.

"Commencement Date" means the date that is the later to occur of (i) the Effective Date, and (ii) the Delivery Date.

"Common Areas" means the core and shell of the Building, including, without limitation, (i) the Lobby and the skylobby located on the 64<sup>th</sup> floor, (ii) the roof of the Building (other than portions of the roof used exclusively by Landlord, Tenant, or other tenants of the Building), (iii) elevators, mechanical rooms, electrical closets, janitorial and telecommunication closets, (iv) elevator lobbies, common toilets and corridors and (v) other areas, if any, shared by two (2) or more occupants on multi-tenant floors, the Building Systems and the public portions of the Building.

"Comparable Buildings" means first-class office buildings located in downtown Manhattan that are comparable in quality, character and service level to the Building.

"Conduit Risers" has the meaning set forth in Section 6.07.

"Conference Facilities" has the meaning set forth in Section 5.04(a)(ii).

"Core Business Licensee" means any Person who (i) if such Person is an individual, either (A) such Person is a Chinese national or (B) such Person is not a Chinese

national, but a primary business of such Person is to transact business, directly or indirectly, in China or with companies incorporated or formed under Chinese law, (ii) if such Person is not an individual, is either (A) a company (or any Affiliate thereof) incorporated or formed under Chinese law, (B) any other company (or any Affiliate thereof) a primary business of which is to transact business, directly or indirectly, in China or with companies incorporated or formed under Chinese law or whose legal name includes the word "China", "Sino" or "Chinese" and/or with Chinese individuals, or (C) any other company (or any Affiliate thereof), the primary business of whose employees using the Premises is to transact business, directly or indirectly, in China or with companies (or any Affiliates thereof) incorporated or formed under Chinese law and/or with Chinese nationals, (iii) in the case of any Person that is not an individual, shall be in good standing under the laws of the jurisdiction of its formation (or the equivalent standard under applicable law, if any), (iv) shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity, unless such Person (A) irrevocably waives such sovereign immunity pursuant to a written waiver reasonably satisfactory to Landlord and (B) if requested by Landlord, provides a legal opinion from a nationally recognized United States law firm in form and substance reasonably satisfactory to Landlord opining (1) that such waiver is legal, valid and binding on such Person and is enforceable in the courts of New York State and (2) as to such other matters as Landlord shall reasonably require, (v) shall be subject to the service of process in, and the jurisdiction of the courts of, New York State, (vi) is engaged in a business or activity, and the Premises, or the relevant part thereof, will be used in a manner, that (A) is in keeping with the then standards of the Building and is in compliance with the terms of this Lease, and (B) is limited to executive, administrative and general offices and such incidental ancillary uses reasonably approved by Landlord in connection therewith, (vii) does not have a reputation that is not in keeping with the standards of the Building as a first class office building, (viii) is not (and does not have an Affiliate who is) identified on the OFAC List or otherwise qualifies as a Prohibited Person, and (ix) is not in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time (and any successor thereto).

"Core Business Licensee Lease Notice" has the meaning set forth in Section 5.06.

"Core Business Licensee Option Notice" has the meaning set forth in Section 5.06.

"CPI" means (i) The Consumer Price Index (New Series) (Base Period 1982-84=100) (all items for all urban consumers for New York-Northeastern New Jersey (CPI-U) Area) as published by the Bureau of Labor Statistics of the United States Department of Labor, or (ii) if the same is discontinued, a replacement index published by the Department of Labor or other applicable governmental authority, appropriately adjusted, or (iii) in the event that the CPI is converted to a different standard reference base or otherwise revised, such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics, or (iv) if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or any other nationally recognized publisher of similar statistical information selected by Landlord and reasonably approved by

Tenant, or (v) if the CPI ceases to be published, and there is no successor thereto, such other index as Landlord and Tenant shall agree upon in writing shall be substituted for the CPI, or (vi) if Landlord and Tenant are unable to agree as to such substituted index under clause (v) above, such matter shall be resolved by arbitration in accordance with the provisions of Article 25. Pending the resolution of such dispute under clause (vi) above, CPI-based increases provided for herein shall be determined in accordance with the substituted index selected by Landlord; subject to adjustment when finally determined with the appropriate party being entitled to a refund from the other party of any overpayment within twenty (20) days of written notice of such final determination.

“CPI Fraction” means as of each January 1st during the Term (each, an “Adjustment Date”), a fraction (i) the numerator of which is the CPI for the calendar month immediately preceding such Adjustment Date and (ii) the denominator of which is the CPI for the calendar month immediately preceding the Commencement Date.

“Decorative Alterations” has the meaning set forth in Section 13.01(a).

“Deficiency” has the meaning set forth in Section 20.04(a)(ii).

“Delivery Date” has the meaning set forth in the Work Letter.

“Effective Date” means March 26, 2009 (i.e., the date upon which a fully executed counterpart of this Lease has been delivered to each of Landlord and Tenant, which date Landlord shall insert in the blank above).

“Electric Inclusion Charge” has the meaning set forth in Section 7.01(d).

“Eligible Space” has the meaning set forth in Section 8.13.

“ESDC” has the meaning set forth in Section 3.05.

“Estimated Tenant’s Operating Expense Payment” has the meaning set forth in Section 4.03(b).

“Excepted Specialty Alterations” has the meaning set forth in Section 13.04.

“Expense Estimate” has the meaning set forth in Section 4.03(b).

“Expense Statement” has the meaning set forth in Section 4.03(d).

“Event of Default” has the meaning set forth in Section 20.01.

“Event Space” has the meaning set forth in Section 5.04(b).

“Expiration Date” means (i) the Initial Expiration Date or any date to which the Term may be extended pursuant to any express amendment of this Lease or pursuant to the exercise of the First Extension Option pursuant to Article 35 or Second Extension Option pursuant to Article 36, or (ii) the date upon which the Term shall terminate sooner or later

pursuant to any of the terms, covenants or conditions of this Lease or pursuant to law, including, without limitation, as set forth in Article 20.

“Federal Bankruptcy Code” means Title 11 of the United States Code, as amended or superseded from time to time.

“Final Tax Statement” has the meaning set forth in Section 4.04(b).

“First Determination Date” shall have meaning set forth in Section 35.05.

“First Dispute Notice” shall have meaning set forth in Section 35.05.

“First Extension Exercise Notice” shall have meaning set forth in Section 35.01(a).

“First Extension Exercise Notice Date” shall have meaning set forth in Section 35.01(a).

“First Extension Minimum Rent” shall have meaning set forth in Section 35.06(e).

“First Extension Option” shall have meaning set forth in Section 35.01(a).

“First Extension Rent” shall have meaning set forth in Section 35.04(b).

“First Extension Term” shall have meaning set forth in Section 35.01(a).

“First Extension Term Commencement Date” shall have meaning set forth in Section 35.01(a).

“First Extension Term Expiration Date” shall have meaning set forth in Section 35.01(a).

“First FMV Agreement” shall have meaning set forth in Section 35.05.

“First FMV Amount” shall have meaning set forth in Section 35.04(b).

“First Increase” shall have the meaning set forth in Section 33.03.

“First Lease Year” shall have meaning set forth in the definition of “Lease Year.”

“First Rent Notice” shall have meaning set forth in Section 35.05.

“Fixed Rent” an annual fixed rent as set forth on Exhibit B attached hereto.

“Force Majeure” means any actual delays resulting from any causes beyond Landlord’s or Tenant’s reasonable control, as the case may be, including, without limitation, governmental regulation, governmental restriction, strike, labor dispute, unusual weather, riot, mob violence, malicious mischief, embargo, enemy action, civil commotion, inability to obtain

materials (giving due regard for the ability to substitute similar materials), acts of God, war, sabotage, hostilities, invasion, insurrection, terrorist acts, fire, earthquakes, flood or other casualty and other like circumstances to the extent not attributable to the acts or omissions of Landlord (and, for so long as Landlord is an Affiliate of Net Lessor, Net Lessor, except to the extent Net Lessor is acting in its capacity as a Governmental Authority) or Tenant, as applicable. Under no circumstances shall the financial inability to perform or a lack of funds be deemed to be (or to have caused) an event of Force Majeure.

“Freight Operating Hours” has the meaning set forth in Section 6.03(b).

“GAAP” means generally accepted accounting principles consistently applied.

“Gas Provider” has the meaning set forth in Section 6.08.

“Gas Riser” has the meaning set forth in Section 6.08.

“Governmental Authority” means any of the United States of America, the State of New York, the City of New York, and the Port Authority and any political subdivision, agency, department, commission, board, bureau or instrumentality thereof and any of any of the foregoing, now existing or hereafter created, having jurisdiction over the Building and/or the Land or any portion thereof or the curbs, sidewalks, and areas adjacent thereto, other than the Port Authority in its capacity as an occupant of the Building or as lessor under the Net Lease (as contrasted with its governmental capacity).

“Gross Sales” has the meaning set forth in Section 37.02.

“Gross Sales Statement” has the meaning set forth in Section 37.03.

“Gubernatorial Review Legislation” has the meaning set forth in Section 28.08.

“Hazardous Substances” has the meaning set forth in the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and applicable regulations.

“Holdover Amount” has the meaning set forth in Section 22.02(a).

“HVAC” means heating, ventilation and air-conditioning.

“HVAC Specifications” means the specifications with respect to the Building HVAC System attached hereto as Exhibit C, as the same may be modified pursuant to any Base Building Specification TSW Changes.

“Incoming Deliveries” has the meaning set forth in Section 39.03.

“Indemnified Party Notice” has the meaning set forth in Section 16.01(c).

“Initial Expansion Notice” means a written notice from Tenant to Landlord pursuant to which Tenant elects to lease the Initial Expansion Space.

“Initial Expansion Space” means, at Tenant’s option to be designated by Tenant in the Initial Expansion Option Notice, either (i) the entire 70th floor of the Building, or (ii) the entire 70th and 71st floors of the Building. Each floor included in the Initial Expansion Space, shall be deemed to contain the USF and the RSF set forth below:

| Floor | USF | RSF |
|-------|-----|-----|
| 71    |     |     |
| 70    |     |     |

“Initial Expansion Space Increase Percentage” has the meaning set forth in Section 2.05 hereof.

“Initial Expiration Date” means the last day of the month in which the twentieth (20th) anniversary of the Rent Commencement Date occurs.

“Initial Term” means the initial term of this Lease commencing on the Commencement Date and ending on the Initial Expiration Date, or such sooner date as this Lease shall terminate pursuant to any of the terms, covenants, or conditions of this Lease or pursuant to law.

“In-Kind Service Credit” has the meaning set forth in Section 38.01.

“In-Kind Services” has the meaning set forth in Section 38.01.

“Land” means the land described in Exhibit D attached hereto in the Borough of Manhattan, City, County and State of New York.

“Landlord” means 1 World Trade Center LLC, a Delaware limited liability company, and its successors and assigns, as construed by Article 23.

“Landlord Entity” means Landlord or any Affiliate of Landlord.

“Landlord Party” means any of Landlord, any Affiliate of Landlord, Landlord’s managing and leasing agents for the Building, each Mortgagee and Superior Lessor, and each of their respective direct and indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, employees, principals, contractors, licensees, agents and representatives.

“Landlord Repairs” has the meaning set forth in Section 12.01.

“Landlord’s Contribution” has the meaning set forth in Section 31.01(a).

“Landlord’s Work” means the Basic Construction (as defined in the Work Letter).

“Late Charge Amendment” has the meaning set forth in Section 3.04(b).

“Lease” has the meaning set forth in the Preamble.

“Lease Year” means the period commencing on the Rent Commencement Date and ending on the last day of the calendar month in which the first anniversary of the Rent Commencement Date occurs (the “First Lease Year”) and each subsequent twelve (12) month period commencing on the first day of the calendar month immediately following the end of the First Lease Year.

“Legal Requirements” means any and all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, executive orders, and any judicial interpretations thereof, extraordinary as well as ordinary, of all Governmental Authorities, including the Americans with Disabilities Act (42 U.S.C. § 12, 101 et seq.), the Port Authority Manual and any law of like import, and all rules, regulations and government orders with respect thereto and any of the foregoing relating to environmental matters, hazardous materials, public health and safety matters, and of the New York Board of Underwriters, the New York Fire Insurance Rating Organization or any other fire rating organizations or insurance entities performing similar functions, in each case, affecting the Real Property or the Premises or the maintenance, use or occupation thereof, or any street or sidewalk comprising a part of or in front thereof or any vault in or under the Real Property.

“Litigation Legislation” means the concurrent legislation of the State of New York and the State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§ 7101-7112), and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. §§ 32:1-157 to 168), as each of them may be amended from time to time.

“Lobby” means the ground floor lobby of the Building.

“Material Alterations” has the meaning set forth in Section 13.01(a).

“Media Center Facilities” has the meaning set forth in Section 5.04(a)(v).

“Messenger Center” has the meaning set forth in Section 39.01.

“Minimum Extension Block” has the meaning set forth in Section 35.01(b).

“Minor Alterations” has the meaning set forth in Section 13.01(a).

“Mortgage” means any mortgage or trust indenture that may now or hereafter affect the Real Property, the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

“Mortgagee” means any mortgagee, trustee or other holder of the mortgagee’s interest under a Mortgage, and any interest in the loan evidenced thereby.

“Named Tenant” shall mean the initial named Tenant (i.e., China Center New York LLC, a Delaware limited liability company) and its Permitted Transferees and any Affiliate of the Named Tenant or its Permitted Transferees to whom this Lease is assigned in accordance with Section 8.02(b).

"Net Lease" means that certain Amended and Restated Agreement of Lease dated as of July 16, 2001, executed November 16, 2006 by and between the Port Authority, as landlord, and Landlord, as tenant, as same has been or may hereafter be modified, amended, revised, restated or supplemented from time to time.

"Net Lessor" means the Port Authority, or any successor thereto, in either case in its capacity as lessor under the Net Lease.

"Net Lessor SNDA" means a subordination, attornment and non-disturbance agreement with respect to the Net Lease in Net Lessor's customary form, a copy of which is attached hereto as Exhibit R.

"Non-Disturbance Agreement" means, with respect to any future Mortgage or Superior Lease, as the case may be, a subordination, attornment and non-disturbance agreement duly executed and acknowledged by a Superior Lessor (including a Successor Landlord) or Mortgagee, as the case may be, and Tenant, in recordable form, and on the Superior Lessor's (including Successor Landlord's) or Mortgagee's (as the case may be) then-standard form of non-disturbance agreement, which shall, in each case, provide that so long as Tenant shall not be in default under this Lease beyond the expiration of any applicable grace or cure period provided for hereunder, Tenant's right of peaceable and quiet use, occupancy, enjoyment and possession of the Premises shall not be disturbed by such Superior Lessor or Mortgagee (as the case may be).

"NYCBC" has the meaning set forth in Section 5.04(c).

"NYCDOB" has the meaning set forth in Section 5.04(c).

"NYPA" has the meaning set forth in Section 7.01(a).

"NYPA Rates" has the meaning set forth in Section 7.01(c).

"OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

"Office Suite Areas" has the meaning set forth in Section 5.04(a)(i).

"Office Suite Uses" has the meaning set forth in Section 5.04(a)(i).

"Office Suites" has the meaning set forth in Section 5.04(a)(i).

"Operating Expenses" has the meaning set forth in Section 4.02(e).

"Operating Hours" means between 8:00 A.M. and 6:00 P.M. New York City time on Business Days.

"Operating Year" has the meaning set forth in Section 4.02(f).

“Operator Agreement” has the meaning set forth in Section 5.07(a).

“Op Ex Gross Up” has the meaning set forth in Section 4.02(e).

“Other Office Space” has the meaning set forth in Section 8.12(b).

“Outgoing Deliveries” has the meaning set forth in Section 39.04.

“Overtime Periods” has the meaning set forth in Section 6.02(c).

“Percentage Rent” has the meaning set forth in Section 37.01.

“Percentage Rent Operations” has the meaning set forth in Section 37.02.

“Percentage Rent Year” has the meaning set forth in Section 37.01.

“Permitted Occupancy License” has the meaning set forth in Section 8.12(a)(iv).

“Permitted Office Occupants” has the meaning set forth in Section 8.12(a).

“Permitted Operators” has the meaning set forth in Section 5.07.

“Permitted RCD Extension” has the meaning set forth in the definition of “Rent Commencement Date.”

“Permitted Transferees” has the meaning set forth in Section 8.02(a).

“Permitted Uses” means use as executive, administrative and general offices, and the permitted lawful uses ancillary thereto described in Article 5, including the Business Center Uses, and for no other use or purpose.

“Person” means any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, joint venture, estate, trust, unincorporated association, business trust, tenancy-in-common or other entity or any Governmental Authority.

“PILOT” means such payments in lieu of Taxes as Landlord is required to make to New York City under the City Agreement, or to any Governmental Authority, or to the Net Lessor pursuant to Section 6.10 of the Net Lease.

“Port Authority” means The Port Authority of New York and New Jersey.

“Port Authority Captive” has the meaning set forth in Section 16.09(d).

“Port Authority Manual” shall mean, collectively, (i) the Tenant Construction Review Manual dated March 2003, (ii) the Architectural, Structural & MEP Tenant Requirement Manual, (iii) the Tenant Construction Application/Tenant Alteration Application Process & Procedures Guide dated September 20, 2006, (iv) World Trade Center Site Rules and Regulations effective January 1, 2006 and (v) the Security Guidelines, as such Port Authority Manual may be implemented, modified or supplemented from time to time, it being

acknowledged that items (ii) and (v) herein have not yet been promulgated by the Port Authority and will automatically become part of the Port Authority Manual upon promulgation by the Port Authority.

“Pre-Delivery Date LOC” has the meaning set forth in Section 33.02(e).

“Preliminary Tax Statement” has the meaning set forth in Section 4.04(a).

“Premises” means a portion of the 64th floor of the Building and the entire 65th through 69th floors of the Building (collectively, “Tenant’s Above Grade Space”), a portion of the B4M basement level of the Building (“Tenant’s Below Grade Space”) and a portion of the Building’s mechanical space (“Tenant’s Mechanical Space”), all as more particularly depicted on the diagrams attached hereto as Exhibit F. Tenant’s Above Grade Space, and each floor or portion thereof included in the Premises, shall be deemed to contain the USF and the RSF set forth below, subject to final confirmation in accordance with the Work Letter:

| Floor        | USF            | RSF            |
|--------------|----------------|----------------|
| 69           |                |                |
| 68           |                |                |
| 67           |                |                |
| 66           |                |                |
| 65           |                |                |
| 64           |                |                |
| <b>Total</b> | <b>143,108</b> | <b>190,810</b> |

Tenant’s Below Grade Space shall be deemed to contain USF and RSF, subject to final confirmation in accordance with the Work Letter.

Tenant’s Mechanical Space shall be deemed to contain USF and RSF (provided, however, that Tenant at its option may reduce the size of Tenant’s Mechanical Space by providing Landlord with written notice of such election no later than ninety (90) days following the Effective Date, which notice shall provide in reasonable detail the proposed new layout and USF and RSF of such smaller Tenant’s Mechanical Space, which proposed new layout shall be subject to Landlord’s reasonable approval), subject to final confirmation in accordance with the Work Letter.

“Prime Rate” means an interest rate per annum equal to the prime rate established by Citibank, N.A., provided, however, if Citibank, N.A. shall cease to establish and publish a prime rate, the rate shall be the prime rate established by the commercial bank in New York City with the highest net worth then establishing and publishing a prime rate, and if no such commercial bank shall establish and publish a prime rate, the rate to be used for the purposes of this definition shall be a comparable rate for the purposes of establishing the cost of money as determined by Landlord, acting in a reasonable manner.

“Private Club Facilities” has the meaning set forth in Section 5.04(a)(iii).

“Quality Assurance Division” or “QAD” means that group within the Net Lessor’s Engineering Department responsible for all matters relating to the Port Authority Manual and code compliance.

“QAD Letter” has the meaning set forth in Section 5.04(c).

“Real Property” means, collectively, the Building, the Land and the Appurtenances (as defined in Section 2.1.1 of the Net Lease).

“Rent” means all Fixed Rent, Tenant’s Operating Expense Payments, Tenant’s Tax Payments, and all other Additional Rent.

“Rent Commencement Date” means the date that is nine (9) months following the Commencement Date. Notwithstanding the foregoing, if there occurs, during the nine (9) month period beginning on the Commencement Date, an event which would entitle Tenant to an abatement of Rent pursuant to Section 12.05, Article 17 or Article 18 (or would have entitled Tenant to an abatement of rent pursuant to Section 12.05, Article 17 or Article 18 had Tenant then been in occupancy of the Premises for the conduct of Tenant’s business), then the Rent Commencement Date shall be extended by one additional day for each day the Rent would have been abated during such nine (9) month period (such extension pursuant to this sentence, a “Permitted RCD Extension”). The Rent Commencement Date is subject to further extensions as provided in Section H of the Work Letter.

“Rent Subsidy” has the meaning set forth in Section 3.05.

“Rentable Square Feet/Foot/Footage”, “rentable square feet/foot/footage”, or “RSF” means rentable square feet/foot/footage of the Building or any portion thereof determined in accordance with the Building Measurement Standard.

“REOA” means that certain Reciprocal Easement and Operating Agreement of the West Portions of the World Trade Center dated as of November 16, 2006 by and among the Port Authority, Landlord, and WTC Retail LLC, as the same may be amended, modified, revised or supplemented from time to time.

“Requisite Net Worth” has the meaning set forth in Section 8.13(a).

“Resubmission Process” has the meaning set forth in Section 13.02(c).

“Revised Estimate” has the meaning set forth in Section 4.03(b).

“Risers” has the meaning set forth in Section 6.08.

“Rules and Regulations” means the rules and regulations attached hereto as Exhibit G, as same may be modified or supplemented from time to time in accordance with the provisions of this Lease.

“Second Determination Date” shall have meaning set forth in Section 36.05.

“Second Dispute Notice” shall have meaning set forth in Section 36.05.

“Second Extension Exercise Notice” shall have meaning set forth in Section 36.01(a).

“Second Extension Exercise Notice Date” shall have meaning set forth in Section 36.01(a).

“Second Extension Minimum Rent” shall have meaning set forth in Section 36.06(e).

“Second Extension Option” shall have meaning set forth in Section 36.01(a).

“Second Extension Rent” shall have meaning set forth in Section 36.04(b).

“Second Extension Term” shall have meaning set forth in Section 36.01(a).

“Second Extension Term Commencement Date” shall have meaning set forth in Section 36.01(a).

“Second Extension Term Expiration Date” shall have meaning set forth in Section 36.01(a).

“Second FMV Agreement” shall have meaning set forth in Section 36.05.

“Second FMV Amount” shall have meaning set forth in Section 36.04(b).

“Second Increase” shall have the meaning set forth in Section 33.03.

“Second Rent Notice” shall have meaning set forth in Section 36.05.

“Section 12.05 Tenant Delay” has the meaning set forth in Section 12.05.

“Secured Access Area” has the meaning set forth in Section 6.15(a).

“Security Letter” has the meaning set forth in Section 33.02(a).

“Self-Insured Retention” has the meaning set forth in Section 16.09(c).

“Specialty Alterations” means installations made in the Premises (or by Tenant elsewhere in the Building) that are not customary for typical office tenants, including, but not limited to, raised flooring, Supplemental AC Units, vaults, supplemental fire and pre-action systems, kitchen and cooking facilities (including ducts and flues), cafeteria, auditorium, child or health care facilities, print shop, conveyors, dumbwaiters, internal staircases, escalators and elevators, spa and fitness facilities, conference facilities (in excess of a standard number of conference rooms of standard size on each floor for a typical office occupant), media and broadcast facilities, private restrooms and showers, and any changes made by Tenant to standard Building conditions in core bathrooms. The term “Specialty Alterations” shall not include (i) reinforcements to strengthen floor slabs provided such reinforcements do not reduce the slab to

slab floor height, (ii) Upgraded Building Systems, or (iii) any widening of fire stair doorways performed as part of Tenant's Special Work.

"Stacking Plan" has the meaning set forth in Section 5.04(a).

"Subletting/Assignment Notice" has the meaning set forth in Section 8.03(a).

"Successor Landlord" has the meaning set forth in Section 9.03(a).

"Superior Lease" means any ground or underlying lease of the Real Property or any part thereof heretofore or hereafter made by Landlord, as tenant, and all renewals, extensions, supplements, amendments and modifications thereof (including, without limitation, the Net Lease).

"Superior Lessor" means the lessor under a Superior Lease.

"Superior Mortgage" means any mortgage which may now or hereafter affect the Real Property or the Building and any modifications, extensions or replacements thereof.

"Superior Mortgagee" means the holder or holders (including the agent for any lending syndicate or a trustee for the benefit of any such holder) of a Superior Mortgage.

"Supplemental AC Condenser Water" has the meaning set forth in Section 6.02(d).

"Supplemental AC Units" has the meaning set forth in Section 6.02(d).

"Supplemental Kitchen AC Unit" has the meaning set forth in Section 6.02(d).

"Taxes" has the meaning set forth in Section 4.02(g).

"Tax Year" has the meaning set forth in Section 4.02(h).

"Tenant" means China Center New York LLC, a Delaware limited liability company, and its successors and permitted assigns (including, without limitation, Permitted Transferees), provided that Tenant or any assignee shall not be released from liability under this Lease in the event of an assignment hereof, other than as expressly provided herein. Notwithstanding anything to the contrary contained in this Lease, at all times during the Term, Tenant shall, in the opinion of Net Lessor, be eligible, suitable and qualified as a World Trade Center tenant, and in exercising its opinion with respect to a proposed tenant, Net Lessor shall apply criteria (x) no less favorable than the criteria used by it in making similar determinations with respect to tenants at the World Trade Center prior to July 16, 2001 (the date of a net lease transaction prior to which Net Lessor was landlord of the entire World Trade Center), as established in the context of the nature of the business conducted and the square footage occupied by tenants at the World Trade Center prior to said date, and (y) in a non-discriminatory manner as against Tenant (i.e., Landlord shall not enforce any such criteria against Tenant that it is not then enforcing generally against other tenants in the Building). Landlord acknowledges that, as of the date hereof, China Center New York LLC, a Delaware limited liability company,

is qualified as a World Trade Center tenant within the meaning of the immediately preceding sentence.

“Tenant Party” means any of Tenant, any Affiliate of Tenant, any subtenant, assignee or other occupant of the Premises, and each of their respective direct and indirect partners, officers, shareholders, directors, members, trustees, beneficiaries, employees, principals, contractors, licensees, agents and representatives.

“Tenant’s Above Grade Space” has the meaning set forth in the definition of “Premises.”

“Tenant’s Below Grade Space” has the meaning set forth in the definition of “Premises.”

“Tenant’s Mechanical Space” has the meaning set forth in the definition of “Premises.”

“Tenant’s Operating Expense Payment” has the meaning set forth in Section 4.03(a).

“Tenant’s Operating Expense Share” has the meaning set forth in Section 4.02(i)(3).

“Tenant’s Special Work” has the meaning set forth in the Work Letter.

“Tenant’s Initial Alterations” has the meaning set forth in the Work Letter.

“Tenant’s Plans” has the meaning set forth in Section 13.02.

“Tenant’s Property” means Tenant’s movable fixtures and movable partitions, telephone and other communications equipment, computer systems, furniture, trade fixtures, kitchen and HVAC equipment that is not permanently affixed to the Premises, satellite dishes, furnishings, art work, decorations, specialty lighting fixtures and other items of personal property (excluding property that is built into the Premises and custom-fitted furniture or cabinetry) whether or not affixed to the Premises, that are removable without material damage to the Premises or Building. If the removal of any Tenant’s Property during the Term should result in any damage to the Premises or the Building, Tenant will repair any damage due to such removal and restore to standard office finish prior to the expiration or earlier termination of this Lease.

“Tenant’s Pro Rata Rent” has the meaning set forth in Section 8.13(d).

“Tenant’s Share” has the meaning set forth in Section 4.02(i)(1).

“Tenant’s Tax Payment” has the meaning set forth in Section 4.04(a).

“Tenant’s Tax Share” has the meaning set forth in Section 4.02(i)(2).

“Term” means the term of this Lease, which shall commence on the Commencement Date and shall expire on the Expiration Date.

“Three Month Average” has the meaning set forth in Section 7.01(d).

“Transaction Expenses” has the meaning set forth in Section 8.09(a)(ii).

“Transaction Profits” has the meaning set forth in Section 8.09(a)(i).

“TRIA” means The Terrorism Risk Insurance Act of 2002.

“U.C.C.” means the Uniform Commercial Code as in effect in the State of New York.

“Unavoidable Delay” has the meaning set forth in Section 15.02.

“Upgraded Building System” has the meaning set forth in the definition of “Building System.”

“Usable Square Feet/Foot/Footage”, “usable square feet/foot/footage”, or “USF” means usable square feet/foot/footage of the Building or any portion thereof determined in accordance with the Building Measurement Standard.

“Vantone” has the meaning set forth in Section 38.01(b).

“Work Letter” means the work letter attached hereto as Exhibit H.

“World Trade Center” means that certain facility of commerce commonly and colloquially known as the “World Trade Center” located in the Borough of Manhattan, City, County and State of New York, comprised of approximately 16 acres, substantially as depicted generally on Exhibit P attached hereto.

“World Trade Center Legislation” means the concurrent legislation of the State of New York and the State of New Jersey set forth at Chapter 209 of the Laws of New York of 1962, as amended by Chapter 1003 of the Laws of New York of 1972, by Chapter 318 of the Laws of New York of 1973 and by Chapter 993 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§ 6601-6618), as amended, and Chapter 8 of the Laws of New Jersey of 1962, as amended by Chapter 208 of the Laws of New Jersey of 1972 and by Chapter 25 of the Laws of New Jersey of 1974 (N.J.S.A. §§ 32:1-35.50-35.68), as amended.

**Section 1.02 Demise.** Landlord hereby leases the Premises to Tenant, and Tenant hereby hires the Premises from Landlord. The leasing of the Premises by Tenant shall include the right of Tenant (a) to use and access the *Common Areas in common with other tenants in the Building* and (b) to use all fixtures, improvements and betterments owned or leased by Landlord that, at any time during the Term, are attached to and serve the Premises or are installed in and serve the Premises, all subject to such restrictions, rules, regulations, security arrangements and charges (if any) as are provided for in this Lease.

TO HAVE AND TO HOLD unto Tenant, its successors and permitted assigns, for the Term, YIELDING AND PAYING the Rent and all rents hereinafter set forth, all on the covenants, conditions and agreements hereinbefore and hereinafter stated.

## ARTICLE 2

### COMMENCEMENT OF TERM; CONDITION OF THE PREMISES

#### Section 2.01 Term; Delivery.

(a) The Term shall commence on the Commencement Date and shall end on the Expiration Date. Except as expressly provided in the Work Letter, Tenant hereby waives any right to rescind this Lease and/or to recover any damages on account of any delay in the Commencement Date.

(b) Landlord will perform Landlord's Work substantially in compliance with all Legal Requirements and otherwise pursuant to the terms and provisions of this Lease, including the Work Letter, and shall complete the same, subject to any delay caused by Tenant, its agents, employees or contractors, to the extent required to deliver possession of the Premises to Tenant in accordance with the Work Letter. Tenant's rights and remedies in connection with Landlord's failure to comply with such obligations shall be governed solely by the terms of the Work Letter. The provisions of this Section 2.01 and the Work Letter are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law or any successor law or ordinance, and, except as expressly provided in the Work Letter, Tenant hereby waives any right to rescind this Lease that Tenant might otherwise have thereunder. Following the Commencement Date, Landlord shall complete in accordance with the Work Letter any portions of Landlord's Work that remain incomplete as of the Commencement Date.

**Section 2.02** "As-Is" Acceptance. Subject to the completion by Landlord of Landlord's Work in accordance with this Lease, including the Work Letter, Tenant agrees to accept possession of the Premises in its "as-is" condition on the Commencement Date, as determined in accordance with the Work Letter. Except for the performance of Landlord's Work (including, without limitation, any Tenant's Special Work which Landlord and Tenant agree upon in accordance with the Work Letter) and the making of Landlord's Contribution as set forth in Article 31, Landlord shall have no obligation to perform any work, supply any materials, incur any expenses or make any installations in order to prepare the Premises for Tenant's occupancy.

**Section 2.03** Required Permits. Upon the written request of Tenant, Landlord, at Tenant's sole cost and expense, shall execute any application for any permit, approval or certificate from any Governmental Authority reasonably required to be obtained by Tenant (including any special permits, public assembly permits or changes to the certificate of occupancy for the Building) in connection with Tenant's Initial Alterations, and shall sign such application within fifteen (15) Business Days after receipt of Tenant's request, provided that (i) the provisions of the applicable Legal Requirement shall require that Landlord join in such application and (ii) such application (x) relates to the performance by Tenant of Tenant's Initial Alterations in accordance with the terms of this Lease or (y) is otherwise reasonably acceptable

to Landlord; Landlord shall otherwise cooperate with Tenant in connection therewith, provided further that Tenant shall (i) reimburse Landlord for any actual, out-of-pocket cost or expense incurred by Landlord in connection therewith, including, but not limited to, reasonable attorneys' fees and disbursements, and any fees or expenses paid by Landlord to any Governmental Authority or as required by any Legal Requirement, and (ii) indemnify Landlord against any liability in connection therewith.

**Section 2.04 Commencement Date Agreement.** Landlord shall, in accordance with this Article 2 and the Work Letter, determine the Commencement Date and shall give written notice to Tenant of the date so determined. Upon the determination of the Commencement Date in accordance with the Work Letter, the parties shall execute and deliver to one another an instrument, in the form attached hereto as Exhibit N, confirming the Commencement Date, Rent Commencement Date and Expiration Date of this Lease, as well as the First Lease Year; provided, however, the failure of either party failure to execute and deliver such instrument shall not affect in any manner whatsoever the validity of the Commencement Date.

**Section 2.05 Initial Expansion Option.** Tenant shall have a one-time right to lease the Initial Expansion Space by delivering to Landlord the Initial Expansion Notice on or before December 31, 2009, time being of the essence with respect to such date. In the event Tenant timely delivers the Initial Expansion Notice, the Initial Expansion Space shall be added to and included in the Premises and Tenant's Above Grade Space for all purposes under this Lease and upon all of the same terms and conditions governing Tenant's Above Grade Space initially leased hereunder. (i) The Fixed Rent for Tenant's Above Grade Space and Landlord's Contribution shall each be recalculated at the rates provided for in Exhibit B attached hereto and Section 31.01, respectively, to include the RSF of the Initial Expansion Space, and (ii) Tenant's Operating Expense Share and Tenant's Tax Share each shall be recalculated in accordance with the formulas set forth in Section 4.02(i) to include the USF of the Initial Expansion Space, and (iii) as more particularly set forth in Article 33 hereof, the required amount of the Security Letter shall be increased by a fraction, expressed as a percentage (the "Initial Expansion Space Increase Percentage"), the numerator of which is the number of RSF in the Initial Expansion Space (i.e., \_\_\_\_\_, as the case may be) and the denominator of which is equal to the number of RSF in Tenant's Above Grade Space prior to the inclusion of the Initial Expansion Space (i.e., \_\_\_\_\_).

In the event Tenant fails to deliver the Initial Expansion Notice on or before December 31, 2009, time being of the essence with respect to such date, which notice shall be accompanied by an amendment to, or replacement of, the Security Letter in form satisfactory to Landlord increasing the amount thereof as required herein and in Article 33 on account of the leasing of the Initial Expansion Space, Tenant shall have no further right to lease the Initial Expansion Space and this Section 2.05 shall be null and void and deemed deleted from this Lease.

### ARTICLE 3

#### RENT

**Section 3.01 Payment of Rent.** Tenant hereby agrees to pay to Landlord Fixed Rent together with all Additional Rent provided for herein. Tenant agrees to pay to Landlord Fixed Rent and recurring Additional Rent, without offset, notice, demand, abatement, or deduction

whatsoever (except as otherwise expressly provided for in this Lease). Payment of Rent shall commence on the Commencement Date, subject to Section 3.02 and Article 37. All Fixed Rent shall be payable in equal monthly installments in advance (subject to Section 3.03) from and after the Rent Commencement Date and on the first (1st) day of each calendar month thereafter during the Term, at the office of Landlord or such other place as Landlord may designate. Unless another time period is specified in this Lease, all non-recurring Additional Rent shall be due and payable twenty (20) days after receipt of an invoice therefor from Landlord and as otherwise set forth above. All Fixed Rent and recurring Additional Rent shall be payable in lawful money of the United States by wire transfer of immediately available funds to the following account or such other account as Landlord may from time to time direct:

Name of Bank - Commerce Bank  
Bank ABA Number -  
Account Number -

Other amounts due and payable under this Lease (including non-recurring Additional Rent) shall be payable in lawful money of the United States by check drawn on a bank which is a member of the New York Clearinghouse Association and remitted to the following address or such address as Landlord may from time to time direct:

The Port Authority of New York & New Jersey  
P.O. Box 95000-1517  
Philadelphia, PA 19195-1517

**Section 3.02 Initial Abatement of Rent.** Notwithstanding anything contained in this Article 3 to the contrary, so long as no Event of Default has occurred, Landlord hereby waives payment of Fixed Rent (i) for the period from and including the Commencement Date until the Rent Commencement Date, (ii) for the calendar month in which the last day of the First Lease Year occurs, (iii) for the calendar month in which the last day of the second Lease Year occurs, and (iv) for the calendar month in which the last day of the third (3<sup>rd</sup>) Lease Year occurs. The total Fixed Rent abated pursuant to this Section 3.02 shall not exceed twelve (12) months (except by reason of a Permitted RCD Extension and/or any extensions of the Rent Commencement Date pursuant to Section H of the Work Letter).

**Section 3.03 Proration of Fixed Rent.** Notwithstanding anything contained in this Article 3 to the contrary, if the Rent Commencement Date shall occur on a date other than the first (1st) day of any calendar month, then the first monthly installment of Fixed Rent that becomes due on the Rent Commencement Date, prorated to the end of said calendar month based upon the actual number of days in such month, shall be payable on the Rent Commencement Date. If the Expiration Date or other date on which the Term expires or is terminated occurs on a date other than the last day of a calendar month, the Fixed Rent for such calendar month shall be prorated based upon the actual number of days in such month.

**Section 3.04 Late Charges.**

(a) If Tenant shall fail to pay any amount required under this Lease when due to Landlord, including without limitation any payment of Rent or if any such amount is found to

be due as the result of an audit, then, in such event, Landlord may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (described below) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent (0.8%) of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to Landlord as the result of Landlord audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Lease. Each late charge shall be payable immediately upon demand therefor by Landlord. No acceptance by Landlord of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of Landlord to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be recoverable by Landlord in the same manner and with like remedies as if it were originally a part of the Fixed Rent or Additional Rent. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of Landlord under this Lease, including without limitation Landlord's rights set forth in Article 20 of this Lease or (ii) any obligations of Tenant under this Lease. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under the provisions of this Section shall be payable instead at such legal maximum. In the event that upon conducting an examination and audit as described in this Section Landlord determines that unpaid amounts are due to Landlord by Tenant, Tenant shall be obligated, and hereby agrees, to pay to Landlord a service charge in the amount of five percent (5%) of each amount determined by Landlord audit findings to be unpaid. Each such service charge shall be payable immediately upon demand therefor by Landlord (by notice, bill or otherwise). Such service charge shall be exclusive of, and in addition to, any and all other moneys or amounts due to Landlord by Tenant under this Lease or otherwise. No acceptance by Landlord of payment of any unpaid amount or of any unpaid service charge shall be deemed a waiver of the right of Landlord to payment of any late charge or other service charge payable under the provisions of this Section with respect to such unpaid amount. Each such service charge shall be recoverable by Landlord in the same manner and with like remedies as if it were originally a part of the Fixed Rent or Additional Rent to be paid hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of Landlord under this Lease, including, without limitation thereto, Landlord's rights to terminate this Lease or (ii) any obligations of Tenant under this Lease.

**Section 3.05 Rent Subsidy.** Pursuant to the Omnibus Act and the Guidelines for the World Trade Center Rent Reduction Program adopted on January 18, 2006, as the same has been and may hereafter be amended, modified, revised or supplemented from time to time, Landlord and Tenant will submit a joint application to the Empire State Development Corporation (“ESDC”) for a rent subsidy in the amount of \$5.00 per RSF of the Premises (the “Rent Subsidy”) to be provided by the State of New York, acting through ESDC. In the event that such application is approved by ESDC and the Rent Subsidy is paid directly to Landlord or any of its Affiliates in lieu of Tenant, Landlord shall promptly notify Tenant of such receipt pursuant to the notice provisions set forth in Article 24 and, at Landlord’s election, either (i) provide Tenant with a corresponding credit against the applicable installment of Fixed Rent due and payable hereunder in the amount of the Rent Subsidy as such Rent Subsidy may from time to time be received by Landlord or its Affiliates or (ii) promptly assign and pay over the entire amount of such Rent Subsidy to Tenant as such Rent Subsidy may from time to time be received by Landlord or its Affiliates.

## ARTICLE 4

### TAXES; EXPENSE PAYMENTS; ADJUSTMENTS OF RENT

**Section 4.01 General.** In addition to the Fixed Rent hereinbefore set forth, commencing on the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, at the times and in the manner hereinafter set forth, (a) Tenant’s Tax Payments, and (b) Tenant’s Operating Expense Payments. In connection with any reference in this Lease to a service being provided by Landlord to Tenant “without cost,” “without charge,” “without additional charge,” “at Landlord’s cost and expense,” or any similar reference, such reference shall not be deemed to exclude any costs applicable thereto from “Operating Expenses” to the extent such costs are otherwise includable therein pursuant to this Lease.

**Section 4.02 Certain Defined Terms.** For the purposes of this Article 4:

- (a) “Base Operating Expenses” means the Operating Expenses for the Base Operating Year.
- (b) “Base Operating Year” means the First Lease Year.
- (c) “Base Tax Year” means the First Lease Year.
- (d) “Base Tax Amount” means an amount equal to Taxes payable for the Base Tax Year.

(e) "Operating Expenses" means, except as otherwise provided herein and without duplication, the total of all costs and expenses consistently determined and paid or incurred by or on behalf of Landlord with respect to the operation and maintenance of the Building and all appurtenances thereto, and under the REOA (including costs and expenses paid by Landlord to the Board of Stakeholders but subject to the provisions of Section 4.02(e)(5) below) with respect to the Building and the services provided to the tenants thereof, including, but not limited to, the costs and expenses incurred for and with respect to: electricity furnished to non-leasable and non-leased portions of the Building (but specifically excluding electricity purchased by or for individual tenants for consumption in such tenants' space or by such tenants' equipment); steam and any other fuel utilized by the Building for operation and maintenance of the Building, excluding any fuel for any tenant's exclusive use; water rates and sewer rents; air conditioning, ventilation and heating to the non-leasable and non-leased portions of the Building and to tenants of the Building; metal, elevator and elevator cab, lobby, sidewalk and plaza maintenance; equipment, services and personnel for protection and security; Lobby decoration and interior and exterior landscape maintenance; sprinkler maintenance and alarm service; maintenance and repairs that are appropriate for the continued operation of the Building in a manner substantially similar to Comparable Buildings; painting and decoration of non-leasable areas; normal and customary testing and monitoring of air and water quality, antennae emissions and of all other similar types of environmental concerns in the Building; cleaning and window washing (interior and exterior) of the Building by contract or otherwise; garbage and trash removal; premiums for fire and extended coverage insurance, special extended coverage insurance, owner's protective insurance, and other casualty insurance coverage, boiler and machinery insurance, sprinkler, apparatus insurance, public liability and umbrella liability insurance, property damage insurance, rent or rental value insurance as required under the Net Lease, plate glass insurance for the Lobby of the Building and any other insurance that is customarily carried by owners of Comparable Buildings or that is required by any Superior Lessor and/or any Superior Mortgagee; Building supplies; wages, salaries, disability benefits, pensions, hospitalization, retirement plans, and group insurance and other direct expenses respecting employees of the Landlord employed to provide direct services for the Building (or allocable to the Building) up to and including the grade of building manager; purchasing or renting uniforms and working clothes for such employees and the cleaning thereof; expenses imposed on Landlord pursuant to laws, orders, rules, regulations, and other legal requirements or pursuant to any collective bargaining agreement with respect to such employees; worker's compensation insurance, pay-roll, social security, unemployment, and other similar taxes with respect to employees of Landlord employed at the Building up to and including the level of building manager; telephone and other Building office expenses (other than rent); auditing fees in connection with the preparation of annual audited operating expense statements; cleaning, security (provided, however, that with respect to any costs for security guards at the World Trade Center which are passed through to the Building under the REOA, it shall be assumed for purposes of calculating the amount included in Operating Expenses on account thereof that the number of such security guards employed during any Operating Year is no greater than the number of such security guards employed as of the last day of the Base Operating Year), messenger and delivery services; and management fees (which shall be deemed in all circumstances to be equal to three percent (3%) of the gross revenues derived from the Building determined in accordance with GAAP; provided, however, that (x) the amount included in Operating Expenses on account of management fees during the Base Operating Year shall, with

respect to any Building Office Space which is unleased for all or any portion of the Base Operating Year, be deemed to be \$2.20 per RSF of such unleased Building Office Space for the Base Operating Year (prorated on a per diem basis for any such Building Office Space which is leased during the Base Operating Year), in lieu of applying the Op Ex Gross Up to the management fees for such year, and (y) the amount included in Operating Expenses on account of management fees with respect to any Building Office Space which is unleased for all or any portion of Operating Years following the Base Operating Year shall be subject to the Op Ex Gross Up). Any expenses that are incurred and charged to the Building and to other buildings or property owned by a Landlord Entity shall be fairly and equitably allocated to the Building and such other buildings or property as appropriate.

Anything to the contrary set forth above notwithstanding, Operating Expenses shall exclude or have deducted from them, as the case may be and as shall be appropriate:

(1) the cost of Landlord's Work or any other costs incurred in connection with the development, design or construction of the Building;

(2) any cost covered by a warranty that Landlord has on the Building or its equipment in the Building, or that would have been covered by a warranty had Landlord obtained warranties customarily maintained by prudent owners in constructing buildings comparable to Comparable Buildings;

(3) all leasing costs, including, without limitation, brokerage commissions, legal fees, concessions, marketing costs, obligations and similar costs as well as other expenses relating to the leasing of space;

(4) salaries, fringe benefits and other compensation of personnel above the grade of building manager;

(5) expenditures for capital improvements, except the following expenditures for capital improvements will, however, be included in the definition of Operating Expenses, as provided for herein below: (a) capital expenditures or expenses for equipment designed to result in savings or reduction of Operating Expenses (e.g., energy saving devices) and (b) capital expenditures required by Legal Requirements enacted after the Commencement Date (or by amendments enacted after the Commencement Date to any Legal Requirements enacted prior to the date hereof to the extent of such amendments or by Legal Requirements or amendments enacted before the Commencement Date but in respect of which enforcement of such Legal Requirements or amendments or any aspect thereof in respect of the Building shall first take place after the Commencement Date), in any of which cases the amortized cost thereof shall be included in Operating Expenses for the Operating Year in which the costs are incurred and subsequent Operating Years, on a straight line basis, depreciated over their useful life in accordance with GAAP with an interest factor equal to the Prime Rate at the time of Landlord's having incurred said expenditure; provided that the amount of any such capital expenditure under clause (a), above, relating to any particular Operating Year that may be included in Operating Expenses for such Operating Year shall not exceed the actual savings realized for such Operating Year as a result of such expenditure by Landlord, which actual savings shall be as determined by a reputable, independent licensed engineer having at least ten

(10) years experience; provided further, that any excess amount of the portion of any such capital expenditure that would otherwise have been included in such Operating Year above the actual savings realized for such particular Operating Year may be included in Operating Expenses for a future Operating Year to the extent there are actual savings realized for such future Operating Year as a result of such expenditure in excess of the amount of such capital expenditure otherwise to be included in such Operating Year pursuant to the amortization schedule herein provided for. (For example, if 10¢ per RSF would be the amount to be included in each Operating Year on account of an energy saving device, provided the actual savings in such year at least equaled such amount, and if in year 5 the actual savings were 8¢, but in year 6 they were 12¢, then only 8¢ could be included in year 5, but 12¢ could be included in year 6 because of the 2¢ “carry forward” from year 5.) If Landlord shall lease any such item of capital equipment designed to result in savings or reductions in Operating Expenses, then the rentals and other costs paid pursuant to such leasing shall be included in Operating Expenses for the Operating Year in which they are incurred; provided that the amount so included may not exceed the amount that would have otherwise been included pursuant to the preceding sentence had Landlord purchased the same. If Landlord receives any sales tax credits or other credits, refunds or abatements on account of any equipment installed by Landlord as to which Landlord is entitled to amortize the cost thereof as an Operating Expense under this clause (5), then such credits, refunds and abatements shall be applied to reduce the amount of the Operating Expenses permitted to be billed hereunder except to the extent such credits, refunds and abatements are already reflected in the computation of Operating Expenses;

(6) cost of repairs or replacements incurred by reason of (A) fire or other casualty for which Landlord is compensated by insurance proceeds or would have been compensated had Landlord maintained the insurance Landlord is required to maintain pursuant this Lease (other than the amount of any customary deductible to which Landlord is actually subject pursuant to the terms of its insurance policies, but including any Self-Insured Retention amounts in excess of such customary deductible), or (B) the exercise of the right of eminent domain to the extent Landlord is compensated by condemnation proceeds;

(7) intentionally deleted;

(8) legal or accounting fees, expenses or disbursements relating to disputes with Tenant and other tenants or other occupants of the Building, or the leasing, sale, financing or refinancing of the Building or in connection with a financing or refinancing secured by the Net Lease, provided that the following shall be included in Operating Expenses: (A) legal or accounting fees in connection with tax returns, tax reporting or accounting at the landlord entity level, and (B) accounting and auditing fees reasonably incurred in connection with the preparation of statements required pursuant to additional rent or rental escalation provisions;

(9) costs incurred in performing work or furnishing services to or for individual tenants (including Tenant), including, without limitation, overtime HVAC, other than work or services of a kind and scope that Landlord is obligated to furnish to Tenant and tenants generally in the Building without charge;

(10) the cost incurred by Landlord in performing work or furnishing any service to or for a tenant of space in the Building (including Tenant and including

Landlord if Landlord occupies space in the Building), for which a separate charge is paid or payable under such tenant's lease (other than charges on account of Operating Expense escalation payments in a manner similar to that set forth in this Article 4, whether with or without a base year or a base expense concept, or on account of other forms of escalation payments in lieu thereof (e.g., porter's wage escalation payments)), including, without limitation, the supply of over-time HVAC and extra cleaning services, regardless of the amount billed or received by Landlord for performing such work or furnishing such service;

(11) Taxes, including, without limitation, PILOT;

(12) any expenses incurred in connection with any mortgage or other financing secured by the Net Lease or any other ground or land lease or the Land or the Building, including, without limitation, mortgage interest or amortization, or in connection with any refinancing thereof, including, without limitation, legal, accounting, consultant, mortgage, brokerage or other expenses related thereto;

(13) incremental costs incurred by reason of any breach or default of Landlord under the Net Lease, the REOA, or any Superior Mortgage or Superior Lease and any penalties, late charges or interest incurred for late payments thereunder;

(14) depreciation, amortization and other non-cash expenses except as provided for herein;

(15) costs of acquiring or replacing (but not the costs of routine maintenance of) works of art of the quality and nature of "fine art" to the extent such costs exceed the costs of decorative art work (other than fine art) customarily found in Comparable Buildings;

(16) any cost incurred in connection with the preparation of any space in, or as part of, the Building for any tenant's (including Tenant's) occupancy and any other contribution by Landlord to the cost of tenant improvements;

(17) costs incurred with respect to removal or encapsulation or other treatment of Hazardous Materials, but excepting costs of normal and customary testing and monitoring;

(18) costs of placing the Building common areas in compliance with the ADA except as set forth in clause (5)(b) above and except for costs of placing the Building common areas in compliance with amendments to, or changes in (as opposed to a first interpretation of) governmental agency interpretations of or regulations governing the ADA after the Commencement Date;

(19) any amounts paid by Landlord to any other Landlord Entity to the extent in excess of then current market rates with respect to Comparable Buildings (it being agreed that Landlord shall specify in reasonable detail in its Expense Statement which fees and expenditures were payable to any such Landlord Entity);

(20) any fines, penalties or other incremental amounts resulting from Landlord's failure to meet its legal or contractual obligations (e.g., failure to pay taxes, defaults under non-occupancy leases or agreements, etc.), except to the extent that such failure is due to Force Majeure, any violation by Tenant of this Lease or Legal Requirements, or the negligence or any willful acts or omissions of Tenant;

(21) the rental cost of items that, if purchased, would be capitalized in accordance with GAAP and excluded from Operating Expenses;

(22) dues to professional and lobbying associations (except for the allocable dues for REBNY, BOMA or any successor or similar organization), and contributions to political or charitable organizations;

(23) costs resulting from the negligence or willful misconduct of any Landlord Entity or any such party's agents, contractors, employees or representatives;

(24) Landlord's overhead and general and administrative expenses other than the above management fees;

(25) transfer, gains, excise, franchise, inheritance, estate, occupancy, personal property, succession, gift, corporation, unincorporated business, gross receipts, profit and income taxes imposed upon Landlord;

(26) costs incurred with respect to a sale or transfer of all or any portion of the Building or Landlord's interest in the Net Lease, or any interest therein or in any person or entity of whatever tier owning an interest therein;

(27) lease takeover or take back costs incurred by Landlord in connection with leases in the Building;

(28) costs for which Landlord receives compensation through the proceeds of insurance or for which Landlord would have been compensated by insurance had it carried the coverage required under this Lease (including any Self-Insured Retention amounts) or for which Landlord receives compensation from any other source (other than through provisions similar to this Article 4);

(29) costs otherwise includable in Operating Expenses to the extent reimbursed to Landlord directly by Tenant or other tenants (other than through provisions similar to this Article 4 or on account of other forms of escalation payments in lieu thereof (e.g., porter's wage escalations)) and whether such reimbursement is accomplished by inclusion in base or fixed rent (if such cost is not customarily included therein) or by payments received under guaranties or warranties, or otherwise;

(30) the cost of any judgment, settlement, or arbitration award resulting from any liability of Landlord and all expenses incurred in connection therewith (other than a liability for amounts otherwise includable in Operating Expenses hereunder);

(31) the cost of providing any service customarily provided by a managing agent and the cost of which is customarily included in management fees (e.g., bookkeeping and accounting costs but not audit fees);

(32) the cost of acquiring or replacing any separate electrical meter, water meter or other utility meters Landlord may provide to any of the tenants in the Building;

(33) costs relating to withdrawal liability or unfunded pension liability under the Multi-Employer Pension Plan Act or similar law;

(34) the cost of installing, operating and maintaining any specialty facility such as an observatory, observation deck, broadcasting facilities, luncheon club, athletic or recreational club, child care facility, auditorium, public or private cafeteria, snack bar or dining facility, conference center or similar facilities, messenger center servicing the Building or the Building antenna rings and mast (unless such specialty facility is generally available to tenants at no additional cost), and any separate Building lobbies exclusively servicing any of the foregoing facilities;

(35) any compensation paid to clerks, attendants or other persons in commercial concessions operated by and for the benefit of Landlord;

(36) fines and penalties incurred because of violations of Legal Requirements that arise by reason of Landlord's failure to maintain or operate the Building or any part thereof in compliance with such Legal Requirements (but excluding the costs of permits and approvals required to comply with Legal Requirements in the ordinary course of the operation or maintenance of the Building);

(37) costs incurred in connection with the making of any additions to, or building additional stories on, the Building or its plazas, or adding buildings or other structures adjoining the Building, or connecting the Building to other structures adjoining the Building;

(38) costs incurred in connection with the acquisition or sale of air rights, transferable development rights, easements or other real property interests;

(39) to the extent not otherwise deducted, any payments received by Landlord for recyclable materials and waste paper for the Building shall be deducted from Operating Expenses;

(40) costs (including, without limitation, any taxes or assessments) allocable directly and solely to any revenue generating signs or other tenants' or occupants' signs and any signs designating the name of the Building (excluding any normal cleaning or maintenance of such signs other than revenue generating signs);

(41) costs or expenses incurred in connection with any parking garage servicing the Building or the World Trade Center or any portion thereof, including,

without limitation, any management or similar fees paid to the operator of any such parking garage; and

(42) rent payable pursuant to the Net Lease.

In determining the amount of Operating Expenses for any Operating Year and the Base Operating Year, if less than ninety-five percent (95%) of the RSF of the Building Office Space shall have been occupied by tenant(s) at any time during any such Operating Year, or if any Operating Year or the Base Operating Year, shall be less than a full calendar year, Operating Expenses shall be determined for such Operating Year or the Base Operating Year, as the case may be, to be an amount equal to the like expenses that would normally be expected to be incurred (including management fees) had ninety-five percent (95%) of the RSF of the Building Office Space been occupied through-out such Operating Year or the Base Operating Year, as the case may be. If in the Base Operating Year or any Operating Year Landlord is not furnishing any particular work or service (the cost of which if performed by Landlord would constitute an Operating Expense) to a tenant of the Building Office Space who has undertaken to perform such work or service in lieu of the performance thereof by Landlord or such work or service although customarily provided by Landlord is not required or desired by such tenant, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses that reasonably would have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. The provisions of the immediately preceding two (2) sentences are herein sometimes called the "Op Ex Gross Up."

If any services are provided by a Landlord Entity for which Operating Expenses are incurred in the Base Operating Year, then any increases in the Operating Expenses for such services in subsequent Operating Years shall not exceed the amounts by which such Operating Expenses would have (in Landlord's reasonable determination) increased had such services not been provided by a Landlord Entity except to the extent that the Operating Expenses for such services in the Base Operating Year were materially below the amount the Operating Expenses would otherwise have been in which case the increases shall not exceed a reasonable amount (as determined by Landlord in its reasonable determination) giving proper regard to the services provided and the reasonable costs incurred by Landlord in providing those services.

(f) "Operating Year" means each twelve (12) month period occurring immediately following the Base Operating Year.

(g) "Taxes" means (i) all real estate taxes and assessments (special or otherwise) and any other governmental levies, impositions or charges of a similar or dissimilar nature, whether general, special, ordinary, extraordinary, foreseen or unforeseen, that may be assessed, levied or imposed upon all or any part of the Real Property, whether or not the same constitute one or more tax lots, payable to any Governmental Authority or to the Net Lessor (it being acknowledged that, as of the date of this Lease, no amounts described in this clause (i) are payable with respect to the Real Property), (ii) PILOT, and (iii) any reasonable expenses (including legal, consultant and appraiser fees and/or disbursements, and experts' and other witnesses' fees) incurred in protesting or contesting any of the foregoing or the assessed valuation of all or any part of the Real Property); but "Taxes" shall not include (i) any succession, gains, recording, income, franchise, transfer, inheritance, capital stock, excise, excess

profits, occupancy or rent (except as permitted pursuant to the third (3<sup>rd</sup>) paragraph of this Section 4.02(g)); gift, estate, foreign ownership or control, mortgage recording, payroll or stamp tax, or any special assessments levied against another tenant or occupant in the Building due to improvements made by such other tenant or occupant, (ii) BID Charges, or (iii) any interest or penalty incurred by Landlord as a result of Landlord's late payment of Taxes, except for interest payable in connection with the installment payments of assessments pursuant to the next sentence.

If by law Taxes may be divided and paid in annual installments, then for purposes of this Article 4, (i) such Taxes shall be deemed to have been so divided and to be payable in the maximum number of annual installments permitted by law and (ii) there shall be deemed included in Taxes for each Tax Year the annual installment of such Taxes becoming payable during such Tax Year, together with interest on such annual installment and on all installments thereafter becoming due to the extent required by law, all as if such Taxes had been so divided.

If, because of any change in the taxation of real estate after the Effective Date, any other tax or assessment (howsoever denominated), including, without limitation, any franchise, income, profits, sales, use, occupancy, gross receipts or rental tax, is imposed upon Landlord or the owner of the Real Property, or the occupancy, rents or income therefrom, in express substitution for any of the foregoing Taxes (as evidenced by either the terms of the legislation imposing such tax or assessment, the legislative history thereof or other documents or evidence that reasonably demonstrate that such tax or assessment was intended to serve as a real estate tax or fulfill substantially the same function as existing real estate taxes), then such other tax or assessment, to the extent expressly substituted therefor, shall be deemed part of Taxes computed as if (a) Landlord's sole asset were the Building and (b) Landlord's only source of income were from rentals from tenants, including Tenant, and occupants of the Building. Except as provided in the immediately preceding sentence, Taxes shall not include the taxes (1) enumerated in said sentence or (2) imposed on Tenant or other tenants in the Building and payable by Tenant or such other tenants in the first instance.

For purposes of calculating the amount includible in "Taxes" on account of this Lease as a "Space Lease" (as defined in the Net Lease), with respect to payments to be made by Landlord to Net Lessor pursuant to Section 6.10.3 of the Net Lease, (i) such amounts shall be calculated as if the entire Building Area were subject to Space Leases on terms identical to this Lease, and (ii) no amounts shall be included in such calculation on account of any other Space Lease other than this Lease (it being the intention of the parties that such adjustment account only for the terms of this Lease, and not for the terms of any other leases in effect with respect to the Building).

In determining the amount of PILOT or real estate taxes, if applicable, for any Tax Year, including the Base Tax Year, if less than ninety-five percent (95%) of the RSF of the Building Office Space shall have been occupied by tenant(s) at any time during any such Tax Year, or if any Tax Year, including the Base Tax Year, shall be less than a full calendar year, PILOT or real estate taxes, if applicable, shall be determined for such Base Tax Year to be an amount equal to the PILOT or real estate taxes, if applicable, that would have been payable had ninety-five percent (95%) of the RSF of the Building Office Space been occupied through-out such Tax Year.

(h) "Tax Year" shall mean each period of twelve (12) months, commencing on the first day of July (or such other day as may be designated by the City of New York as the first day of its fiscal tax year) of each such period, in which occurs any part of the Term, or such other period of twelve (12) months occurring during the Term as hereafter may be duly adopted as the fiscal year for real estate tax purposes of the City of New York.

(i) (1) "Tenant's Share" shall mean jointly, or individually as applicable, Tenant's Tax Share (as defined below) and Tenant's Operating Expense Share (as defined below).

(2) "Tenant's Tax Share" shall be computed on the basis of a fraction the numerator of which is the USF area, from time to time, of Tenant's Above Grade Space, and the denominator of which is the total USF area of the Building Office Space. As of the date hereof, subject to confirmation in accordance with the Work Letter, Tenant's Tax Share is (i.e., a fraction, expressed as a percentage, the numerator of which is usable square feet and the denominator of which is usable square feet).

(3) "Tenant's Operating Expense Share" shall be computed on the basis of a fraction, the numerator of which is the USF area, from time to time, of Tenant's Above Grade Space, and the denominator of which is the total USF area, from time to time, of the Building Office Space. As of the date hereof, subject to confirmation in accordance with the Work Letter, Tenant's Operating Expense Share is (i.e., a fraction, expressed as a percentage, the numerator of which is usable square feet and the denominator of which is usable square feet).

#### Section 4.03/ Tenant's Operating Expense Payments.

(a) For each Operating Year following the Base Operating Year, all or a portion of which occurs in or during the Term, if the Operating Expenses for such Operating Year shall be greater than the Base Operating Expenses, Tenant shall pay to Landlord, as Additional Rent for such Operating Year, in the manner hereinafter provided, an amount equal to Tenant's Operating Expense Share of the excess of the Operating Expenses for such Operating Year over the Base Operating Expenses (such amount being herein called the "Tenant's Operating Expense Payment"). If the first day of the first Operating Year after the Base Operating Year is not the first day of a calendar year, then Tenant's Operating Expense Payment for such Operating Year shall be prorated based upon the number of days of the first Operating Year compared to the number of days in a full calendar year.

(b) Landlord shall, prior to or following the commencement of the Base Operating Year and each Operating Year, deliver to Tenant a reasonably itemized statement of Landlord's reasonable good faith estimate (an "Expense Estimate") of the projected Operating Expenses for such Operating Year. Tenant shall pay on the first day of each month commencing in the first Operating Year following the Base Operating Year, as Additional Rent, together with payment of Fixed Rent, an "Estimated Tenant's Operating Expense Payment," which shall be equal to one-twelfth (1/12th) of Tenant's Operating Expense Share of the amount by which such projected Operating Expenses exceed the Base Operating Expenses, which shall be credited toward Tenant's Operating Expense Payment for such Operating Year. Landlord shall have the

right from time to time to deliver a revised estimate (a "Revised Estimate") of projected Operating Expenses to reflect, if Landlord can reasonably so estimate, known increases in Operating Expenses for the then current Operating Year applicable to the categories involved in computing Operating Expenses that would further increase the percentage increase in Operating Expenses for such Operating Year over Landlord's prior good faith estimate of such Operating Expenses (provided Landlord can reasonably document such known increases) and, as of the first day of the month following delivery of such Revised Estimate, Tenant shall pay the new amount for each subsequent month of the then current Operating Year (Tenant's monthly Estimated Tenant's Operating Expense Payment being deemed adjusted accordingly).

(c) To the extent that at the time of furnishing of any Revised Estimate the aggregate monthly payments made during the preceding months of the Operating Year in question are less than the amount that would have been paid if the installment required pursuant to such Revised Estimate had been made for such preceding months, the deficiency shall be due and payable in full as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's statement to Tenant therefor. To the extent that there is an overpayment of such aggregate monthly payments by Tenant, Landlord shall credit such overpaid amount against the Estimated Tenant's Operating Expense Payments next coming due. The provisions of this Section 4.03(c) shall survive the expiration or earlier termination of this Lease.

(d) Within one hundred eighty (180) days following the expiration of each Operating Year, Landlord shall submit to Tenant a statement (an "Expense Statement") certified as true and correct by Landlord or an officer of the managing agent of Landlord, setting forth in reasonable line item detail the Operating Expenses for the preceding Operating Year and the Tenant's Operating Expense Payment, if any, due to Landlord from Tenant for such Operating Year. In the event that Tenant's Operating Expense Payment due to Landlord shall be greater than the aggregate of Tenant's Estimated Tenant's Operating Expense Payments made by Tenant for such Operating Year, then, within twenty (20) days after receipt of such Expense Statement, Tenant shall make payment of any unpaid portion of the Tenant's Operating Expense Payment. In the event the aggregate of the Tenant's Estimated Tenant's Operating Expense Payments made by Tenant for such Operating Year shall be more than the Tenant's Operating Expense Payment, then, any such excess paid by Tenant shall be credited against the Estimated Tenant's Operating Expense Payments next coming due. Subject to Section 4.03(e), the failure by Landlord to deliver an Expense Statement within the time period set forth above shall not prejudice Landlord's right to deliver same to Tenant or to receive Tenant's Operating Expense Payments.

(e) Until a new Expense Estimate of projected Operating Expenses is rendered, Tenant's Estimated Tenant's Operating Expense Payment for any Operating Year shall be deemed to be one-twelfth (1/12th) of the total Estimated Tenant's Operating Expense Payment for the preceding Operating Year, if any.

(f) The Expense Statements (including the Expense Statement for the Base Operating Year) furnished to Tenant shall constitute a binding determination on Tenant of the Operating Expenses for the periods represented thereby, unless Tenant, within one hundred and eighty (180) days after same are furnished to Tenant, shall give a notice to Landlord that it disputes the accuracy or appropriateness of any of same, or requires further information in order

to do so. Pending the resolution of such dispute, Tenant shall pay any net debit balance due on account of the Operating Year in dispute and the Estimated Tenant's Operating Expense Payments to Landlord in accordance with the Expense Statements furnished by Landlord, subject to the provisions of Section 4.03(e) above and Section 4.06. Tenant and its accountants (which, if not the Tenant's own employees, shall be one of the "big 4" accounting firms or a nationally or regionally recognized accounting firm) shall have the right, during reasonable business hours and upon not less than fifteen (15) Business Days' prior written notice to Landlord, to examine, make abstracts and audit the relevant portions of Landlord's books and records with respect to the Expense Statement for which Tenant has delivered the notice required above, provided (X) such examination is commenced within one hundred eighty (180) days following the rendition of the Expense Statement in question as such date may be extended on a day for day basis to the extent Landlord delays Tenant's access to such books and records following Tenant's request therefor and the required fifteen (15) Business Days' Notice, provided that Tenant notifies Landlord in writing of any such delays; and (Y) Tenant shall comply with any confidentiality requirements reasonably imposed by Landlord (including, without limitation, the execution and delivery of a confidentiality agreement reasonably acceptable to Landlord). Tenant covenants and agrees that Tenant will not employ, in connection with such examination, any Person who is to be compensated, in whole or in part, on a contingency fee basis. Tenant shall conduct such examination with all *commercially reasonable diligence and conclude same no later than ninety (90) days after the commencement thereof*, as such ninety (90) day period may be extended on a day for day basis to the extent Landlord delays Tenant's access to such books and records following Tenant's request therefor and the required fifteen (15) Business Days' notice, provided that Tenant notifies Landlord in writing of any such delays.

(g) If the date of expiration or termination of this Lease, whether or not same is the Expiration Date or another date prior or subsequent thereto, falls so that only a fraction of the Operating Year is within the Term, then the Tenant's Operating Expense Payment shall be prorated based upon the number of days of the applicable Operating Year within the Term. With respect to the year in which the Term expires or terminates, such pro rata portion shall, within twenty (20) days of Tenant's receipt of an Expense Statement for that Operating Year become due and payable by Tenant to Landlord, if it has not theretofore already been paid. Prior to the receipt by Tenant of the aforementioned Expense Statement from Landlord, Tenant shall continue to make Estimated Tenant's Operating Expense Payments to Landlord through the end of the Term in accordance with the other applicable terms of this Article 4.

#### Section 4.04 Tenant's Tax Payments.

(a) For each Tax Year following the Base Tax Year all or a portion of which occurs in or during the Term, (i) if the Taxes for such Tax Year shall be greater than the Base Tax Amount, Tenant shall pay to Landlord, as Additional Rent for such Tax Year, in the manner hereinafter provided, an amount equal to Tenant's Tax Share of the excess of the Taxes for such Tax Year over the Base Tax Amount, and (ii) Tenant's Tax Share of any BID Charges for such Tax Year (such amounts in clauses (i) and (ii) of this sentence being herein collectively called the "Tenant's Tax Payment"). Tenant's said payment of Additional Rent shall be due and owing as hereinafter provided following presentation to Tenant of a preliminary tax statement (the "Preliminary Tax Statement") indicating Landlord's good faith reasonable estimate of Taxes and BID Charges to be paid for the then current Tax Year and Landlord's calculation of Tenant's Tax

Payment. Tenant shall pay equal monthly installments of Tenant's Tax Payment set forth on such Preliminary Tax Statement on the same dates and in the same manner as Fixed Rent hereunder. If Landlord receives a discount for early payment of Taxes or BID Charges, such discount shall accrue solely to the benefit of Landlord unless Tenant, at Landlord's request, makes an early payment of Tenant's Tax Payment to facilitate such early payment by Landlord, in which event Tenant shall share in such discount by paying Tenant's Tax Payment computed on the basis of the discounted Taxes. If the date of expiration or termination of this Lease, whether or not same is the Expiration Date or another date prior or subsequent thereto, falls so that only a fraction of a Tax Year is within the Term, then Tenant's Tax Payment shall be prorated based upon the number of days of the applicable Tax Year within the Term. With respect to the year in which the Term expires or terminates, such pro rata portion shall, within twenty (20) days after Tenant's receipt of a Final Tax Statement for that Tax Year, become due and payable by Tenant to Landlord, if it has not theretofore already been paid.

(b) Within sixty (60) days following the later to occur of (i) the expiration of each Tax Year, and (ii) receipt by Landlord of the applicable tax bill from the applicable authority to which Taxes are payable, Landlord shall submit to Tenant a statement (a "Final Tax Statement") from the applicable authority to which Taxes and BID Charges are payable together with a statement certified as true and correct by an officer of the managing agent of Landlord, setting forth in reasonable detail the Taxes and Bid Charges for such Tax Year and Tenant's Tax Payment due to Landlord from Tenant for the applicable Tax Year. In the event that Tenant's Tax Payment shall be greater or less than, respectively, the aggregate of the amounts Tenant has theretofore paid to Landlord for the applicable Tax Year, then, within twenty (20) days after Tenant's receipt of the Final Tax Statement, Tenant shall make payment of any unpaid portion of Tenant's Tax Payment, as Additional Rent, or any excess paid by Tenant shall be credited, at Tenant's option against the Estimated Tenant's Operating Expense Payments or payments of Tenant's Tax Payment next coming due.

(c) The Final Tax Statements furnished to Tenant shall constitute a binding determination on Tenant of the Taxes for the periods represented thereby, unless (i) the Taxes or BID Charges for any such period are subsequently adjusted by tax certiorari proceedings or otherwise, or (ii) Tenant, within one hundred and eighty (180) days after same are furnished to Tenant, shall give notice to Landlord that it disputes the accuracy or appropriateness of any of same, or requires further information in order to do so. Pending the resolution of such dispute, Tenant shall pay Tenant's Tax Payment to Landlord in accordance with the Final Tax Statements furnished by Landlord, subject to Section 4.06. Tenant shall have the right to receive a copy of any tax bill or statement from Net Lessor or the applicable authority to which such Taxes or BID Charges are to be paid upon which a Final Tax Statement is based within twenty (20) days after Landlord's receipt of Tenant's written request therefor, provided that Landlord has received such tax bill or statement. Landlord's failure to render a Final Tax Statement with respect to any Tax Year shall not prejudice Landlord's right to render a Final Tax Statement retroactively respecting the Taxes or BID Charges and/or with respect to any subsequent Tax Year and/or collect Tenant's Tax Payments.

(d) If, after Tenant shall have made any payments or installments of Tenant's Tax Payment for any Tax Year, as provided for hereinabove, Landlord shall receive a refund or credit of any portion of said Taxes or BID Charges for such Tax Year or said Taxes or BID

Charges shall be reduced prior to payment of all or part thereof, Landlord, promptly after Landlord or such predecessor-in-interest shall have received such refund or credit, and after deducting the reasonable expenses of obtaining such refund, credit or reduction (unless they have already been or will be included as an item of Taxes or BID Charges under this Article 4), shall (to the extent Tenant has theretofore made any Tax Payment allocable to the Taxes or BID Charges so refunded or reduced), at Landlord's election, either pay to Tenant or credit against the installment(s) of Fixed Rent and Additional Rent next becoming due a sum equal to Tenant's Tax Share of the resulting net refund, credit and/or reduction (not to exceed Tenant's Tax Payment for the Tax Year in question), together with a separate explanation and computation as to such payment to Tenant. The provisions in this Section 4.04(d) shall survive the expiration or termination of this Lease.

**Section 4.05 Survival.** The executory provisions of this Article 4 shall survive the expiration or earlier termination of the Term. In no event shall the Fixed Rent under this Lease be reduced by virtue of this Article 4 or any provision hereof.

**Section 4.06 Disputes.** Either party shall be permitted to submit disputes arising under this Article 4 to arbitration in accordance with the provisions of Article 25, provided that any such dispute shall not relieve Tenant of its obligation to continue to make all payments of Additional Rent billed by Landlord under this Article 4 as and when otherwise due (including the disputed amount). Any adjustments due to Tenant as a result of such arbitration proceeding shall be either paid or credited to Tenant, at Landlord's option, within twenty (20) days of any final determination in arbitration, together with interest at the Prime Rate on any such excess amounts paid by Tenant from the dates any such excess was paid by Tenant to the date so paid or credited. Tenant's payment of any Additional Rent billed by Landlord under this Article 4 shall not preclude Tenant from later disputing the correctness of any Expense Statement or Final Tax Statement if done in accordance with and within the time frames so set forth in this Article 4. Notwithstanding anything to the contrary contained herein, Tenant shall pay all fees and expenses relating to such contest, unless it is finally determined by arbitration under Article 25 that Landlord overstated Tenant's Operating Expense Payment by more than five percent (5%) for such Operating Year, in which event Landlord shall pay such fees and expenses.

**Section 4.07 Landlord's Records.** For the purpose of ascertaining the amount payable as Tenant's Operating Expense Payment and Tenant's Tax Payment, Landlord agrees to prepare and keep available, for a period of not less than one hundred and eighty (180) days following each of the dates upon which Landlord delivers to Tenant an Expense Statement or a Final Tax Statement, adequate records for the period reported upon by such statement that shall show such Operating Expenses and Taxes.

## ARTICLE 5

### USE

#### Section 5.01 Permitted Uses and Limitations on Permitted Uses.

(a) The Premises shall be used and occupied for the Permitted Uses consistent with a first-class downtown Manhattan office building and the provisions of the Net Lease and for no other use or purpose whatsoever.

(b) In connection with and ancillary to the primary use of the Premises for general offices and the other Permitted Uses as provided in this Article 5, Tenant may, subject to the provisions of this Lease and applicable Legal Requirements, use certain portions of the Premises for the following purposes, but only to the extent used solely by Tenant and Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) solely in connection with such Person's own business requirements: (i) a messenger and mail room facility; (ii) a reproduction and copying facility; (iii) a computer and communication system center; (iv) employee lounges; (v) file rooms and pantries (as provided in Section 5.01(c)); and (vi) meeting, training and conference centers and rooms.

(c) Tenant and Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons), incidental to the general office use of the Premises, shall, subject to the provisions of this Lease (including the provisions of Article 13), applicable Legal Requirements and such other reasonable regulations as Landlord may adopt from time to time in accordance with Article 26, have the right, at Tenant's sole cost and expense, to use a portion or portions of the Premises as a pantry or pantries for use solely by Tenant and its respective employees and business guests, which may contain reheating (for ordinary office use) but not cooking equipment, including items such as a microwave, coffee maker, sink, ice maker, soda machine, vending machines, tables and chairs, dishwasher, hot water heater and refrigerator, provided that (i) no cooking, and no other preparation of food that would require ventilation to the outside of the Building in connection therewith (other than the reheating of food by a microwave and the preparation of beverages), shall be done in any such pantry, (ii) no food or beverages will be kept or served in the Premises in a manner or under any conditions that result in fumes or odors being emitted from, or detectable outside of, the Premises such that same may unreasonably affect other tenants or occupants of the Building, (iii) such portion or portions of the Premises shall be at all times maintained by Tenant in a clean and sanitary condition and free of refuse, insects and rodents (including required use of extermination services) and (iv) subject to Section 5.04, no alcoholic beverages may be served in the Premises.

(d) Tenant acknowledges that it has read and understands the terms, conditions and obligations set forth in the Net Lease and the REOA. Each of Landlord and Tenant acknowledges and agrees that it will not take any action or fail to take any action (in the case of (i) Tenant, with respect to its obligations as a subtenant under this Lease and

(ii) Landlord, with respect to its obligations as a party to the Net Lease and the REOA) that will cause it or the other to be in breach of or violate any of the terms of the Net Lease or the REOA. Tenant hereby agrees that Tenant will at all times, at its sole cost and expense, (i) observe, be bound by and comply with all of the terms, provisions, covenants and conditions of the Net Lease affecting Tenant's operations under or in connection with this Lease and its occupancy of the Premises and the REOA, (ii) pay directly to Net Lessor under the Net Lease on demand any rental, fee, charge or other amount due to Landlord if Landlord shall be under an uncured notice of default under the Net Lease and (iii) cooperate in every reasonable manner with Landlord with regard to Landlord's obligations under the Net Lease and the REOA, provided that if Landlord shall have requested and received a waiver of any terms, covenants or conditions of the Net Lease or the REOA applicable to the Premises and the conduct of Tenant's business in the Building, Landlord shall not enforce such waived terms, covenants or conditions against Tenant. Landlord hereby represents and warrants that Landlord has delivered to Tenant true and correct copies of each of the Net Lease and the REOA.

(e) If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Premises, or any part thereof, then Tenant, at its expense, shall duly procure and thereafter maintain such license or permit and submit a copy to Landlord (and Landlord shall reasonably cooperate with Tenant at Tenant's sole cost and expense in connection therewith). Within fifteen (15) Business Days after receipt of Tenant's request therefor, Landlord shall execute applications for building permits and other applicable governmental filings, as necessary, prior to Landlord's approval of Tenant's plans and specifications pursuant to Article 13, provided that Tenant shall be solely responsible for all costs and expenses that may arise in connection with any revision or resubmission of such applications that may subsequently be necessary. Tenant shall at all times comply with the terms and conditions of each such license or permit, but in no event shall failure to procure and maintain same by Tenant affect Tenant's obligations hereunder.

(f) Notwithstanding anything to the contrary contained in this Lease, (i) Tenant's Below Grade Space shall be used solely for storage (excluding garbage storage), a staff locker room (provided that shower facilities shall not be permitted), and a maintenance room, (ii) Landlord shall not be required to provide any services to Tenant's Below Grade Space other than power for convenience lighting, (iii) Landlord shall provide as part of Landlord's Work sufficient sleeves for Tenant to install plumbing and waste lines for toilet facilities in Tenant's Below Grade Space in accordance with Tenant's proposed layout dated 2/23/09 as follows: (i)                 diameter sleeves to accommodate water closet (toilet) piping, (ii)                 box outs to accommodate floor drains, and (iii)                 diameter sleeves to accommodate janitor and bathroom sink piping. Tenant shall pay all incremental out-of-pocket costs incurred by Landlord therefor within twenty (20) days of receipt of an invoice therefor, and (iv) Tenant shall pay the cost and expense for bringing any other Building Services to Tenant's Below Grade Space required for the uses permitted therein, such work to be performed in accordance with all requirements of this Lease applicable to Alterations by Tenant. Landlord makes no representation or warranty that the use of Tenant's Below Grade Space for purposes other than storage is permitted under applicable Legal Requirements or that Tenant's Below Grade Space will be habitable for any purposes other than storage and shall have no liability to Tenant (and this Lease shall not be affected) in the event Tenant's Below Grade Space may not

be used for purposes other than storage or Tenant's Below Grade Space is not habitable for any purposes other than storage.

(g) Notwithstanding anything to the contrary contained in this Lease, Tenant's Mechanical Space may be used solely for the installation, maintenance, operation, replacement and repair of Tenant's Supplemental Kitchen AC Unit and one kitchen exhaust unit with a capacity of \_\_\_\_\_ subject to and in accordance with Section 6.02(d).

#### **Section 5.02 Prohibited Uses.**

(a) Tenant shall not use or permit the Premises or any part thereof to be used (i) for the business of commercial printing or other manufacturing of any kind, except for the use of office equipment in connection with the normal operation of the Premises for a Permitted Use and except as otherwise set forth herein, (ii) as a retail branch of a bank or savings and loan association, or as a retail loan company, (iii) as a retail stock broker's or dealer's office, (iv) for the storage or sale of merchandise (other than merchandise sold to the normal and customary invitees of the occupants of the Premises (including merchandise incidental to the Business Center Uses)), (v) for the distribution, by mail-order or otherwise, of merchandise, (vi) except as provided in Section 5.04, as a restaurant or bar or for the sale of food or beverages (except the sale of snack food, beverages and other convenience items to occupants of the Premises and guests by vending machines), (vii) as a news or cigar stand, (viii) as an employment agency, labor union office, school, physician's or dentist's office, dance or music studio, (ix) as a barber shop or beauty salon (other than for a use which is ancillary to use of the Premises as a spa but in no event to off the street customers), (x) for the sale, at retail or otherwise, of any goods (other than merchandise sold to the normal and customary invitees of the occupants of the Premises (including merchandise incidental to the Business Center Uses)), (xi) by the United States Government, the City or State of New York, any other Governmental Authority, any foreign government, the United Nations or any agency or department of any of the foregoing, any Person having sovereign or diplomatic immunity or any Person not subject to the jurisdiction of the state and Federal courts located in the State of New York, unless such Person satisfies the criteria set forth in clause (iv) of the definition of "Core Business Licensee" herein, (xii) for the rendition of medical, dental or other therapeutic services (it being understood that Tenant may use or may permit the use of the Premises for certain diagnostic services in connection with health programs conducted from time to time for the benefit of Tenant's employees or for a use which is ancillary to use of the Premises as a spa but in no event to off the street customers), (xii) for the conduct of an auction (other than private auctions that are incidental to the Business Center Uses) or (xiii) for the sale or licensing of lottery tickets or similar chances or devices or for the conduct or licensing of off-track or other wagering operations or activities at or from the Premises. Tenant agrees that no souvenir or souvenir type merchandise whether involving the World Trade Center or other Port Authority facilities (or depicting any aspect thereof) or bearing or carrying the World Trade Center legend or reproduction thereof shall be sold or displayed at or from the Premises without the prior consent of Landlord and Net Lessor under the Net Lease.

(b) Tenant shall not suffer or permit the Premises or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, that would in any way (i) violate any of the provisions of any of the Net Lease or any grant, lease or mortgage to which this Lease is subordinate to the extent applicable

to the Premises, (ii) violate any Legal Requirements (subject to the right to contest such Legal Requirements as provided in Article 11), (iii) make unobtainable from reputable insurance companies authorized to do business in New York State at standard rates any fire insurance with extended coverage, or liability, elevator or boiler or other insurance carried by Landlord in connection with the Building, (iv) cause, or in Landlord's reasonable opinion be likely to cause, physical damage to the Building or any part thereof, (v) constitute a public or private nuisance, (vi) impair, in the reasonable opinion of Landlord, the appearance, character or reputation of the Building, (vii) discharge objectionable fumes, vapors or odors into the Building air-conditioning system or into Building flues or vents not designated to receive such fumes, vapors, or odors, or otherwise discharge same, in such manner as may reasonably be anticipated to adversely affect other tenants or occupants of the Building or as may adversely affect space outside of the Premises, (viii) impair or interfere with any of the Building Services or the proper and economic heating, cleaning, air-conditioning or other servicing of the Building or the Premises, or impair or interfere with the use of any of the other areas of the Building by any other tenants or occupants of the Building, the determination of any such impairment or interference to be in the reasonable judgment of Landlord, (ix) result in the leakage of fluid or the growth of mold or the creation of any other condition that causes, or in Landlord's reasonable opinion would be likely to cause, an internal air quality problem in the Premises or the Building, (x) cause Tenant to default in any of its other obligations under this Lease or (xi) occasion any unreasonable annoyance or discomfort to any tenants or occupants of the Building or unreasonably interfere with the use or occupancy of other portions of the Building. The provisions of this Section 5.02(b), and the application thereof, shall not be deemed to be limited in any way to or by the provisions of Rules and Regulations referred to in Article 26.

**Section 5.03 Tenant's Use of Common Spaces.** Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use in common with others, subject to the Rules and Regulations and the other applicable provisions of this Lease, the Common Areas (limited, in the case of Common Areas that are located on multi-tenanted floors, to such Common Areas on those floors on which the Premises are located).

**Section 5.04 Business Center Uses.**

(a) In addition to the other Permitted Uses, the Named Tenant (and only the Named Tenant) shall have the right to use the Premises as hereinafter described in this Section 5.04 for the additional uses specified in subsection 5.04(a)(i) through (vi) (collectively, the "Business Center Uses"), subject to and in accordance with this Section 5.04:

(i) Subject to adjustment pursuant to Section 8.12(b), up to \_\_\_\_\_ RSF of the Premises (or \_\_\_\_\_ of the Premises if Tenant leases the 70th floor as the Initial Expansion Space, or \_\_\_\_\_ of the Premises if Tenant leases the 70th and 71st floors as the Initial Expansion Space) ("Office Suite Areas") may be used for pre-built short term office space, including, without limitation, for the provision of services typical of business centers ("Office Suites"), which shall include, but not be limited to, "virtual office" services, which shall include use of the Building name and address ("Office Suite Uses"), provided that Tenant shall comply with the requirements of Section 8.12 with respect to any occupants of the Office Suite Areas. Any user of "virtual office" services who does not occupy space within the Office Suites

and who has not complied with the requirements of Section 8.12 will not be granted Building passes but may enter the Building only in accordance with Building procedures for guests.

(ii) Up to \_\_\_\_\_ of the Premises may be used for conference facilities for business and corporate events and functions for China Center Members and non-China Center Members, which events and functions may be unrelated to the China Center ("Conference Facilities").

(iii) Up to \_\_\_\_\_ of the Premises may be used for a private executive club with restaurant facilities, including bar service and exercise and dry (other than showers) spa facilities (collectively, "Private Club Facilities"), which Private Club Facilities shall be solely for the use of China Center Members, Permitted Office Occupants and invited guests of Tenant. No portion of the Private Club Facilities shall be open to the general public or used as a public restaurant or bar.

(iv) Up to \_\_\_\_\_ of the Premises (the "Catering Area") may be used for catering facilities, services and event space ("Catering Facilities"), in each case including bar service. Catering services (including, without limitation, the furnishing or delivery of any food or beverages or the provision of any other catering services) may be provided only within the Premises and not in any other space within the Building, except that Tenant may provide catering services to China Center Members that occupy space in the Building outside of the Premises provided that Tenant shall comply with all Rules and Regulations regarding the furnishing and/or delivery of food and beverages within the Building. The Catering Facilities shall be used solely (i) for business and corporate events and functions for China Center Members and non-China Center Members, which business and corporate events and functions may be unrelated to the China Center, and (ii) for fundraising events and other professional events (by way of example only, the American Cancer Society Annual Gala and the Real Estate Board of New York Annual Banquet) for China Center Members and non-China Center Members, which fundraising events and other professional events may be unrelated to the China Center. No portion of the Catering Facilities shall (except as provided in Section 5.04(d)) be open to the general public or be used as a public restaurant or bar (it being understood and agreed that any event with respect to which an invitation has been extended in advance to a select list of invitees (including the right to purchase tables or places and receive an "admission ticket" in advance therefor) shall not constitute an event that is "open to the general public"; provided that attendees at such events shall comply with all Building-wide procedures and security guidelines for the admission of guests to the Building and such events shall otherwise comply with the terms and conditions of this Lease.

(v) Up to \_\_\_\_\_ of the Premises may be used for a media center, including but not limited to, broadcast facilities providing taping and live interviews ("Media Center Facilities").

(vi) Up to \_\_\_\_\_ of the Premises may be used for a reception area and conference rooms and for uses ancillary to the Permitted Uses for the Premises (but not deemed to include a "snack bar" beyond catering services described in clause (iv) above).

The Business Center Uses shall be permitted only on those floors of the Premises depicted on the stacking plan attached hereto as Exhibit Q (the "Stacking Plan"). Notwithstanding the foregoing, Tenant may relocate the Business Center Uses to other floors within the Premises with Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed provided that: (i) such relocation complies with all applicable Legal Requirements and all required approvals of Governmental Authorities have been obtained, (ii) Landlord may impose reasonable requirements that certain Business Center Uses be on the same or on contiguous floors and that Tenant provide sufficient internal staircases to accommodate such relocated Business Center Uses, and (iii) in no event shall the amount of RSF allocated to any Business Center Use exceed the RSF limits set forth in clauses (i) through (vi) of this Section 5.04(a).

(b) The Conference Facilities and the Catering Facilities are hereinafter jointly referred to as the "Event Space." Tenant shall comply with the following additional terms and conditions in connection with any use of the Event Space:

(i) All deliveries, set ups, knock downs, and removal of furniture, fixtures, and personal property required for the use of the Event Space, to the extent any of the foregoing activities involve the use of Building freight elevators or loading docks in excess of typical office use, shall be done outside of Operating Hours, and such use of the loading dock and freight elevators outside of Operating Hours will be reserved in advance. Notwithstanding the foregoing, although Tenant shall use reasonable efforts to arrange for food deliveries for use in the Premises generally to be made outside of Operating Hours, the foregoing shall not preclude the occasional delivery of food to the Premises during Operating Hours (Tenant hereby acknowledging that the use of the loading dock and freight elevators for such occasional deliveries during Operating Hours shall be on a first-come, first-served basis).

(ii) All guest services, including coat checks, guest name badges and other concierge services will be performed within the Premises.

(iii) Tenant shall be solely responsible for any actual, incremental, out-of-pocket costs incurred by Landlord for security, cleaning and other Building Services in connection with any use of the Event Space, together with a fee for overhead in the amount of 5% of such actual, incremental, out-of-pocket costs (excluding any employment or contractual agreements that are entered into and paid for directly by Tenant for such services), and Tenant shall pay such amounts to Landlord as Additional Rent from time to time within twenty (20) days after receipt by Tenant of an invoice therefor. The 5% administrative charge provided for herein shall not apply to overtime or supplemental services (e.g., overtime HVAC) for which a specific rate is charged pursuant to this Lease or which are provided to all tenants in the Building in accordance with Landlord's then-current rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

(iv) Tenant shall notify Landlord in writing at least eight (8) Business Days prior to any event being held in all or any part of the Event Space (whether sponsored by a China Center Member or non-China Center Member) that either (A) is expected to involve more than 100 guests, or (B) by its nature (e.g., the nature of the sponsor, speaker or invited guests) is

reasonably expected to generate special security concerns in the Building. Such notice shall set forth the name of the organization holding the event, the proposed date and time of the event (Tenant hereby agreeing that any event of 100 guests or more shall not have an advertised start time between 8:01 a.m. and 9:59 a.m. (inclusive), New York City time, on any Business Day), the expected duration of the event, the expected number of visitors attending the event, and any additional security measures proposed by Tenant. Landlord will have eight (8) Business Days following receipt of such notice to disapprove the event if, in Landlord's sole good faith judgment, Tenant is unable to reasonably address Landlord's security concerns with respect to such event. Landlord will not allow any other tenant that has restaurant, catering hall or comparable event space in the Building to hold any event in its premises that Landlord has prohibited Tenant from holding, unless such other tenant has agreed to satisfy Landlord's security concerns which Tenant was unwilling or unable to satisfy.

(c) (i) Tenant shall be solely responsible for complying with all applicable Legal Requirements in connection with all Business Center Uses. Tenant acknowledges that the Business Center Uses shall at all times be subject to and governed by the Port Authority Manual (including, without limitation, any references to the then-current and prevailing building code of the City of New York ("NYCBC")), as reviewed for compliance by the Port Authority (per Memorandum of Understanding with the NYC Department of Buildings ("NYCDOB")). For uses expected to exceed floor occupancy restrictions per Port Authority Manual requirements associated with typical office uses, Landlord will cooperate with Tenant, to the extent possible but without any obligation on the part of Landlord to incur additional liability or expense, to lawfully accommodate assembly uses within portions of the Premises designed for office occupancy. All costs associated with lawfully accommodating assembly uses within the Premises and any subsequent appeals to the Port Authority (if undertaken) will be borne exclusively by Tenant and, to the extent incurred by Landlord, shall be reimbursed to Landlord within twenty (20) days after Tenant's receipt of an invoice therefor. Furthermore, all costs to plan, construct, implement, and remove improvements within the Premises installed for the purpose of meeting the Port Authority Manual requirements for lawful public assembly spaces on the designated floors, including but not limited to incremental egress capacity upgrades and the creation of areas of refuge, will be borne exclusively by Tenant.

(ii) Landlord and Tenant acknowledge that the two (2) floors used as the Event Space are expected to exceed Port Authority Manual floor occupancy restrictions associated with typical office uses. Tenant acknowledges that it is Tenant's sole responsibility (other than Landlord's obligation to perform Landlord's Work and Tenant's Special Work subject to and in accordance with the Work Letter) to secure the approvals required for use of the Premises at levels in excess of the Port Authority Manual floor occupancy restrictions associated with typical office uses. Notwithstanding anything to the contrary contained in this Section 5.04, (A) QAD has approved certain test-fits related to the Business Center Uses pursuant to a certain letter dated February 24, 2009, a copy of which is attached hereto as Exhibit M (the "QAD

Letter”), and (B) Landlord hereby approves the proposed headcounts and uses reflected on the test-fits referred to in the QAD letter; provided, however, that Tenant acknowledges that neither Landlord nor QAD has approved the specific layouts or Alterations reflected in such test-fits. Neither this Lease nor Tenant’s obligations hereunder shall be conditioned upon Tenant obtaining approvals for any specific Alterations required to be made to accommodate uses permitted under this Section 5.04, and such approvals shall be governed by Article 13 of this Lease.

(iii) Intentionally omitted.

(iv) Notwithstanding anything to the contrary contained in this Lease, Tenant’s use of the Premises shall at all times avoid material, adverse impacts on Building operations, including unreasonable levels of lobby and elevator traffic during peak hours on Business Days or other material, adverse impacts on security and operations activities within the Building, including the Lobby, the skylobby located on the 64th floor, and all Building sub-grade levels; provided that the foregoing will not be deemed to prohibit the use of the Premises for the Permitted Uses; provided, further, that the foregoing requirements shall be applied against Tenant as if all other occupants in the elevator banks servicing the Premises used their premises solely for general and executive offices and ancillary uses thereto typical in Comparable Buildings; and provided, further, that all passenger elevators are in service and performing at the capacity and speed set forth in the Base Building Specifications.

(v) No alcoholic beverages may be served in the Premises, except either (A) in connection with the Private Club Facilities and Catering Facilities or (B) elsewhere in the Premises (including office space) as part of Tenant’s operations and for normal entertaining, but not for resale (other than a cash bar at events permitted to be held in the Event Space); provided, that (A) such use of alcoholic beverages shall not violate the certificate of occupancy or permit to occupy and use for the Building, (B) such use of alcoholic beverages shall not unreasonably interfere with or disturb other tenants or occupants of the Building, (C) such use of alcoholic beverages (including without limitation in connection with a cash bar) is permitted by and operated in accordance with all applicable Legal Requirements and Tenant shall have obtained one or more liquor licenses with respect thereto, and (D) Tenant shall maintain such additional insurance coverage relating to the sale or serving of alcoholic beverages in the Premises as is typically required in Comparable Buildings and which Landlord shall require, and shall provide evidence of such additional coverage to Landlord upon request.

(d) If, during the Term, Landlord opens or enters into a lease, license agreement or other operating agreement for the use of any portion of the Building Office Space as a “sit-down” restaurant open to the general public (specifically excluding, for example, (x) a cafeteria or restaurant open only to occupants or employees of the Building, (y) a gift shop or other vendor of snack food, beverages and other convenience items to the general public and (z) vending machines), Landlord shall notify Tenant of such event in writing and Tenant shall thereafter for the balance of the Term have the right to operate a first-class, high quality “sit-down” public restaurant in a portion of the space on the 65th floor otherwise permitted to be Event Space under this Lease (not to exceed, in any event, more than one-half of the RSF of the 65th Floor) (the space so converted to a public restaurant, together with all kitchen and other ancillary space in the Premises serving such restaurant, hereinafter called the “Converted

Restaurant Space”). In the event Tenant elects to open a public restaurant in accordance with this Section 5.04(d), then from and after the date Tenant opens such public restaurant for business (the “Restaurant Adjustment Date”) (and for the balance of the Term, irrespective of whether or for how long Tenant operates a restaurant therein), the Fixed Rent for the Converted Restaurant Space shall be the greater of (x) the Fixed Rent which would have been payable under this Lease for such space but for the provisions of this sentence without giving effect to any abatement, credit or reduction that may then be applicable (the “Minimum Restaurant Fixed Rent”), and (y) the fair market rent for the Converted Restaurant Space as first-class, high quality “sit-down” public restaurant space (the “Converted Restaurant Space FMV”) determined in accordance with Exhibit S attached hereto and taking into account all then relevant factors, including the level of improvements made by Tenant to open such Event Space as a public restaurant. Any Alterations required to be made to the Premises in order to so use the Converted Restaurant Space shall be made by Tenant at its sole cost and expense in accordance with all applicable provisions of this Lease and all applicable Legal Requirements.

**Section 5.07 Permitted Agreements with Permitted Operators.** Provided that (x) the Named Tenant is then the Tenant under this Lease and (y) no Event of Default has occurred and is continuing, Tenant shall be permitted to enter into license and/or management agreements with third party operators of the Business Center Uses ("Permitted Operators") without Landlord's prior written consent and without compliance with the provisions of Article 8, provided and on condition that:

(a) Tenant shall give Landlord not less than thirty (30) days' written notice prior to the date any Permitted Operator commences work at the Premises, which notice shall set forth the name and address of the Permitted Operator, the nature of the services such Permitted Operator will perform at the Premises, the number of anticipated employees such Permitted Operator will utilize at the Premises, reasonably detailed information regarding the background and experience of such Permitted Operator, a copy of all agreements between Tenant and the Permitted Operator regarding the provision of services at the Premises, with all financial and other confidential terms redacted (collectively, the "Operator Agreement"), and such other information as Landlord may reasonably request;

(b) the Operator Agreements shall be in the nature of licenses or personal services agreements and shall not create a tenancy or other interest in real property and shall be automatically terminated upon the Expiration Date or any earlier termination of this Lease, provided, however, that the foregoing shall not prohibit Tenant from subleasing to an operator which is an Affiliate of Tenant pursuant to Section 8.02(b); and

(c) the Permitted Operator (i) shall be in good standing under the laws of the jurisdiction of its formation, (ii) shall be subject to the service of process in, and the jurisdiction of the courts of, New York State, (iii) shall be engaged in a business or activity, and shall only use the Premises in a manner, that (A) is in keeping with the then standards of the Building as a first class office building and is in compliance with the terms of this Lease, and (B) is limited to the specified Business Center Use for which such Permitted Operator was engaged and to the portion of the Premises in which such Business Center Use is permitted under Section 5.04(a) of this Lease, (iv) does not have a reputation that is not in keeping with the standards of the Building, (v) is not (and does not have an Affiliate who is) identified on the OFAC List, (vi) is not in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time (and any successor thereto), (vii) is sufficiently qualified and experienced, in Landlord's reasonable judgment, for such Business Center Use, and (viii) is not a Person (or an

Affiliate of a Person) who has defaulted on any material obligation to Landlord or the Port Authority or who Landlord or Port Authority has barred from having access the Building.

## ARTICLE 6

### SERVICES AND EQUIPMENT

**Section 6.01 Building Services.** Landlord shall operate and maintain the Building and provide, at Landlord's expense, except as otherwise set forth herein, the services described in this Article 6 (the "Building Services") in conformance with the standards applicable to Comparable Buildings.

**Section 6.02 Heat, Ventilation and Air Conditioning.**

(a) Landlord shall provide HVAC to Tenant's Above Grade Space during Operating Hours, through systems installed in Tenant's Above Grade Space by Landlord in accordance with the Base Building Specifications, including cooling towers, pumps and associated equipment (collectively, sometimes referred to herein as the "Building HVAC System"), in accordance with the HVAC Specifications.

(b) Anything in this Section 6.02 to the contrary notwithstanding, Landlord shall not be responsible if the normal operation of the Building HVAC System shall fail to provide cooled or heated air at reasonable temperatures, pressures or degrees of humidity or any reasonable volumes or velocities in any parts of the Premises (i) that, solely by reason of any machinery or equipment installed by or on behalf of Tenant (other than any Tenant's Special Work) or any Person claiming through or under Tenant, shall have an electrical load in excess of the average electrical load and human occupancy factors for such air conditioning system as set forth in the HVAC Specifications, (ii) to the extent caused by any Alterations made or performed by or on behalf of Tenant (other than Tenant's Special Work) or any Person claiming through or under Tenant or (iii) because Tenant fails to comply with the Rules and Regulations or any other applicable provisions of this Lease. Tenant acknowledges that Tenant is solely responsible for the design of the ventilation and air-conditioning system within the Premises and the adequacy of such system to distribute air therein, and no approval by Landlord of any proposed or final plans for such work shall constitute a representation or warranty by Landlord that such system will function to achieve its intended purpose. Tenant at all times shall cooperate fully with Landlord and shall abide by the reasonable Rules and Regulations that Landlord may prescribe for the proper functioning and protection of the Building HVAC System.

(c) Landlord shall not be required to furnish Building HVAC System services during periods other than the hours and days set forth in this Section 6.02 for the furnishing and distributing of such services ("Overtime Periods"), unless Landlord has received advance notice from Tenant requesting such services (i) at least four (4) hours prior to the requested service in the case of Overtime Periods occurring on Business Days or (ii) no later than 2:00 p.m. on the Business Day immediately preceding any non-Business Day for Overtime Periods occurring on such non-Business Day. Accordingly, if Landlord shall furnish any such services to the Premises at the request of Tenant during Overtime Periods, Tenant shall pay Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of an invoice therefor, for such services at

Landlord's then-current rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

(d) Tenant shall have the right to install supplemental air conditioning units (each, a "Supplemental AC Unit") in the Tenant's Above Grade Space (or, in the case of an up-to-Supplemental AC Unit to be used for Tenant's kitchen (the "Supplemental Kitchen AC Unit"), in Tenant's Mechanical Space), subject to and in accordance with this Section 6.02(d). In addition to the condenser water required to service the base Building DX units which are to be furnished pursuant to the Base Building Specifications, Landlord shall make the following additional allocations of condenser water to each floor on which Tenant's Above Grade Space is located available for use by Tenant for its Supplemental AC Units ("Supplemental AC Condenser Water") on such floor or to service the increased capacity of any base Building DX units servicing such floor which are upgraded as part of Tenant's Special Work pursuant to the Work Letter ("Base Building Upgrade Condenser Water"), as more particularly set forth in the following chart:

| Floor | Supplemental AC Condenser Water | Base Building Upgrade Condenser Water | Total Additional Allocation of Condenser Water |
|-------|---------------------------------|---------------------------------------|------------------------------------------------|
| 71*   |                                 |                                       |                                                |
| 70*   |                                 |                                       |                                                |
| 69    |                                 |                                       |                                                |
| 68    |                                 |                                       |                                                |
| 67    |                                 |                                       |                                                |
| 66    |                                 |                                       |                                                |
| 65    |                                 |                                       |                                                |
| 64    |                                 |                                       |                                                |
| 91    |                                 |                                       |                                                |

Landlord shall not be obligated to reserve any Base Building Upgrade Condenser Water for Tenant's use except to the extent required for the increase in capacity in any Building DX units which are upgraded as part of Tenant's Special Work pursuant to the Work Letter. Landlord shall not be obligated to reserve the 115 tons of Supplemental AC Condenser Water for Tenant's Supplemental Kitchen AC Unit beyond the date which is eighteen (18) months after the Delivery Date except to the extent Tenant has installed and connected Tenant's Supplemental Kitchen AC Unit to the condenser water system on or before such date. The Supplemental AC Condenser Water allocated for the Premises as provided in the above chart may be reallocated by Tenant (at Tenant's sole cost and expense and in accordance with all applicable terms and conditions of this Lease governing Alterations) within and among the floors comprising the Premises provided that Tenant shall, on or before the expiration or earlier termination of this Lease, perform (at Tenant's sole cost and expense and in accordance with all applicable terms and conditions of this Lease

\* Applicable only if Tenant leases as part of the Initial Expansion Space.

governing Alterations) all work necessary to restore the Supplemental AC Condenser Water allocations indicated in the above chart. Tenant shall pay, within twenty (20) days after Tenant's receipt of an invoice therefor from Landlord, the actual out-of-pocket costs and expenses reasonably incurred by Landlord in connection with such work, including, if necessary, the costs of shut down and draining of risers, but no charge shall be due for Tenant's initial tap in to the system. Tenant shall pay as Additional Rent, within twenty (20) days after Tenant's receipt of an invoice therefor from time to time, an annual charge for the aggregate amount of condenser water tonnage that Landlord reserves for Tenant hereunder (i.e., the sum of (i) the Base Building Upgrade Condenser Water used to service the increased capacity in any Building DX units upgraded as Tenant's Special Work, from and after the Commencement Date, plus (ii) the Supplemental AC Condenser Water for Tenant's Supplemental Kitchen AC Unit, from and after the connection of Tenant's Supplemental Kitchen AC Unit to the condenser water system, plus (iii) the remaining Supplemental AC Condenser Water capacity reserved for Tenant's Above Grade Space per the above chart) from and after the Commencement Date, irrespective of whether Tenant actually connects to or uses such reserved capacity; provided, however, that Tenant shall have the one-time right, exercisable at any time prior to the date which is eighteen (18) months after the Delivery Date, to reduce the amount of the remaining Supplemental AC Condenser Water capacity reserved for Tenant's Above Grade Space per the above chart. Such charge shall be computed at Landlord's then-current rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

#### Section 6.03 Elevators; Loading Dock.

(a) Landlord shall provide passenger elevator service to the Premises twenty-four hours per day, 365 days per year, subject to interruptions caused by Force Majeure. The passenger elevators shall perform at the capacity and speed set forth in the Base Building Specifications. At all times, subject to temporary stoppages for repairs and maintenance and Force Majeure, there shall be at least five (5) passenger elevators serving (A) the skylobby on the 64<sup>th</sup> floor and (B) the floors on which the Premises are located. Landlord represents and covenants that (i) passenger elevators serving the Premises will not also serve the observation deck or any restaurant that is located on or above the one hundredth (100th) floor of the Building, and (ii) no public restaurant shall be located in any portion of the elevator bank serving floors sixty-four (64) through seventy-six (76) of the Building; provided, however, that a "grab-and-go," cafeteria or similar operation that is not open to the general public shall be permitted on the sixty-fourth (64th) floor.

(b) Landlord shall provide freight elevator service to the Premises twenty-four hours per day, 365 days per year, subject to interruptions caused by Force Majeure and temporary stoppages for repairs and maintenance. Freight elevator service shall be provided during the hours of 7:00 a.m. to 5:00 p.m. New York City time on Business Days ("Freight Operating Hours") for use by all tenants of the Building in common, at no charge during Freight Operating Hours, on a first-come, first-served basis. All other freight elevator usage, and the use of freight elevators for transporting, lifting, and hoisting construction materials and personnel, including during Tenant's performance of its Tenant's Initial Alterations and fit-out work outside of Freight Operating Hours, will be on a reserved basis and in accordance with the reasonable

Rules and Regulations of Landlord in effect from time to time in accordance with Article 26. Landlord agrees to endeavor in good faith, subject to such Rules and Regulations; to accommodate Tenant's requirements for overtime access to freight elevators to remove trash for the operation of its business in the Premises. Tenant shall pay, as Additional Rent within twenty (20) days after receipt of an invoice from Landlord therefor, the charges for such use at Landlord's then-current standard rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services. Subject to the Work Letter, Tenant shall not use the freight elevators during Freight Operating Hours for moving in or out of the Premises. Notwithstanding the foregoing, Tenant shall be entitled to up to thirty-two (32) hours of overtime (i.e., outside of Freight Operating Hours) freight elevator service without charge for Tenant's initial move-in to the Premises and/or construction of Tenant's Initial Alterations.

(c) Landlord shall provide loading dock facilities (or, prior to the completion of World Trade Center site improvements, other temporary reasonable means of access to the Building freight elevators) twenty-four hours per day, 365 days per year, subject to interruptions caused by Force Majeure and temporary unavailability for repairs and maintenance. Tenant shall have non-exclusive use of the Building's loading docks (or, prior to the completion of World Trade Center site improvements, other temporary reasonable means of access to the Building freight elevators) during Freight Operating Hours at no charge on a first-come, first-served basis. At all other times, Tenant shall have non-exclusive use of the Building's loading docks (or such other means of access) on a reserved basis in accordance with the reasonable Rules and Regulations of Landlord in effect from time to time in accordance with Article 26, and Tenant shall pay, as Additional Rent within twenty (20) days after receipt of an invoice from Landlord therefor, the charges for such use at Landlord's then-current standard rates for the Building, which rates shall be (i) not materially in excess of similar rates charged to tenants of Comparable Buildings and (ii) increased over time in an amount that is proportionate to the actual increases in the costs incurred by Landlord in providing such services.

#### Section 6.04 Cleaning.

(a) Landlord shall cause Tenant's Above Grade Space to be cleaned on Business Days, substantially in accordance with the Cleaning Specifications. Notwithstanding the foregoing, Landlord reserves the right, from time to time, to make reasonable non-discriminatory changes to the Cleaning Specifications, upon written notice to Tenant; provided, however, that Landlord shall not adopt any such changes that affect only the Premises without Tenant's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) If Tenant requires services in excess of those contained in the Cleaning Specifications and/or any cleaning services in connection with the Business Center Uses, Tenant shall contract for same through the cleaning contractor engaged by Landlord and shall be responsible for paying the cost thereof; provided, however, that (i) Tenant may use its own employees or employees of a Permitted Operator (which Permitted Operator, in such capacity, shall comply with Section 13.07) to provide such additional cleaning services, and (ii) in the event that special cleaning services are required for the Event Space, the Private Club Facilities or the Media Center Facilities and such special cleaning services are not available from

Landlord's cleaning contractors at rates which are commercially reasonable (which for purposes of this sentence shall mean that the rates charged by Landlord's cleaning contractor for such special cleaning services are not more than 110% of the prevailing rates for such special cleaning services then generally being charged by the designated Building cleaning company at Comparable Buildings), then Tenant may retain, at Tenant's sole cost and expense, a cleaning contractor to provide such special cleaning services (which contractor shall be reasonably acceptable to Landlord and shall be subject to such rules and regulations as Landlord may from time to time reasonably adopt and shall comply with Section 13.07 of this Lease). Tenant shall reimburse Landlord on demand as Additional Rent for the costs incurred by Landlord for extra cleaning work in the Premises required by reason of (i) misuse or neglect on the part of Tenant, its agents, employees, contractors, invitees or subtenants, (ii) use of portions of the Premises for the preparation, serving or consumption of food or beverages, pantries, data processing or reproducing operations, non-core lavatories, private lavatories or toilets or other special purposes requiring greater or more difficult cleaning work than office areas, (iii) unusual quantities of interior glass surfaces or (iv) non-Building standard materials or finishes installed by Tenant or at its request.

(c) Landlord and its cleaning contractor and their employees shall have after hours access to the Premises and the use of Tenant's electricity and water in the Premises, without charge therefor, as may reasonably be required for the purpose of cleaning the Premises.

(d) Tenant shall have the one-time right, exercisable by written notice given to Landlord not later than twenty (20) days following delivery of the Twelve-Month Notice (as such term is defined in the Work Letter) to perform its own cleaning (using its own employees or employees of a Permitted Operator, provided that such Permitted Operator, in such capacity, shall comply with Section 13.07) on up to three (3) floors of the Premises which Tenant intends to use for Business Center Uses. If Tenant exercises such right, and until Tenant elects to again have Landlord perform cleaning on such floors (a right which Tenant may exercise only once as to each such floor being cleaned by Tenant, on a floor by floor basis, and only upon not less than thirty (30) days written notice to Landlord), there shall be deducted from Operating Expenses (including Base Operating Expenses) for purposes of calculating Tenant's Operating Expense Payment the cost which would have been incurred by Landlord to clean such floors in the Operating Year in question and the Base Operating Year.

**Section 6.05 Refuse and Rubbish Removal.** Landlord shall provide refuse and rubbish removal service at Tenant's Above Grade Space for ordinary office refuse and rubbish that includes boxes and other containers in which office supplies are commonly sold on Business Days at times reasonably specified by Landlord, and pursuant to Rules and Regulations established by Landlord from time to time in accordance with Article 26. Tenant shall reimburse Landlord within twenty (20) days after receipt of an invoice from Landlord for the actual out-of-pocket costs incurred by Landlord for removal from the Premises and the Building of so much of any of Tenant's refuse or rubbish as shall exceed that ordinarily accumulated daily in ordinary office occupancy (it being understood that, without limitation, garbage or other waste from any Event Space, lunchroom or other food preparation and/or consumption facilities in the Premises are in excess of ordinary office occupancy). Tenant shall be responsible for removing its refuse and rubbish accumulated from non-ordinary office uses, including the Event Space, to a point or points in the Building (including a centralized wet storage facility which Landlord shall provide

for wet garbage) designated by Landlord (and shall have the right to use its own employees or the employees of its Permitted Operators for such removal) for removal from the Building by the Building contractor, and Tenant shall pay as Additional Rent, within twenty (20) days after receipt by Tenant of an invoice therefor from time to time, Landlord's standard charges (which shall be commercially reasonable) for use of the Building's wet storage facility (provided, that such charges shall not be duplicative of the reimbursement provided for in the immediately preceding sentence).

**Section 6.06 Water.** Landlord shall furnish (i) cold water to Tenant's Above Grade Space in reasonable quantities for ordinary drinking, core bathrooms and up to two (2) pantries per floor, and (ii) hot water to Tenant's Above Grade Space in reasonable quantities for core bathrooms. If Tenant requires, uses or consumes water for any purpose in addition to core bathrooms, cleaning and drinking purposes or in amounts materially in excess of normal office usage (it being expressly understood that, without limitation, water required for use in connection with any kitchen, pantry (in excess of two (2) per floor), private bathroom or shower is in excess of normal office usage), (i) Tenant may access additional cold water from the Building for such purposes and (ii) Landlord may install a water meter or meters and thereby measure Tenant's consumption of water for such purposes. Tenant shall (i) pay to Landlord the cost of any such tap-in equipment and/or meters and their installation, (ii) at Tenant's sole cost and expense, keep any such tap-in equipment and/or meters in good working order and repair, and (iii) pay to Landlord, as Additional Rent, within twenty (20) days after Tenant's receipt of an invoice from Landlord for Landlord's actual cost for the water consumed (such charge to be at the rate charged Landlord by the public utility furnishing water to the Building). Subject to the foregoing provisions of this Section 6.06, Landlord shall provide (i) up to an aggregate of 95 gallons per minute of cold water to the Premises through multiple Building cold water risers, and (ii) sanitary waste and sanitary venting to floors on which the Premises are located sufficient to accommodate 100 gallons per minute in the aggregate through multiple Building waste stacks.

**Section 6.07 Telecommunications Equipment and Risers.** Tenant may install, operate and maintain, at Tenant's expense, telephone switching equipment and storage batteries within the Premises, but in no event in Landlord's telecommunication room(s) on any floors. Tenant shall comply with all applicable Legal Requirements with respect to the installation, maintenance and ventilation of such switching equipment and storage batteries. Tenant shall obtain and pay for telecommunications services to be supplied to the Premises by direct application to and arrangement with any telecommunications service provider approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Landlord shall furnish and install, at Landlord's sole cost and expense, (i) two (2) four inch (4") conduits running from the Building's points of entry on the B-2 basement level to the 20th floor telecommunication rooms for Tenant's exclusive use, and (ii) one (1) six inch (6") slab opening in each of the two (2) Building telecommunication closets running from the 20th floor telecommunication rooms to the 69th floor for Tenant's exclusive use and in which Landlord shall, if requested by Tenant as Tenant's Special Work (which shall be at Tenant's expense and subject to and in accordance with the Work Letter), install telecommunications conduits (all such risers and conduits, together with all associated lines, wiring and cabling, collectively, the "Conduit Risers"). The Conduit Risers may be used solely for the installation, repair and replacement, at Tenant's sole expense, of Tenant's lines, wiring and cabling for its Landlord-approved telecommunications, broadcasting, voice and data requirements (such approval not to be unreasonably withheld, conditioned or

delayed). Tenant, at Tenant's sole cost and expense, shall be responsible for the installation of all telecommunications lines, wiring, cabling, connections and other systems and equipment necessary in order to provide telecommunications services to the Premises. Landlord hereby grants to Tenant an exclusive license (coterminous with the Term), subject to and in accordance with the provisions of this Section 6.07, to install such telecommunications lines, wiring, cabling, connections and other systems and equipment and use and access the Conduit Risers.

**Section 6.08 Gas.** Tenant may obtain gas for use in the Premises directly from the public utility serving the Building (the "Gas Provider"). Tenant shall make its own arrangements with the Gas Provider for the furnishing of gas consumed by Tenant in the Premises, and the costs of such service shall be paid by Tenant directly to the Gas Provider. Landlord shall, if requested by Tenant as Tenant's Special Work (which shall be at Tenant's expense and subject to and in accordance with the Work Letter), furnish and install one (1) gas pipe and riser (the "Gas Riser" and, together with the Conduit Risers, collectively, the "Risers") capable of providing \_\_\_\_\_ BTU/hour of gas volume, from the third-floor mechanical room to a location in the Premises jointly designated by Tenant and Landlord, for Tenant's exclusive use, to provide gas to the Premises. Landlord shall provide Tenant with reasonable access to such Gas Riser for maintenance purposes, unless such Gas Riser passes through another tenant's premises, in which event Landlord shall perform such maintenance and Tenant shall reimburse Landlord for expenses reasonably incurred therefor.

**Section 6.09 Conduits.** For the sole purpose of servicing or repairing the Risers and wiring and cabling located therein, Tenant and its approved contractors shall have access to such portions of the Building as may be necessary at reasonable times upon reasonable notice to Landlord upon and subject to the applicable terms of this Lease, the rights of any tenants pursuant to the terms of their respective leases and any other reasonable requirements imposed by Landlord in connection therewith. Tenant shall not be charged any Additional Rent in connection with the operation of the Risers.

**Section 6.10 Steam.** Tenant may, at its sole cost and expense, connect to the Building's low-pressure steam supply and return pipe risers located in the Building for Tenant's own use in connection with Tenant's kitchen. Landlord shall, if requested by Tenant as Tenant's Special Work (which shall be at Tenant's expense and subject to and in accordance with the Work Letter), install a valved outlet connector to connect to the Building's low-pressure steam supply and return pipe risers, in a location in the Premises determined as part of the design of Tenant's Special Work, and Tenant shall arrange, at its sole cost and expense, for (i) the installation of submeter(s) to measure Tenant's consumption of steam and (ii) from the tap located in the Premises, all steam lines and connections necessary in order to obtain such steam service. The steam risers shall be capable of supplying 1,500 lbs/hr of capacity to Tenant's kitchen. If Landlord is furnishing steam to Tenant pursuant to this Section 6.10, Tenant's total consumption shall be paid for by Tenant at one hundred and three percent (103%) of the amount paid by Landlord to the public utility company therefor without any additional profit, mark-up or add on. Tenant shall pay such amounts to Landlord within twenty (20) days after Tenant's receipt of Landlord's invoice therefor as Additional Rent.

**Section 6.11 Class E System.** Landlord shall provide and operate a fire detection, smoke detection, elevator recall, alarm and voice communication, annunciation and floor warden

communication system as a part of the Building's "Class E System" for all base Building areas to the extent required by applicable Legal Requirements. Landlord shall provide local panels in the core area and points adequate to connect Tenant supplied fire alarm speaker/strobe devices for normal office occupancy (and a reasonable number of additional connection points required for Tenant's other Permitted Uses for which Tenant shall pay as Additional Rent within twenty (20) days after receipt by Tenant of an invoice therefor an amount equal to 110% of Landlord's actual cost for making such additional connection points available), in addition to all points required for core and shell connection and Tenant, at Tenant's sole cost and expense and subject to the provisions of this Lease, shall be permitted to so connect such devices to the Building's "Class E System." In addition, Tenant shall be responsible for all repairs and maintenance of its fire/smoke detection equipment (including, without limitation, all alarm devices, dispatchers, locks and safety devices or any other equipment that may be linked to a base Building operating system).

**Section 6.12 No Warranty of Landlord.** Landlord does not warrant that any of the services to be provided by Landlord to Tenant hereunder, or any other services that Landlord may supply (a) will be adequate for Tenant's particular purposes or as to any other particular need of Tenant or (b) will be free from interruption, and Tenant acknowledges that any one or more such services may be interrupted or suspended by reason of Unavoidable Delays. In addition, Landlord reserves the right to stop, interrupt or reduce service of the Building Systems by reason of Unavoidable Delays, or for repairs, additions, alterations, replacements, decorations or improvements that are, in the judgment of Landlord, necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. Landlord shall provide Tenant with such advance notice, if any, as is reasonable under the circumstances of any such stoppage, reduction or interruption. Landlord shall use commercially reasonable efforts to begin and diligently prosecute to completion such repairs as may be required to machinery or equipment within the Building to provide restoration of any service provided by Landlord hereunder as promptly as reasonably possible and in a manner so as to minimize interference with Tenant's ordinary use and enjoyment of the Premises, and, where the cessation or interruption of such service has occurred due to circumstances or conditions beyond the Real Property boundaries, to cause the same to be restored by diligent application or request to the relevant party or parties. To the extent reasonably possible, Landlord shall confine all such stoppages (other than a stoppage that would have an insubstantial effect on Tenant's ordinary use and enjoyment of the Premises) within Landlord's reasonable control to times that are not ordinary Operating Hours. Except to the extent expressly provided for in Section 12.05, neither any such interruption or discontinuance of service, nor the exercise of such right by Landlord to suspend or interrupt such service, shall entitle Tenant to any compensation or to any abatement or diminution of Fixed Rent or Additional Rent. Landlord shall use reasonable efforts to minimize interference with Tenant's access to and use and occupancy of the Premises in making any repairs, alterations, additions, replacements, decorations or improvements; provided, however, that Landlord shall have no obligation to employ contractors or labor at "overtime" or other premium pay rates or to incur any other "overtime" costs or additional expenses whatsoever, unless requested to do so by Tenant, in which case, Landlord shall, to the extent practicable, perform such work on an "overtime" basis (including, if so requested by Tenant, performing any shutdown or stoppage of Building Services between the hours of 12:00 a.m. and 6:00 a.m. New York City time), and Tenant will reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of an invoice from Landlord, for any such overtime or

similar costs incurred by Landlord at Tenant's request. Landlord shall not be required to furnish any services except as expressly provided in this Lease.

**Section 6.13 Access.** Tenant shall have access to the Premises and the Building twenty-four hours per day, 365 days per year, except in the event of emergency.

**Section 6.14 Building Security.** Landlord shall provide security services to the Building at the levels appropriate for Comparable Buildings, to the extent not prohibited by or inconsistent with the Net Lease. Without limiting the foregoing, Landlord shall provide a security system for access to the Building outside of Operating Hours. Tenant at its expense may install its own security system within the Premises, upon and subject to the other terms of this Lease, provided that any such system (i) is capable of being read by Landlord's Building-wide security system and (ii) will not decrease the security standards of the Building below the levels maintained by Landlord with respect thereto. Tenant shall at all times comply with, and cause its employees, contractors and invitees to the Premises to comply with, any security guidelines adopted by Landlord and/or the Port Authority for the Building and the World Trade Center. Such security guidelines shall be enforced as against Tenant in a non-discriminatory manner.

**Section 6.15 Secured Areas within Premises.**

(a) Tenant shall have the right to designate certain areas located entirely within the Premises (not to exceed five percent (5%) of the rentable area of the Premises in the aggregate) consisting of locked documentation rooms and those anterooms and interior offices wherein privacy is necessary to support the Tenant's intended use of the Premises (x) in accordance with the standard business practices within Tenant's business sector and (y) in accordance with the typical uses within Comparable Buildings (each Premises area so-designated, a "Secured Access Area"). Tenant shall notify Landlord of each such Secured Access Area as soon as reasonably practicable after reaching a decision to designate any area within the Premises as a Secured Access Area. In no event shall any area within the Premises be designated a Secured Access Area without at least ten (10) Business Days' prior written notice to Landlord. Each such notice shall include a copy of the floor plan clearly designating the Secured Access Area and be accompanied by a key, pass card, lock combination or similar access ability to the Secured Access Area. Each Secured Access Area so designated shall be clearly and fully marked "Secured Access Area" by signs posted within the Premises. Any installations or alterations within or on account of any Secured Access Area shall be subject to the applicable provisions of this Lease.

(b) Except in the event of an emergency or other out of the ordinary circumstances, Landlord shall not enter any Secured Access Area without prior notice to Tenant and unless accompanied by a representative of Tenant (whom Tenant shall make available immediately upon request of Landlord). Landlord shall not be required to provide cleaning services within any Secured Access Area, and Tenant shall be responsible for maintaining same in a clean and neat condition and for removing therefrom (to other non-secured areas of the Premises) any rubbish to be removed by Landlord in accordance with this Lease. Tenant shall pay, within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor, all costs incurred by Landlord in connection with Landlord's compliance with this Section 6.15(b), including, without limitation, any overtime or additional charges for services or repair work not

performed at the customary times or in the customary manner. In addition, Tenant shall reimburse Landlord for any costs, damages, claims, liabilities, and expenses (including reasonable attorneys' fees and disbursements) suffered by or claimed against Landlord indemnify resulting from Landlord's inability to gain access to or use of the Premises arising out of the limitation on Landlord's access set forth in this subsection.

**Section 6.16 Unarmed Security Guards and Other Attendants.** Provided Tenant shall have obtained the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed, and provided same can be accommodated in accordance with applicable Legal Requirements, insurance requirements and reasonable security requirements, Tenant shall have the right, at Tenant's sole cost and expense, to have (i) unarmed security guards stationed solely within the Premises (and not in any other portions of the Building) and (ii) during events only, one or more of Tenant's employees serving as translators/guest-relations coordinators roaming in the Lobby and/or the skylobby located on the 64th floor.

**Section 6.17 Additional Costs.** In the event that Tenant's use of the Building or the Premises creates an additional operating or security burden, Tenant shall reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor, for all reasonable incremental costs incurred by Landlord to accommodate the same; provided that (x) the foregoing shall not duplicate other costs paid by Tenant elsewhere in this Lease, and (y) Landlord shall provide prior notice to Tenant where practicable prior to incurring any such costs.

## ARTICLE 7

### ELECTRICITY

#### **Section 7.01 NYPA Power.**

(a) So long as the Net Lessor's agreement with the Power Authority of the State of New York ("NYPA") covering the furnishing of electricity by NYPA to the Building remains in effect, Tenant shall have the right to have furnished to the Premises, and to redistribute available electricity across the Premises, electricity at a level sufficient to accommodate a coincident demand load of \_\_\_\_\_ per RSF of the Premises, exclusive of base Building HVAC. Tenant covenants that, notwithstanding any other provision of this Lease, Tenant shall not charge any subtenant of the Premises any mark-up or profit on electrical power costs. Tenant covenants that Tenant's redistribution, use and consumption of electricity shall not at any time exceed such amount, nor exceed the capacity of any of the electrical facilities and installations in or otherwise serving or being used in the Premises and shall not diminish the capacity to other tenants served by the same bus distribution system

\_\_\_\_\_ to be diminished). Such service shall be provided to the electric closets on each floor or part thereof of the Premises, transformed as provided for in the Base Building Specifications.

(b) Submeters reasonably acceptable to Landlord shall be installed by Tenant, at Tenant's cost and expense as soon as reasonably practicable after the Commencement Date (and thereafter Tenant shall maintain same, at Tenant's cost and expense), at such location or locations as Landlord shall reasonably select. Tenant shall pay the amounts due under this Section 7.01 to Landlord, in Landlord's capacity as the collection agent of Net Lessor for such purpose, for Tenant's time-of-use demand and total consumption of alternating current in the Premises as measured by such submeters, to be computed by using the NYPA Rates, within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor and the same shall be deemed Additional Rent. Notwithstanding anything herein to the contrary, Landlord's method of measuring demand shall be the same method used by the utility providing electricity. In the event that any such submeter fails to record such consumption and demand, the quantity of such electricity so supplied during any period that a submeter is out of service will be considered to be the same as the quantity supplied during a like period either immediately before or immediately after such interruption as mutually (and reasonably) designated by Landlord and Tenant, subject to seasonal or other equitable adjustment. Landlord shall, upon prior reasonable notice (except in the event of an emergency), be permitted access to the electric closets and the submeters, provided that Landlord shall be accompanied by a representative of Tenant (at Tenant's expense), which representative Tenant shall make available upon reasonable advance notice. Tenant's demand and total consumption for electricity shall not include any electricity consumed in connection with providing base Building HVAC equipment, as set forth in the Base Building Specifications. All submeters serving the Premises shall be summed electronically such that demand is registered as though all electricity were flowing through a single meter, and billed in the aggregate with coincident demand as if there were only one (1) submeter. Tenant may, from time to time (but in no event more than once every twelve (12) months), at Tenant's sole cost and expense, check the accuracy of each submeter, provided that (A) Tenant shall provide Landlord with at least thirty (30) days' prior written notice of any such testing, (B) Tenant shall engage the services of an independent testing agency/lab reasonably acceptable to Landlord and (C) an employee or agent of Landlord shall be present during any such testing. If such testing agency/lab shall find that any submeter is not accurate, Landlord shall be permitted to dispute such finding by employing another independent testing agency/lab at Landlord's sole cost.

(d) Prior to the date that the submeters to be installed by Tenant as set forth above are actually installed and operational, Tenant shall pay to Landlord within twenty (20) days after Tenant's receipt of an invoice from Landlord therefor: (i) per annum per RSF of the relevant portion of the Premises during the period that Tenant shall be performing Tenant's Initial Alterations in such portion of the Premises, and (ii) per annum per RSF of the relevant portion of the Premises after Tenant shall have begun to occupy such portion of the Premises for the conduct of Tenant's business therein (the "Electric Inclusion Charge") for Tenant's consumption of electricity. The parties agree that although the charge for furnishing electrical energy is reflected in the Electricity Inclusion Charge on a so called "rent inclusion" basis, the value to Tenant of such service may not be accurately reflected in such Electricity Inclusion Charge. Accordingly, Landlord and Tenant agree that after the submeters are installed

and operational and electricity is being furnished to the Premises for a three (3) month period, the Electricity Inclusion Charge shall be adjusted based on the average of the electricity payments due under this Section 7.01(d) ("Three Month Average") payable by Tenant for such three (3) month period with respect to the Premises, with such Three Month Average to be annualized (i.e., adjusted so as to be normalized to account for typical seasonal fluctuations in the usage of electricity during a calendar year as reasonably agreed between Landlord and Tenant). If the Three Month Average shall exceed the Electricity Inclusion Charge, Tenant, within twenty (20) days after receipt of demand therefor, shall pay such excess to Landlord, and if the Electricity Inclusion Charge shall exceed the Three Month Average, Landlord, at its option, shall either promptly refund to Tenant such excess or shall credit such excess against immediately subsequent monthly installments of Fixed Rent next becoming due and payable hereunder.

(e) In the event that any tax shall be imposed upon Landlord's receipts from the sale, use or resale of electrical energy to Tenant, the pro rata share allocable to the electrical energy service received by Tenant shall be passed onto, included in the bill of, and paid by Tenant if and to the extent not prohibited by applicable Legal Requirements (it being agreed that Tenant shall not be obligated to pay any administrative or reading fee to Landlord with respect to such taxes or charges). Tenant acknowledges and agrees that a variable gross receipts tax is presently built into Landlord's electrical energy service, and such tax shall be paid by Tenant in accordance with this Section 7.01(e).

#### **Section 7.02 Termination of NYPA Agreement.**

(a) If Net Lessor's agreement with NYPA is terminated or is otherwise not in effect with respect to the provision of electricity to the Building then, subject to Section 7.05 and all other terms and provisions of this Lease, Landlord shall furnish to Tenant electricity to the electric closets on the floors or part thereof in which the Premises are located in the same manner as required under Section 7.01 above. Tenant shall pay for the time-of-day demand and total consumption of alternating current in the Premises, which demand and total consumption shall be measured by submeters. Such submeters shall be furnished, maintained, repaired or replaced (if necessary) by Tenant, at Tenant's cost and expense, for that purpose and in the event that any such submeter fails to record such consumption and demand, the quantity of such electricity so supplied during any period that a submeter is out of service will be considered to be the same as the quantity supplied during a like period either immediately before or immediately after such interruption as reasonably selected by Landlord and Tenant, subject to seasonal or other equitable adjustment. Tenant's demand and total consumption for electricity shall not include any electricity consumed in connection with the provision of base Building HVAC equipment, as provided in the Base Building Specifications.

(b) If Landlord is furnishing electricity to Tenant pursuant to this Section 7.02, Tenant's time-of-day demand and total consumption in the Premises shall be paid for by Tenant at one hundred and three percent (103%) of the rates applicable to Tenant's demand and consumption without any additional profit, mark-up or add on. Tenant shall pay the cost of such demand and total consumption to Landlord within twenty (20) days after Tenant's receipt of Landlord's invoice therefor as Additional Rent. Notwithstanding anything herein to the

contrary, Landlord's method of measuring demand shall be the same method used by the utility providing electricity.

**Section 7.03 Maintenance of Equipment; Landlord's Contractors.** Tenant, at Tenant's expense, shall maintain, service, and repair all such electrical equipment furnished or installed by Tenant. Tenant shall supply, at Tenant's cost, adequate electric lighting and electric power (subject to power outages and failures beyond Tenant's control) to Landlord or Landlord's vendor's and contractors for such time as is reasonably necessary to clean or make repairs in the Premises; provided, however, that Landlord shall pay for the cost of such electricity in any case where it is making repairs or restorations arising from a fire or other casualty for which it is responsible hereunder to make such repairs or restorations unless Tenant is then using the applicable portion of the Premises for the ordinary conduct of its business.

**Section 7.04 Bulbs, Ballasts, Etc.** At Landlord's option, Landlord shall furnish, install and replace, as required, all Building standard lighting tubes, lamps, bulbs and ballasts required in the Premises (other than specialty lighting required by Tenant in connection with any Business Center Use) at Tenant's sole cost and expense provided that Landlord's charges therefor shall be in accordance with Landlord's regular rates in effect from time to time, and not materially in excess of the rates for similar materials and services provided by landlords in other first class office buildings. All lighting tubes, lamps, bulbs and ballasts so installed by Landlord shall become Landlord's property upon the expiration or sooner termination of this Lease. Tenant shall pay such charges as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice therefor.

**Section 7.05 Termination of Service.** Subject to this Section 7.05, Landlord reserves the right to terminate the furnishing of electrical energy at any time, upon at least thirty (30) days' notice (provided that such longer notice as is reasonably feasible under the circumstances shall be given) to Tenant unless a shorter period of notice is required or necessitated by Legal Requirements, but Landlord shall exercise such right only if required to do so by applicable Legal Requirements. If Landlord shall so discontinue the furnishing of electrical energy, (a) Tenant shall arrange to obtain electrical energy directly from the public utility company or other service provider then furnishing electrical energy to the Building and, unless required by such Legal Requirements and/or insurance requirements, Landlord shall not terminate such service until Tenant shall have obtained such direct service, (b) Landlord shall permit the existing feeders, risers, wiring and other electrical facilities serving the Premises to be used by Tenant for such purpose, (c) from and after the effective date of such discontinuance Landlord shall not be obligated to furnish electric energy to Tenant, (d) Landlord shall not have liability to Tenant on account of such discontinuance and (e) Tenant shall, at Tenant's sole cost and expense and in accordance with the provisions of this Lease governing Alterations, install and maintain at locations in the Building reasonably selected by Landlord any necessary electrical meter equipment, panel boards, feeders, risers, wiring and other conductors and equipment that may be required to obtain electrical energy directly from the public utility company or other service provider supplying the same including all equipment necessary to supply such power to the existing electric closets serving the Premises.

**Section 7.06 Limitation on Liability.** Notwithstanding anything to the contrary contained herein and subject to Section 12.05, Landlord shall not in any way be liable or

responsible to Tenant for any loss, damage or expense that Tenant may sustain or incur as a result of the unavailability of or interruption in the supply of electricity to the Premises or a change in the quantity or character or nature of such current and such change, interruption or unavailability 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 of its obligations under this Lease, or impose any liability upon Landlord or any Landlord Party, by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

**Section 7.07 Electrical Capacity.** Tenant's use of electricity and Tenant's equipment shall in no event exceed a coincident demand load of \_\_\_\_\_ exclusive of base Building HVAC. If (i) in Landlord's reasonable opinion Tenant's installation overloads the electrical vaults/feeders or any riser(s) and/or switch(es) in or servicing the Building or (ii) Tenant requests additional power in addition to that being supplied by Landlord on the date of initial occupancy, then if and to the extent allocated power is available in the Building for use by Tenant without resulting in allocation to Tenant of a disproportionate amount of allocated power, Landlord shall, at Tenant's cost and expense, provide and install in conformity with law any additional riser or risers and/or any and all switch or switches to connect additional power to the Premises, and Tenant agrees to pay Landlord its then established connection charge for each additional amp of power or portion hereof so supplied to the Premises, together with the cost of installing such additional risers, switches and related equipment.

**Section 7.08 Intentionally Omitted.**

**Section 7.09 Emergency Power for Fire and Life Safety.** Landlord will furnish and install emergency power capacity of 0.25 watt per usable square foot from the Building's emergency generators for connection of Tenant's emergency egress lighting. Tenant shall, at its sole cost and expense and using the contractor designated for such work by Landlord, connect all of Tenant's life and fire safety systems to the Building's emergency generators.

## ARTICLE 8

### ASSIGNMENT, SUBLETTING, MORTGAGING

**Section 8.01 No Assignment or Subletting Without Consent.**

(a) Except as otherwise expressly provided herein, Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors, subtenants and assigns, expressly covenants that it shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, nor sublet (nor underlet), nor suffer, nor permit, nor license the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without the prior written consent of Landlord in each instance, and any such assignment, mortgage, pledge, encumbrance, transfer, sublet, underlet, license or use, whether occurring voluntarily, by operation of law or otherwise, shall be and hereby is expressly prohibited.

(b) "Assignment" shall include, without limitation, (i) a sale of all or substantially all of Tenant's assets, (ii) a transfer of the Premises for the entire or substantially the entire remaining Term or (iii) the merger or consolidation of Tenant into or with any other entity. If and so long as Tenant is a corporation with fewer than five hundred (500) shareholders or a partnership (whether general, limited or limited liability) or other legal entity, an Assignment, within the meaning of this Article 8, shall be deemed to include a change in Control of Tenant (whether by one or more transactions or by operation of law or otherwise or the issuance of new stock, partnership or other ownership interests); provided, however, that the initial public offering of the shares of Tenant or any member of Tenant (or any affiliate of any member of Tenant) on a nationally recognized stock exchange shall not be deemed to be an Assignment. For the purpose of this Section 8.01, ownership of stock or partnership interests shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent law.

(c) If, whether by operation of law or otherwise, (i) this Lease is Assigned, (ii) the Premises or any part thereof are sublet or occupied by any Person other than Tenant or (iii) this Lease or the Premises are encumbered, then Landlord may, after default by Tenant beyond applicable grace or notice periods, (i) collect rent from the assignee, subtenant or occupant and (ii) apply the net amount collected to Fixed Rent and Additional Rent, provided, however, that (i) no Assignment, subletting, occupancy or collection shall be deemed (x) a waiver by Landlord of the provisions hereof, (y) the acceptance by Landlord of the assignee, subtenant or occupant as a tenant, or (z) a release by Landlord of Tenant from the further performance by Tenant of its obligations under this Lease, and (ii) Tenant shall remain fully liable therefor. The consent by Landlord to any Assignment or subletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further Assignment or subletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others (subject to Section 8.13), except in accordance with this Lease. Any Assignment, sublease, mortgage, pledge, encumbrance, underlet, license or transfer in contravention of the provisions of this Article 8 shall be void and shall constitute a default hereunder. The limitations set forth in this Section 8.01 shall be deemed to apply to subtenant(s), assignee(s) and guarantor(s) of this Lease.

#### **Section 8.02 Permitted Transfers.**

(a) Anything in the foregoing Section 8.01 to the contrary notwithstanding, transactions with an entity (i) into or with which Tenant is merged or consolidated or created by a reorganization or recapitalization, (ii) to which substantially all of the stock in Tenant or Tenant's assets are transferred as a going concern or (iii) that results in a change in Control of Tenant ("Permitted Transferees"), shall not require the consent of Landlord, provided that, in the event of any of such transfers (whether effectuated through a single transaction or a series of transactions), (i) either (x) such successor has a tangible net worth, determined in accordance with GAAP, equal to or greater than the tangible net worth of Tenant immediately prior to such transaction, and proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction or (y) such successor shall provide an additional letter of credit (in amount, form and substance reasonably satisfactory to Landlord) which will secure all of Tenant's obligations under this Lease and shall

be held and drawn down (if applicable) in accordance with the terms of Section 33.01), (ii) the business and activities of such successor to Tenant shall not diminish the value of the Building and such business and activities constitute Permitted Uses in accordance with the provisions of Article 5, (iii) the successor to Tenant agrees, by written instrument in form reasonably satisfactory to Landlord, to be bound by all the obligations of Tenant hereunder, including, without limitation, the limitations relating to Assignment and subletting, it being understood that Landlord shall be specifically named as a third-party beneficiary under such written agreement, (iv) in no event shall Tenant be released from its obligations under this Lease other than as expressly hereinafter provided, (v) any such transfer or transaction is for a legitimate, regular business purpose of Tenant (other than a transfer of Tenant's interest in this Lease or avoiding the obligations under this Lease, including Section 8.09), (vi) a duplicate original of the instrument of transfer shall be delivered to Landlord within ten (10) Business Days after the effective date thereof and (vii) Tenant shall reimburse Landlord within twenty (20) days after receipt of demand for any reasonable out-of-pocket costs, including, without limitation, reasonable legal costs, actually incurred by Landlord in connection with such transaction. Notwithstanding the foregoing, a transfer of all or substantially all of Tenant's assets that does not include this Lease or Tenant's operations in the Premises, shall be an Assignment for purposes of this Article 8 and shall be subject to this Section 8.01(a).

(b) Anything in the foregoing Section 8.01(a) to the contrary notwithstanding, an Assignment or subletting to an Affiliate of Tenant shall not require the consent of Landlord, provided that (i) the assignee or subtenant agrees directly with the Landlord, by written instrument in form reasonably satisfactory to Landlord, to be bound by all the obligations of Tenant hereunder (except that in case of a sublease, such obligations shall be limited to the Rent payable thereunder and to those obligations under this Lease that apply to the portion of the Premises being sublet), (ii) in no event shall Tenant be released from its obligations under this Lease, (iii) any such transfer or transaction is for a legitimate business purpose of Tenant and not principally for the purpose of effectuating a transfer of Tenant's interest in this Lease, (iv) appropriate evidence that such Person is an Affiliate is delivered to Landlord, (v) the business and activities of such Affiliate shall not diminish the value of the Building and such business and activities constitute Permitted Uses in accordance with the provisions of Article 5 and (vi) Tenant shall reimburse Landlord within twenty (20) days after Tenant's receipt of Landlord's invoice for any reasonable out-of-pocket costs, including, without limitation, reasonable legal costs actually incurred by Landlord in connection with such transaction.

(c) If any Person to whom Tenant shall have assigned this Lease or sublet all or any portion of the Premises pursuant to and in accordance with this Section 8.02, shall thereafter cease to be an Affiliate of Tenant, then the continuation of such Person's tenancy or subtenancy, as applicable, after the date such Person shall cease to be an Affiliate of Tenant shall be subject to Landlord's consent pursuant to Section 8.06. In the event Tenant shall assign this Lease or sublet all or any part of the Premises to an Affiliate of Tenant in accordance with this Section 8.02, the parties agree that if such Affiliate desires to assign this Lease or sublet all or any part of the Premises to a Person other than an Affiliate of Tenant or a Permitted Transferee, then (i) the provisions of this Article 8 shall apply with respect thereto and (ii) for purposes of calculating profits, Sections 8.09(a)(i) and (ii) shall apply, but the sums to be paid to Landlord shall be calculated as if the sublet or Assignment to an Affiliate of Tenant had not occurred and the sublease and Assignment were made directly by Tenant. The provisions of the immediately

preceding sentence shall not be deemed to (x) limit the right of Tenant, an Affiliate of Tenant or a Permitted Transferee to enter into any transaction with a Core Business Licensee, Permitted Office Occupant or Permitted Operator otherwise permitted under this Lease or (y) make Section 8.09 applicable to any transaction as to which it would not otherwise apply.

**Section 8.03 Subletting/Assignment Notice.**

(a) Prior to subletting all or any part of the Premises or assigning this Lease within the meaning of this Article 8 (other than to Tenant's Affiliates or Permitted Transferees), Tenant shall submit to Landlord a notice (any such notice being hereinafter called a "Subletting/Assignment Notice"), which Subletting/Assignment Notice shall contain the information set forth in clauses (i), (ii) and (iii) below.

(i) (A) The name and address of the proposed subtenant or assignee and a brief description of such Person's business, (B) such Person's proposed use of the Premises or applicable portion thereof, (C) such financial information in respect of such Person as Landlord may reasonably request (Landlord agreeing to hold any such financial information in confidence and make no disclosure thereof except to Landlord's accountants and attorneys, a Mortgagee or Superior Lessor, and otherwise as required by law), (y) the identity of any broker entitled to a commission in respect of such subletting or Assignment and the commission, if any, payable to such broker, and (z) any other information reasonably requested by Landlord;

(ii) A description of all of the material economic terms and conditions of the proposed subletting or Assignment (including, without limitation, with respect to a subletting, a description of the portion of the Premises proposed to be sublet, the proposed fixed rent, additional rent, base amounts or years, if any, free rent and other concessions, if any, the term, the party responsible for the cost of physical separation and end of term restoration, and other similar, material proposed terms and conditions) setting forth all consideration to be received by Tenant for or in connection with such subletting or Assignment (including, without limitation, any payment to be made for Tenant's Property or leasehold improvements) and the terms of payment therefor; and

(iii) (A) Executed copies of all other agreements, if any, relating to the proposed Assignment or sublease and, (B) if not fully disclosed by such agreements, a statement of all consideration to be received by Tenant for or in connection with such Assignment or sublease (including, without limitation, any payment to be made for Tenant's Property or leasehold improvements) and the terms of payment therefor.

(b) The effective date of the proposed sublease or Assignment shall be at least *thirty (30) days but not more than twelve (12) months after the date of the giving of such notice.*

**Section 8.04 Intentionally Omitted.**

**Section 8.05 Intentionally Omitted.**

**Section 8.06 Terms and Conditions of Approved Subleases.**

(a) Provided that no Event of Default shall have occurred and be continuing under this Lease as of the time Landlord's written consent is requested by Tenant, then Landlord agrees not to unreasonably withhold or delay its consent (which must be in writing) to the proposed Assignment or sublease described in the Subletting/Assignment Notice. Notwithstanding anything to the contrary contained herein, as a condition to the effectiveness of any such Assignment or sublease each of the following clauses (i) through (xi) must be true:

(i) The proposed assignee or subtenant is engaged in a business or activity, and the Premises, or the relevant part thereof, will be used in a manner that (x) is in keeping with the then standards of the Building, and (y) is limited to Permitted Uses in accordance with Article 5 and otherwise complies with the provisions of this Lease;

(ii) The business and activities of such proposed assignee or subtenant shall not diminish the value of the Building, and such proposed assignee or subtenant shall have sufficient financial worth considering the responsibility involved, and Landlord has been furnished with reasonable evidence of such financial worth;

(iii) The proposed assignee or subtenant is not then a tenant or occupant in the Building or a Person with whom Landlord or Landlord's agent is then actively negotiating in connection with the rental of space in the Building or has negotiated in connection with the rental of space in the Building at any time during the immediately preceding six (6) month period, in each case to the extent Landlord then has space available for lease in the Building;

(iv) The form of the proposed sublease or instrument of Assignment shall be reasonably satisfactory to Landlord and shall comply with the applicable provisions of this Article 8, and Tenant shall have delivered a true and complete original, fully executed counterpart of such sublease or other instrument to Landlord promptly after the execution and delivery thereof;

(v) Tenant and its proposed subtenant or assignee, as the case may be, shall execute and deliver to Landlord an agreement in a form reasonably acceptable to Landlord setting forth the terms and conditions upon which Landlord shall have granted its consent to such Assignment or subletting, and the agreement of Tenant and such subtenant or assignee, as the case may be, to be bound by the provisions of this Article 8;

(vi) There shall not be more than \_\_\_\_\_ subtenants on any floor of the Premises being used for Office Suite Areas (except that one (1) floor only may contain up to \_\_\_\_\_ or more than \_\_\_\_\_ subtenants \_\_\_\_\_, if Tenant exercises the Initial Expansion Option, irrespective of whether Tenant exercises the Initial Expansion Option as to one or two floors) in the aggregate in the Premises;

(vii) Tenant shall reimburse Landlord, as Additional Rent within thirty (30) days after receipt of demand, for (x) the reasonable, actual out-of-pocket costs and expenses incurred by Landlord in connection with the Assignment or sublease, including the costs of making investigations as to the acceptability of the proposed assignee or subtenant and

the cost of reviewing plans and specifications relating to any Alterations proposed to be made in connection therewith and (y) Landlord's reasonable out-of-pocket legal fees and disbursements actually incurred in connection with the granting of any requested consent and the preparation of Landlord's consent to the sublease or Assignment;

(viii) Tenant shall not have advertised or publicized in any way the rental rate for the Premises without prior notice to and approval of Landlord, which approval may be withheld by Landlord in its sole and absolute discretion;

(ix) The proposed occupancy shall not (w) materially increase the office cleaning requirements, (x) impose an extra burden upon services to be supplied by Landlord to Tenant (except to a *de minimis* extent), (y) increase the burden on the elevators that serve the Premises (except to a *de minimis* extent) or (z) increase Operating Expenses with respect to the Premises;

(x) The proposed subtenant or assignee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in, and the jurisdiction of the courts of, New York State, or shall agree to consent thereto; and

(xi) no subletting shall be for a term of less than twelve (12) months.

(b) Each sublease pursuant to this Section 8.06 shall be subject to all of the covenants, agreements, terms, provisions and conditions contained in this Lease. Notwithstanding any such sublease or any acceptance of Fixed Rent or Additional Rent by Landlord from any subtenant, Tenant will remain fully liable for the payment of the Fixed Rent and Additional Rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on Tenant's part to be observed and performed, and for all acts and omissions of any licensee or subtenant or anyone claiming under or through any subtenant that are in violation of any of the obligations of this Lease, and any such violation shall be deemed to be a violation by Tenant. If Landlord shall decline to give its consent, pursuant to the provisions of this Lease, to any proposed Assignment or sublease, Tenant shall indemnify, defend and hold harmless Landlord against and from any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and disbursements) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant arising from or in connection with such proposed Assignment or subletting, or by any brokers or other Persons (with whom Tenant or its proposed assignee or subtenant may have dealt) claiming a commission or similar compensation in connection with the proposed Assignment or sublease.

**Section 8.07 Changes to Approved Subleases.** If Landlord grants its consent to a proposed Assignment or subletting under Section 8.06 and (x) such Assignment or sublease has not been executed for any reason not caused by a default by Landlord under this Lease within four (4) months after the granting of such consent or (y) the economic terms of such Assignment or sublease is modified or amended prior to its becoming effective such that the economic terms in the aggregate are less than ninety-five percent (95%) of the value of the economic terms in the approved Subletting/Assignment Notice, then and in any such event Landlord's consent shall be deemed to have been withdrawn and Tenant shall not have the right to assign this Lease or to

sublease all or any portion of the Premises without once again complying with all of the provisions and conditions of this Article 8. In no event shall Tenant modify or amend the economic terms of any Assignment or sublease or materially modify or amend any other material terms of any Assignment or sublease to which Landlord has consented under Section 8.06 without Landlord's prior written consent, such consent not to be unreasonably withheld or delayed.

**Section 8.08 Further Conditions of Subleases.** With respect to each and every sublease authorized by Landlord under the provisions of this Lease (whether or not requiring Landlord's approval), the following conditions apply:

(a) No sublease shall be for a term ending later than one day prior to the Expiration Date of this Lease;

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

(c) Each sublease shall contain the condition and restriction that the sublease shall not be assigned, encumbered or otherwise transferred or the subleased premises further sublet by the sublessee in whole or in part, or any part thereof suffered or permitted by the sublessee to be used or occupied by others, without the prior written consent of Landlord in each instance; and

(d) Each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and each subtenant by entering into a sublease is deemed to have agreed that in the event of termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublandlord, under such sublease, and such subtenant shall, at Landlord's option, (i) attorn to Landlord as sublandlord under such sublease for the balance of the term and on all of the then-executory provisions of such sublease, except that Landlord shall not (r) be liable for any previous act or omission of Tenant under such sublease, (s) be subject to or liable for any credit, counterclaim, offset or defense that theretofore accrued to such subtenant against Tenant, (t) be bound by any rent that such subtenant might have paid for more than the current month to Tenant, (u) be required to account for any security deposit other than the security deposit actually delivered to Landlord, (v) be liable for any brokerage commission payable in connection with such sublease or any renewal thereof, (w) be bound by any amendment, modification or surrender of such sublease made without Landlord's prior written consent, such consent not to be unreasonably withheld or delayed, other than modifications that do not increase Landlord's obligations, decrease Tenant's obligations or increase Tenant's rights, (x) be liable for any claim for damages of any kind whatsoever as the result of any breach by Tenant that occurred before the date of attornment, (y) be bound by any obligation to restore the Building, such subtenant's premises or any portion thereof or any property located therein in the event of a casualty or condemnation of the Building except as required by this Lease, or (z) be obligated to perform, or be liable for any payment to such subtenant of any sums or the granting to such subtenant of any credit in the nature of a contribution toward the cost of any work in the subleased space or to prepare it for occupancy beyond Landlord's obligations under this Lease, and (ii) in connection

with such attornment, execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such attornment. Each subtenant or licensee of Tenant shall be deemed, automatically upon and as a condition of its occupying or using the Premises or any part thereof, to have agreed to be bound by the terms and conditions set forth in this Article 8. The provisions of this Article 8 shall be self-operative and no further instrument shall be required to give effect to this provision.

**Section 8.09 Transaction Profits.**

(a) If Landlord shall consent to any Assignment of this Lease or to any sublease, or if Tenant shall enter into any other Assignment or sublease permitted hereunder, Tenant shall, in consideration therefor, pay to Landlord, as Additional Rent, Transaction Profits, after first deducting therefrom (but not below zero) Transaction Expenses incurred by Tenant in connection with such Assignment or subletting. For purposes of this Section 8.09:

(i) "Transaction Profits" means, (i) in the case of an Assignment, an amount equal to fifty percent (50%) of all sums and other consideration payable to or for the benefit of Tenant by the assignee for or by reason of such Assignment (including sums paid for Tenant's Property, fixtures or leasehold improvements calculated as if such items were sold in an arm's-length transaction and for services provided or to be provided to such assignee or to the space assigned), and, (ii) in the case of a sublease, an amount equal to fifty percent (50%) of all rents, additional charges or other consideration payable to or for the benefit of Tenant under or by reason of the sublease in excess of the Fixed Rent and Additional Rent payable during the term of the sublease in respect of the subleased space (at the rate per square-foot payable by Tenant hereunder) pursuant to the terms hereof (including sums paid for the sale or rental of Tenant's Property, fixtures or leasehold improvements calculated as if such items were sold in an arm's-length transaction); and

(ii) "Transaction Expenses" means, to the extent actually paid by Tenant to unrelated third parties, (i) the reasonable out-of-pocket costs and expenses of Tenant in entering into the Assignment or sublease (such as customary real estate brokerage commissions, legal and architectural fees, and advertising fees paid to unrelated third parties), (ii) free rent, rent concessions or rent abatements solely to the extent of any Rent payable by Tenant to Landlord for the portion of the Term during which the free rent or rent abatement period under the sublease occurs, (iii) the cost of improvements, construction contributions or alterations made by Tenant expressly and solely for the purpose of preparing the space for such tenancy, (iv) the actual hard and soft costs (other than to the extent funded by Landlord as part of Landlord's Contribution) paid by Tenant in connection with Tenant's Initial Alterations (and, in the case of a subletting, reasonably allocated to the sublet space), amortized on a straight line basis over the Term, to the extent such amortization is allocable to the period during the term of such assignment or sublease; provided, however, if, in connection with such subletting or Assignment, the alterations to which such hard costs relate are substantially altered or demolished prior to such subletting or Assignment or within the six (6) month period following the rent commencement date of any such sublease or the effective date of such Assignment, such hard costs shall not be permitted to be so deducted, and (iv) any work allowance or other monetary concession actually paid to the assignee or subtenant as the case may be (i.e., exclusive of Landlord's Contribution). Notwithstanding anything contained in this paragraph to the contrary,

in the event Tenant shall assign this Lease or sublet the Premises or any portion thereof prior to Tenant's occupying the Premises, construction allowances and other out-of-pocket concessions shall only be includable as Transaction Expenses to the extent that such concessions exceed, on an RSF basis, the amount of construction allowances and concessions provided by Landlord to Tenant under this Lease.

(iii) The sums payable under this Section 8.09 shall be paid by Tenant to Landlord as Additional Rent as and when paid by the subtenant or assignee to Tenant. In the case of a sublease, Transaction Expenses shall be amortized on a straight line basis over the term of the sublease, and may be deducted from amounts that otherwise would be payable to Landlord under this Section 8.09, without interest, as and when actually expended.

(b) Notwithstanding anything to the contrary set forth in Section 8.09(a) above, Tenant shall not be obligated to pay Transaction Profits to Landlord with respect to transactions for which Landlord's consent is not required under Sections 8.02(a) or (b).

#### Section 8.10 Tenant's Liability.

(a) Each permitted assignee or transferee (i) shall assume and be deemed to have assumed the obligations of Tenant under this Lease to be performed, or arising or accruing, on and after the effective date of such Assignment or transfer and (ii) shall be and remain liable jointly and severally with Tenant for the payment of Rent and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the remainder of the Term. With respect to any Assignment or transfer, whether made with Landlord's consent pursuant to Section 8.01 or without Landlord's consent to the extent permitted under Section 8.02, Landlord shall have the right to require that the assignee execute and deliver to Landlord within thirty (30) days after such Assignment or transfer an agreement in a form reasonably acceptable to Landlord (i) whereby the assignee shall assume the obligations of this Lease on the part of Tenant to be performed or observed from and after the effective date of such Assignment or transfer, and (ii) whereby the assignee shall agree that the provisions in Article 8 shall, notwithstanding such Assignment or transfer, continue to be binding upon it in respect of all future Assignments and transfers. In connection with any Assignment of this Lease by operation of law, Tenant shall provide Landlord with a written instrument confirming such Assignment in form and substance reasonably satisfactory to Landlord within ten (10) days after the effective date of such Assignment.

(b) The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant and the due performance of the obligations of this Lease on Tenant's part to be performed or observed shall not be discharged, released or impaired in any respect (i) by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord by way of mortgage or otherwise, extending the time, or modifying any of the obligations of this Lease, or (ii) by any waiver or failure of Landlord, or any grantee or assignee of Landlord by way of mortgage or otherwise, to enforce any of the obligations of this Lease.

(c) The listing of any name other than that of Tenant, whether on the doors of the Premises or the Building directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Premises, nor shall it be deemed to be the consent of Landlord to any

Assignment or transfer of this Lease or to any sublease of Premises or to the use or occupancy thereof by others.

**Section 8.11 No Security Agreement.** Tenant covenants and agrees that no security agreement, whether by way of conditional bill of sale, chattel mortgage or instrument of similar import, shall be placed upon any improvement at the Premises that is affixed to the Real Property.

**Section 8.12 Permitted Office Occupancies.**

(a) Notwithstanding anything to the contrary contained herein, with respect only to the Office Suite Areas constructed by Tenant as Office Suites in accordance with Section 5.04(a)(i) (subject, however, to Section 8.12(b)), the Named Tenant shall have the right, upon not less than ten (10) days' prior written notice to Landlord (but without Landlord's consent and without being subject to the provisions of this Article 8 except as expressly provided in this Section 8.12(a)), to permit occupancy of the Office Suite Areas by Persons, who may or may not be Core Business Licensees ("Permitted Office Occupants"), provided and on condition that:

(i) the Named Tenant is the Tenant under this Lease, and no Event of Default has occurred and is continuing;

(ii) each Permitted Office Occupant will either (x) occupy (together with its Affiliates) less than \_\_\_\_\_ or (y) will be in occupancy for a term of less than one (1) year;

(iii) no Permitted Office Occupant and no user of "virtual office" services shall be a Person listed on the OFAC List nor shall any such Person be in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time (and any successor thereto). Tenant shall prescreen all Permitted Office Occupants (including all users of "virtual office" services) to insure compliance with this clause (iii).

(iv) each Permitted Office Occupant shall execute and deliver a license or service agreement in a form reasonably acceptable to Landlord (a "Permitted Occupancy License"), a copy of which shall be provided to Landlord no later than ten (10) days prior to the effective date thereof, which Permitted Occupancy License shall, among other things, obligate each Permitted Office Occupant to be bound by all the obligations of Tenant hereunder (except that such obligations shall be limited to the rent and additional rent payable under such license and to those obligations under this Lease that apply to the portion of the Premises being licensed);

(v) in no event shall Tenant be released from its obligations under this Lease by virtue of any such licensing;

(vi) any such Permitted Occupancy License is in connection with Tenant's business of providing space to Permitted Office Occupants and is for a legitimate

business purpose and not principally for the purpose of effectuating a transfer of Tenant's interest in this Lease;

(vii) additional information reasonably requested by Landlord and reasonably obtainable by Tenant related to Permitted Office Occupants is delivered to Landlord;

(viii) such Permitted Office Occupant shall be engaged in a business or activity that is a permitted use in accordance with the provisions of Article 5;

(ix) Tenant shall reimburse Landlord on demand for any out-of-pocket costs (including, without limitation, reasonable legal costs) actually incurred by Landlord in connection with such transaction;

(x) such Permitted Occupancy License shall expressly contain the following provisions: (1) a waiver by the Permitted Office Occupant, for itself and for any Person claiming by, through or under such Permitted Office Occupant, of any rights that such Permitted Office Occupant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any eviction proceedings that Landlord or Tenant may institute to evict such Permitted Office Occupant or such Person; (2) an agreement by the Permitted Office Occupant that no further assignment or transfer by such Permitted Office Occupant of this Lease or such license, whether in whole or in part, or any licensing of the Premises or the licensed portion thereof or any part thereof by the Permitted Office Occupant shall occur without the prior written consent of Landlord; (3) an agreement by the Permitted Office Occupant to use the Premises only for the Permitted Uses; (4) an agreement by the Permitted Office Occupant not to make any Alterations except in accordance with the applicable provisions of this Lease; and (5) a representation and warranty by the Permitted Office Occupant that such Permitted Office Occupant (and any person, group, or entity that such Permitted Office Occupant controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing in violation of the U.S. Patriot Act or any OFAC rule or regulation, including, without limitation, any assignment of such license or any further licensing, if, and to the extent, permitted hereunder, of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of any prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation;

(xi) such Permitted Occupancy License shall only give such Permitted Office Occupant the right to use one or more of the temporary office suites to be located in Office Suite Areas of the Premises;

(xii) the provisions of Section 8.08 shall apply to each Permitted Occupancy License as if such Permitted Occupancy License were a sublease;

(xiii) in the event that any Permitted Office Occupant shall fail to observe or shall violate any of the terms, covenants, conditions, agreements, provisions, obligations or conditions of this Lease, the REOA or the Net Lease, then Tenant, at Landlord's request, shall use its best efforts (at Tenant's sole cost and expense) to terminate such Permitted Occupancy License and evict such Permitted Office Occupant from the Premises, and Tenant

**Section 8.13 Subtenant Recognition Agreements.** Landlord shall furnish a subtenant recognition agreement, in a form reasonably acceptable to the Port Authority Law Department, for any subtenant leasing Eligible Space, provided and on condition that:

(a) Landlord is reasonably satisfied with the financial condition of the proposed subtenant or the proposed subtenant either (i) has a net worth (exclusive of good will and general intangibles) equal to or greater than at least the aggregate of the annual Fixed Rent then reserved hereunder plus all of the recurring Additional Rent for the preceding calendar year in each case allocable to the portion of the Premises that is the subject of the subletting (the "Requisite Net Worth") or (ii) agrees to provide Landlord with either a reasonably acceptable security deposit at the time the proposed subtenant attorns to Landlord;

(b) the proposed sublease demises Eligible Space, for a term of at least five (5) years (inclusive of any extension options of such subtenant that are conditioned upon Tenant's exercise of its extension rights in accordance with this Lease), with no right of cancellation (other than those customarily provided in the event of casualty or condemnation) prior to the expiration of such minimum term (but in no event extending beyond the then current stated Expiration Date of this Lease, as that date may have been theretofore, or may thereafter be, extended in accordance with the terms of this Lease);

(c) the proposed sublease is a bona fide arm's length sublease with a Person not Affiliated with Tenant or any other Tenant Entity;

(e) the proposed sublease does not give the subtenant any right to extend or renew the term of its sublease beyond the then current stated Expiration Date, as that date may have been theretofore, or may thereafter be, extended in accordance with the terms of this Lease unless such rights are conditioned upon Tenant's exercise of its extension rights pursuant to Article 35 or 36, as the case may be;

(f) the proposed sublease imposes no obligations on Landlord to do any work (other than is otherwise required to be done by Landlord hereunder) or provide any landlord contribution, work allowance or free rent period to the subtenant (that would be binding on Landlord); and

(g) the proposed sublease gives no greater rights to the subtenant than Tenant has under this Lease nor imposes any greater obligations on the sublandlord that would be binding on Landlord (or provides that any such greater rights or obligations shall be null and void if the subtenant becomes the direct tenant of Landlord).

The term "Eligible Space" as used herein shall mean space constituting not less than one full floor of the Building comprised of full floors which constitute (i) the "top floor" or "bottom floor" (i.e., the then highest or lowest full floor of the Premises as constituted at the time in question) together with any one or more full floors that are contiguous to such "top floor" or "bottom floor" and (ii) any full floor (together with any one or more full floors contiguous thereto) that is contiguous to one or more floors that are then the subject of a sublease with respect to which Landlord previously entered into a subtenant recognition agreement.

**Section 8.14 Additional Requirements.** Notwithstanding anything to contrary contained in this Lease (including, without limitation, the provisions of Sections 5.07 and 8.12), Tenant may not permit occupancy by any proposed user (A) engaged in a business, or use of the Premises in a manner that is inconsistent with the permitted uses or the first class status of the Building or (B) in the case of a subtenant or assignee, if such party is not qualified as a World Trade Center tenant in the opinion of Net Lessor (in accordance with the provisions of the definition of "Tenant" in Section 1.01). Without limiting Landlord's rights and remedies in such event, Landlord shall have the right to require the removal of any Person occupying the Premises in violation of the immediately preceding sentence, and upon written request from Landlord, Tenant shall use its best efforts (at Tenant's sole cost and expense) to terminate the occupancy of such Person and evict such Person from the Premises.

**Section 8.15 Tenant's Below Grade Space.** In no event shall Tenant be permitted to sublease Tenant's Below Grade Space to, or permit occupancy thereof by, any Person other than Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants of the Premises during such Person's continued occupancy of the Premises.

## ARTICLE 9

### SUBORDINATION, NON-DISTURBANCE, ESTOPPEL CERTIFICATE

**Section 9.01 Subordinate to Superior Leases.** This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to the terms, covenants, conditions and provisions of all Mortgages and Superior Leases (including the Net Lease) and all rights of the Mortgagees and Superior Lessors thereunder, and no further instrument of subordination shall be required. Tenant shall promptly execute and deliver any instrument that Landlord or any Superior Lessor or Mortgagee or Governmental Authority may reasonably request to evidence such subordination. This Lease is subject to the rights of The City of New York pursuant to the City Agreement.

### **Section 9.02 Rights of Superior Parties.**

(a) In the event of any act or omission of Landlord that would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease (other than pursuant to Sections 17.02 or 18.02), or to claim a partial or total eviction, Tenant shall give each Mortgagee and Superior Lessor whose name and address shall previously have been furnished to Tenant in writing, notice of such act or omission. If Landlord fails to cure such act or omission within the time provided for in this Lease, then each such Mortgagee or Superior Lessor shall have an additional thirty (30) days after receipt of such notice within which to cure such act or omission or if such act or omission cannot be cured, using diligent efforts, within that time, then such additional time as may be reasonably necessary if, within such thirty (30) days, such Mortgagee or Superior Lessor has notified Tenant of its intention to cure such act or omission and has commenced and is diligently pursuing the remedies necessary to cure such act or omission (including, without limitation, commencement of foreclosure proceedings or eviction proceedings, if necessary, to effect such cure), in which event this Lease shall not be terminated and Tenant shall not exercise any other rights or remedies under this Lease or otherwise while such remedies are being so diligently pursued.

(b) Tenant shall not withhold its consent to any reasonably requested modifications to this Lease, upon request of a Mortgagee, provided that such Lease modification shall not decrease Landlord's obligations or decrease Tenant's rights under this Lease (except to a *de minimis* extent), modify the definition of Permitted Uses herein or increase Tenant's monetary obligations under this Lease (to any extent) or non-monetary obligations under this Lease (except to a *de minimis* extent).

### **Section 9.03 Attornment to Successor Landlord.**

(a) If a Mortgagee or Superior Lessor (other than Net Lessor under the Net Lease for so long as Net Lessor and Landlord are the same person or are Affiliates of one another, under which circumstances Net Lessor shall be subject to the terms of Section 9.03(b) below) shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such Mortgagee or Superior Lessor, Tenant shall attorn to and recognize such Mortgagee, such Superior Lessor, the designee of such Mortgagee or Superior Lessor or a purchaser at foreclosure or otherwise, in

each case acquiring Landlord's interest under this Lease (a "Successor Landlord") as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment this Lease shall continue in full force and effect as, or as if it were, a direct lease between such Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment except that such Successor Landlord, unless such Successor Landlord shall be an Affiliate of Landlord, shall not:

(i) be liable for any acts, omissions, events or conditions arising prior to the time such Successor Landlord acquired Landlord's interest under this Lease;

(ii) except to the extent set forth in the Non-Disturbance Agreement entered into by such Successor Landlord, be subject to any offset or defenses that Tenant may have against Landlord, that shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any previous material modification of this Lease entered into after Tenant has been notified of the existence and identity of such Successor Landlord and of its address for notices, not expressly provided for in this Lease, or by any previous prepayment of more than one month's Fixed Rent, unless such material modification or prepayment shall have been expressly approved in writing by such Successor Landlord; or

(iv) except to the extent set forth in the Non-Disturbance Agreement entered into by such Successor Landlord, be bound by any obligation to perform any work or to make improvements to the Premises except for normal repairs and maintenance to the extent required to be made by Landlord pursuant to this Lease.

(b) Subject to the terms of the applicable Non-Disturbance Agreement to be delivered pursuant to Section 9.04, Tenant covenants and agrees that if, whether (i) by reason of a default on the part of Landlord who is the lessee under the Net Lease in the performance of any of the terms or provisions of such Net Lease or (ii) for any other reason of any nature whatsoever, such Net Lease and the leasehold estate of the lessee thereunder are terminated by summary dispossession proceeding or otherwise, then Tenant shall attorn to and recognize such landlord as Tenant's landlord under this Lease. Tenant covenants and agrees to execute and deliver, at any time and from time to time upon request of the landlord under such Net Lease, any instrument that may be reasonably necessary or appropriate to evidence such attornment. Tenant further waives the provisions of any statute or rule of law now or hereafter in effect that may terminate this Lease or give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises demised hereby in the event such Net Lease terminates or in the event any such proceeding is brought by the landlord under such Net Lease, and in that circumstance Tenant agrees that this Lease shall not be affected in any way whatsoever by any such proceeding or termination.

#### **Section 9.04 Non-Disturbance Agreements.**

(a) Concurrently with the execution of this Lease, Tenant and Landlord are entering into a Net Lessor SNDA.

(b) Anything in this Article 9 to the contrary notwithstanding, this Lease shall not be subordinate to any future Mortgage or future Superior Lease, unless and until there shall first be delivered to Tenant, for execution, a Non-Disturbance Agreement executed by such Mortgagee or Superior Lessor. Landlord shall use commercially reasonable efforts to obtain and deliver to Tenant a Non-Disturbance Agreement from any future Mortgagee or Superior Lessor within a reasonable time after the execution of such applicable Mortgage or Superior Lease.

(c) Tenant shall have the right to record any Non-Disturbance Agreement and Net Lessor SNDA in the appropriate Register's Office, provided that Tenant shall pay all costs, taxes and expenses necessary for the recordation of such Non-Disturbance Agreement and Net Lessor SNDA.

**Section 9.05 Estoppel Certificates.** Each party agrees, at any time and from time to time, as reasonably requested by the other party, upon not less than fifteen (15) days' prior notice, to execute and deliver to the other a written statement executed and acknowledged by an appropriate individual representing such party (i) stating that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the then-Fixed Rent and Additional Rent, (iii) setting forth the date to which the Fixed Rent and Additional Rent have been paid, (iv) stating whether or not, to the best knowledge of the signatory, the other party is in default under this Lease, and if so, setting forth the specific nature of all such defaults, (v) stating the amount of the security deposit, if any, held by Landlord under this Lease, (vi) stating whether there are any subleases affecting the Premises, (vii) stating the address of the person to which all notices and communication under this Lease shall be sent, (viii) stating the Commencement Date, the Rent Commencement Date and the Expiration Date, (ix) stating whether or not there are any amounts of Landlord's Contribution not yet advanced to Tenant, (x) stating whether or not (to Tenant's knowledge, in the case of any statement by Tenant) there are any items of Landlord's Work that have not been completed, and if so, describing such work in a reasonable manner, (xi) stating what portion of the Premises Tenant is in possession and occupancy of pursuant to this Lease, and (xii) as to any other matters reasonably requested by the party requesting such certificate. The parties acknowledge that any statement delivered pursuant to this Section 9.05 may be relied upon by (i) any purchaser or owner (x) of the Real Property or the Building or (y) of Landlord's interest (directly or indirectly) in the Real Property or the Building or any Superior Lease, or (ii) any Mortgagee or Superior Lessor, or (iii) any purchaser of the interest of any Mortgagee or Superior Lessor (directly or indirectly) in the Real Property or the Building, or (iv) any prospective or actual sublessee of the Premises or assignee of this Lease, or (v) any permitted transferee of or successor to Tenant.

**Section 9.06 Net Lease Acknowledgements.** Tenant acknowledges and agrees that, notwithstanding any provision to the contrary anywhere in this Lease:

(a) in accordance with Sections 9.3(i) and 41.1 of the Net Lease, this Lease is subject to the terms, covenants, conditions and provisions of the REOA and the Net Lease;

(b) in accordance with Section 9.3(ii) of the Net Lease, (x) this Lease shall terminate and expire, without notice to Tenant, on the day preceding the "Expiration Date" (as defined in the Net Lease) or on such earlier date as Landlord and Tenant may agree upon, or (y) in the event the Net Lease shall terminate prior to the "Expiration Date" (as defined in the Net

Lease), subject to the provisions of this Article 9, Tenant shall attorn to, or enter into a direct lease on identical terms with, Net Lessor for the balance of the unexpired Term;

(c) in accordance with Section 9.4 of the Net Lease, upon the occurrence of an "Event of Default" (as defined in the Net Lease) by Landlord, Net Lessor may collect Rent and any other sums due under this Lease directly from Tenant;

(d) in accordance with Section 9.5 of the Net Lease, Landlord hereby presently assigns to Net Lessor any Rents or other sums due it under this Lease, such assignment to be effective immediately upon the occurrence of any "Event of Default" (as defined in the Net Lease) by Landlord under the Net Lease,

(e) in accordance with Sections 11 and 19.13 of the Net Lease, all Tenant's Property that constitute fixtures shall become the sole property of Net Lessor upon installation, provided, however, that all Tenant's Property shall be governed in accordance with this Lease, and provided further that nothing contained in this subsection 9.06(e) shall be deemed to modify Tenant's obligations set forth elsewhere in this Lease with respect to the removal of Alterations at the expiration of the Term;

(f) in accordance with Sections 6.4.6, 13.3 and 13.4 of the Net Lease, Net Lessor and QAD may, (x) upon reasonable prior notice, inspect the Premises for health code violations and (y) police the Building for any other violations of applicable Legal Requirements, said policing and inspections to be conducted in accordance with the Port Authority Manual guidelines; and

(g) in accordance with Section 9.3(iii) of the Net Lease, to the extent Net Lessor provides electrical power pursuant to Section 7.01 of this Lease, Landlord is deemed the agent of Net Lessor to collect any payments therefor.

## ARTICLE 10

### ENTRY; RIGHT TO CHANGE PUBLIC PORTIONS OF THE BUILDING

**Section 10.01 Landlord's Right to Repair Building; Access During Repairs.** Subject to the provisions of this Article 10, Tenant shall permit Landlord to erect, use and maintain pipes, ducts, cabling and conduits in and through the Premises in concealed locations beneath floors, behind core or perimeter walls or within existing column enclosures and above ceilings. Subject to the provisions of this Article 10, Landlord, Net Lessor or Landlord's or Net Lessor's agents or designees shall have the right to enter the Premises, at any time upon prior reasonable notice (except in an emergency), for the purpose of (i) in the case of Landlord or its agents or designees, making or inspecting such repairs or alterations as Landlord shall be required or shall have the right to make by the provisions of this Lease and, (ii) in the case of Net Lessor or its agents or designees, inspecting and reviewing such repairs or alterations as to their compliance with Legal Requirements and the Superior Lease. Landlord shall promptly repair any damage caused by such repairs or alterations, including, without limitation, repair (or replacement as necessary) of all Tenant finishes in substantially the same condition existing prior to such damage except to the extent such damage is caused by Tenant's acts or omissions. Landlord shall be allowed to take

such material as shall reasonably be required for such work into and upon the Premises during periods when work is in progress (it being expressly understood and agreed that Landlord shall not store any materials in the Premises during the performance of such work except to the extent that such storage does not unreasonably interfere with Tenant's business and use of the Premises), without the same constituting an actual or constructive eviction of Tenant in whole or in part, and the Rent reserved shall in no wise abate while said repairs or alterations are being made. Landlord shall clean up all work areas at the end of each day or block off such work areas in a manner that does not unreasonably interfere with Tenant's business and use of the Premises.

**Section 10.02 Landlord's Right to Show the Premises to Others.** Landlord may, on reasonable prior notice to Tenant, during Operating Hours, enter the Premises for the purposes of inspecting the Premises and/or showing the Premises to prospective purchasers or lessees of the Building (other than space tenants) or prospective mortgagees or prospective assignees of any such mortgagees for such prospective transaction. During the twenty-four (24) months prior to the expiration of the Term, Landlord may exhibit the Premises to prospective tenants, upon prior reasonable notice to Tenant and in coordination with Tenant so as not to unreasonably disrupt Tenant's business.

**Section 10.03 Landlord's Use of Contractors in the Premises.** Landlord shall use its commercially reasonable efforts to minimize interference with Tenant's access to and use or occupancy of the Premises for Permitted Uses (including Business Center Uses) in making any repairs, alterations, additions or improvements and in inspecting and exhibiting the Premises, and all of the foregoing shall be performed by Landlord with all reasonable diligence, provided, however, that Landlord shall have no obligation to employ contractors or labor at so-called overtime or other premium pay rates or to incur any other overtime costs or expenses whatsoever, unless Landlord is requested to do so by Tenant, in which event (i) such overtime labor shall be reasonable and feasible in both cost and efficacy under the circumstances and (ii) Tenant will reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for any such overtime or similar costs incurred by Landlord at Tenant's request. In making any repairs, alterations, additions or improvements, Landlord shall use reasonable efforts to cause its contractors or labor to cover and secure such repair areas and equipment in such a manner as to minimize interference with Tenant's business operations and to minimize any damage that might result to the appearance or function of the affected areas of the Premises.

**Section 10.04 Landlord's Right to Alter the Building.** Subject to Landlord's obligation to perform Landlord's Work pursuant to, and in accordance with, the Work Letter, Landlord shall have the right from time to time to alter the Building and, without the same constituting an actual or constructive eviction, to change the arrangement or location of entrances or passageways, doors and doorways, and corridors, stairs, toilets, or other public parts of the Building, provided that such alterations or changes do not materially interfere with Tenant's layout, use or enjoyment of the Premises, or access to the Building or Premises and provided, further, that the Building's plaza, Lobby and elevator lobbies, including the skylobby located on the 64<sup>th</sup> floor, shall, following the completion of such alterations or changes, be of a quality of finish and utility at least comparable to other first class office buildings.

## ARTICLE 11

### LAWS, ORDINANCES, REQUIREMENTS OF PUBLIC AUTHORITIES

**Section 11.01 Tenant's Obligations.** If Tenant receives written notice of any violation or alleged violation of any Legal Requirements applicable to the Premises, Tenant shall give prompt notice thereof to Landlord. Tenant, at its sole expense, shall comply with all Legal Requirements applicable to the Premises or the use and occupancy thereof by Tenant to the extent in each case arising from (i) Tenant's particular manner of use or the manner of conduct of Tenant's business in the Premises or the operation by Tenant of its installations, equipment or other property therein, it being agreed that to the extent any Legal Requirement becomes applicable to any Event Space or to any ancillary use, then the obligation to comply with such Legal Requirements shall be deemed to have arisen by reason of Tenant's particular manner of use of the Premises, or (ii) any Alterations performed by or on behalf of Tenant; and Tenant shall make all repairs or Alterations required thereby, whether structural or non-structural, ordinary or extraordinary, in which event such repair or Alteration shall be performed by Tenant in accordance with all of the terms of this Lease governing the performance of Alterations, provided, however, that in the event of any such structural or extraordinary Alterations or repairs that are the obligation of Tenant hereunder, at Landlord's option, such repairs or Alterations may be performed by Landlord, in which event the reasonable cost thereof shall be paid by Tenant as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice therefor).

**Section 11.02 Tenant's Right to Contest.** Tenant, at its expense, after notice to Landlord, may contest by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Premises or Tenant, of any Legal Requirement, provided that: (a) Landlord shall not be subject to criminal penalty or to prosecution for a crime, or any other fine or charge (unless Tenant pays such fine or charge and any interest accrued thereon, in each case, on or prior to the due date therefor), nor shall the Premises or any part thereof or the Real Property or any part thereof be subject to being condemned, forfeited, defeased, encumbered or vacated by reason of non-compliance or otherwise by reason of such contest; (b) no unsafe or hazardous condition, relating to such contest, then exists in the Premises that remains unremedied; (c) such non-compliance or contest shall not constitute or result in any default under any Superior Lease or Mortgage, or if any such Superior Lease and/or Mortgage shall permit such non-compliance or contest on condition of the taking of action or furnishing of security by Landlord, and the applicable Mortgagee or Superior Lessor shall so require, then such action shall be taken and such security shall be furnished at the expense of Tenant; (d) such non-compliance or contest shall not prevent Landlord from obtaining any and all permits and licenses then required under applicable Legal Requirements in connection with the operation of the Building; (e) no insurance policy carried in respect of the Building by Landlord is cancelled and no premium for any such policy is increased by reason of such non-compliance or such contest; (f) if Landlord so requires (but Landlord may only so require in instances where Landlord (x) would be subject to civil fines or penalties, (y) would be liable to an independent third party or (z) otherwise reasonably requires), Tenant furnishes to Landlord the bond of a surety company, in form and substance satisfactory to Landlord, in an amount equal to at least one hundred ten percent (110%) of the cost of such compliance (as reasonably estimated by Landlord), or such other security reasonably satisfactory in all respects to Landlord; and (g) Tenant shall keep Landlord advised as to the status of such proceedings, including any settlement thereof. Tenant agrees to indemnify, defend

and save Landlord and all Landlord Parties harmless, in accordance with the provisions of Article 16, from and against any loss, liability, damage or expense arising out of any such deferral of compliance or contest, including, without limitation, reasonable attorneys' fees and disbursements and other expenses reasonably incurred by Landlord. Landlord agrees to execute any documents reasonably required by Tenant in order to permit Tenant effectively to carry on any such contest, provided Landlord is not thereby subjected to any cost or expense not reimbursed by Tenant or exposed to any material liability or material obligation on account thereof.

**Section 11.03 Landlord's Compliance.** Landlord shall, at its expense to the extent same are not the responsibility of Tenant under Section 11.01 (but subject to recoupment as Operating Expenses to the extent permitted under Article 4), comply with all Legal Requirements with respect to the Common Areas (including, but not limited to, the Americans with Disabilities Act of 1992, as amended), to the extent, as between Landlord and Tenant, failure to do so would have a material adverse effect on Tenant but may defer compliance so long as Landlord shall be diligently contesting the validity or applicability thereof in good faith so long as such contest does not unreasonably interfere with Tenant's access to or use of the Premises and such non-compliance or contest shall not prevent Tenant from obtaining any and all permits and licenses then required under applicable Legal Requirements in connection with Tenant's use and occupancy of the Premises.

**Section 11.04 Hazardous Substances.** Neither Landlord nor Tenant shall cause or permit any Hazardous Substances to be used, transported, stored, released, removed and/or disposed of, handled, produced or installed in, on or from the Premises or the Building other than in connection with (i) materials and supplies typically and lawfully used in connection with the performance of Alterations of the type being undertaken by Tenant as part of the Tenant's Initial Alterations or any Alterations thereafter performed by Tenant and by Landlord as part of Landlord's Work or any Alterations thereafter performed by Landlord, and (ii) the use, operation, and maintenance of the Premises for the Permitted Uses, provided in each case that the same are used, handled, removed, disposed of and stored in compliance with all applicable Legal Requirements. In the event of a violation of any of the foregoing provisions of this Section 11.04, Landlord may, without notice and without regard to any grace or cure period contained elsewhere in this Lease, take all remedial action deemed necessary to correct such condition, and Tenant shall reimburse Landlord for the cost thereof, within twenty (20) days after Tenant's receipt of Landlord's invoice therefor.

**Section 11.05 Window Cleaning.** Tenant will not clean, nor require, permit, suffer or allow any window in the Premises to be cleaned from the outside in violation of Section 202 of the New York Labor Law or of the rules of the New York City Board of Standards and Appeals or of any other board or body having or asserting jurisdiction.

## ARTICLE 12

### REPAIRS

**Section 12.01 Landlord and Tenant Repairs.** Landlord, at Landlord's expense, shall diligently maintain, replace and repair the Common Areas and the Building Systems (except as

otherwise set forth herein), the Lobby, the skylobby located on the 64<sup>th</sup> floor and the other public portions of the Building, both exterior and interior, and the structural elements thereof, including, without limitation, the roof, foundation and curtain wall, footings, exterior walls, load bearing columns, floor slabs, window sashes, elevators, corridors, core electrical closets, core telecommunications closets, core janitor closets, mechanical rooms, curbs and sidewalks adjacent to the Building, and the plumbing, electrical, mechanical, Building HVAC System, fire protection, life safety and sprinkler systems of the New Tower Building in conformance with standards applicable to Comparable Buildings (all of the foregoing, "Landlord Repairs"). Tenant, at Tenant's expense, shall keep the Premises and the fixtures, systems, equipment and appurtenances in good condition, except for reasonable wear and tear, obsolescence and damage for which Tenant is not responsible pursuant to the provisions of Articles 17 and 18. Tenant, at Tenant's expense, shall repair and keep in good working order those portions of the Building Systems located within and exclusively serving the Premises, from the point of connection on each floor of the Premises; provided, however, that in no event shall Tenant repair the Building HVAC System. By way of example only, Tenant shall be responsible for the maintenance and repair of (i) the electrical system serving the Premises from (but not including) the bus duct disconnect switch on each floor, (ii) the plumbing and sanitary systems and installations serving the Premises from the points of connection to (but not including) the main vertical risers and stacks of the Building, including any private bathrooms and shower facilities, but excluding, on multi-tenanted floors, the core bathrooms (including all fixtures therein), which shall be maintained and repaired by Landlord, at Landlord's expense, and (iii) the sprinkler system serving the Premises from the point of connection to (but not including) the tamper and flow valves. In no event may Tenant have access to or the right to use, modify or repair telephone or electrical closets, provided, however, that Tenant may have access to such closets so long as a representative of Landlord is present.

**Section 12.02 Damage caused by Tenant.** Notwithstanding anything to the contrary set forth in Section 12.01, all damage or injury to the Building Systems, the Building or the Premises caused by or resulting from the negligence, willful misconduct, breach of contract or violation of law of, or from Alterations made by, Tenant or any Tenant Party, shall be repaired at Tenant's expense (i) by Tenant, subject to Article 13, to the reasonable satisfaction of Landlord (if the required repairs are non-structural and do not affect any Building System) or (ii) by Landlord at Tenant's sole cost and expense (if the required repairs are structural or affect any Building System). All of such repairs shall be of quality or class equal to the original work or construction. If Tenant fails after twenty (20) days' notice to commence, and thereafter to proceed with due diligence to complete repairs required to be made by Tenant, the same may be made by Landlord upon not less than five (5) days' prior written notice to Tenant (except in an emergency) at the sole cost and expense of Tenant. Tenant shall pay to Landlord the actual, reasonable out-of-pocket costs and expenses thereof incurred by Landlord as Additional Rent within twenty (20) days after Tenant's receipt of a bill or statement therefor setting forth, in reasonable detail, a description of the repairs performed and attaching invoices therefor.

**Section 12.03 Floor Loads.** Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry (unless suitable reinforcement has been installed, subject to the provisions of Article 13 and in accordance with the Port Authority Manual). If any safe, heavy equipment, business machines, freight, bulky matter or fixtures to be moved into or out of the Building requires special handling, Tenant shall

give Landlord reasonable prior notice thereof and shall employ only persons holding a Master Rigger's license to do such work.

**Section 12.04 No Liability.** Except as may be expressly provided in this Lease, there shall be no allowance to Tenant for a diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord making, or failing to make, any repairs, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances or equipment thereof. *Landlord shall use reasonable efforts (which shall not include the use of overtime or premium labor (A) other than in the case of imminent danger to life or property, or (B) unless requested to do so by Tenant, in which event (i) such overtime labor shall be reasonable and feasible in both cost and efficacy under the circumstances and (ii) Tenant will reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for any such overtime or similar costs incurred by Landlord at Tenant's request) to minimize interference with Tenant's access to and use and occupancy of the Premises in making any repairs, alterations, additions or improvements and shall perform all work and repairs diligently and in a workerlike manner and in compliance with Legal Requirements.*

**Section 12.05 Rent Abatement for Untenantability.** Notwithstanding anything to the contrary contained in any other provision of this Lease, but subject to the provisions of Articles 17 and 18, in the event that (a) Tenant is unable to use seven thousand five hundred (7,500) or more contiguous RSF of the Premises for the ordinary conduct of Tenant's business due to Landlord's breach of an obligation under this Lease to provide services or perform repairs, in each case other than as a result of Unavoidable Delays or any delay caused by Tenant, its agents, employees or contractors ("Section 12.05 Tenant Delay"), and such condition continues for a period in excess of seven (7) consecutive days, subject to Section 12.05 Tenant Delay or Unavoidable Delays, after Tenant gives a notice to Landlord (the "Abatement Notice") stating that Tenant's inability to use the Premises or such portion thereof is solely due to such condition, (b) Tenant does not actually use the Premises or such portion thereof during such period, and (c) such condition has not resulted from the negligence, willful misconduct, breach of contract, violation of the provisions of this Lease beyond any applicable notice and cure period or violation of law of Tenant or any Tenant Party, then, unless Landlord shall have either (i) advised Tenant that it disputes the matters set forth in the Abatement Notice, in which case no abatement of Fixed Rent, Tenant's Tax Payment or Tenant's Operating Expense Payment shall occur until such dispute is resolved (but such abatement will be retroactive in the event Tenant prevails in such dispute) or (ii) cured such condition within such seven (7) day period (subject to any Section 12.05 Tenant Delay or Unavoidable Delays) after delivery of the Abatement Notice and thereafter proceeds with due diligence to cure such condition, Fixed Rent, Tenant's Tax Payment and Tenant's Operating Expense Payment shall be abated as to the Premises or such affected portion of the Premises on a per diem basis for the period commencing on the seventh (7th) day (subject to any Section 12.05 Tenant Delay) after Tenant gives the Abatement Notice, and ending on the earlier of (A) the date Tenant reoccupies the Premises or such portion thereof for the ordinary conduct of its business, or (B) the date on which such condition is substantially remedied such that Tenant is able to use the Premises or such portion thereof for the ordinary conduct of its business and Landlord has notified Tenant in writing thereof.

**Section 12.06 Removal of Tenant Wiring and Cabling.** If at any time during the Term, Tenant ceases using any wiring or cabling installed by or on behalf of Tenant in any portion of the Premises or in any other portions of the Building (other than a cessation that is temporary and where Tenant intends to resume using such wiring or cables within a reasonable period of time after such cessation), Tenant shall promptly give written notice to Landlord of such cessation and, subject to the applicable requirements of this Lease, Tenant shall, at Landlord's election, promptly remove such unused wiring and cabling at Tenant's sole cost and expense. In order for Landlord and Tenant to (a) identify any wiring or cabling installed by or on behalf of Tenant in any portion of the Premises or in any other portions of the Building and/or (b) trace the starting and terminating points of such wiring and cabling, Tenant shall cause such wiring and cabling to be labeled and tagged, when installed, with appropriate identification marks and shall maintain, during the Term for all then existing wiring and cabling, "as built" drawings containing a guide or key to such marks and showing the routing of such wiring and cabling. Upon Landlord's request, Tenant shall provide to Landlord and Landlord's representatives and contractors reasonable access to such "as built" drawings for inspection and copying.

## ARTICLE 13

### ALTERATIONS; FIXTURES

#### **Section 13.01 Landlord Consent Requirement.**

(a) Except as otherwise provided in this Article 13, Tenant shall not make any Alterations without Landlord's prior consent in each instance. Landlord's consent shall not be required for any Alterations that are (i) decorative or cosmetic Alterations (and that are not Material Alterations), such as painting and the installation of wall coverings and of movable fixtures and ordinary office business equipment (collectively, "Decorative Alterations"), or (ii) are not Material Alterations and do not for any one project cost in excess of One Hundred Thousand Dollars (\$100,000) (the "Alteration Threshold"; Alterations which are not Material Alterations and which for any one project do not cost in excess of the Alteration Threshold are herein called "Minor Alterations"), provided that with respect to any such Decorative Alteration or Minor Alteration, the Net Lessor has consented thereto (if such consent is required under the Net Lease) and such Alteration complies with all Legal Requirements and the Net Lease (including, without limitation, the Port Authority's requirements for fire safety with respect to any wall coverings or carpeting). The Alteration Threshold shall be increased annually on January 1<sup>st</sup> of each year during the Term by the CPI Fraction. For those Alterations for which Landlord's consent is required hereunder (i.e., Alterations other than Decorative Alterations or Minor Alterations), Landlord's consent shall not be unreasonably withheld, conditioned or delayed, provided such Alterations are not Material Alterations. "Material Alterations" means Alterations that (i) affect the outside appearance of the Building or the structural integrity of the Building, including the structural elements of the walls, floors, ceiling or columns of the Building, (ii) would physically affect any components of the exterior of the Building, (iii) affect the Building Systems or the Building Services, (iv) would affect the provision of services to other Building tenants, (v) would include work that requires the removal of a portion of the floor slab in any portion of the Premises, or access to, or penetration of the floor slab adjacent to, any space occupied by any other tenant or occupant of the Building (other than Tenant's subtenants) or (vi) require that a governmental permit be filed in connection therewith. In the event that an

Alteration is deemed a Material Alteration solely for the reason given in clause (vi) above (and not for any of the reasons given in clauses (i) through (v) above), Landlord's consent shall not be unreasonably withheld, conditioned or delayed with respect to the making of such Material Alteration, if such consent is required pursuant to the provisions of this Article 13.

(b) If Tenant intends to perform Alterations for which Tenant believes Landlord's consent is not required hereunder, Tenant shall nonetheless be required to give Landlord prior notice of such intention and belief and reasonable information concerning the nature of such proposed Alterations, the start date and expected duration thereof, and Tenant shall be permitted to perform such Alterations without Landlord consent so long as (A) such Alterations shall be performed only by contractors and subcontractors approved by Landlord to the extent approval of such contractor or subcontractor is required by Section 13.03, (B) the performance of such Alterations does not affect areas outside the Premises, (C) such Alterations do not violate the certificate of occupancy then in effect for the Building, (D) Tenant shall have provided Landlord with plans and specifications for such Alterations if and as required by Section 13.02, and (E) Tenant otherwise complies with the requirements of this Article 13.

(c) Notwithstanding anything to the contrary contained herein, Tenant shall comply with the provisions of the Net Lease (including, without limitation, Section 19.4 thereof) with respect to the performance of any Alterations and shall not commence any work until a "Tenant Alteration Application" (as described in the Port Authority Manual) with respect to such Alterations, and the plans and specifications forming a part thereof, covering such work have been finally approved by the QAD. Landlord shall cooperate as is reasonably necessary in connection therewith and shall execute all reasonably necessary consents and applications and perform other reasonable ministerial and non-ministerial requirements as and to the extent required, all at Tenant's sole cost and expense.

(e) In the event of any conflict between this Article 13 and the Work Letter regarding Tenant's Initial Alterations, the terms and provisions of the Work Letter shall govern.

(f) Tenant shall have the right, as part of Tenant's Initial Alterations, subject to the terms of this Article 13, including Landlord's approval of specific location, at Tenant's sole cost and expense, to install a fiber loop in a location reasonably designated by Landlord in the Building for Tenant's telecommunications and fiber systems. Such fiber loop shall be deemed to be a Specialty Alteration for all purposes of this Lease. Tenant may use the fiber loop solely for Tenant's own use, except that Tenant may (i) sell such fiber loop services to Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) or (ii) allow Tenant and Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) to use such fiber loop so long as Tenant does not charge any fee or rent for the use thereof, in the case of each of clauses (i) and (ii) above, solely in connection with their use of the Premises.

#### Section 13.02 Plan Approval.

(a) Prior to making any Alterations (other than (x) Decorative Alterations and (y) Minor Alterations for which Tenant is not required by applicable Legal Requirements to, and does not in fact, prepare plans and specifications), Tenant shall submit to Landlord a Tenant Alteration Application and detailed plans and specifications therefor in form reasonably satisfactory to Landlord, which shall comply with all Port Authority Manual requirements and Legal Requirements (which detailed plans and specifications shall be subject to Landlord's approval only with respect to Alterations that are subject to Landlord's consent as provided herein) ("Tenant's Plans"). The data to be supplied by Tenant with the Tenant Alteration Application shall describe the fixtures, equipment and systems, if any, to be installed by Tenant, including those for the emission, handling and distribution of heat, air conditioning, domestic hot and cold water and electricity, in sufficient detail as shall enable QAD to determine whether the Port Authority Manual requirements have been complied with, and as shall enable Tenant's contractor to perform the work described and shown in such plans and specifications and shall show the proposed method of tying in such fixtures, equipment and systems to the utility lines or connections provided by Landlord in the electric closets located on the various floors on which each portion of the Premises is located. If such Alterations require a filing with a Governmental Authority or require the consent of such Governmental Authority, then (a) such plans and specifications shall be prepared and certified by a registered architect or licensed engineer, to the extent necessary for such governmental filing or consent, (b) Tenant, at its expense, shall obtain and deliver to Landlord true copies of all required permits, approvals and certificates, and (c) Tenant shall provide evidence that it carries all required insurance as well as worker's compensation insurance (covering all persons to be employed by Tenant and all contractors and subcontractors supplying materials or performing work in connection with such Alterations) and comprehensive public liability (including property damage coverage) and Builder's Risk coverage (issued on a completed value basis). All insurance required under clause (c) of the immediately preceding sentence shall be in such form, with such companies, for such periods and in such amounts and types of coverage as would be required by prudent landlords of Comparable Buildings, or as required by the terms of any Superior Lease (including the Net Lease) or any Mortgage, naming Landlord and its employees and agents, and any Superior

Lessor and any Mortgagee as well as any other Person required pursuant to the terms of the Net Lease as additional insureds. All Alterations including, but not limited to, Decorative Alterations shall be performed by Tenant, at Tenant's sole cost and expense, (A) in a good and workerlike manner, (B) in compliance with all Legal Requirements and with the Alteration Rules and Regulations attached hereto as Exhibit J, (C) except for Decorative Alterations and Minor Alterations, in accordance in all material respects with the plans and specifications previously approved by Landlord (as such plans and specifications may be revised from time to time in accordance herewith), and (D) under the supervision of a licensed architect or engineer, if such Alterations are projected by Tenant to cost in excess of the Alteration Threshold or if such Alterations constitute Material Alterations. Notwithstanding the foregoing provisions of this Section 13.02(a), for so long as Net Lessor is an affiliate of Landlord, Landlord shall coordinate distribution of Tenant's Plans for approval by QAD and by Net Lessor, as applicable (i.e., Tenant shall submit information required for approval of Alterations to Landlord's designated contact for construction in such number of multiple copies as Landlord may require and such designated contact shall then coordinate review by QAD and by Net Lessor, as applicable, such that Tenant shall receive a single response consolidating the results of each entity's review).

(b) Tenant shall promptly commence all Alterations after receipt of all consents and permits required hereunder and shall diligently prosecute same to completion. Tenant shall promptly reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for any and all reasonable, actual out-of-pocket costs and expenses incurred by Landlord in connection with the review of Tenant's plans and specifications for any such Alteration by any third-party architect, engineer or other consultant retained by Landlord or the review by any Superior Lessor or Mortgagee or any third-party architect, engineer or other consultant retained by any of them.

(c) In the event that Landlord, QAD and/or Net Lessor (so long as Net Lessor is an affiliate of Landlord) shall not approve any request for approval of Tenant's Plans, Tenant shall receive a single notice of such non-approval indicating the reasons for such non-approval, in sufficient detail so as to reasonably permit Tenant to make changes. Landlord, QAD and/or Net Lessor (so long as Net Lessor is an affiliate of Landlord), as applicable, may, at its election, approve with (and conditioned upon) modifications to Tenant's Plans. Tenant, subject to dispute resolution pursuant to Article 25 of this Lease, shall make such changes and additions as Landlord, QAD and/or Net Lessor (so long as Net Lessor is an affiliate of Landlord), as applicable, requires and shall resubmit the affected portion of Tenant's Plans as expeditiously as possible for approval in accordance with this Article 13. The foregoing resubmission process shall be repeated until all approvals for Tenant's Plans are received. The process described in this Section 13.02(c) is hereinafter referred to as the "Resubmission Process."

(d) If, after Tenant's Plans have been approved by Landlord, QAD and/or Net Lessor, as applicable, Tenant shall desire any material changes to be made in Tenant's Plans, Tenant shall so notify Landlord in writing, such notification to include any plans, specifications or information in sufficient detail as to permit Landlord to make a determination with respect thereto. Any change in Tenant's Plans that shall have a material impact on the Building Systems, the core and shell of the Building, Basic Construction or the project schedule, shall be subject to Landlord's approval which shall not be unreasonably withheld, conditioned or delayed. No party shall disapprove any matter previously submitted and approved by such party, except to the

extent that the proposed modification affects, other than incidentally or to a de minimis extent, the matter so approved or deemed approved. In the event that Landlord, QAD and/or Net Lessor, as applicable, shall object to such change, Tenant shall resubmit Tenant's Plans pursuant to the Resubmission Process.

**Section 13.03 Approval of Architects, Engineers and Contractors.** Tenant shall be fully responsible at its sole cost and expense for retaining all architectural, engineering and other technical consultants as QAD shall determine are necessary to prepare Tenant's Plans in accordance with this Article 13. The plans and specifications required to be submitted by Tenant to Landlord under this Lease shall bear the seal of a licensed architect or professional engineer licensed in the State of New York who shall be responsible for the administration of the work, and shall be in sufficient detail for Tenant's contractor to perform the work. Prior to engaging or retaining an architect or architects for any Alterations (other than Decorative Alterations), Tenant shall submit the name or names of said architect or architects to Landlord for its approval. The Landlord shall have the right to approve any such architect, such approval not to be unreasonably withheld. Prior to entering into any contracts for any part of the Alterations (other than Decorative Alterations), Tenant shall submit to Landlord for its approval the name or names of the contractors to whom Tenant proposes to award said contracts. The Landlord shall have the right to approve any such contractors, such approval not to be unreasonably withheld. Tenant shall include in all such contracts such provisions and conditions as Landlord may reasonably require. Without limiting the generality of the foregoing, all of the Tenant's construction contracts shall provide as follows: "If (i) the Contractor fails to perform any of its obligations under the Contract, including its obligation to the Tenant to pay any claims lawfully made against it by any materialman, subcontractor or workman or other third party that arises out of or in connection with the performance of the Contract or (ii) any claim (just or unjust) that arises out of or in connection with the Contract is made against the Tenant or (iii) any subcontractor under the Contract fails to pay any claims lawfully made against it by any materialman, subcontractor, workman or other third party that arise out of or in connection with the Contract or if in the Tenant's opinion any of the aforesaid contingencies is likely to arise, then the Tenant shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payments have already been certified as due) such sums as the Tenant may deem necessary to protect it against delay or loss or to assume the payment of just claims of third parties, and to apply such sums in such manner as the Tenant may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Failure by the Tenant to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Tenant does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Tenant to withhold and apply monies, nor any exercise, or attempted exercise of, or omission to exercise, such rights by the Tenant shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third parties. Until actual payment is made to the Contractor, its right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of Tenant under this provision."

**Section 13.04 Property of Landlord.** Except as otherwise provided in this Section 13.04, all work, construction, repairs, Alterations, other improvements or installations made to or upon the Premises, other than Tenant's Property, whether or not at the expense of Tenant, shall

become part of the Premises and, upon the expiration or earlier termination of the Term, shall become the property of Landlord and remain upon and be surrendered with the Premises as a part thereof upon the Expiration Date or earlier termination of the Term; provided, however, that Tenant shall remove from the Premises any or all Specialty Alterations (except those Specialty Alterations so designated in writing by Landlord not less than ninety (90) days prior to the Expiration Date or with reasonable promptness following any earlier expiration or termination of the Term, hereinafter called "Excepted Specialty Alterations"). If Tenant so requests in writing in connection with requesting Landlord's consent to any proposed Alteration, Landlord shall identify, at the time it approves Tenant's Plans, any Specialty Alterations contained in such Tenant's Plans as to which Landlord retains the right to require Tenant to remove upon the expiration or sooner termination of this Lease. On the Expiration Date (unless this Lease has been terminated due to the occurrence of a casualty pursuant to Article 17) (i) Tenant shall have removed Tenant's Property from the Premises, and (ii) Tenant shall have removed the Specialty Alterations (other than Excepted Specialty Alterations) from the Premises, at Tenant's sole cost and expense in accordance with the provisions of this Article 13 and repaired and restored in a good and workerlike manner any damage to the Premises and the Building caused by removal of Tenant's Property and Specialty Alterations in accordance with the provisions of this Article 13 and to the condition existing prior to the installation of same. In the case of any changes made by Tenant to the base Building conditions in core bathrooms, such restoration work shall include, if required by Landlord, the reinstallation of Building standard fixtures and finishes. Any of the Specialty Alterations or Tenant's Property not so removed by Tenant at or prior to the Expiration Date shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or be removed from the Premises by Landlord, and Tenant shall (unless Landlord shall have directed Tenant not to remove such items) reimburse Landlord, as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice, for Landlord's reasonable, actual out-of-pocket costs incurred in connection with such removal and restoration. The covenants and agreements set forth in this Section 13.04 shall survive the expiration or earlier termination of this Lease.

**Section 13.05 Permits and Consents of Governmental Authorities; "As Built Plans."** Landlord shall cooperate with Tenant, at Tenant's sole cost and expense, as is reasonably necessary for Tenant to obtain all permits and approvals required to be issued by any Governmental Authority in connection with Tenant's Alterations, and Landlord shall execute necessary consents and applications and perform other reasonable ministerial requirements as and to the extent required. Tenant shall pay, as Additional Rent, Landlord's actual out-of-pocket review and approval costs and other costs and expenses payable by Landlord to any Governmental Authority in connection with any Alterations (to the extent not paid directly by Tenant to such Governmental Authority). Upon completion of any Alterations, Tenant, at its expense, shall promptly obtain certificates of final approval of such Alterations as may be required by any Governmental Authority (including any new or amended certificate of occupancy required by any Governmental Authority), and shall furnish Landlord with copies thereof, together with copies of the final "as-built" plans and specifications (other than for Decorative Alterations or Minor Alterations for which no such plans or specifications were actually produced or required to be produced) prepared by or on behalf of Tenant in connection with such Alterations (which plans and specifications must include final, marked record drawings which incorporate all bulletins issued from each of Tenant's HVAC, electrical, plumbing, fire safety and sprinkler subcontractors, as applicable) prepared on an AutoCAD

Computer Assisted Drafting and Design System (or such other system or medium as Landlord may reasonably specify or accept at its request) using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming conventions as Landlord may reasonably accept) and magnetic computer media of such record drawings and specifications, translated into in a format compatible with AutoCAD Release 2000 or later or another format reasonably acceptable to Landlord. Without limiting the generality of the foregoing, with reasonable promptness but in no event later than thirty (30) days following the completion of any Alterations, Tenant shall deliver to Landlord (i) proof of the issuance of any required approvals, permits and sign-offs for the Alterations by all Governmental Authorities having jurisdiction thereover and (ii) final lien waivers issued by all contractors, subcontractors and material suppliers covering all of the Alterations.

#### Section 13.06 Liens.

(a) If, because of any act or omission of a Tenant Party, its suppliers or subcontractors, any mechanic's lien, U.C.C. financing statement or other lien, charge or order for the payment of money shall be filed against Landlord, or against all or any portion of the Premises, the Building or the Real Property, Tenant shall, at its own cost and expense, cause the same to be discharged of record, by bonding or otherwise, within thirty (30) days after Tenant *has received notice thereof. Tenant shall indemnify, defend and save Landlord and all Landlord Parties* harmless against and from all costs, expenses, liabilities, suits, penalties, claims and demands (including reasonable attorneys' fees and disbursements) resulting from any such liens, charges or orders.

(b) Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in and to the Premises.

**Section 13.07 Labor.** Tenant shall not directly or indirectly, engage any third-party contractor, mechanic or laborer in the Premises, whether in connection with any Alteration or otherwise, or use any materials in connection with such Alteration in a manner that would disturb harmony with any trade engaged in performing any other work in the Building (including, without limitation, the creation of any work slowdown, sabotage, strike, picket or jurisdictional dispute) *or create any actual interference with the operation of the Building or performance of Landlord's Work or the work of any other tenant or increase the cost of any of the foregoing.* Tenant shall immediately stop the performance of any Alteration, or the use of any materials in connection with such Alteration or use of any third-party contractor, mechanic or laborer if Landlord notifies Tenant that continuing such Alteration or employing such third-party contractor, mechanic or laborer *would so disturb harmony with any trade engaged in performing any other work in the Building or create any actual or perceived interference with the operation of the Building.* Landlord and Tenant shall cooperate with one another in all reasonable respects to avoid any such labor disharmony.

**Section 13.08 Miscellaneous Requirements.**

(a) All work to be performed by Tenant shall be done in a manner that will not unreasonably interfere with or disturb other tenants or occupants of the Building. Landlord shall not enforce this Section 13.08(a) as against Tenant in a discriminatory manner (i.e., Landlord shall not enforce such provision against Tenant unless it is then generally enforcing such requirement against other tenants in the Building).

(b) All actual out-of-pocket fees, costs and expenses reasonably incurred by Landlord in obtaining approvals or reviews required or contemplated by the Net Lease or by any Mortgagee in connection with any Alterations shall be payable by Tenant as Additional Rent, within twenty (20) days after Tenant's receipt of Landlord's invoice therefor (unless, solely in the case of any Governmental Authority, Tenant pays the same directly to such Governmental Authority).

(c) Landlord's review and approval of Tenant's plans and specifications and consent to the performance of the work described therein shall not be deemed an agreement by Landlord that such plans, specifications and work conform with applicable law and insurance requirements, nor shall it be deemed a waiver by Landlord of compliance by Tenant with any provisions of this Lease, nor shall it impose upon Landlord any liability or obligation with respect to such work, including without limitation, its completeness, design sufficiency or the performance thereof.

(d) Before proceeding with any Alteration that will cost more than \$100,000 (exclusive of the costs of the Tenant's Initial Alterations, decorating work and items constituting Tenant's Property), as estimated by a reputable contractor designated by Landlord, Tenant shall furnish to Landlord one of the following: (i) a cash deposit, or (ii) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in New York reasonably satisfactory to Landlord), or (iii) an irrevocable, unconditional, negotiable letter of credit, issued by and drawn on a bank or trust company that is a member of the New York Clearing House Association in a form reasonably satisfactory to Landlord; each to be in an amount equal to one hundred twenty five (125%) percent of the cost of the Alteration, estimated as set forth above. Any such letter of credit shall be for one year and shall be renewed by Tenant *each and every year until the Alteration in question is completed and shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the then-current letter of credit.* Failure to deliver such new letter of credit on or before said date shall be a material breach of this Lease and Landlord shall have the right, inter alia, to present the then-current letter of credit for payment. Upon (i) the completion of the Alteration in accordance with the terms of this Article 13 and (ii) the submission to Landlord of proof evidencing the payment in full for said Alteration, the security deposited with Landlord (or the balance of the proceeds thereof, if Tenant has furnished cash or a letter of credit and if Landlord has drawn on the same) shall be returned to Tenant. Upon Tenant's failure to properly perform, complete and fully pay for the said Alteration, which failure continues after the giving of notice and the expiration of applicable grace period, Landlord shall be entitled to draw on the security deposited under this Article 13 *to the extent Landlord deems necessary in connection with the said Alteration, the restoration and/or protection of the Premises or the Real Property and the payment or satisfaction of any*

costs, damages or expenses in connection with the foregoing and/or Tenant's obligations under this Article 13.

#### ARTICLE 14

##### LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS

**Section 14.01 Landlord's Right to Perform Tenant's Obligations.** If Tenant shall default in the observance or performance of any term or covenant on its part to be observed or performed under or by virtue of any of the terms or provisions in any Article of this Lease, and such default shall continue beyond any applicable notice and grace period, Landlord, without being under any obligation to do so and without thereby waiving such default, may, upon ten (10) days' prior written notice to Tenant and a reasonable opportunity for Tenant to cure (or such shorter period, if any, as may be feasible in the case of an emergency), remedy such default for the account and at the reasonable expense of Tenant. If Landlord makes any such expenditures in connection therewith, including, but not limited to, reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid with interest at five percent (5%) in excess of the Prime Rate shall be deemed to be Additional Rent hereunder and shall be paid to it by Tenant within twenty (20) days after Tenant's receipt of Landlord's invoice therefor, and if such Additional Rent shall not have been paid prior to the expiration or termination of the Term, same shall be recoverable by Landlord after the expiration or termination of the Term.

#### ARTICLE 15

##### NO LIABILITY OF LANDLORD; FORCE MAJEURE

**Section 15.01 No Implied Warranties.** Tenant acknowledges that neither Landlord nor Landlord's agents, employees, and representatives have made any representations, warranties, or promises with respect to the Building, the Land or the Premises except as expressly set forth in this Lease.

**Section 15.02 Unavoidable Delay.** Except as otherwise expressly provided in this Lease, this Lease and the obligation of Tenant to pay Rent hereunder, and perform all of the other covenants and agreements hereunder on the part of Tenant to be performed, shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease or is unable to supply or is unable to make, or is delayed in making, any repairs, additions, alterations or decorations or is unable to supply, or is delayed in supplying, any equipment or fixtures, if Landlord is prevented or delayed from so doing by reason of Force Majeure or delays resulting from a failure of any Superior Mortgagee or Superior Lessor (including, without limitation, the Port Authority in its capacity as a Governmental Authority, but not, for so long as Net Lessor is an affiliate of Landlord, in its capacity as Net Lessor) to grant a required consent (collectively, "Unavoidable Delay"): Except as otherwise expressly provided in this Lease, this Lease and the obligation of Landlord to perform all of the covenants and agreements hereunder on the part of Landlord to be performed, shall in no way be affected, impaired or excused because Tenant is unable to fulfill any of its obligations under this Lease or is unable to supply or is unable to make, or is delayed in making, any repairs, additions,

alterations or decorations or is unable to supply, or is delayed in supplying, any equipment or fixtures, if Tenant is prevented or delayed from so doing by reason of Unavoidable Delay.

Landlord and Tenant each shall notify the other as promptly as is reasonably practicable after learning of an Unavoidable Delay which prevents such party from fulfilling any of its obligations under this Lease, and after such initial notification promptly after request of the other party, Landlord or Tenant (as the case may be) shall notify the other party of the status of such delay. Each party shall use all commercially reasonable efforts to mitigate the delay caused by any Unavoidable Delay to the extent reasonably commercially practicable, but without the necessity of employing overtime labor unless such party elects to do so within its sole discretion or unless the other party elects to pay for such overtime labor.

**Section 15.03 Landlord's Liability; Window Closure.** Landlord and its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the Building, nor for the loss of or damage to any property of Tenant by theft. Landlord and its agents shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain or snow, but the foregoing shall not limit Tenant's rights or decrease Landlord's obligations under this Lease; provided, however, that this sentence shall not be deemed to exculpate Landlord or its agents from their respective own negligence. If at any time any windows of the Premises are temporarily darkened or bricked up for any reason whatsoever outside of Landlord's reasonable control, or by Landlord in connection with the performance of repairs, maintenance or improvements to the Building, or if required by any Legal Requirements, Landlord shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement of Rent, nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Landlord shall use commercially reasonable efforts to (i) minimize any unreasonable interference with Tenant's use of the Premises, (ii) close as few windows as possible, and (iii) proceed with due diligence to re-open any such closed windows. If any windows of the Premises are permanently blocked, darkened or bricked-up due to any illegal actions by third parties, Landlord shall use commercially reasonable efforts to enforce Landlord's rights against such third parties.

## ARTICLE 16

### INDEMNIFICATION; INSURANCE

#### **Section 16.01 Indemnity.**

(a) To the maximum extent permitted by law, but subject to Section 16.08, Tenant shall indemnify, defend and hold harmless Landlord and all Landlord Parties from and against any and all claims against any of such parties arising from (i) the use or occupancy of the Premises or any business therein, (ii) any work or thing whatsoever done, or any condition created (other than by Landlord, its employees, agents or contractors) in or about the Premises or (iii) any negligent act or omission, or willful misconduct of Tenant or any Tenant Party, licensees or invitees, whether resulting in injury or death to persons or damage to property or otherwise; except, in each case, to the extent that any such claim results from the negligence or willful misconduct of Landlord or any other Landlord Party; together with all costs, expenses

and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon, including all reasonable attorneys' fees and expenses.

(b) To the maximum extent permitted by law, but subject to Section 16.08, Landlord shall indemnify, defend and hold harmless Tenant and all Tenant Parties from and against any and all claims against any of such parties arising from (i) the performance or non-performance by Landlord of any alterations, improvements, repairs, maintenance or other work in the Building or the Premises and (ii) any gross negligence or willful misconduct of Landlord or any Landlord Party, or any of their respective partners, officers, shareholders, directors, members, trustees, beneficiaries, employees, principals, contractors, licensees, agents or representatives, whether resulting in injury or death to persons or damage to property or otherwise, except, in each case, to the extent that any such claim results from the negligence or willful misconduct of Tenant or any Tenant Party; together with all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon, including all reasonable attorneys' fees and expenses.

(c) If any claim that is within the scope of any indemnity set forth in this Lease is asserted against any indemnified party, then the indemnified party shall give prompt notice (each, an "Indemnified Party Notice") thereof to the indemnifying party (i.e., within a time period so as not to prejudice the indemnifying party's or its insurer's ability to defend effectively any action or proceeding brought on such claim) and the indemnifying party shall have the right to defend and control the defense of any action or proceeding brought on such claim with counsel chosen by the indemnifying party, subject to the approval of the indemnified party (such approval not to be unreasonably withheld), or by the indemnifying party's insurance company. If the indemnified party fails promptly to deliver the Indemnified Party Notice, the indemnifying party shall continue to be liable within the scope of the indemnity provided herein, provided, however, the indemnifying party shall not be liable for such loss sustained by any indemnified party as a result of the failure by the indemnified party to promptly deliver to the indemnifying party the Indemnified Party Notice. If the indemnified party shall not afford the indemnifying party the right to defend and control the defense of any such action or proceeding then the indemnifying party shall have no obligation under the applicable indemnity set forth in this Lease with respect to such action or proceeding or other actions or proceedings involving the same or related facts. If the indemnifying party shall defend any such action or proceeding, then:

(i) the indemnified party shall cooperate with the indemnifying party (or its insurer) in the defense of any such action or proceeding in such manner as the indemnifying party (or its insurer) may from time to time reasonably request and the indemnifying party shall not be liable for the costs of any separate counsel employed by the indemnified party;

(ii) the indemnified party shall not be liable for any settlement made without the indemnified party's consent;

(iii) if such action or proceeding can be settled by the payment of money and without the need to admit liability on the indemnified party's part, then the indemnifying party shall have the right to settle such action or proceeding without the indemnified party's consent and the indemnifying party shall have no obligation under the

applicable indemnity set forth in this Lease with respect to such action or proceeding or other actions or proceedings involving the same or related facts if the indemnified party refuses to agree to such a settlement; and

(iv) if such action or proceeding cannot be settled merely by the payment of money and without the need to admit liability on the indemnified party's part, then the indemnifying party shall not settle such action or proceeding without the indemnified party's consent (which consent shall not be unreasonably withheld, conditioned or delayed) and if the indemnified party unreasonably withholds, conditions or delays its consent to any such settlement, then the indemnifying party shall have no obligation under the applicable indemnity set forth in this Lease with respect to such action or proceeding or other actions or proceedings involving the same or related facts.

(d) If an indemnifying party shall, in good faith, believe that a claim set forth in an Indemnified Party Notice is not or may not be within the scope of the indemnifying party's indemnity set forth in this Lease then, pending determination of that question, the indemnifying party shall not be deemed to be in default under this Lease by reason of its failure or refusal to indemnify and hold harmless any indemnified party therefrom or to pay such costs, expenses and liabilities, but if it shall be finally determined by a court of competent jurisdiction or by arbitration in accordance with Article 25 that such claim was within the scope of such indemnifying party's indemnity set forth in this Lease, then such indemnifying party shall be liable for any judgment or reasonable settlement or any reasonable legal fees incurred by the party entitled to indemnity hereunder. The provisions of this Section 16.01 shall survive the expiration or earlier termination of this Lease.

(e) Notwithstanding any provisions of this Lease to the contrary, neither Landlord nor Tenant (except, in the case of Tenant, pursuant to Section 22.02), shall be liable to the other for consequential damages of any kind or nature (including, without limitation, consequential damages in respect of (i) any loss of use of the Premises or any Alterations or otherwise or (ii) any loss of use of, or rents from, the Building or any part thereof) in any event whatsoever, even if arising from any act, omission or negligence of Landlord or Tenant or from the breach by Landlord or Tenant of their respective obligations under this Lease.

(f) In connection with any claim or demand with respect to which Tenant is the indemnifying party in accordance with Section 16.01(a) (even if such claim or demand is groundless, false or fraudulent), Tenant shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise, assert or maintain any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority; the immunity of the Port Authority, its Commissioners, officers, agents or employees; the governmental nature of the Port Authority; or the provisions of any statutes regarding suits against the Port Authority.

**Section 16.02 Tenant's Liability Insurance.** Tenant agrees to maintain in full force and effect from the date upon which Tenant first enters the Premises or any portion thereof for the conduct of its business or for the performance of any Alterations, throughout the Term and thereafter, so long as Tenant is in occupancy of any part of the Premises, (A) a policy of commercial general liability insurance (including (i) a contractual liability endorsement for such coverage as may reasonably be required from time to time by Landlord, covering Tenant's

operations within the Building, unless already covered by the policy, (ii) coverage for international and domestic terrorist acts if available at commercially reasonable rates, and (iii) Liquor Law Legal Liability Coverage and Personal Injury Liability Coverages) under which Tenant is the named insured and Landlord, Landlord's managing agent and Net Lessor (and such other Persons as Landlord may reasonably request by notice to Tenant from time to time) are named as additional insureds (but not loss payees), in the broadest form of such coverage from time to time generally available and utilized in New York City for office tenants in Comparable Buildings, and under which policy the insurer agrees to indemnify and hold Landlord, and those designated by Landlord as additional insureds having an insurable interest as aforesaid, harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims for which provision is made in Section 16.01, including non-owned and hired cars coverage to the full policy limit, and (B) Statutory Workers Compensation Coverage with Employers Liability limits of not less than \$1,000,000 each accident and disease. Each such policy shall be issued by one or more insurers in a financial size category of not less than X and with general policy holders ratings of not less than A-, as rated in the most current available insurance reports published by A.M. Best & Company, Inc., or the then-equivalent thereof, and licensed to do business in the State of New York and authorized to issue such policies. Each policy of insurance procured by Tenant shall (i) contain endorsements providing that (w) such policy shall not be cancelled or amended with respect to Landlord and Landlord's said designees without thirty (30) days' prior notice to Landlord and such designees, (x) Tenant shall be solely responsible for the payment of premiums therefor notwithstanding that Landlord or any such designee is or may be named as an additional insured, (y) no insurer shall, without the express permission of Landlord and Net Lessor, raise any defense involving in any way the jurisdiction of any tribunal over Landlord or Net Lessor, if any, or any sovereign immunity of Landlord or Net Lessor, to the extent applicable; and (z) the protection afforded Tenant under any policy of commercial general liability insurance maintained by Tenant pursuant to this Section 16.02 with respect to any claim or action against Tenant by a third Person shall pertain and apply with like effect with respect to any claim or action against Tenant by Landlord or Net Lessor and by Tenant against Landlord or Net Lessor, provided, however, that such endorsement shall not limit, vary, change or affect the protections afforded to Landlord and Net Lessor as additional insureds under the contractual liability endorsement required pursuant to this Section 16.02 or the protections afforded to Landlord as loss payee under Section 16.03; and (ii) not prohibit the release of claims given under Section 16.07, nor shall any of them be limited, terminated or materially affected thereby. As of the Commencement Date, the limits of liability of such insurance shall be (i) \$25,000,000 per occurrence for commercial general liability insurance and excess liability insurance and, from time to time during the Term, such limits shall be increased to the prevailing level customarily carried by tenants with respect to Comparable Buildings (which coverage may be a combination of commercial general liability insurance and excess liability policies for Tenant).

### **Section 16.03 Tenant's Casualty Insurance.**

(a) Tenant shall take out on or prior to the Commencement Date with respect to the Premises and keep in force during the Term fire and extended coverage or all risk insurance in an amount insuring the full replacement value of all Alterations, personal property, trade fixtures, furniture, furnishings, equipment and other Tenant's Property, Tenant's Initial Alterations, and any paneling or other wall finishes or coverings other than normal painting, to

include a replacement cost endorsement. Such policies shall be written by an insurer of the A.M. Best & Company, Inc. financial size category and general policy holders rating, and include the required policy provisions, each as specified in Section 16.02, licensed to do business in the State of New York and authorized to issue such policies, and Landlord and Landlord's managing agent shall be named loss payees, as their interests may appear under each of such policies.

(b) In addition to the foregoing, so long as TRIA or a similar statute relating to acts of terrorism on behalf of foreign individuals or interests, as contemplated by TRIA, is in effect, or terrorism insurance is commercially available, Tenant shall carry terrorism insurance, covering domestic and international terrorist acts, for property damage throughout the Term, on a per-occurrence basis, in an amount equal to one hundred percent (100%) of the full replacement cost of the furniture, fixtures, equipment and other property situated within the Premises from time to time. With respect to such terrorism insurance, Landlord and Landlord's managing agent shall be named as loss payees, as their interests may appear. If TRIA is not renewed and no such similar statute is in effect, Tenant shall carry terrorism insurance covering terrorist acts in full compliance with the requirements of this Lease, but only if the premium for such terrorism insurance is commercially reasonable.

**Section 16.04 Certificates of Insurance.** On or before the Commencement Date, Tenant shall furnish Landlord with certificates evidencing the aforesaid insurance coverage, and renewal certificates shall be furnished to Landlord at a maximum of seven (7) days from the expiration date of each policy for which a certificate was theretofore furnished evidencing no interruption in coverage. Each such certificate shall evidence, with respect to each required policy (i) that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to Landlord and Net Lessor, (ii) each insurer shall not, without express advance permission of Landlord, raise any defense involving in any way (x) the jurisdiction of any tribunal over Landlord or Net Lessor, if any, or (y) any sovereign immunity of Landlord or Net Lessor, to the extent applicable, (iii) Tenant shall be solely liable for the payment of premiums therefor (notwithstanding that Landlord is named as an additional insured) and (iv) the protection afforded Tenant under any policy of commercial general liability insurance maintained by Tenant pursuant to Section 16.02 with respect to any claim or action against Tenant by a third Person shall pertain and apply with like effect with respect to any claim or action against Tenant by Landlord or Net Lessor and by Tenant against Landlord or Net Lessor, provided, however, that such endorsement shall not limit, vary, change or affect the protections afforded to Landlord and Net Lessor as *additional insureds under the contractual liability endorsement* required pursuant to Section 16.02 or the protections afforded to Landlord as loss payee under Section 16.03.

**Section 16.05 Blanket Policies.** Tenant shall have the right to insure and maintain the insurance coverage required by Sections 16.02 and 16.03 under blanket insurance policies covering other premises occupied or owned by Tenant so long as such blanket policies comply as to terms and amounts with the insurance provisions set forth in this Lease, provided that, upon request, Tenant shall deliver to Landlord a certificate of Tenant's insurer evidencing the portion of such blanket insurance allocated exclusively to the Premises (which amount shall comply with the terms of this Lease). If Tenant shall fail to maintain insurance in effect as required by this Article 16, the obligations of Tenant to reimburse set forth at Section 16.01 shall be in full force and effect, as if such required insurance (containing a waiver of subrogation) were in effect.

Notwithstanding anything to the contrary contained in this Lease, the carrying of insurance by Tenant in compliance with this Article 16 shall not modify, reduce, limit or impair Tenant's obligations and liability under this Lease.

**Section 16.06 No Violation of Building Policies.** Tenant shall not commit or permit any violation of the public liability or "all risk" property policies covering the Building and/or the fixtures, equipment and property therein carried by Landlord (provided such policies contain terms and conditions that are customary in policies for Comparable Buildings and Tenant is given notice, or provided copies, of same), or do or permit anything to be done, or keep or permit anything to be kept, in the Premises, that in case of any of the foregoing (i) would result in termination of any such policies, (ii) would give rise to any defense by the insurer to claims under any policy of insurance in respect of the Building, or (iii) would result in reputable and independent insurance companies refusing to insure the Building or the property of Landlord in amounts reasonably satisfactory to Landlord.

**Section 16.07 Premium Increases.** If (i) Tenant's knowing failure to comply with any term or provision of this Lease, or (ii) any use required by Tenant or any Tenant Party in connection with the Premises, causes the rates for liability and property insurance (with all extended coverage) on the Building or on the property and equipment of Landlord to be higher than they otherwise would be, then Landlord shall furnish Tenant with evidence of such increase and specify the cause thereof and Tenant shall, to the extent caused by (i) or (ii) above, reimburse Landlord for the additional insurance premiums thereafter actually paid by Landlord or by the other tenant(s) and subtenant(s) in the Building (to the extent that Landlord has paid for same) that shall have been charged because of the aforesaid reasons, such reimbursement to be made from time to time on Landlord's demand. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make up" of insurance rates for the Building or Premises issued by the New York Fire Insurance Exchange, or other body establishing fire insurance rates for said Building, shall be presumptive evidence of the facts therein stated and of the several items and charges in the insurance rates then applicable to the Building or the Premises.

**Section 16.08 Waiver of Liability and Subrogation.** Landlord and Tenant shall each endeavor to secure an appropriate clause in, or an endorsement upon, each fire or extended coverage or all risk policy obtained by it and covering the Building, the Alterations, the Premises or the personal property, fixtures and equipment or Tenant's Property or any other items specified in Section 16.03 located therein or thereon, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. The waiver of subrogation or permission for waiver of any claim hereinbefore referred to shall extend to the agents of each party and its members, partners, officers and employees and, in the case of Tenant, shall also extend to all other Persons occupying or using the Premises in accordance with the terms of this Lease. If and to the extent that such waiver or permission can be obtained only upon payment of an additional charge, then the party benefiting from the waiver or permission shall pay such charge upon demand, and if such party shall fail or refuse to pay such charge within twenty (20) days after Tenant's receipt of Landlord's invoice therefor, such party shall be deemed to have agreed that the party obtaining the insurance coverage in question shall be free of any further obligations under the provisions hereof relating to such waiver or permission. In the event that either Landlord or Tenant shall be unable at any time to obtain one of the provisions referred to

above in any of its insurance policies, Landlord or Tenant, as the case may be, shall promptly notify the other and promptly obtain a replacement policy, identical in form and substance to that which is required by this Lease, from another qualified insurance company.

In the event that Landlord elects to provide Self-Insured Retention or to the extent Landlord satisfies its obligations under this Article 16 on a retained basis, Landlord hereby releases Tenant from any claim (including a claim for negligence) that it might otherwise have against Tenant for loss, damages or destruction with respect to its property by fire or other casualty (including rental value) occurring during the Term that would have been covered under Landlord's liability or property insurance policies, whether or not actually obtained.

Subject to the foregoing provisions of this Section 16.08, and insofar as may be permitted by the terms of the insurance policies carried by it, each party hereby releases the other and its partners, members, agents, officers and employees (and in the case of Tenant, all other Persons occupying or using the Premises in accordance with the terms of this Lease) with respect to any claim (including a claim for negligence) that it might otherwise have against the other party for loss, damages or destruction with respect to its property by fire or other casualty (including rental value or business interruption, as the case may be) or otherwise occurring during the Term to the extent of the limits of coverage under such insurance policies.

#### **Section 16.09 Landlord's Insurance.**

(a) (i) The Port Authority has established and will maintain an owner-controlled insurance program during the period of the construction of the Building continuing at least until the Commencement Date under which the Landlord's interest in the Building will be covered. The owner-controlled program will include, but not be limited to, Builder's Risk coverage in the amount of \$1,000,000,000.

(ii) Landlord agrees to maintain in full force and effect from the Commencement Date throughout the Term "all risk" property insurance, inclusive of fire coverage, with respect to the Building, its systems, fixtures, equipment and property and the Premises (including Landlord's Work, but excluding Tenant's Property, Tenant Initial Alterations, other Tenant Alterations and any property that is not Landlord's obligation to restore pursuant to the provisions of Article 17), in an amount insuring the full replacement value of the Building and in such amount as will avoid co-insurance; provided, however, that if (A) such insurance coverage ceases to be available, or (B) the cost of such insurance coverage increases so that owners of Comparable Buildings generally cease to carry such insurance, then Landlord shall notify Tenant of such fact and Landlord shall maintain such insurance coverage as is customarily maintained by owners of Comparable Buildings.

(b) Landlord agrees to maintain in full force and effect from the Commencement Date and throughout the Term, so long as this Lease is in full force and effect, a policy of commercial general liability insurance under which Landlord, Landlord's managing agent (if any) and Net Lessor are the insured. Each such policy shall be issued by one or more insurers in a financial size category of not less than X and with general policy holders ratings of not less than A-, as rated in the most current available insurance reports published by A.M. Best & Company, Inc., or the then-equivalent thereof, and licensed to do business in the State of New

York and authorized to issue such policies. Each policy of insurance procured by Landlord shall contain endorsements providing that (i) such policy shall be not be cancelled or amended without thirty (30) days' notice to Net Lessor and (ii) Landlord shall be solely responsible for the payment of premiums therefor. As of the Commencement Date, the limits of liability of such insurance shall be \$25,000,000 per occurrence for commercial general liability insurance.

(c) Notwithstanding anything contained in Sections 16.09 (a) and (b) above, Landlord shall be permitted to provide up to a \$5,000,000-per-occurrence limit of the above-depicted coverages on a retained basis ("Self-Insured Retention"). If Landlord elects to provide such Self-Insured Retention, Landlord shall (i) act in all respects (and be fully liable and responsible) as the insurance company that would otherwise be providing the insurance Landlord is required to have in effect for the Self-Insurance Retention amounts pursuant to the terms of this Lease, (ii) implement a claims-handling mechanism (such as a third-party administrator) to handle all claims within the Self-Insured Retention and (iii) timely report all claims to the insurance carriers that provide excess insurance above the Self-Insured Retention, if required by such excess insurance carriers. Tenant may review and inspect the financials associated with the Self-Insured Retention on a semi-annual basis. Without limiting the generality of the foregoing and notwithstanding anything herein to the contrary, if Landlord elects to provide the Self-Insured Retention, (A) Tenant's rights and remedies against Landlord shall not be less extensive than the rights and remedies Tenant would have in the event Landlord had effectuated all insurance required hereunder without a Self-Insured Retention and (B) Landlord's obligations under this Lease shall not be less extensive than the obligations Landlord would have in the event Landlord had effectuated all insurance required hereunder without a Self-Insured Retention. Landlord shall furnish a certificate to Tenant that shall confirm Landlord's obligations hereunder and the extent to which Landlord has elected to provide a Self-Insured Retention (it being understood, however, Landlord's failure to furnish such certificate shall not limit or impair Landlord's obligations and liabilities under this Lease). In no event shall Landlord seek to collect any premium, contribution, or other monies from Tenant to fund the exposures of the Self-Insured Retention.

(d) Notwithstanding anything to the contrary contained in this Section 16.09, with respect to insurance coverage to be maintained by Landlord pursuant to this Section 16.09, the Port Authority Insurance Captive Entity L.L.C., a District of Columbia limited liability company (the "Port Authority Captive"), shall be an acceptable insurer for all purposes under this Lease, so long as (i) the policy issued by the Port Authority Captive has (x) a per-occurrence limit of no less than one million dollars (\$1,000,000); and (y) a deductible of no greater than that contemplated by the actuarial data approved by the Department of Insurance, Banking and Securities/Risk Bureau located in Washington, D.C., (ii) the Port Authority Captive is not the subject of a bankruptcy or similar insolvency proceeding and (iii) no statement, finding, or decree issued under any Legal Requirement states captive insurers arranged similar to the Port Authority Captive are no longer allowable providers of insurance in the coverage types and amounts required by this Lease. The portion of such insurance that is not reinsured by TRIA shall either be reinsured by an insurance carrier rated no less than A-X (or its equivalent) by A.M. Best & Company, Inc., or shall carry reserves sufficient to sufficiently address any loss covered by the Port Authority Captive. In no instance shall the Port Authority Captive seek to collect any premium, contribution, or other monies from Tenant to fund the exposures of the Port

Authority Captive. Landlord represents that the insurance premiums for the insurance coverages provided to Landlord by the Port Authority Captive are fair market value insurance premiums.

## ARTICLE 17

### DAMAGE BY FIRE OR OTHER CAUSE

#### Section 17.01 Termination Upon Casualty.

(a) Tenant shall give prompt notice to Landlord in case of fire or other casualty in the Premises. If (i) so much of the Building is damaged or rendered untenable (whether or not the Premises or a portion thereof shall be damaged) by fire or other cause that in Landlord's reasonable opinion, substantial alteration, demolition or reconstruction of the Building is required (i.e., damage that would cost more than twenty-five (25%) of the replacement cost of the Building to repair and restore) or (ii) the Premises shall suffer damage or be rendered untenable by fire or other casualty and Landlord shall reasonably determine that (x) such portion of the Premises cannot be reasonably expected to be restored or rendered tenantable under a normal working schedule within a period of twelve (12) months after the occurrence of such damage or destruction or (y) any Mortgagee will not permit Landlord to apply the net proceeds of Landlord's insurance to the restoration of the Building or the Premises, then and in any such event Landlord shall (i) notify Tenant of such determination within ninety (90) days after such casualty and (ii) have the right to terminate this Lease by notice to Tenant given within one-hundred twenty (120) days of the occurrence of such fire or other casualty; provided that in any such case Landlord terminates the leases of at least twenty-five percent (25%) of the tenants similarly affected.

(b) If either (i) the Premises shall be totally or substantially damaged or rendered wholly or substantially untenable (whether or not any other portions of the Building shall be damaged) or (ii) the Building shall be substantially damaged, so that Tenant's access to and use and enjoyment of the Premises shall be rendered inaccessible, whether or not the Premises shall be damaged, and (iii) in case of either (i) or (ii) Landlord reasonably determines that the same cannot reasonably be expected to be restored or rendered tenantable under a normal working schedule within a period of eighteen (18) months after the occurrence of such damage or destruction, then Landlord shall promptly notify Tenant of such fact, and within thirty (30) days thereafter either Landlord or Tenant may terminate this Lease by notice to the other party.

(c) If (i) during the last eighteen (18) months of the Term (including any exercised renewal or extension thereof) the Building or the Premises shall be damaged by fire or casualty, and (ii) such fire or casualty damage, whether to the Premises or the Building, cannot, in Landlord's reasonable determination, be expected to be repaired or restored within one hundred eighty (180) days from the time that repair or restoration work would commence or prior to the Expiration Date, whichever would first occur, then Landlord shall promptly notify Tenant of such fact, and within thirty (30) days thereafter Landlord or Tenant shall have the right to terminate this Lease.

(d) If either Landlord or Tenant shall give notice of termination pursuant to this Section 17.01, the Term shall expire by lapse of time upon the date that is thirty (30) days

after such notice is given and Tenant shall vacate the Premises and surrender the same to Landlord. Upon the termination of this Lease under the conditions provided for in this Section 17.01, Tenant's liability for Rent and all other obligations hereunder (except to the extent expressly stated to survive) shall cease as of the date of such termination, subject, however, to abatement thereof between the date of such casualty and the date of such termination pursuant to Section 17.03 below.

(e) Tenant hereby expressly waives the provisions of Section 227 of the Real Property Law or any like law that may hereafter be enacted and agrees that the foregoing provisions of this Article shall govern and control in lieu thereof, this Article 17 being an express agreement governing any case of damage or destruction of the Premises by fire or other casualty.

**Section 17.02 Repair and Restoration; Termination Upon Delay.**

(a) If the Premises or the Building shall be damaged by fire or other casualty and this Lease is not terminated pursuant to Section 17.01, the damage (i) to the Building shall be repaired by and at the expense of Landlord so that (x) access to the Premises and (y) the common areas of the Building serving the Premises shall be substantially the same as prior to the damage, (ii) to the Premises shall be repaired (x) by Landlord as to the core, shell, floors, roof, curtain wall, windows, Building Systems and all other structural elements of the Building located in the Premises including all of Landlord's Work, and (y) by Tenant as to Tenant's Initial Alterations and all other Alterations and Tenant's Property, and (iii) to the Building Systems shall be repaired by Landlord up to and including the point of delivery to each floor of the Premises (the work to be performed pursuant to the foregoing clauses (i), (ii)(x) and (iii) is referred to collectively as the "Base Building Restoration"). Notwithstanding the foregoing, Landlord shall not be obligated to expend for such repairs and restoration any amount in excess of the net insurance proceeds made available to Landlord after deduction therefrom of Landlord's actual out-of-pocket expenses in obtaining such proceeds and any amounts applied by any Superior Lessor or Mortgagee to obligations other than restoration of the Building (provided, however, that if Landlord shall elect not to perform the Base Building Restoration because the cost thereof exceeds such net insurance proceeds, then Landlord shall give written notice thereof to Tenant and Tenant may, within thirty (30) days thereafter, terminate this Lease on written notice to Landlord, in which event the Term shall expire by lapse of time upon the date that is thirty (30) days after Tenant's notice is given and Tenant shall vacate the Premises and surrender the same to Landlord). In no event shall Landlord be obligated to repair or restore Tenant's Initial Alterations, other Alterations, Tenant's Property or paneling or other finishes, carpeting or wall coverings.

(b) Where Landlord is obligated or otherwise elects to effect restoration of the Premises, unless such restoration is completed within eighteen (18) months from the date of the casualty, or within the one hundred eighty (180) day period applicable during the last eighteen (18) months of the Term (each such period to be subject, however, to extension by one (1) day for each day of Unavoidable Delay (but in no event beyond twenty-four (24) months from the date of the casualty, or during the last eighteen (18) months of the Term, two hundred and ten (210) days from the date of the casualty)), Tenant shall have the right to terminate this Lease (i) within thirty (30) days after the expiration of such eighteen (18) month period or one hundred eighty (180) day period, as applicable (as each such period may be extended), but

(ii) prior to the time that the restoration is substantially completed, such termination to take effect as of the thirtieth (30th) day after such notice is given, with the same force and effect as if such date were the date originally established as the Expiration Date unless, within such thirty (30) day period, such restoration is substantially completed, in which case Tenant's notice of termination shall be of no force and effect and this Lease and the Term shall continue in full force and effect. If Tenant shall not have exercised Tenant's termination right within the time periods aforesaid, Tenant shall have no further right to exercise such termination right thereafter in respect of the casualty in question.

**Section 17.03 Abatement of Rent; Insurance Proceeds.** Until this Lease is terminated pursuant to Sections 17.01 or 17.02 or, if this Lease is not so terminated, until the completion of Landlord's restoration work pursuant to Section 17.02, Fixed Rent, Tenant's Tax Payment and Tenant's Operating Expense Payment shall be abated in the proportion by which the RSF of the affected portion of the Premises bears to the total RSF of the Premises. Except as otherwise provided herein, no damages of any type, compensation or claims shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building. If Rent abates in respect of all or any portion of the Premises and Tenant reoccupies the Premises or such portion thereof, or any part thereof, for the conduct of Tenant's business operations during the period in which restoration work is taking place and prior to the date that the same is made completely tenantable, Fixed Rent allocated to the space so reoccupied shall be payable, and Tenant's Tax Payment and Tenant's Operating Expense Payment shall increase by the portion thereof allocable to such space, from the date that is five (5) Business Days after notice from Landlord that such space is ready for reoccupancy for the conduct of Tenant's business. Notwithstanding anything in this Section 17.03 to the contrary, if Landlord shall be unable to collect all of the insurance proceeds (including rent insurance proceeds) payable by reason of any damage to the Building or the Premises under Landlord's insurance policies by reason of any action or inaction by Tenant or failure by Tenant to comply with any of the provisions of this Lease, then without prejudice to any other remedy that may be available against Tenant, the abatement of Rent provided for in this Section 17.03 shall not be effective to the extent of the uncollected insurance proceeds, and the amount of any abatement theretofore taken by Tenant shall be immediately payable to Landlord on demand. Nothing contained in this Section 17.03 is intended to contravene the provisions of Section 16.07.

## ARTICLE 18

### CONDEMNATION

**Section 18.01 Total Condemnation.** If the whole of the Building or of the Premises shall be taken by condemnation or in any other manner for any public or quasi-public use or purpose (other than for temporary use or occupancy), the Term shall forthwith cease and terminate as of the date of vesting of title by reason of such taking (which date is hereinafter referred to as the "date of the taking"), and Rent shall be apportioned as of such date. If such portion of the Building shall be so taken such that substantial structural alterations or reconstruction of the Building shall be necessary as a result of such taking (whether or not the Premises be affected), which alterations or reconstruction Landlord reasonably determines will take at least one hundred eighty (180) days to complete, Landlord may, at its option, terminate this Lease and the

Term and estate hereby granted as of the date of such vesting of title by notifying Tenant in writing of such termination within sixty (60) days following the date of the taking.

**Section 18.02 Partial Condemnation.** If any part, but less than all, of the Premises shall be so taken and this Lease shall not be terminated pursuant to Section 18.01, then the part so taken shall no longer constitute part of the Premises but this Lease shall otherwise remain unaffected by such taking, provided, however, that Tenant may elect to terminate the Term in the event of either:

(a) a taking of more than fifteen percent (15%) of the total RSF of the Premises, or

(b) a taking that deprives Tenant of reasonable access to the Building or the Premises, if Landlord determines that it will be unable to provide or in fact fails to provide adequate alternative access to the Building and the Premises within sixty (60) days thereafter,

by giving notice of such election to Landlord not later than sixty (60) days after Tenant's receipt from Landlord of notice of such taking (describing the nature and extent of such taking) or the date of such taking, whichever first occurs, or not later than thirty (30) days after such sixtieth (60<sup>th</sup>) day, as the case may be. If notice of termination of this Lease shall be given pursuant to this Section 18.02, then upon such date as may be specified by Tenant by notice to Landlord, which date shall be not earlier than thirty (30) and not later than sixty (60) days after the date of Tenant's notice, the Term shall terminate as of the date specified in such notice and Rent shall be apportioned as of such date of termination. Upon a partial taking, and this Lease continuing in force as to any part of the Premises, (i) Fixed Rent, Tenant's Tax Payment and Tenant's Operating Expense Payment shall be equitably reduced for the remainder of the Term, according to the nature and extent of the loss of use of the Premises suffered by Tenant, and (ii) Landlord shall, at its expense, restore with reasonable diligence the remaining portions of the Premises as nearly as practicable to the same condition as it was in prior to such condemnation or taking, provided, however, that Landlord shall not be obligated to expend for such restoration and for restoration of the remainder of the Building any amount in excess of the net condemnation proceeds actually received by Landlord. Proceeds of any award applied by any Mortgagee to reduction of the indebtedness secured thereby or retained by any Superior Lessor as compensation for the taking shall not be deemed to have been received by Landlord.

**Section 18.03 Condemnation Compensation.** In the event of any condemnation or taking hereinabove mentioned of all or a part of the Building (whether or not the Premises be affected) Landlord shall be entitled to receive the entire award in the condemnation proceeding, including any award made for the value of the estate vested by this Lease in Tenant, and Tenant hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, and Tenant shall be entitled to receive no part of such award. The foregoing, however, shall not be deemed to preclude Tenant from recovering a separate award for Tenant's moving expenses, Tenant's Property and the unamortized value of Alterations paid by Tenant, provided that any such award does not reduce and is not payable out of the amount for the Land and the Building.

**Section 18.04 Temporary Takings.** If all or any part of the Premises shall be taken for a limited period, Tenant shall be entitled, except as hereinafter set forth, to that portion of the award for such taking that represents compensation for the use and occupancy of the Premises, for the taking of Tenant's Property and for moving expenses, and Landlord shall be entitled to that portion that represents reimbursement for the cost of restoration of the Premises. This Lease shall remain unaffected by such taking and Tenant shall continue to be responsible for all of its obligations under this Lease (except if prevented from doing so by the condemning authority) and shall continue to pay in full all Rent when due. If the period of temporary use or occupancy shall extend beyond the Expiration Date, that part of the award that represents compensation for the use and occupancy of the Premises shall be apportioned between Landlord and Tenant as of the Expiration Date.

## ARTICLE 19

### BANKRUPTCY

**Section 19.01 Transfer Pursuant to Bankruptcy.** If pursuant to the Federal Bankruptcy Code, Tenant is permitted to assign or otherwise transfer this Lease (whether in whole or in part in disregard of the restrictions contained in this Article 19 and Article 8), Tenant agrees that adequate assurance of future performance by the assignee or transferee permitted under the Federal Bankruptcy Code shall mean the deposit of cash security (or a letter of credit) with Landlord in an amount equal to the sum of one year's Fixed Rent then payable hereunder plus an amount equal to all Additional Rent payable to Landlord for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord for the balance of the Term as security for the full and faithful performance of all of the obligations under this Lease on the part of Tenant yet to be performed. If Tenant receives or is to receive any valuable consideration for such assignment or transfer (in part or in whole) of this Lease, Landlord shall receive the same fifty percent (50%) of such consideration as Landlord would receive had the assignment or transfer (and the calculation thereunder) been made pursuant to Article 8. Nothing contained in this Lease shall limit or prejudice the right of Landlord to present proof for and obtain, in proceedings for the termination of this Lease by reason of bankruptcy or insolvency, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

## ARTICLE 20

### DEFAULTS AND REMEDIES; WAIVER OF REDEMPTION

**Section 20.01 Event of Default.** Each of the following events shall be an "Event of Default" hereunder:

(a) If Tenant defaults in the payment when due of (i) any installment of Fixed Rent or recurring Additional Rent and such default continues for a period of five (5) Business Days after receipt by Tenant from Landlord of a notice of default in respect thereof or (ii) any other installment of Additional Rent and such default continues for a period of eight (8) Business

Days after receipt by Tenant from Landlord of a notice of default in respect thereof; provided that in the event that Tenant shall fail to pay when due any three (3) installments of Fixed Rent (such failures need not be consecutive) in any twelve (12) month period, any subsequent failure of Tenant within such twelve (12) month period to pay Fixed Rent when due shall constitute an Event of Default without the giving of written notice or the expiration of a cure period);

(b) If Tenant abandons all or substantially all of the Premises and such abandonment continues for more than thirty (30) days after notice from Landlord; or

(c) If:

(i) Tenant admits in writing its inability to pay its debts as they become due; or

(ii) Tenant commences or institutes any case, proceeding or other action (x) seeking relief as a debtor, or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (y) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or

(iii) Tenant makes a general assignment for the benefit of creditors; or

(iv) Any case, proceeding or other action is commenced or instituted against Tenant (x) seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (y) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, in each case that remains undismissed for a period of ninety (90) days; or

(v) Any case, proceeding or other action is commenced or instituted against Tenant seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property that results in the entry of an order for any such relief that has not been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or

(vi) Tenant takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (ii), (iii), (iv) or (v) of this Section 20.01(c); or

(vii) A trustee, receiver or other custodian is appointed for any substantial part of the assets of Tenant or any guarantor, which appointment is not vacated or effectively stayed within five (5) Business Days, or if any such vacating or stay does not thereafter remain in effect; or

(d) If Tenant fails to maintain any of the insurance required to be maintained by Tenant hereunder or to deliver certificates or copies thereof when required hereunder and Tenant fails to remedy such default within five (5) Business Days after notice by Landlord to Tenant specifying such default; or

(e) If an assignment or subletting shall occur or if Tenant's interest in this Lease or the Premises shall devolve upon or pass to any Person, whether by operation of law or otherwise, and whether directly or indirectly, except as expressly permitted by Article 8; or

(f) If Tenant shall fail to perform or observe any term or condition of this Lease that, because of its character, would immediately (i) jeopardize Landlord's interest in the Real Property or the health or safety of any person, (ii) have a material and adverse affect on the operation of the Building or any Building System, or (iii) have a material and adverse affect on the business operations of any occupant, and such failure continues for three (3) Business Days after notice from Landlord to Tenant specifying such default, or, if such default is of such a nature that it cannot be completely remedied within said period of three (3) Business Days, if Tenant fails to commence to remedy such default within such three (3) Business Day period; or fails thereafter to diligently prosecute to completion all steps necessary to remedy such default, which such remedy in all events will be completed within ten (10) days after notice by Landlord to Tenant of such default; or

(g) If Tenant defaults in the observance or performance of any other term, covenant or condition of this Lease on Tenant's part to be observed or performed and Tenant fails to remedy such default within (i) fifteen (15) days after notice by Landlord to Tenant specifying such default, or, (ii) if (x) such default is of such a nature that it cannot be completely remedied within said period of fifteen (15) days, (y) Tenant fails to commence to remedy such default within such fifteen (15) day period, or (z) fails thereafter to diligently prosecute to completion all steps necessary to remedy such default, which such remedy in all events will be completed within sixty (60) days after notice by Landlord to Tenant of such default, as such sixty (60) day period shall be extended by an additional thirty (30) days so long as Tenant has provided Landlord with a certification from an authorized officer of Tenant within fifteen (15) days prior to the expiration of such sixty (60) day period requesting such extension and attaching evidence showing to Landlord's reasonable satisfaction that Tenant has made significant progress in curing such default, provided, however, that if any Governmental Authority having jurisdiction requires that such default be remedied in less than ninety (90) days, then Tenant's time to remedy such default shall be shortened so that such default must be remedied at least five (5) days before the last date of the shorter period of time to remedy such default provided by such Governmental Authority.

If, at any time, (i) Tenant shall comprise two (2) or more Persons, (ii) Tenant's obligations under this Lease shall have been guaranteed by any Person other than Tenant, or (iii) Tenant's interest in this Lease shall have been assigned, then the word "Tenant," as used in Section 20.01(c), shall be deemed to mean any one or more of the Persons primarily or secondarily liable for Tenant's obligations under this Lease. Any monies received by Landlord from or on behalf of Tenant during the pendency of any proceeding of the types referred to in Section 20.01(c) shall be deemed paid as compensation for the use and occupancy of the Premises, and the acceptance of

any such compensation by Landlord shall not be deemed an acceptance of Rent or a waiver on the part of Landlord of any rights hereunder.

**Section 20.02 Conditions of Limitation.** If an Event of Default occurs, Landlord may serve a written three (3) day notice of termination of this Lease upon Tenant, and, upon the expiration of said three (3) day period, this Lease and the Term and all rights of Tenant under this Lease shall end, expire and terminate as fully and completely as if the expiration of said three (3) day period were the date set forth herein as the Expiration Date and Tenant immediately shall quit and surrender the Premises, but Tenant shall remain liable as hereinafter provided. If the notice provided for in this Section 20.02 shall have been given and the Term shall expire as aforesaid, then Landlord may, without notice (i) re-enter the Premises either by force or otherwise (but only if permitted under Legal Requirements), dispossess Tenant and recover possession of the Premises by summary proceedings and in such manner as set forth in Sections 20.03, 20.04 and 20.05 against the legal representative of Tenant or other occupant of the Premises and remove its/their effects and (ii) hold the Premises as if this Lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. Anything contained herein to the contrary notwithstanding, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Section 20.01(c), or by federal or state statute, then, following the expiration of any such stay (i) if the trustee appointed in any such proceeding, Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, and (ii) if said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, may serve a written three (3) day notice of the termination of this Lease upon Tenant, Tenant as debtor-in-possession or said trustee, and upon the expiration of said three (3) day period this Lease shall cease and expire as set forth above and Tenant, Tenant as debtor-in-possession or said trustee shall immediately quit and surrender the Premises as aforesaid.

**Section 20.03 Landlord's Right to Re-Enter and Relet.**

(a) If an Event of Default shall occur, and this Lease and the Term shall expire and come to an end as provided in Section 20.02, then

(i) Tenant shall quit and peacefully surrender the Premises to Landlord, and Landlord and its agents may at any time after the date upon which this Lease and the Term shall expire and come to an end, re-enter the Premises or any part thereof, without further notice, either by summary proceedings, or by any other applicable legal action or proceeding, and may repossess the Premises and dispossess Tenant and any other Persons from the Premises and remove any and all of their property and effects from the Premises; and

(ii) Landlord, at Landlord's option, may relet the whole or any part or parts of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Expiration Date, at such

rental or rentals and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole discretion, may determine, provided, however, that Landlord (x) shall have no obligation to relet the Premises or any part thereof and shall in no event be liable (1) for refusal or failure to relet the Premises or any part thereof, or, (2) in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise affect any such liability, and, (y) at Landlord's option, may make such repairs, replacements, alterations, additions, improvements, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(b) Tenant, on its own behalf and on behalf of all Persons claiming through or under Tenant, including all creditors, hereby waives any and all rights that Tenant and all such Persons might otherwise have under any present or future law to redeem the Premises, or to re-enter or repossess the Premises, or to restore the operation of this Lease, after (i) Tenant shall have been dispossessed by a judgment or by warrant of any court or judge, or (ii) any expiration or termination of this Lease and the Term, whether such dispossession, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

#### Section 20.04 Tenant Liabilities Upon Termination.

(a) If this Lease and the Term shall expire and come to an end as provided in Section 20.02, or if Landlord shall re-enter by or under any summary proceeding or any other legal action or proceeding, then, in any of such events,

(i) Tenant shall pay to Landlord an amount equal to all Rent due and payable under this Lease by Tenant to Landlord to the date upon which (x) this Lease and the Term shall have expired and come to an end or (y) Landlord shall have re-entered or taken possession of the Premises;

(ii) Tenant also shall be liable for and shall pay to Landlord, as liquidated damages, any deficiency (the "Deficiency") between (x) Rent for the period that otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding such termination or re-entry increased by an amount to take into account an increase in the CPI), and (y) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 20.03(a)(ii) for any part of such period (first deducting from the rents collected under any such reletting all of Landlord's expenses in connection with the termination of this Lease, Landlord's re-entry upon the Premises and with such reletting, including all repossession costs, brokerage commissions, legal expenses, attorneys' fees and disbursements, alteration costs and other expenses of keeping the Premises in good order or for preparing the Premises for such reletting), provided that if the Premises or any part thereof should be relet in combination with other space or for a term that extends beyond the Expiration Date, then proper apportionment (on a per Rentable Square Foot basis in the case of a reletting in combination with

other space) shall be made of the rent received from such reletting and of the expenses of reletting. Tenant shall pay the Deficiency in monthly installments on the days specified in this Lease for payment of installments of Fixed Rent, and Landlord shall be entitled to recover from Tenant each monthly Deficiency as the same shall arise. No suit to collect the amount of the Deficiency for any month shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(iii) whether or not Landlord shall have collected any monthly Deficiency as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency as and for liquidated and agreed final damages, an amount equal to (x) Rent for the period that otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding increased each year by the CPI Fraction), less (y) the then-fair and reasonable rental value of the Premises, including Additional Rent for the same period, both discounted to present value at six percent (6%), less (z) the aggregate amount of Deficiencies previously collected by Landlord pursuant to the provisions of Section 13.04(a)(ii) for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, Landlord shall have relet the Premises or any part thereof on an arm's-length basis for the period that otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of net rents collected in connection with such reletting shall be deemed, *prima facie*, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) If Landlord shall relet the Premises, or any part thereof, together with other space in the Building, the net rents collected under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this Section 20.04. Tenant shall in no event be entitled to any rents collected or payable under any reletting, whether or not such rents shall exceed the Fixed Rent reserved in this Lease. Nothing contained in this Article 20 shall be deemed to limit or preclude the recovery by Landlord from Tenant of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this Section 20.04 (it being agreed, however, that the only damages that Landlord is entitled to in respect of Tenant's failure to pay Rent for the remainder of the Term in the event of the termination of this Lease by reason of Tenant's default are as set forth in this Section 20.04).

**Section 20.05 Additional Rights Upon Certain Monetary Defaults.** Landlord reserves the right in connection with monetary Event(s) of Default that, in the aggregate, exceed(s) twenty-five thousand dollars (\$25,000), without liability to Tenant and without constituting any claim of constructive eviction, to suspend furnishing or rendering to Tenant any overtime Building services, in the event that (but only for so long as) such monetary Event(s) of Default in excess of twenty-five thousand dollars (\$25,000) exist(s).

**Section 20.06 Waiver of Trial by Jury.** THE RESPECTIVE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER (EXCEPT FOR PERSONAL INJURY OR PROPERTY DAMAGE) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S

USE OR OCCUPANCY OF THE PREMISES, OR FOR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE. IF LANDLORD COMMENCES ANY SUMMARY PROCEEDING AGAINST TENANT, TENANT WILL NOT INTERPOSE ANY COUNTERCLAIM OF WHATEVER NATURE OR DESCRIPTION IN ANY SUCH PROCEEDING (UNLESS FAILURE TO IMPOSE SUCH COUNTERCLAIM WOULD PRECLUDE TENANT FROM ASSERTING IN A SEPARATE ACTION THE CLAIM THAT IS THE SUBJECT OF SUCH COUNTERCLAIM), AND WILL NOT SEEK TO CONSOLIDATE SUCH PROCEEDING WITH ANY OTHER ACTION THAT MAY HAVE BEEN OR WILL BE BROUGHT IN ANY OTHER COURT BY TENANT.

**Section 20.07 Other Waivers.**

(a) Tenant, for itself and any and all Persons claiming through or under Tenant, including its creditors, upon the termination of this Lease or expiration of the Term in accordance with the terms hereof, or in the event of entry of judgment for the recovery of the possession of the Premises in any action or proceeding, or if Landlord shall reenter the Premises by process of law, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges that it or they may or might have under and by reason of any present or future law or decision, to redeem the Premises or for a continuation of this Lease for the Term after having been dispossessed or ejected therefrom by process of law.

(b) If Tenant is in default (subject to any applicable notice and cure period), in the payment of any Rent, Tenant waives its right, if any, to designate the item against which any payments made by Tenant are to be credited and Tenant agrees that Landlord may apply any payment made by Tenant to any items as Landlord may see fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payment shall be credited.

**ARTICLE 21**

**COVENANT OF QUIET ENJOYMENT**

**Section 21.01 Quiet Enjoyment by Tenant.** Provided this Lease is in full force and effect and there is no Event of Default that has occurred and is continuing, Tenant shall quietly enjoy the Premises without hindrance or molestation by Landlord or by any other person lawfully claiming the same, subject to the covenants, agreements, terms, provisions and conditions of this Lease and to any Superior Leases (including the Net Lease) and any Mortgages to which this Lease is subject and subordinate, as hereinbefore set forth.

**ARTICLE 22**

**SURRENDER OF PREMISES**

**Section 22.01 Tenant's Obligations at End of Term.** Upon the expiration or other termination of this Lease, Tenant shall (i) quit and surrender to Landlord the Premises, vacant, broom-clean and in good condition, excepting ordinary wear and tear, damage caused by fire or

other casualty or condemnation and damage for which Tenant is not responsible under the terms of this Lease, and (ii) remove all of Tenant's Property and any Specialty Alterations (except as otherwise expressly set forth in this Lease) from the Premises and perform any required repair and restoration, all to the extent required under Section 13.04. Tenant's obligations pursuant to this Article 22 shall survive the expiration or sooner termination of the Term. If the last day of the Term or any renewal thereof falls on Saturday or Sunday, this Lease shall expire on the Business Day next preceding such day. Tenant expressly waives, for itself and for any Person claiming through or under Tenant, any rights that Tenant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings that Landlord may institute to enforce the foregoing provisions of this Article 22.

**Section 22.02 Holdover Tenant.**

(a) Tenant agrees that if for any reason Tenant or any subtenant of Tenant shall fail to vacate and surrender possession of the Premises or any part thereof on or before the expiration or earlier termination of this Lease and the Term, then Tenant's continued possession of the Premises shall be as a month-to-month tenancy, during which time, without prejudice and in addition to any other rights and remedies Landlord may have hereunder or at law, Tenant shall (i) pay to Landlord an amount per month (the "Holdover Amount") equal to

of an amount equal to the total monthly amount payable hereunder, immediately prior to such termination, of (1) Fixed Rent, plus (2) Additional Rent on account of Tenant's Tax Payment and Tenant's Operating Expense Payment, and (ii) comply with all other terms and conditions of this Lease. The provisions of this Section 22.02 shall not in any way be deemed to (i) permit Tenant to remain in possession of the Premises after the Expiration Date or sooner termination of this Lease or (ii) imply any right of Tenant to use or occupy the Premises upon expiration or termination of this Lease and the Term, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of the Term shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Article 22. Landlord waives no rights against Tenant by reason of accepting any holding over by Tenant, including without limitation (i) the right to terminate such month-to-month tenancy as provided by law at any time after the expiration of the Term and (ii) any right to damages in the event that Tenant's holding over causes Landlord to suffer any loss.

(b) Notwithstanding anything herein to the contrary, Tenant shall indemnify and save Landlord harmless (in accordance with the procedures set forth in Sections 16.01(c) and (d)) against all costs, claims, loss or liability resulting from delay by Tenant in surrendering the Premises upon expiration or sooner termination of the Term, including, without limitation, any claims made by any succeeding tenant founded on such delay or any lost profits, losses, costs, expenses or liability payable to such tenant or otherwise incurred by Landlord as a result thereof.

(c) Tenant's obligations under this Article 22 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 23

### DEFINITION OF LANDLORD

**Section 23.01 Transfer of Net Lease.** Subject to the other terms of this Lease, the term "Landlord" wherever used in this Lease shall be limited to mean and include only the owner or owners at the time in question of the lessee's interest under the Net Lease and any person to whom this Lease may be assigned, or a leasehold mortgagee thereof in possession, so that in the event of any sale, assignment or transfer of Landlord's interest as a lessee under the Net Lease to an unrelated third party, such transferor owner or mortgagee in possession shall thereupon be released and discharged from all covenants, conditions and agreements of Landlord hereunder, but such covenants, conditions and agreements shall thereupon be deemed assumed by and binding upon each new lessee under the Net Lease or mortgagee in possession for the time being, until the Landlord's interest as a lessee under the Net Lease is further sold, assigned or transferred to an unrelated third party.

## ARTICLE 24

### NOTICES

**Section 24.01 Method of Delivery.** Except as otherwise expressly provided in this Lease, any bills, statements, consents, notices, demands, requests or other communications given or required to be given under this Lease shall be in writing and shall be given or rendered if by (i) hand delivery, (ii) certified or registered United States mail, postage prepaid, return receipt requested, or (iii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of delivery or attempted delivery required, in the case of (i), (ii) or (iii) above, in each case, addressed as shown below:

If to Tenant, (a) until the date Tenant first occupies the Premises for the ordinary conduct of business, as follows:

China Center New York LLC  
One Battery Park Plaza  
Fifth Floor  
New York, New York 10004  
Attention: Xue Ya

with copies to (except for Expense Statements, Final Tax Statements, electricity bills and all other Rent bills, as well as other routine, non-material communications and correspondence):

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Attention: Peter W. Herman, Esq.  
Facsimile number: (212) 822-5742

and (b) after the date Tenant first occupies the Premises for the ordinary conduct of business:

China Center New York LLC  
One World Trade Center  
New York, New York \_\_\_\_\_  
Attention: Xue Ya

with copies to (except for Expense Statements, Final Tax Statements, electricity bills and all other Rent bills, as well as other routine, non-material communications and correspondence):

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Attention: Peter W. Herman, Esq.  
Facsimile number: (212) 822-5742

If to Landlord, as follows:

The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: Executive Director – 15<sup>th</sup> Floor

with copies to:

The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: General Counsel

and a copy of any default or termination notice to Landlord's Mortgagee and all Superior Lessors at an address to be provided by Landlord.

**Section 24.02 Change of Addresses.** Such address may be changed by any party in a written notice to the other parties hereto in the manner provided for in this Article 24. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery or refusal to accept delivery; in the case of registered or certified mail or expedited prepaid delivery, upon delivery or refusal to accept delivery; or in the event of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, as of the date of such failure or refusal. A party receiving a notice that does not comply with the technical requirements for notice under this Article 24 may elect to waive any deficiencies and treat the notice as having been properly given. Any notice to be given by any party may be given by such party's attorney.

## ARTICLE 25

### ARBITRATION

**Section 25.01 Procedure.** Landlord and Tenant shall have the right to submit disputes where arbitration is specifically provided for in this Lease to arbitration in the City of New York under the Expedited Procedures provisions of the Commercial Arbitration Rules of the AAA; provided, however, that with respect to any such arbitration (i) the list of arbitrators shall be returned within five (5) days from the date of mailing, (ii) the parties shall notify the AAA within four (4) days of any objections to the arbitrator appointed and will have no right to object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to within such four (4) day time period, (iii) the Notice of Hearing shall be four (4) days in advance of the hearing, (iv) the hearing shall be held within five (5) days after the appointment of the arbitrator, (v) the arbitrator shall have no right to award damages except with respect to a successful claim by one party that the other party has unreasonably withheld its consent in bad faith, (vi) the decision and award of the arbitrator shall be final and conclusive on the parties and, (vii) with respect to disputes under this Lease in which three (3) arbitrators are required pursuant to the express provisions of this Lease, each party shall, on the date it submits such dispute to arbitration, select and appoint (in its sole and absolute discretion) one (1) arbitrator to act as its designee and a third (3<sup>rd</sup>) arbitrator shall be chosen by the first two (2) arbitrators so chosen; and provided, further, that Work Letter Disputes (as defined in the Work Letter) shall be resolved in accordance with Section K of the Work Letter. The time periods set forth in this Section 25.01 are of the essence.

**Section 25.02 Scope, Rights and Qualifications.** The arbitrator(s) conducting any arbitration shall be bound by the provisions of this Lease and shall not have the power to add to, subtract from, or otherwise modify such provisions. Landlord and Tenant agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder which shall be binding and conclusive on the parties and shall constitute an "award" by the arbitrator(s) within the meaning of the AAA rules and applicable law. Judgment may be had on the decision and award of the arbitrator(s) so rendered in any court of competent jurisdiction. The arbitrator(s) shall be a qualified, disinterested and impartial person(s) who shall have had at least ten (10) years' experience in New York City in a calling connected with the matter of the dispute. Landlord and Tenant shall each have the right to appear and be represented by counsel before said arbitrator(s) and to submit such data and memoranda in support of their respective positions in the matter in dispute as may reasonably be necessary or appropriate in the circumstances. Each party hereunder shall pay its own costs, fees and expenses in connection with any arbitration or other action or proceeding brought under this Article 25, and the expenses and fees of the arbitrator selected shall be shared equally by Landlord and Tenant (provided, however, that where the arbitration is conducted by three (3) arbitrators pursuant to the terms of this Lease, each party shall pay the expenses and fees of its designee and share equally the expenses and fees of the third (3<sup>rd</sup>) arbitrator). Notwithstanding any contrary provisions of this Article 25, Landlord and Tenant agree that (i) the arbitrator(s) may not award or recommend any damages to be paid by either party and (ii) in no event shall

either party be liable for, nor be entitled to recover, any damages. This Article 25 shall survive the expiration or sooner termination of this Lease.

## ARTICLE 26

### RULES AND REGULATIONS

**Section 26.01 Right to Change Rules and Regulations.** Landlord shall have the right, from time to time during the term of this Lease, upon reasonable notice to Tenant, to make changes in, and additions to, the Rules and Regulations, provided that (i) such changes or additions are applicable to all other office tenants in the Building, (ii) Landlord in good faith deems that such changes or additions are necessary or desirable for the safety, care or appearance of the Building or the preservation of good order therein, or the operation or maintenance of the Building, or the equipment thereof, or the comfort of tenants or other occupants in the Building, and (iii) such changes or additions do not unreasonably affect the conduct of Tenant's business in the Premises, including, without limitation, the use of the Premises for the Permitted Uses (subject, however, to Building security requirements). In the case of any conflict or inconsistency between the provisions of this Lease and any of said Rules and Regulations as originally promulgated or as changed, the provisions of this Lease shall control.

**Section 26.02 Enforcement of Rules and Regulations.** Nothing in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other tenant. Landlord shall not be liable to Tenant for violation of the Rules and Regulations or of any other lease by other tenants or occupants of the Building, or their servants, agents, visitors or licensees. Notwithstanding the foregoing, Landlord shall not enforce against Tenant any Rules and Regulations that Landlord shall not then be enforcing generally against a majority of other office tenants in the Building.

## ARTICLE 27

### CONSENTS

**Section 27.01 Consents and Approvals.** Wherever in this Lease Landlord's consent or approval is required, if Landlord shall refuse such consent or approval, then (unless Landlord is determined by a court of competent jurisdiction after final appeal to have acted with malice or in bad faith in withholding such consent or approval), Tenant shall not be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld, unreasonably conditioned or unreasonably delayed its consent or approval. In such event, Tenant's sole remedies shall be, at Tenant's option, (i) an action or proceeding to enforce any such provision, for specific performance, injunction or declaratory judgment, or (ii) to the extent Landlord has specifically agreed that it will not unreasonably withhold its consent or approval under this Lease, an arbitration in accordance with Article 25. Where Landlord has not so specifically agreed that it will not unreasonably withhold its consent or approval under this Lease, it is the express intent of the parties that any such consent shall be given or required only in the sole, absolute and

unfettered discretion of Landlord, and may be withheld for any reason whatsoever. In no event shall Landlord's withholding consent or approval be deemed to be unreasonable if such withholding of consent is due to Landlord's inability to obtain the consent of a Mortgagee or Superior Lessor.

## ARTICLE 28

### MISCELLANEOUS

**Section 28.01 Noise; Vibration.** Business machines and mechanical equipment belonging to Tenant, Landlord or other tenants of the Building that may cause noise, vibration or any other nuisance that may be transmitted to other portions of the Building to such a degree as to interfere with the use or enjoyment by Tenant or other tenants of their premises or the public portions of the Building or that adversely affect the Building's structure, shall be placed and maintained by the party owning such machines and/or equipment at such party's cost and expense, in settings of cork, rubber or spring type vibration eliminators sufficient to eliminate any such noise or vibration, but Tenant shall not be entitled to any Rent diminution resulting from such annoyance or interference (unless otherwise expressly provided herein).

**Section 28.02 No Implied Waivers.** The failure of Landlord or Tenant to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease or, as applicable, any of the Rules and Regulations attached hereto or hereafter adopted by Landlord, shall not prevent a subsequent act that would have originally constituted a violation from having all the force and effect of an original violation. The delivery of keys to any employee of Landlord or of Landlord's agent shall not operate as a termination of this Lease or a surrender of the Premises. The receipt or acceptance by Landlord, or payment by Tenant, of Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver be in writing signed by such party. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent required to be paid shall be deemed to be other than on account of the earliest such Rent, nor shall the acceptance of any wire transfer of funds or any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such wire transfer, check or payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy provided in this Lease.

**Section 28.03 No Oral Modification.** Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought. All references in this Lease to the consent or approval of either party shall be deemed to mean the written consent or approval of such party, and no consent or approval of such party shall be effective for any purpose unless such consent or approval is set forth in a written instrument executed by such party. This Lease may not be orally waived, terminated, changed or modified.

**Section 28.04 Amendments.** This Lease with its exhibits, schedules and annexes (and all other documents being executed by the parties in connection with this Lease) contain the entire

agreement between Landlord and Tenant, and any agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless such agreement is signed by the parties hereto.

**Section 28.05 Headings.** The captions of Articles and Sections in this Lease and its Table of Contents and Index are inserted only as a convenience and for reference and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Sections are to those in this Lease unless otherwise noted.

**Section 28.06 Severability.** If any term, covenant, condition or provision of this Lease or the application thereof to any circumstance or to any Person shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Lease or the application thereof to any circumstances or to any Person other than those as to which any term, covenant, condition or provision is held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, condition and provision of this Lease shall be valid and shall be enforceable to the fullest extent permitted by law.

**Section 28.07 Internal References; Attachments and Appendices.** All references to "Section," "Subsection" and "Exhibit" refer to such Section, Subsection or Exhibit of this Lease, unless explicitly noted otherwise. Each of the schedules and exhibits appended to this Lease is incorporated by reference herein as if set out in full herein. If, and to the extent that, any of the provisions of the main body of this Lease conflict, or are otherwise inconsistent, with any of the schedules and exhibits appended to this Lease, other than the Work Letter, then, whether or not such inconsistency is expressly noted in this Lease, the provisions of the main body of this Lease shall prevail. If, and to the extent that, any of the provisions of the main body of this Lease conflict, or are otherwise inconsistent, with the Work Letter, then, whether or not such inconsistency is expressly noted in this Lease, the provisions of the Work Letter shall prevail.

**Section 28.08 Authority of Parties.** Landlord and Tenant each represent and warrant to the other that, except as hereinafter provided in this Section 28.08, (i) this Lease (x) has been duly authorized, executed and delivered by such party and (y) constitutes the legal, valid and binding obligation of such party and (ii) the execution and delivery of this Lease is not prohibited by, nor does it conflict with, or constitute a default under, any agreement or instrument to which such party may be bound or any Legal Requirement applicable to such party. Notwithstanding the preceding sentence, Landlord and Tenant acknowledge that Landlord's representations and warranties provided in this Section 28.08 are subject to the satisfaction of the requirements of the Gubernatorial Review Legislation without the occurrence of a gubernatorial veto, and the satisfaction of such requirements without the occurrence of a gubernatorial veto shall be a condition precedent to the effectiveness of the terms and conditions of this Lease and this Lease shall be of no force and effect unless and until such requirements have been satisfied without the occurrence of a gubernatorial veto. Accordingly, in the event of a gubernatorial veto pursuant to the Gubernatorial Review Legislation, (i) this Lease shall automatically terminate ab initio, (ii) Landlord shall promptly notify Tenant of such termination and return to Tenant any Security Letter previously delivered by Tenant to Landlord hereunder and (iii) this Lease shall be null and void and neither party shall have any obligations or liability hereunder.

“Gubernatorial Review Legislation” means Chapter 333 of the Laws of New Jersey of 1927, as amended by Chapter 20 of the Laws of New Jersey of 1972 (N.J.S.A. 32:2-6 to 9), and Chapter 700 of the Laws of New York of 1927, as amended by Chapter 215 of the Laws of New York of 1956 and Chapter 602 of the Laws of New York of 1972 (McK. Unconsol. Laws §§ 7151-7154).

**Section 28.09 No Smoking.** Smoking shall be prohibited at all times within the Premises. This policy shall apply to all employees, officers, clients, contractors and visitors of Tenant in the Premises and shall cover all common work areas, conference and meeting rooms, private offices, elevators, hallways, cafeterias, employee lounges, stairways, rest rooms, locker rooms, shops, stockrooms, and other areas within the Premises not specifically listed above. Tenant acknowledges that smoking is prohibited in the Lobby and other common areas of the Building and that designated exterior smoking areas (if any) will be adequately signed and located at least twenty-five (25) feet from all entries to the Building and outdoor air intakes, but Tenant shall have no responsibility to prevent smoking in any areas outside of the Premises.

**Section 28.10 Confidentiality.** Neither Landlord nor Tenant nor any of any their respective employees, representatives, agents or consultants shall publicize, advertise or otherwise disclose to third parties any of the economic terms (including, but not limited to, the Fixed Rent or other Rent payable hereunder) nor any of the material terms of this Lease without the prior written consent of the other party except to the extent such disclosure of such information is required to be made (i) to any actual or prospective purchasers, equity investors, partners, mortgagees (including participants or syndicate members), overlessors, assignees or subtenants (or any of their respective employees, representatives, agents or consultants), (ii) by Legal Requirement (including to the extent required with respect to any disclosure requirements under applicable Legal Requirement), (iii) in any arbitration or litigation between the parties, (iv) to any Governmental Authority providing to Landlord and/or Tenant business incentives, or to any Governmental Authority that is a party to an agreement pursuant to which such business incentives are being provided to Landlord and/or Tenant, or (v) to such parties' advisors, consultants, auditors, accountants, attorneys, officers or employees for a valid business purpose provided such parties agree to keep such information confidential. No party shall be required to keep confidential information that is generally known to the public other than by reason of a breach by such party (or its agents, employees or Affiliates) of its obligations under this Section 28.10.

**Section 28.11 Partnership Tenant.** If Tenant is a partnership on the date of this Lease, or if Tenant should assign this Lease to a partnership, whether with or without the consent of Landlord, the individuals constituting the partnership from and after the said date or the effective date of such assignment, as the case may be, shall be and continue to be jointly and severally liable for performing and observing the obligations of Tenant hereunder except as expressly provided in this Section. Furthermore, any new partners of Tenant shall, by their admission as partners, be deemed to have assumed liability jointly and severally with the then partners for the obligations of Tenant under this Lease, and neither the admission of new partners nor the withdrawal of partners shall be a violation of Section 8.01 of this Lease if the conditions hereinafter stated in this Section are satisfied. Tenant shall notify Landlord of the admission of each new partner and shall supply to Landlord a written agreement executed by each new partner confirming assumption of liability as described above. Notwithstanding any provisions of this Lease, or any law to the contrary, or the provisions of any agreement executed by Tenant during

the term of the letting, if any partner of Tenant shall die during the unexpired portion of the term of this Lease, or if any partner of Tenant shall complete his or her retirement from Tenant, or sever his or her connection with Tenant for reasons other than death or retirement, during the unexpired portion of the term of this Lease, such partner and his or her estate shall be relieved of all liability for performance of Tenant's obligations under this Lease accruing after such death, retirement or severance, provided that in order to obtain such release with respect to any such partner Tenant shall give notice to Landlord on behalf of the deceased, retiring or withdrawing partner of such death, retirement or severance, and provided, further, that the total partnership assets available to meet the obligations of Tenant under this Lease immediately after such death, retirement or severance shall not be materially less than the total partnership assets available to meet the obligations of Tenant under this Lease immediately prior to such death, retirement or severance.

**Section 28.12 Brokers.** Each of Tenant and Landlord covenants, warrants and represents that no broker except Jones Lang LaSalle Americas, Inc. (herein called the "Broker") was instrumental in bringing about or consummating this Lease and that such party had no conversations or negotiations with any broker except the Broker concerning the leasing of the Premises. Each of Tenant and Landlord agrees to indemnify and hold harmless the other party against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, arising out of any dealings or communications that occurred or are claimed to have occurred between the indemnifying party and the claimant in connection with this Lease, or arising from a breach by such party of the representation and warranty set forth in this Section 28.12. Landlord agrees to pay the Broker a commission in connection with the negotiation of this Lease in accordance with a separate agreement between Landlord and the Broker. The provisions of this Section 28.12 shall survive the expiration or earlier termination of this Lease.

**Section 28.14 Tenant's Incentive Programs.** Upon Tenant's request, Landlord shall cooperate in all reasonable respects with Tenant with respect to Tenant's efforts to negotiate and implement an incentive package with various governmental entities (including the Port Authority) pursuant to the Omnibus Act and otherwise, existing now or in the future, for rent subsidies, the abatement of commercial rent tax, sales tax or other similar taxes or impositions and any additional rate reductions with respect to electricity provided to the Premises that may be available to Tenant, including the execution and delivery of any estoppel and other certificates or documentation reasonably and customarily required by such entities, the execution and delivery of joint applications and the making of any reasonably required modifications to this Lease in connection therewith, provided that no such certificate, documentation or Lease modification shall (a) increase any obligation of Landlord under this Lease, (b) adversely affect any right of or benefit to Landlord under this Lease or (c) relieve Tenant of any of its obligations under this Lease. Any and all fees, costs and expenses imposed by such governmental entities or other third parties in connection with any such incentive package to be obtained by Tenant shall be borne solely by Tenant. In no event shall this Lease or Tenant's obligations hereunder be conditioned upon Tenant obtaining any such incentives or additional benefits (whether or not same have been offered to Tenant as of the Effective Date), and by its execution of this Lease, Tenant hereby confirms that it has obtained all necessary incentives and benefits required to induce Tenant to enter into this Lease.

**Section 28.15 Signage.** Tenant shall not have the right to install signage anywhere on the exterior of the Building. Landlord shall provide the following signage benefits to Tenant:

(a) Tenant may install signage with the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed, containing the full name of any business occupying the Premises (provided such occupancy is permitted under this Lease) in the elevator lobby on each floor of the Premises and at Tenant's entrance on each floor of the Premises, including standard directional signage in common areas of the sixty-fourth (64th) floor of the Building and any other multi-tenanted floors on which any part of the Premises is located, all in accordance with Landlord's standard signage policy which shall apply to all tenants in the Building in a non-discriminatory manner. Such signage shall be professionally designed and manufactured. Tenant shall maintain such signage in good order and repair throughout the Term and shall remove the same on or before the Expiration Date or earlier termination of this Lease and shall repair any damage to and restore the area where such signage was installed.

Landlord will be responsible for furnishing and installing, as part of Landlord's Work, ADA-compliant signs to indicate base Building toilets, closets, stairways, and elevators.

**Section 28.16 No Individual Liability.**

(a) Neither the Commissioners of the Port Authority, nor any of them, nor any officer or employee thereof, shall be charged personally by the Tenant with any liability or be held liable under any term or provision of this Lease or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

(b) Landlord agrees that in pursuing its rights and remedies against Tenant under or with respect to this Lease, Landlord will not have recourse or otherwise look to the individual or personal assets of any partner, member, officer or director of Tenant.

**ARTICLE 29**

**SUCCESSORS AND ASSIGNS**

**Section 29.01 Successors and Assigns.** The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and, except as otherwise provided herein, their assigns.

**ARTICLE 30**

**SUBMISSION TO JURISDICTION**

**Section 30.01 Jurisdiction; Venue; Governing Law.** Landlord and Tenant each hereby (i) irrevocably consents and submits to the jurisdiction of any Federal, state, county or municipal court sitting in the County of New York in respect to any action or proceeding concerning any matters arising out of or in any way relating to this Lease, (ii) irrevocably waives all objections as to venue and any and all rights it may have to seek a change of venue with respect to any such action or proceedings if the same is brought in New York City, (iii) agrees that the laws of the State of New York shall govern in any such action or proceeding and waives any defense to any action or proceeding granted by the laws of any other country or jurisdiction unless such defense is also allowed by the laws of the State of New York and (iv) agrees that any final judgment rendered against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Landlord and Tenant further agree that any action or proceeding with respect to any matters arising out of or in any way relating to this Lease shall be brought only in the State of New York, County of New York. As of the date hereof, Tenant's address for notices given by Landlord and service of process under this Lease shall be Tenant's address as set forth in Article 24.

**Section 30.02 Compliance with the Litigation Legislation.** Notwithstanding the foregoing nor anything to the contrary contained in this Lease, Tenant hereby expressly acknowledges that any litigation instituted by Tenant against the Port Authority must be brought in accordance with the requirements of the Litigation Legislation and nothing contained in Section 30.01 above or any other provisions of this Lease shall be deemed a waiver by the Port Authority of any provisions, rights or requirements thereunder.

## ARTICLE 31

### LANDLORD'S CONTRIBUTION

#### Section 31.01 Landlord's Contribution for Initial Alterations.

(a) Provided that this Lease shall be in full force and effect and no material default shall have occurred and be continuing hereunder at the time of any progress payment, Landlord shall contribute toward the actual hard costs and design costs incurred by Tenant in connection with Tenant's Initial Alterations an amount ("Landlord's Contribution") equal to the lesser of (i) (i.e., per Rentable Square Foot of Tenant's Above Grade Space), which amount shall be increased in the event Tenant exercises the Initial Expansion Option by an amount equal to multiplied by the number of RSF in the Initial Expansion Space leased by Tenant, or (ii) the aggregate amount of all hard costs and design costs actually incurred by Tenant in connection with Tenant's Initial Alterations.

(b) Tenant shall pay any cost of Tenant's Initial Alterations in excess of Landlord's Contribution. Tenant shall not be entitled to receive any portion of Landlord's Contribution not actually expended by Tenant in the performance of Tenant's Initial Alterations, nor shall Tenant have any right to apply any unexpended portion of Landlord's Contribution as a credit against Rent or any other obligation of Tenant hereunder. Tenant may not assign any part of Landlord's Contribution prior to actual payment thereof by Landlord to Tenant. The provisions of this Article 31 shall apply during the Initial Term only.

(c) Tenant's Initial Alterations for which Tenant has received payments from the Landlord's Contribution shall be the property of, and for federal income tax purposes shall be owned by, Landlord.

(d) Notwithstanding anything to the contrary contained in this Article 31, in the event that this Lease is terminated, Landlord shall have no further obligation to pay to Tenant the Landlord's Contribution.

#### Section 31.02 Progress Payments.

(a) From and after the date Landlord approves Tenant's Plans with respect to Tenant's Initial Alterations and provided that no Event of Default shall then exist and be continuing, Landlord shall make progress payments for Landlord's Contribution to Tenant, on a monthly basis, for the work performed during the previous month or, if not previously paid, an earlier month, less any retainages provided for in Tenant's construction contracts. Tenant's construction contracts will provide for retainages in the amount of (which percentage may be decreased to after substantial completion of Tenant's Initial Alterations).

(b) Each of Landlord's progress payments will be limited to an amount equal to the aggregate amounts theretofore paid or then payable by Tenant (as certified by an authorized officer of Tenant and by Tenant's independent, licensed architect) to Tenant's contractors, subcontractors, material suppliers or others that have not been the subject of a previous disbursement from Landlord's Contribution, multiplied by a fraction (i) the numerator

of which is the amount of Landlord's Contribution, and (ii) the denominator of which is the total contract price (or, if there is no specified or fixed contract price for Tenant's Initial Alterations, then a reasonable estimate thereof in the opinion of Tenant's architect, construction manager or general contractor) for the performance of all of Tenant's Initial Alterations shown on all plans and specifications approved by QAD. Provided that Tenant delivers to Landlord, on or prior to the first (1st) day of any month, a requisition for a progress payment, signed by an authorized officer of Tenant, setting forth the names of each contractor, subcontractor, material supplier or other party to whom payment is due, and the amount thereof, and accompanied by, (i) with the exception of the first requisition, copies of partial waivers of lien from all contractors, subcontractors, material suppliers and others covering all work and materials that were the subject of previous progress payments by Landlord and Tenant, (ii) a written certification from Tenant's architect that the work for which the requisition is being made has been completed substantially in accordance with the plans and specifications approved by QAD and (iii) such other documents and information as Landlord or any Superior Mortgagee requests (in the case of Landlord, such requests shall be reasonable), then Landlord shall make such progress payment on or before the last day of such month. Any requisitions made following the (1st) day of any month shall be paid no later than the last day of the month following the month in which such requisitions are made. At the request of any Superior Mortgagee, the requisition date and the payment date may be altered to accommodate such Superior Mortgagee's schedule so long as the period between submission to payment shall not be extended beyond the requisition date and payment date that applies to Landlord's construction manager.

(c) All requisitions for Landlord's Contribution (other than for retainages withheld pursuant hereto) must be submitted within twenty-four (24) months after the Rent Commencement Date.

**Section 31.03 Additional Credit against Certain Fees and Expenses.** Provided that this Lease shall be in full force and effect and no material Event of Default shall have occurred and be continuing hereunder, Tenant shall receive a credit in the amount of \$300,000, which may be applied against any fees payable to Landlord by Tenant associated with any Tenant's Initial Alterations and the costs of any Building utilities or services used by Tenant or its contractors during the course of the Tenant's Initial Alterations.

**Section 31.04 Right to Apply a Portion of Landlord's Contribution to Tenant's Special Work.** Tenant shall have the right to apply up to \$2,862,150 of Landlord's Contribution (i.e., \$15 per RSF) to any Change Costs incurred with respect to Tenant's Special Work, by written notice given to Landlord on or before the date payment is due from Tenant with respect to any such Change Costs. Any amounts so applied shall be a direct credit against Change Costs billed by Landlord, and shall not be subject to the progress payment procedures under Section 31.02.

## ARTICLE 32

### MEMORANDUM OF LEASE

**Section 32.01 Execution of Memorandum.** Upon request by Tenant, Landlord shall execute, acknowledge and deliver to Tenant a short form or memorandum of this Lease in recordable form and otherwise in form reasonably satisfactory to Landlord and Tenant, together

with such other instruments as may reasonably be necessary to record such short form or memorandum. Tenant may record such short form or memorandum of this Lease in the appropriate Register's Office, and shall be responsible for all recording fees, charges and taxes (if any) in connection therewith. Contemporaneously with the execution by Tenant of such memorandum, Tenant shall execute a termination of memorandum of Lease in recordable form and otherwise in form reasonably satisfactory to Landlord and Tenant, which Landlord shall hold in escrow until the Expiration Date (at which point Landlord may record same in the appropriate Register's Office and Tenant shall reimburse Landlord for the costs thereof as Additional Rent within thirty (30) days after receipt of an invoice therefor from Landlord). The provisions of this Article 31 shall expressly survive the Expiration Date.

### ARTICLE 33

#### SECURITY DEPOSIT/LETTER OF CREDIT

**Section 33.01 Required Security.** Subject to Section 33.02 below, Tenant has, upon execution of this Lease by Tenant, deposited with Landlord and shall maintain throughout the Term the sum of \_\_\_\_\_ (which amount shall be (i) increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space, (ii) increased as and when provided in Section 33.03, and (iii) decreased as and when provided in Section 33.04) as security for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Lease. If Tenant defaults in the full and prompt payment and performance of any of Tenant's covenants and obligations under this Lease beyond the expiration of any applicable notice and grace period, including, but not limited to, the payment of Fixed Rent and Additional Rent, Landlord shall use, apply or retain the whole or any part of the security so deposited and the interest accrued thereon, if any, to the extent required for the payment of any Fixed Rent and Additional Rent or any other sums as to which Tenant is in default beyond the expiration of any applicable notice and grace period or for any sum that Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease beyond the expiration of any applicable notice and grace period, including, but not limited to, any damages or deficiency in the reletting of the Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the security or the interest accrued thereon, if any, Tenant shall, within five (5) days after receipt by Tenant from Landlord of a demand therefor, deposit with Landlord a sum equal to the amount so used, applied or retained, as security as aforesaid, failing which Landlord shall have the same rights and remedies as for the non-payment of Fixed Rent beyond the applicable grace period. Tenant's timely tendering of such sum shall be deemed to cure the default. If Tenant shall fully and faithfully comply with all of Tenant's covenants and obligations under this Lease, the security or any balance thereof to which Tenant is entitled, shall be returned or paid over to Tenant after the date fixed as the expiration of this Lease and after delivery to Landlord of possession of the entire Premises. In the event of any sale, transfer or leasing of Landlord's interest in the Building or the Net Lease whether or not in connection with a sale or transfer of the Net Lease or leasing of the Building to a vendee, transferee or lessee, Landlord shall have the right to transfer the unapplied part of the security and the interest thereon, if any, to which Tenant is entitled, to the vendee, transferee or lessee, and Landlord shall thereupon be released by Tenant from all liability for the return or

payment thereof, provided such vendee, transferee or lessee shall be deemed to have assumed any responsibilities of Landlord with respect to such security, and Tenant shall look solely to the new landlord for the return or payment of the same. The provisions of the preceding sentence shall apply to every subsequent sale, transfer or leasing of the Building, and any successor of Landlord may, upon a sale, transfer, leasing or other cessation of the interest of such successors in the Building, whether in whole or in part, pay over any unapplied part of said security to any vendee, transferee or lessee of the Building and shall thereupon be relieved of all liability with respect thereto. Except in connection with a permitted assignment of this Lease, Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security or any interest thereon to which Tenant is entitled, and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In any event, in the absence of evidence satisfactory to Landlord of an assignment of the right to receive the security, or the remaining balance thereof, Landlord may return the security to the original Tenant regardless of one or more assignments of this Lease.

#### Section 33.02 Letter of Credit.

(a) In lieu of the cash security deposit provided for in Section 33.01, Tenant shall maintain the required security deposit by delivering to Landlord and maintaining in effect at all times during the Term an irrevocable letter of credit, in the form attached hereto as Exhibit L (subject to Section 33.02(e) below), in the amount of the security required pursuant to this Lease issued by a banking corporation reasonably satisfactory to Landlord and having its principal place of business within the Port of New York District (generally speaking, the area encompassed within a 25-mile radius of the Statue of Liberty). Such letter of credit shall have an expiration date no earlier than the first anniversary of the date of issuance thereof and shall be automatically renewed from year to year unless terminated by the issuer thereof by notice to Landlord given not less than 60 days prior to the expiration thereof. Except as otherwise provided herein, Tenant shall, throughout the term of this Lease deliver to Landlord, in the event of the termination of any such letter of credit, replacement letters of credit in lieu thereof (each such letter of credit and such extensions or replacements thereof, as the case may be, is hereinafter referred to as a "Security Letter") no later than 60 days prior to the expiration date of the preceding Security Letter. The term of each such Security Letter shall be not less than one year and shall automatically be renewable from year to year as aforesaid. If Tenant shall fail to obtain any replacement of a Security Letter within the time limits set forth in this Section 33.02(a), Landlord may draw down the full amount of the existing Security Letter and retain the same as security hereunder, provided, however, that so long as no Event of Default has occurred and is continuing, Landlord shall promptly return to Tenant any cash remaining on deposit with Landlord in the event that Tenant subsequently delivers a replacement Security Letter to Landlord which is in compliance with the terms hereof.

(b) In the event Tenant defaults in the full and prompt payment and performance of any of Tenant's covenants and obligations under this Lease beyond the expiration of any applicable notice and grace period, including, but not limited to, the payment of Fixed Rent and Additional Rent, Landlord shall use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Fixed Rent and Additional Rent or any other sum as to which Tenant is in default beyond the expiration of any applicable notice and grace period or for any sum that Landlord may expend or may be required to expend

by reason of Tenant's default in respect of any of the terms, provisions, covenants, and conditions of this Lease beyond the expiration of any applicable notice and grace period, including but not limited to, any damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. Subject to Section 33.02(e) below, to insure that Landlord may utilize the security represented by the Security Letter in the manner, for the purpose, and to the extent provided in this Article 33, each Security Letter shall provide that the full amount thereof may be drawn down by Landlord upon the presentation to the issuing bank of Landlord's draft drawn on the issuing bank without accompanying memoranda or statement of beneficiary.

(c) In the event Landlord applies or retains any portion or all of the security delivered hereunder, Tenant shall, within five (5) days after receipt by Tenant from Landlord of a demand therefor, restore the amount so applied or retained so that at all times the amount deposited shall be not less than the security required by this Article 33. Tenant's timely restoration of such amount shall be deemed to cure the default.

(d) If Tenant shall fully and faithfully comply with all of Tenant's covenants and obligations under this Lease, the Security Letter shall be returned to Tenant after the date fixed as the expiration of this Lease and after delivery of possession of the entire Premises to Landlord. In the event of a sale of the Land and Building or leasing of the Building, Landlord shall have the right to transfer any interest it may have in the Security Letter to the vendee, transferee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Letter, provided such vendee, transferee or lessee assumes any responsibilities of Landlord with respect to such Security Letter, and Tenant agrees to look solely to the new landlord for the return of said Security Letter; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Letter to a new landlord. Except in connection with a permitted assignment of this Lease, Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In the event of a sale of the Building Landlord shall have the right to require Tenant to deliver a replacement Security Letter naming the new landlord as beneficiary and, if Tenant shall fail to timely deliver the same, to draw down the existing Security Letter and retain the proceeds as security hereunder until a replacement Security Letter is delivered.

(e) Notwithstanding Sections 33.02(a) or 33.02(b) above, in lieu of the letter of credit in the form of Exhibit L attached hereto, during the period between the Effective Date and the Delivery Date, Landlord shall accept a Security Letter in the form attached hereto as Exhibit L.1 (the "Pre-Delivery Date LOC"); provided that, on or before the Delivery Date, Tenant shall deliver to Landlord either an amendment to the Pre-Delivery Date LOC in form satisfactory to Landlord or a new Security Letter, such that the Security Letter on deposit with Landlord from and after the Delivery Date conforms in all respects to Exhibit L.

(f) In the event the issuer of any Security Letter held by Landlord is declared by the Federal Deposit Insurance Corporation, or any successor or similar entity ("FDIC"), to be insolvent, or is placed into receivership or conservatorship by the FDIC, or has been identified by the FDIC as an institution for which the FDIC will not honor letters of credit or is otherwise

closed for any other reason, or if a trustee, receiver or liquidator is appointed for the issuer, then, effective as of the date of such occurrence, said Security Letter shall be deemed to not meet the requirements of this Section 33.02, and, within ten (10) Business Days of receipt by Tenant of notice thereof, Tenant shall replace such Security Letter with cash security in the amount of the security required under this Article 33 or another Security Letter drawn on an issuer acceptable to Landlord in its sole and absolute discretion (and Tenant's failure to do so shall, notwithstanding anything in this Lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid ten (10) Business Day period).

**Section 33.03 Increases in Required Security.** The amount of security required to be maintained hereunder shall (i) be increased to Twenty-Five Million (\$25,000,000) Dollars (which amount shall be increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space) on the Commencement Date (the "First Increase"), and (ii) be increased to Forty-Six Million (\$46,000,000) Dollars (which amount shall be increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space) on the date which is nine (9) months following the Commencement Date (the "Second Increase"). Each such increase shall be effectuated by the delivery of either an amendment to the Security Letter then being held by Landlord, which amendment shall be in form and substance satisfactory to Landlord, or by a replacement Security Letter in the amount of the security required hereunder as so increased. Each such replacement Security Letter shall otherwise be in the form required under Section 33.02. Tenant acknowledges that its obligation to increase the amount of its security deposit is a material inducement to Landlord executing this Lease. Accordingly, except as expressly provided in this Lease or the Work Letter to the contrary, in the event Tenant shall fail to deliver either of the increases in the required security deposit in accordance with the preceding sentence, and such failure continues for a period of ten (10) days after written notice from Landlord, then, (i) with respect to the First Increase, Landlord shall have the right in its sole and absolute discretion to terminate this Lease effective upon written notice to Tenant and to draw upon the Security Letter then on deposit with Landlord and to retain the balance thereof as liquidated damages on account of such default, whereupon this Lease shall be terminated and neither party shall have any further obligations to the other party hereunder (it being acknowledged that in no event shall Landlord be obligated to deliver possession of the Premises to Tenant prior to the delivery by Tenant of the First Increase), and (ii) with respect to the Second Increase, such failure shall, notwithstanding anything in this Lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid ten (10) day period. The provisions herein contained for liquidated and agreed upon damages are bona fide provisions for such and are not a penalty, the parties agreeing that Landlord will sustain damages if Tenant defaults in such obligation, which damages will be substantial and will have increased with the passage of time but will not be capable of determination with mathematical precision, and therefore, as aforesaid, this provision for liquidated and agreed upon damages has been incorporated in this Section 33.03 as a provision beneficial to both parties.

**Section 33.04 Decreases in Required Security.** Notwithstanding anything to the contrary contained herein, provided that no Event of Default (and no circumstance which, with the giving of notice or the passage of time, would constitute an Event of Default) shall exist as of the date of the reduction, the amount of security required under Section 33.01 shall be reduced on the 5th anniversary of the Rent Commencement Date to Twenty Million (\$20,000,000.00) Dollars (which amount shall be increased by the Initial Expansion Space Increase Percentage in the event Tenant exercises its option to lease the Initial Expansion Space).

Each such reduction shall be effectuated by the delivery of an amendment to the Security Letter delivered to Landlord pursuant to Section 33.02, which amendment shall be in form and substance satisfactory to Landlord, or by a replacement Security Letter in the amount of the security required hereunder as so decreased.

## ARTICLE 34

### ROOF ANTENNA

**Section 34.01 Tenant's Antennae Option.** Subject to the provisions of this Article 34 Landlord shall reserve, until the end of the Antennae Reservation Period sufficient space (as determined by Landlord in its sole discretion) at a location reasonably determined by Landlord on one or more of the rings encircling the broadcast mast installed on the roof of the Building (collectively, the "Antenna Area") for Tenant's own use insofar as such use is related to the business of Tenant (and not for resale purposes, provided that Tenant may allow Tenant's Affiliates, Permitted Transferees, Core Business Licensees, Permitted Office Occupants, Permitted Operators, China Center Members, permitted assignees and permitted subtenants (and their respective clients, invitees and employees in conjunction with such use by such Persons) to use Tenant's Antennae solely in connection with their use of the Premises so long as Tenant does not charge any fee or rent for the use of such roof space) for whip antenna(e), satellite dishes, microwave dish antenna(e) and communications equipment and related equipment (each, an "Antenna" and collectively, the "Antennae"). Tenant's use of the ring(s) shall be on a non-exclusive basis. Prior to the expiration of the Antennae Reservation Period, Tenant shall provide Landlord with its written notice of intent to install any Antennae (the "Antennae Notice"), which Antennae Notice shall set forth in reasonable detail the quantity and specifications of all of Antennae and related equipment Tenant proposes to install. In the event Tenant does not timely provide Landlord with the Antennae Notice on or before the expiration of the Antennae Reservation Period, no Antenna Area shall be reserved for use by Tenant, and Landlord makes no representation as to the availability of telecommunications capacity at the Building for Tenant use.

### **Section 34.02 License Agreement.**

(a) Subject to Tenant's providing the Antennae Notice and the satisfaction of all applicable provisions of this Lease (including this Article 34), (i) Landlord shall provide reasonably sufficient space in the Building for wiring the Antennae from the Premises to a common mechanical room on the \_\_\_\_\_ and (ii) Tenant shall have a non-exclusive, non-transferable, revocable license, at Tenant's sole risk, cost and expense, (x) to

maintain those Antennae reserved by Tenant within the Antennae Reservation Period, in the Antenna Area, and (y) to install and maintain the cables (including electrical cables, Tenant acknowledging that Landlord shall not supply any separate electricity to the Antenna Area, the mechanical room, or any other areas relating to the Antennae) extending from the Antennae to the Premises through plenums, risers, mechanical room(s) and/or electrical closets, ducts or pipes on or serving the floors on which the Premises is located (other than those installed for another tenant's exclusive use and provided Tenant shall have utilization of each such facility or area in no greater proportion than Tenant's Operating Expense Share), such license of (x) and (y) above to be exercised all in accordance with the plans and specifications approved by Landlord. The quantity, location, size, weight, height and all other features and specifications of the Antennae and the manner of the initial installation of the Antennae shall be subject to Landlord's prior written approval, which approval may be granted or withheld in Landlord's sole and absolute discretion. The installation of the Antennae and all related wiring and equipment shall be performed during Operating Hours and under the supervision of Landlord's designated representative at Tenant's cost. Notwithstanding the foregoing, the installation of any Antenna shall be deemed to be a Material Alteration for all purposes of this Lease, subject to the provisions of Article 13. Any failure to complete the installation of the Antennae and related equipment shall not delay the Commencement Date or the Rent Commencement Date. Tenant shall have no right to any abatement or reduction in Rent if for any reason Tenant is unable to obtain any required approval for installation of any Antenna, or is thereafter unable to use any Antenna for any reason.

(b) Throughout the Term, Tenant shall pay as Additional Rent to Landlord, on the first day of each month following a month wherein any Antenna was installed or pre-existing, a monthly license fee of \_\_\_\_\_ per Antenna per month (the "Antennae Charge"). The Antenna Charge payable for any period less than a month shall be apportioned based upon the number of days in that month any Antenna was installed. On the first day of each Lease Year after the Rent Commencement Date, the Antenna Charge shall be increased to equal the product of (i) the Antenna Charge in effect during the immediately preceding Lease Year multiplied by (ii)

(c) Tenant shall not have access to any Antenna without Landlord's prior written consent, which consent shall be granted (i) to the extent necessary for Tenant to perform its maintenance and repair obligations hereunder only and (ii) only if Tenant is accompanied by Landlord's representative (if Landlord so requests), it being expressly understood, however, that such access may be delayed or denied due to circumstances beyond Landlord's control (such as any approval required by Legal Requirements or the Net Lease). All Tenant personnel, subcontractors and agents requiring access to the Antenna Area shall have current training in Radio Frequency site safety awareness or otherwise qualify as "Occupational" per FCC OET Bulletin-65 and be pre-approved by Landlord, in its reasonable discretion. Any such access by Tenant or Tenant's personnel shall be subject to the Rules and Regulations relating thereto, including without limitation rules and regulations prohibiting such access unless Tenant is accompanied by Landlord's representative. Landlord and Net Lessor shall have the right to access the Antenna Area without prior notice to Tenant. Landlord shall promptly repair any damage caused by such entry and restore the Antenna Area to substantially the same condition existing prior to such damage except to the extent such damage is caused by Tenant's acts or omissions.

(d) At all times during the Term, Tenant shall (i) maintain all said equipment in clean, good and safe condition and in a manner that avoids interference with or disruption to Landlord and other tenants and wireless rooftop users of the Building, including full compliance with the Objectionable Interference Protocol (ii) comply with all Legal Requirements and requirements of insurers that shall impose any order or duty upon Landlord with respect to or affecting the Antenna or wiring arising out of Tenant's use or manner of use thereof, (iii) comply with FCC and OSHA rules and guidelines with respect to limiting human exposure to radio frequency emissions (including, but not limited to, proper labeling of antennae and equipment) as articulated in the RF Protocol and (iv) register the equipment, if required, with appropriate Governmental Authorities and keep same current. All repairs and maintenance shall be performed by an approved contractor pursuant to Section 13.03. All repairs and maintenance to the Building made necessary by reason of the furnishing, installation, maintenance, operation or removal of the Antennae or any replacements thereof (including, without limitation, any invalidation of the roof or broadcast mast warranty due to the Antennae or Tenant's actions) shall be at Tenant's sole cost. If the operation of the Antennae shall require electrical power, Landlord may, at its sole option, install a separate meter, at Tenant's sole expense, to measure such electrical consumption, and Tenant shall pay for such consumption in accordance with Article 7. At the expiration or earlier termination of the Term, or upon termination of the operation of the Antennae and related equipment as provided in Subsection (f) below, Tenant shall remove the Antennae and related equipment from the Building and surrender the Antenna Area in good condition, ordinary wear and tear and unavoidable damage by the elements excepted. If Tenant fails to so remove the Antennae and equipment in accordance with the foregoing, Landlord shall have the right to remove and dispose of any of the Antennae and equipment, at Tenant's sole cost and expense, and Landlord shall have no liability therefor.

(e) Upon at least ten (10) days' prior written notice to Tenant, Landlord shall have the right to require relocation of the Antennae, if in Landlord's opinion such relocation is necessary or desirable, and Landlord shall perform such relocation, at Landlord's sole cost and expense, which relocation shall occur outside of Operating Hours; provided that such relocation of Tenant's Antennae does not cause the transmission or reception of communication signals to be materially interrupted or impaired other than temporarily during the process of relocating such Antennae. Upon at least ninety (90) days' prior written notice to Tenant, Landlord shall have the right to require Tenant to relocate the Antennae, if in Landlord's opinion such relocation is necessary or desirable, and Tenant shall perform such relocation, at Landlord's sole cost and expense, provided that such relocation of Tenant's Antennae does not cause the transmission or reception of communication signals to be materially interrupted or impaired other than temporarily during the process of relocating such Antennae. Nothing in this Article 34 shall be construed as granting Tenant any line of sight easement with respect to any Antenna, provided, however, that if Landlord requires that any Antenna be relocated in accordance with the preceding two (2) sentences, then Landlord shall provide either (i) the same line of sight for such Antenna as was available prior to such relocation, or (ii) a line of sight for such Antenna that is functionally equivalent to that available prior to such relocation.

(f) It is expressly understood that by granting Tenant a license hereunder, Landlord makes no representation as to the legality of the Antennae or their installation. In the event that any federal, state, county, regulatory or other authority requires the removal or relocation of any Antenna, Tenant shall remove or relocate such Antenna at Tenant's sole cost

and expense, and Landlord shall under no circumstances be liable to Tenant therefor. In addition, at Landlord's sole option and discretion, Landlord may require Tenant, at any time prior to the expiration or earlier termination of this Lease, to terminate the operation of the Antennae and related equipment if it is (i) causing physical damage to the structural integrity of the Building, (ii) interfering with any other service provided to the Building, (iii) interfering with any other tenant's business or (iv) causing the violation of any condition or provision of this Lease, the Net Lease or any Legal Requirement. Landlord may require Tenant to take any of the foregoing actions even if any or all other tenants in the Building are permitted to continue any similar use or operation. The right granted to Tenant under this Section 34.02 constitute a non-exclusive, non-transferable, revocable license to use the Antenna Area solely in accordance with terms and conditions of this Article 34.

(g) Tenant agrees to reimburse Landlord for any costs, damages, claims, liabilities, and expenses (including reasonable attorneys' fees and disbursements) suffered by or claimed against Landlord, directly or indirectly, based on, arising out of or resulting from any act or omission by Tenant or Tenant's employees, agents, assignees, subtenants, contractors, clients, guests, licensees, customers or invitees with respect to the installation, use, operation, maintenance, repair, removal or disassembly of the Antennae and related equipment (including, without limitation, any damage to other wires or equipment of the Building or other tenants/occupants of the Building).

**Section 34.03 Additional Insurance; No Warranty.** Tenant shall maintain such insurance (in addition to that required by Article 16 of this Lease) as is appropriate with respect to the installation, operation and maintenance of the Antennae. Landlord shall have no liability on account of any damage to or interference with the operation of the Antennae, except for physical damage caused by Landlord's negligence or willful misconduct not covered by Tenant's insurance carried or required to be carried by Article 16, and Landlord expressly makes no representations or warranties with respect to the capacity for any Antenna placed in the Antenna Area to receive or transmit signals. The operation of the Antennae shall be at Tenant's sole and absolute risk at all times. Tenant shall in no event interfere with the use of any other communications equipment located on the roof of or anywhere else in the Building.

## ARTICLE 35

### FIRST EXTENSION OPTION

#### **Section 35.01 Exercise of First Extension Option.**

(a) Tenant shall have the option (hereinafter referred to as the "First Extension Option") to extend the Term for a term (hereinafter referred to as the "First Extension Term") of \_\_\_\_\_ to commence on the date (hereinafter referred to as the "First Extension Term Commencement Date") following the Initial Expiration Date and to expire on the date (hereinafter referred to as the "First Extension Term Expiration Date") that is the \_\_\_\_\_ of the Initial Expiration Date, which First Extension Option shall be exercised only by Tenant giving to Landlord notice thereof (hereinafter referred to as the "First Extension Exercise Notice") on or before the date (hereinafter referred to as the "First Extension Exercise

Notice Date") that is no later than  
time being of the essence.

prior to the Initial Expiration Date,

(b) Tenant may exercise the First Extension Option as to either (i) the entire Premises, or (ii) a portion of the Premises consisting of at least the entire floors of the Building and the entire portion of the of the Building then included within the Premises (the "Minimum Extension Block") and such additional space then included within the Premises as Tenant may elect, provided such additional space shall consist of one or more full floors that are contiguous to (i.e., immediately above or immediately below, without intervening floors) the Minimum Extension Block. Tenant's election pursuant to this Section 35.01(b) shall be set forth in the First Extension Exercise Notice, and if Tenant fails to make such election in the First Extension Exercise Notice, the delivery of the First Extension Exercise Notice shall be deemed an election to extend the Term as to the entire Premises. All references hereinafter contained in this Article 35 to "Premises" shall be deemed to refer to such portion of the Premises as to which the First Extension Option has been exercised in accordance with this Section 35.01(b). On or before the Initial Expiration Date, the portion of the Premises as to which the First Extension Option has not been exercised, if any, shall be surrendered to Landlord in accordance with all of the terms and conditions of this Lease governing the surrender of the Premises on the Expiration Date.

**Section 35.02 No Default.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall not have the First Extension Option if on the date Tenant gives to Landlord the First Extension Exercise Notice an Event of Default shall have occurred and is continuing.

**Section 35.03 Other Conditions.** In addition to the provisions of Section 35.02 above, and notwithstanding anything contained in this Lease to the contrary, the First Extension Option shall be deemed revoked, null and void, and of no further force or effect, and the First Extension Exercise Notice (or purported First Extension Exercise Notice) given in connection with Tenant's attempt to exercise the First Extension Option shall be ineffective and void ab initio as a First Extension Exercise Notice (a) if Tenant fails to timely give the First Extension Exercise Notice to Landlord in the manner provided in Section 35.01, or (b) if as of the First Extension Term Commencement Date, this Lease is not in full force and effect, or an Event of Default shall have occurred and is continuing. Notwithstanding anything contained in this Lease that may be deemed to the contrary, if Tenant exercises the First Extension Option, but prior to the First Extension Term Commencement Date, this Lease or the Term hereof has ended, expired or is not otherwise in full force and effect as a result of any default by Tenant under this Lease, then, solely for the purposes of calculating the damages to which Landlord is entitled under Article 20 of this Lease, the Term shall be deemed to have been extended by the First Extension Term.

**Section 35.04 First Extension Term Covenants and Conditions.** The First Extension Term, if any, shall be upon, and subject to, all of the terms, covenants and conditions provided in this Lease for the Initial Term, except that:

(a) any terms, covenants, or conditions hereof that are expressly or by their nature inapplicable to the First Extension Term (including, without limitation, Article 31 and this Article 35, and the Work Letter) shall not apply during the First Extension Term; and

**Section 35.05 Determination of First FMV Amount.** The initial determination of the First FMV Amount shall be made by Landlord. Landlord shall give notice (hereinafter referred to as a "First Rent Notice") to Tenant of the proposed First FMV Amount on or before the date that is fourteen (14) months prior to the First Extension Term Commencement Date. The First FMV Amount so determined by Landlord shall be deemed conclusive and binding upon Tenant unless on or before the date that is thirty (30) days after Landlord gives to Tenant the First Rent Notice (a) Tenant gives to Landlord notice (hereinafter referred to as the "First Dispute Notice") that Tenant disputes the First FMV Amount so determined by Landlord, or (b) Landlord and Tenant agree in writing (which agreement (hereinafter referred to as a "First FMV Agreement") shall be duly executed and delivered by Landlord and Tenant) upon the First FMV Amount on or before the date that is twelve (12) months prior to the First Extension Term Commencement Date (hereinafter referred to as the "First Determination Date"). If Tenant sends to Landlord a First Dispute Notice within the time and in the manner hereinbefore provided, and if Landlord and Tenant fail to so agree upon the First FMV Amount on or before the First Determination Date, the First FMV Amount for the First Extension Term shall be determined by arbitration pursuant to Section 35.06 below.

**Section 35.06 Dispute Regarding First FMV Amount.** If Tenant gives to Landlord a First Dispute Notice in respect of the First FMV Amount so determined by Landlord as provided in Section 35.05 above, and Landlord and Tenant fail to execute and deliver a First FMV Agreement on or before the First Determination Date, then the First FMV Amount for the First Extension Term shall be determined by arbitration as follows:

(a) Landlord and Tenant shall each appoint an arbitrator by written notice given to the other party hereto not later than thirty (30) days after the First Determination Date, which arbitrators may then be regularly employed or engaged by Landlord or Tenant, but shall be unaffiliated with such party. If either Landlord or Tenant fail to appoint an arbitrator within such period of time and thereafter fail to do so by written notice given within a period of five (5) days after notice by the other party requesting the appointment of such arbitrator, then such arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York), upon request of either Landlord or Tenant, as the case may be;

(b) the two (2) arbitrators appointed as above provided shall attempt to reach an agreement as to the First FMV Amount, and in the event that they are unable to do so within

thirty (30) days after their joint appointment, then the two (2) arbitrators shall appoint a third (3<sup>rd</sup>) arbitrator and give written notice of such designation to both Landlord and Tenant, and, if they fail to do so by written notice given within sixty (60) days after their joint appointment, such third (3<sup>rd</sup>) arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York). Such third (3<sup>rd</sup>) arbitrator shall not then be employed or engaged by either Landlord or Tenant or any of their respective affiliates;

(c) all of such arbitrators shall be New York State licensed real estate brokers having not less than ten (10) years' experience in representing owners or tenants in commercial leasing transactions in respect of Comparable Buildings; and

(d) the arbitrators, selected as aforesaid, shall convene and render their decision in accordance with the then-applicable rules of the AAA, which decision shall be strictly limited to a determination of the First FMV Amount, within thirty (30) days after the appointment of the second (2<sup>nd</sup>) arbitrator or the third (3<sup>rd</sup>) arbitrator, as the case may be. The decision of such arbitrators shall be in writing. If the first two (2) arbitrators appointed as above provided reach an agreement as to the First FMV Amount, said agreement shall be the decision of the arbitrators. If a third (3<sup>rd</sup>) arbitrator is appointed as above provided, then such third (3<sup>rd</sup>) arbitrator's decision shall be limited to a choice that is either the determination of the First FMV Amount made by the first (1<sup>st</sup>) arbitrator or the determination of the First FMV Amount made by the second (2<sup>nd</sup>) arbitrator. Insofar as the same is in compliance with the provisions and conditions of this Article, the decision of the arbitrators shall be binding upon Landlord and Tenant. Duplicate original counterparts of such decision shall be sent forthwith by the arbitrators by certified mail, return receipt requested, to both Landlord and Tenant. The arbitrators, in arriving at their decision (including the third (3<sup>rd</sup>) arbitrator, notwithstanding the fact that the third (3<sup>rd</sup>) arbitrator's decision is limited as hereinbefore provided), shall be entitled to consider all testimony and documentary evidence that may be presented at any hearing, as well as facts and data that the arbitrators may discover by investigation and inquiry outside such hearings. If, for any reason whatsoever, a written decision of the arbitrators shall not be rendered within sixty (60) days after the appointment of the third (3<sup>rd</sup>) arbitrator, then, at any time thereafter before such decision shall have been rendered, either party may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, by action, proceeding or otherwise (but not by a new arbitration proceeding) as may be proper, to determine the question in dispute consistently with the provisions of this Lease. The cost and expense of such arbitration, action, proceeding, or otherwise shall be borne equally by Landlord and Tenant, but Landlord and Tenant shall each pay their own arbitrators' and attorneys' fees and disbursements and witnesses fees.

(e) FMV Pending Resolution of Dispute. If Tenant gives to Landlord a First Dispute Notice in respect of the First FMV Amount so determined by Landlord as provided in Section 35.05, and the Fixed Rent for the First Extension Term shall not be finally determined pursuant to the terms of Section 35.05 or 35.06 on or before the First Extension Term Commencement Date, then, pending such resolution, the Fixed Rent payable by Tenant during the First Extension Term, subject to adjustment as herein provided, shall be equal to the annual rate of Fixed Rent in effect on the last day of the Initial Term, without giving effect to any abatement, credit or reduction that may then be applicable (hereinafter collectively referred to as the "First Extension Minimum Rent"), and once the Fixed Rent for the First Extension Term is

finally determined pursuant to the terms of Section 35.06, there shall be a retroactive adjustment between the parties. If the Fixed Rent for the First Extension Term, as so determined, shall be greater than the First Extension Minimum Rent, Tenant, within twenty (20) days after Tenant's receipt of Landlord's invoice therefor, shall pay to Landlord an amount equal to the difference between (x) the sum of the actual Fixed Rent payments paid to Landlord during the First Extension Term before such final determination and (y) the sum of the Fixed Rent payments that would have been payable by Tenant if the Fixed Rent for the First Extension Term had been finally determined prior to the First Extension Term Commencement Date. If the Fixed Rent for the First Extension Term, as so determined, shall be less than the First Extension Minimum Rent, Landlord, within thirty (30) days after Tenant's demand therefor, shall, at Landlord's election, either pay or credit against the next Rent payable hereunder, the amount of such overpayment by Tenant.

**Section 35.07 Miscellaneous.** If, in accordance with and subject to, all of the terms, covenants and conditions contained in this Article, the Term is extended for the First Extension Term, then "Expiration Date," as such term is used in this Lease, shall mean the "First Extension Term Expiration Date," and "Term" (and comparable words), shall mean the Initial Term, as extended by the First Extension Term. Notwithstanding anything that may be contained in this Lease to the contrary, Landlord shall have no obligation or duty, nor shall Landlord be required, to make any installations, alterations or improvements to the Premises or any portion thereof (including, without limitation, painting, finishing, plastering or decorating) with respect to the First Extension Term; provided, however, that nothing contained in this sentence shall affect Landlord's obligations to perform the repairs that Landlord is expressly required to make under this Lease. Except as expressly set forth in this Article and Article 36, Tenant shall not have any option or right to extend or renew the Term.

## ARTICLE 36

### SECOND EXTENSION OPTION

#### Section 36.01 Exercise of Second Extension Option.

(a) If Tenant exercises the First Extension Option and this Lease is extended for the First Extension Term, Tenant shall have an additional option (hereinafter referred to as the "Second Extension Option") to extend the Term for an additional term (hereinafter referred to as the "Second Extension Term") of ten (10) years to commence on the date (hereinafter referred to as the "Second Extension Term Commencement Date") next succeeding the First Extension Term Expiration Date and to expire on the date (hereinafter referred to as the "Second Extension Term Expiration Date") that is the tenth (10th) anniversary of the First Extension Term Expiration Date, which Second Extension Option shall be exercised only by Tenant giving to Landlord notice thereof (hereinafter referred to as the "Second Extension Exercise Notice") on or before the date (hereinafter referred to as the "Second Extension Exercise Notice Date") that is no later than prior to the First Extension Term Expiration Date, time being of the essence.

(b) Tenant may exercise the Second Extension Option as to either (i) the entire Premises, or (ii) the Minimum Extension Block and such additional space then included

within the Premises as Tenant may elect, provided such additional space shall consist of one or more full floors that are contiguous to (i.e., immediately above or immediately below, without intervening floors) the Minimum Extension Block. Tenant's election pursuant to this Section 36.01(b) shall be set forth in the Second Extension Exercise Notice, and if Tenant fails to make such election in the Second Extension Exercise Notice, the delivery of the Second Extension Exercise Notice shall be deemed an election to extend the Term as to the entire Premises. All references hereinafter contained in this Article 36 to "Premises" shall be deemed to refer to such portion of the Premises as to which the Second Extension Option has been exercised in accordance with this Section 36.01(b). On or before the First Extension Term Expiration Date, the portion of the Premises as to which the Second Extension Option has not been exercised, if any, shall be surrendered to Landlord in accordance with all of the terms and conditions of this Lease governing the surrender of the Premises on the Expiration Date.

**Section 36.02 No Default.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall not have the Second Extension Option if on the date Tenant gives to Landlord the Second Extension Exercise Notice an Event of Default shall have occurred and is continuing.

**Section 36.03 Other Conditions.** In addition to the provisions of Section 36.02 above, and notwithstanding anything contained in this Lease to the contrary, the Second Extension Option shall be deemed revoked, null and void, and of no further force or effect, and the Second Extension Exercise Notice (or purported Second Extension Exercise Notice) given in connection with Tenant's attempt to exercise the Second Extension Option shall be ineffective and void ab initio as a Second Extension Exercise Notice (a) if Tenant fails to timely give the Second Extension Exercise Notice to Landlord in the manner provided in Section 36.01, or (b) if as of the Second Extension Term Commencement Date, this Lease is not in full force and effect, or an Event of Default shall have occurred and is continuing. Notwithstanding anything contained in this Lease that may be deemed to the contrary, if Tenant exercises the Second Extension Option, but prior to the Second Extension Term Commencement Date, this Lease or the Term hereof has ended, expired or is not otherwise in full force and effect as a result of any default by Tenant under this Lease, then, solely for the purposes of calculating the damages to which Landlord is entitled under Article 20 of this Lease, the Term shall be deemed to have been extended by the Second Extension Term.

**Section 36.04 Second Extension Term Covenants and Conditions.** The Second Extension Term, if any, shall be upon, and subject to, all of the terms, covenants and conditions provided in this Lease for the First Extension Term, except that:

(a) any terms, covenants, or conditions hereof that are expressly or by their nature inapplicable to the Second Extension Term (including, without limitation, Article 31, Article 35, this Article 36, and the Work Letter) shall not apply during the Second Extension Term; and

(b) the Fixed Rent payable by Tenant during the Second Extension Term (hereinafter referred to as the "Second Extension Rent") shall be an amount equal to of the fair market rent for the Premises determined in accordance with Section 36.05 as of the Second Extension Term Commencement Date on the basis of a new letting of the Premises

for the Second Extension Term for a term equal to the number of years in the Second Extension Term (but taking into account that, for purposes of the Second Extension Term, the Base Tax Year will be the Tax Year in which occurs the first day of the Second Extension Term and the Base Operating Year will become the calendar year in which occurs the first day of the Second Extension Term (so that no Additional Rent will be payable during the Base Tax Year on account of Taxes or during the Base Operating Year on account of Operating Expenses), and taking into account all other then relevant factors (the Fixed Rent for the period covered by the Second Extension Term is herein referred to as the "Second FMV Amount").

**Section 36.05 Determination of Second FMV Amount.** The initial determination of the Second FMV Amount shall be made by Landlord. Landlord shall give notice (hereinafter referred to as a "Second Rent Notice") to Tenant of the proposed Second FMV Amount on or before the date that is fourteen (14) months prior to the Second Extension Term Commencement Date. The Second FMV Amount so determined by Landlord shall be deemed conclusive and binding upon Tenant unless on or before the date that is thirty (30) days after Landlord gives to Tenant the Second Rent Notice (a) Tenant gives to Landlord notice (hereinafter referred to as the "Second Dispute Notice") that Tenant disputes the Second FMV Amount so determined by Landlord, or (b) Landlord and Tenant agree in writing (which agreement (hereinafter referred to as a "Second FMV Agreement") shall be duly executed and delivered by Landlord and Tenant) upon the Second FMV Amount on or before the date that is twelve (12) months prior to the Second Extension Term Commencement Date (hereinafter referred to as the "Second Determination Date"). If Tenant sends to Landlord a Second Dispute Notice within the time and in the manner hereinbefore provided, and if Landlord and Tenant fail to so agree upon the Second FMV Amount on or before the Second Determination Date, the Second FMV Amount for the Second Extension Term shall be determined by arbitration pursuant to Section 36.06 below.

**Section 36.06 Dispute Regarding Second FMV Amount.** If Tenant gives to Landlord a Second Dispute Notice in respect of the Second FMV Amount so determined by Landlord as provided in Section 36.05 above, and Landlord and Tenant fail to execute and deliver a Second FMV Agreement on or before the Second Determination Date, then the Second FMV Amount for the Second Extension Term shall be determined by arbitration as follows:

(a) Landlord and Tenant shall each appoint an arbitrator by written notice given to the other party hereto not later than thirty (30) days after the Second Determination Date, which arbitrators may then be regularly employed or engaged by Landlord or Tenant, but shall be unaffiliated with such party. If either Landlord or Tenant fail to appoint an arbitrator within such period of time and thereafter fail to do so by written notice given within a period of five (5) days after notice by the other party requesting the appointment of such arbitrator, then such arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York), upon request of either Landlord or Tenant, as the case may be;

(b) the two (2) arbitrators appointed as above provided shall attempt to reach an agreement as to the Second FMV Amount, and in the event that the two (2) arbitrators are unable to do so within thirty (30) days after their joint appointment, then they shall appoint a third (3<sup>rd</sup>) arbitrator and give written notice of such designation to both Landlord and Tenant,

and, if they fail to do so by written notice given within sixty (60) days after their joint appointment, such third (3<sup>rd</sup>) arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York). Such third (3<sup>rd</sup>) arbitrator shall not then be employed or engaged by either Landlord or Tenant or any of their respective affiliates;

(c) all of such arbitrators shall be New York State licensed real estate brokers having not less than ten (10) years' experience in representing owners or tenants in commercial leasing transactions in respect of Comparable Buildings; and

(d) the arbitrators, selected as aforesaid, shall convene and render their decision in accordance with the then-applicable rules of the AAA, which decision shall be strictly limited to a determination of the Second FMV Amount, within thirty (30) days after the appointment of the second (2<sup>nd</sup>) arbitrator or the third (3<sup>rd</sup>) arbitrator, as the case may be. The decision of such arbitrators shall be in writing. If the first two (2) arbitrators appointed as above provided reach an agreement as to the Second FMV Amount, said agreement shall be the decision of the arbitrators. If a third (3<sup>rd</sup>) arbitrator is appointed as above provided, then such third (3<sup>rd</sup>) arbitrator's decision shall be limited to a choice that is either the determination of the Second FMV Amount made by the first (1<sup>st</sup>) arbitrator or the determination of the Second FMV Amount made by the second (2<sup>nd</sup>) arbitrator. Insofar as the same is in compliance with the provisions and conditions of this Article, the decision of the arbitrators shall be binding upon Landlord and Tenant. Duplicate original counterparts of such decision shall be sent forthwith by the arbitrators by certified mail, return receipt requested, to both Landlord and Tenant. The arbitrators, in arriving at their decision (including the third (3<sup>rd</sup>) arbitrator, notwithstanding the fact that the third (3<sup>rd</sup>) arbitrator's decision is limited as hereinbefore provided), shall be entitled to consider all testimony and documentary evidence that may be presented at any hearing, as well as facts and data that the arbitrators may discover by investigation and inquiry outside such hearings. If, for any reason whatsoever, a written decision of the arbitrators shall not be rendered within sixty (60) days after the appointment of the third (3<sup>rd</sup>) arbitrator, then, at any time thereafter before such decision shall have been rendered, either party may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, by action, proceeding or otherwise (but not by a new arbitration proceeding) as may be proper, to determine the question in dispute consistently with the provisions of this Lease. The cost and expense of such arbitration, action, proceeding, or otherwise shall be borne equally by Landlord and Tenant, but Landlord and Tenant shall each pay their own arbitrators' and attorneys' fees and disbursements and witnesses fees.

**Section 36.07 FMV Pending Resolution of Dispute.** If Tenant gives to Landlord a Second Dispute Notice in respect of the Second FMV Amount so determined by Landlord as provided in Section 36.05, and the Fixed Rent for the Second Extension Term shall not be finally determined pursuant to the terms of Section 36.05 or 36.06 on or before the Second Extension Term Commencement Date, then, pending such resolution, the Fixed Rent payable by Tenant during the Second Extension Term, subject to adjustment as herein provided, shall be equal to the annual rate of Fixed Rent in effect on the last day of the First Extension Term, without giving effect to any abatement, credit or reduction that may then be applicable (hereinafter collectively referred to as the "Second Extension Minimum Rent"), and once the Fixed Rent for the Second

Extension Term is finally determined pursuant to the terms of Section 36.06, there shall be a retroactive adjustment between the parties. If the Fixed Rent for the Second Extension Term, as so determined, shall be greater than the Second Extension Minimum Rent, Tenant, within thirty (30) days after receipt of Landlord's demand therefor, shall pay to Landlord an amount equal to the difference between (x) the sum of the actual Fixed Rent payments paid to Landlord during the Second Extension Term before such final determination and (y) the sum of the Fixed Rent payments that would have been payable by Tenant if the Fixed Rent for the Second Extension Term had been finally determined prior to the Second Extension Term Commencement Date. If the Fixed Rent for the Second Extension Term, as so determined, shall be less than the Second Extension Minimum Rent, Landlord, within twenty (20) days after Tenant's demand therefor, shall, at Landlord's election, either pay or credit against the next Rent payable hereunder, the amount of such overpayment by Tenant.

**Section 36.08 Miscellaneous.** If, in accordance with and subject to, all of the terms, covenants and conditions contained in this Article, the Term is extended for the Second Extension Term, then "Expiration Date," as such term is used in this Lease, shall mean the "Second Extension Term Expiration Date," and "Term" (and comparable words), shall mean the Initial Term, as extended by the First and Second Extension Terms. Notwithstanding anything that may be contained in this Lease to the contrary, Landlord shall have no obligation or duty, nor shall Landlord be required, to make any installations, alterations or improvements to the Premises or any portion thereof (including, without limitation, painting, finishing, plastering or decorating) with respect to the Second Extension Term; provided, however, that nothing contained in this sentence shall affect Landlord's obligations to perform the repairs that Landlord is expressly required to make under this Lease. Except as expressly set forth in this Article and Article 35, Tenant shall not have any option or right to extend or renew the Term.

## ARTICLE 37

### PERCENTAGE RENT

**Section 37.01 Percentage Rent.**

**Section 37.02 Definition of Gross Sales.**

**Section 37.03 Quarterly and Annual Statements of Gross Sales.** Tenant agrees to deliver to Landlord, simultaneously with each quarterly installment of Percentage Rent, a complete statement showing Gross Sales for the preceding quarter. Within one hundred and eighty (180) days after the end of each Percentage Rent Year, Tenant shall deliver to Landlord a complete statement of the Gross Sales for such Percentage Rent Year, certified by the President, General Manager or Chief Financial Officer of Tenant (a "Gross Sales Statement"). If Tenant shall fail to furnish to Landlord the Gross Sales Statement required by this Section 37.03 within one hundred and eighty (180) days after the end of each Percentage Rent Year or the quarterly statement required by this Section 37.03 on the due date thereof, Landlord shall give Tenant notice thereof. If Tenant fails to supply said statements within ten (10) days after such notice, then in addition to the remedies available to Landlord for default by Tenant hereunder, and regardless whether the same constitutes a default by Tenant hereunder, Landlord shall have the right to perform (or cause to be performed by an independent auditing firm) an audit of Tenant's books and records to ascertain the information required to be contained in the statement to be provided by Tenant. Such audit shall be conducted at the sole cost and expense of Tenant and Tenant shall pay to Landlord the cost of such audit within thirty (30) days after receipt of demand therefor.

**Section 37.04 Audits by Landlord.** The Gross Sales Statements furnished to Landlord shall constitute a binding determination on Landlord of the Gross Sales for the periods represented thereby, unless Landlord shall, at any time within thirty-six (36) months after the close of each Percentage Rent Year, shall give notice to Tenant that it elects to audit all of the books of account, documents, records, returns, papers and files of Tenant relating to the Percentage Rent Operations and Gross Sales for such Percentage Rent Year, and Tenant, on written request of Landlord, shall make all such items available for such examination at the Premises during Tenant's normal business hours. If Landlord shall have such an audit conducted for any Percentage Rent Year and the Gross Sales shown by Tenant's statement for such calendar year should be found to be understated, Tenant shall pay any Percentage Rent deficiency revealed thereby, plus interest on the amount past due at five (5%) percent in excess of the Prime Rate within ten (10) days after Landlord's demand therefor. In addition, if Gross Sales shall be found to be understated by five percent (5%) or more, then Tenant shall pay to Landlord the cost of such audit. If such audit establishes an overpayment of Percentage Rent by Tenant, then Landlord shall credit Tenant, against Tenant's next payment of Percentage Rent, the amount of such overpayment, less the cost to Landlord of performing such audit. Such examination and audits may be made by any independent auditor designated by Landlord from time to time.

**Section 37.05 Tenant's Records.** For the purpose of ascertaining the amount payable as Percentage Rent, Tenant agrees to prepare and keep available, for a period of not less than thirty-

six (36) months following each of the dates upon which Tenant delivers to Landlord each of the written statements required in Section 37.03, adequate records for the period reported upon by such statement that shall show daily receipts from all sales and other transactions related to Business Center Uses on or from the Premises (with receipts from Percentage Rent Operations separately reported from all other receipts) by Tenant and any other persons conducting any business upon or from the Premises. Tenant further agrees to keep available for at least three (3) years following the end of each Percentage Rent Year the gross income, sales and occupation tax returns with respect to said Percentage Rent Year and all pertinent original sales records. Pertinent original sales records shall include, to the extent kept in the ordinary course of business: (a) cash register tapes, including tapes from temporary registers; (b) serially numbered sales slips and copies of all credit card vouchers and checks for all receipts; (c) the originals of all mail orders at and to the Premises; (d) the original records of all telephone orders at and to the Premises; (e) settlement report sheets of transactions with subtenants, assignees, concessionaires and licensees (unless covered by the register receipts described above); (f) such other sales records, if any, that would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's sales; and (g) the records specified in (a) to (f) above of subtenants, assignees, concessionaires or licensees.

## ARTICLE 38

### IN-KIND SERVICES

**Section 38.01 In-Kind Services.** As additional consideration and a material inducement to Landlord to enter into this Lease, commencing on the date Tenant first occupies the Premises for the conduct of business and continuing throughout the Term, Tenant will provide Landlord with the following in-kind services ("In-Kind Services"):

(a) the right to use the Business Center Use facilities in the Premises to the extent same are available from time to time in accordance with Section 38.02;

(b) the use of office space, if available, in strategic commercial markets in China and other global markets where Beijing Vantone Real Estate Co., Ltd. ("Vantone") has an ownership interest, including Shanghai and/or Beijing in accordance with Section 38.03;

having an aggregate value of up to \$250,000 per annum throughout the Term (the "In-Kind Service Credit").

**Section 38.02 In-Kind Services at the Premises.** The In-Kind Services provided at the Premises will include but not be limited to: available rooms, such as conference rooms, the Event Space and offices or cubicles in the Office Suites. The value of In-Kind Services provided in the Premises against which the In-Kind Service Credit may be applied will be based upon the then-most favorable current market fee charged by Tenant to third parties (including China Center Members and Permitted Office Occupants) who use such facilities. The In-Kind Service Credit may not be applied to the cost of: (1) any special services (beyond the typical services included in the current market fee for available facilities) and (2) the cost of food and beverages if requested for the available facilities, but such services, food and beverages shall be supplied if requested by Landlord in connection with any events being held by Landlord in the China

**Section 39.05 Non-Business Hours.** Landlord shall make the Messenger Center available to Tenant during periods other than Operating Hours upon not less than twenty-four (24) hours' prior request by Tenant (and subject to other reasonable Building requirements), and Tenant shall pay Landlord's reasonable out-of-pocket costs and expenses for overtime hours of personnel therefor as Additional Rent within twenty (20) days after Tenant's receipt of Landlord's invoice therefor.

**Section 39.06 No Liability.** Landlord shall not have liability to Tenant for accepting or failing to accept or for providing or not providing or for requesting or failing to request receipts or evidence of delivery for any mail or packages or for the handling of, or damage to, such mail or packages.

**Section 39.07 Sole Method.** Tenant acknowledges that all courier, messenger and mail services are required to use the Messenger Center and may not deliver or retrieve packages directly to or from the Premises.

## ARTICLE 40

### LANDLORD'S RIGHT TO TERMINATE

**Section 40.01 Right To Terminate.** In the event Landlord determines, in its sole and absolute discretion, to cancel or suspend construction of the Building, Landlord shall have the one-time right to terminate this Lease by giving Tenant a written notice of such election on or before March 31, 2010. In the event Landlord so notifies Tenant, this Lease shall be automatically terminated as of the date of the delivery of such notice, Landlord shall return the Security Letter to Tenant, and thereupon neither party shall have any further rights or obligations under this Lease other than such rights or obligations that expressly survive the termination of this Lease.

**Section 40.02 Reimbursement.** If this Lease is terminated pursuant to Section 40.01 hereof, Landlord shall, within thirty (30) days after receipt of an invoice therefor from Tenant setting forth in reasonable detail (and accompanied by copies of paid invoices evidencing) Tenant's actual out-of-pocket expenses incurred and paid by Tenant (during the period from March 1, 2007 through the date Landlord gives Tenant notice of its election pursuant to Section 40.01) (i) (x) to unaffiliated third parties for attorneys' fees and architects', engineers' and consultants fees incurred and paid in connection with the negotiation of this Lease and the design of the Premises and (y) for the reasonable allocation of any rent paid to unaffiliated third parties during such period for space to house employees who devoted all or substantially all of their time to the negotiation of this Lease and/or preparation for Tenant's operations in the Premises (collectively, "Lease Expenses") and (ii) obtaining and maintaining in effect the Security Letter ("LC Fees"), reimburse Tenant for such Lease Expenses and LC Fees, provided that Landlord shall not be obligated to reimburse Tenant for Lease Expenses in excess of \_\_\_\_\_ or LC Fees in excess of \_\_\_\_\_. The provisions of this Section 40.02 shall survive the termination of this Lease.

**Section 40.03 Reinstatement of Lease.** If this Lease is terminated pursuant to Section 40.01 hereof and thereafter Landlord, in its sole and absolute discretion, elects to resume

construction of the Building substantially in accordance with the Basic Building Plans, then, provided that the Delivery Date based upon the construction schedule then governing the completion of the Building would be scheduled to occur not later than December 31, 2015, then Landlord shall notify Tenant in writing of its election to resume construction. Such notice shall contain an offer (a "Reinstatement Offer") to reinstate this Lease upon all of the terms and conditions of this Lease with appropriate adjustments specified by Landlord in such offer for any change in the Premises' location due to subsequent changes in the design of the Building or any extensions of dates or time periods herein resulting from the period the Building project was suspended. Tenant shall have the right, exercisable by written notice given to Landlord not later than sixty (60) days after receipt by Tenant of a Reinstatement Offer (a "Reinstatement Acceptance"), to reinstate this Lease on the terms and conditions in the Reinstatement Offer. The Reinstatement Acceptance shall not be effective unless it is accompanied by a new Security Letter for the amount of security required under Article 33 hereof and by repayment to Landlord of the Lease Expenses and LC Fees reimbursed to Tenant pursuant to Section 40.02. If this Lease is so reinstated, the parties shall enter into a confirmatory agreement evidencing such reinstatement in form reasonably satisfactory to Landlord and Tenant. If the Delivery Date based upon the construction schedule governing the completion of the Building at the time Landlord elects to resume construction of the Building would be scheduled to occur later than December 31, 2015, Tenant shall have no right to reinstate the Lease.

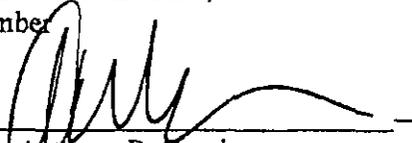
[REMAINDER OF PAGE BLANK – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have respectively executed and delivered this Lease as of the date first above written.

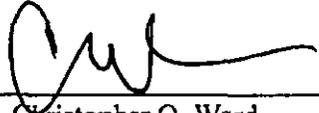
**LANDLORD:**

1 WORLD TRADE CENTER LLC,  
a Delaware limited liability company

By: THE PORT AUTHORITY OF NEW  
YORK AND NEW JERSEY,  
its sole member

By: 

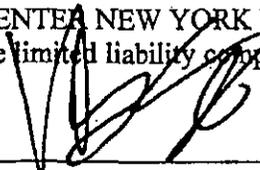
Name: Anthony R. Coscia  
Title: Chairman

By: 

Name: Christopher O. Ward  
Title: Executive Director

**TENANT:**

CHINA CENTER NEW YORK LLC,  
a Delaware limited liability company

By: 

Name: Lun Feng  
Title: Manager

**EXHIBIT A**

**BUILDING MEASUREMENT STANDARD**

\* \* \* \* \*

**THE REAL ESTATE BOARD OF NEW YORK, INC.  
RECOMMENDED METHOD OF FLOOR MEASUREMENT FOR OFFICE BUILDINGS**

*Effective January 1, 1987*

In order to facilitate a comparison of the cost of space among buildings, The Real Estate Board of New York, Inc. recommends that owners use a standard definition of usable area and that they clearly explain how rentable area is calculated based upon such usable area. Architectural plans and calculations should be made available to the tenant if requested.

The Real Estate Board of New York, Inc. recommends the following definitions and methods as the Standard Method of Floor Measurements in office buildings. Any Board member who advertises office space for rent is expected to follow these guidelines in determining any rentable area count mentioned in the advertisement.

**RENTABLE AREA:**

Because of dissimilarities among buildings, calculations of rentable area may vary. If requested, owners should disclose to prospective tenants the loss factor used for spaces under consideration.

**USABLE AREA, SINGLE TENANT FLOORS:**

Measure the floor to the outside surface of the building. Subtract from this area the following, including the nominal four inch enclosing walls:

Public elevator shafts and elevator machines and their enclosing walls.

Public stairs and their enclosing walls.

Heating, ventilating, and air-conditioning facilities (including pipes, ducts and shafts) and their enclosing walls, unless such equipment, mechanical room space, or shafts serve the floor in question.

Fire towers and fire tower courts and their enclosing walls.

Main telephone equipment rooms and main electric switchgear rooms, except that telephone equipment, and electric switchgear rooms serving the floor exclusively shall not be subtracted.

**USABLE AREA, MULTIPLE TENANT FLOOR:**

First, calculate the usable area as if for a single tenant floor.

Then deduct corridor areas, including toilets, supply room, etc., but do not deduct the enclosing walls of such corridor.

Measure the net usable area of each space on the floor by measuring each enclosing wall that is a building exterior wall to the outside surface of the exterior wall, or to the outside surface of the glass as the case may be. Measure demising walls to the center and walls that abut corridors to the corridor side of the finished surface of the corridor wall.

To determine the usable area on a multiple tenant floor, apportion the corridor area to each space by multiplying the corridor area by a fraction, whose numerator is the net usable area of the space and whose denominator is the total of the net usable areas of all the spaces on the floor, and add the result to the net usable area of the space.

#### **BELOW-GRADE, CELLAR AND SUB-CELLAR SPACE:**

To determine the usable area of below grade, cellar and sub-cellar areas, follow the same procedures as are appropriate for single or multiple tenant floors except that the following additional areas should be deducted from usable area:

Machine rooms and pump rooms and their enclosing walls.

Electric switchgear rooms and their enclosing walls.

Telephone equipment rooms and their enclosing walls.

All space devoted to servicing the operation of the building, i.e., cleaning contractors, storage, building maintenance shop, building engineer's office, etc.

#### **RECOMMENDED METHOD OF FLOOR MEASUREMENT FOR STORES:**

The rentable area of a store shall be computed by measuring from the building line in the case of street frontages, and from the inside surface of the outer building walls to the finished surface of the corridor side of the corridor partition and from the center of the partitions that separate the premises from adjoining rentable area.

No deductions shall be made for column and projections necessary to the building.

Rentable area of a store shall include all area within the outside walls, less the following, with their enclosing walls, if serving more than one tenant: building stairs, fire towers, elevator shafts, flues, vents, stacks, pipe shafts and vertical ducts.

The following area shall be included in rentable area, if such areas exclusively serve a store, together with their enclosing walls: private stairs, private elevators, toilets, air conditioning facilities, janitors' closets, slop sinks, electrical closets and telephone closets. When air conditioning facilities serve more than one tenant area, they shall be apportioned in the same manner as that used for single tenancy floors.

Where a store fronts on a plaza or arcade that is intended for use by the general public and is not for the exclusive use of the store tenant, its customers, etc., the area of the plaza or arcade shall not be included in determining the rentable area of the store.

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| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

**EXHIBIT B**

**FIXED RENT**

**With respect to Tenant's Above Grade Space:**

| <b>Lease Year</b>                                    | <b>Fixed Rent per RSF per annum</b> | <b>Premises RSF</b> | <b>Total Fixed Rent per annum</b> |
|------------------------------------------------------|-------------------------------------|---------------------|-----------------------------------|
| Lease Years 1 through 6 (the "First Rent Period")    | \$ 80.00                            | 190,810             | \$15,264,800.00                   |
| Lease Years 7 through 10 (the "Second Rent Period")  |                                     |                     |                                   |
| Lease Years 11 through 15 (the "Third Rent Period")  |                                     |                     |                                   |
| Lease Years 16 through 20 (the "Fourth Rent Period") |                                     |                     |                                   |

**With respect to Tenant's Below Grade Space:**

| <b>Lease Year</b>  | <b>Fixed Rent per RSF per annum</b> | <b>Premises RSF</b> | <b>Total Fixed Rent per annum</b> |
|--------------------|-------------------------------------|---------------------|-----------------------------------|
| First Rent Period  |                                     |                     |                                   |
| Second Rent Period |                                     |                     |                                   |
| Third Rent Period  |                                     |                     |                                   |
| Fourth Rent Period |                                     |                     |                                   |

**With respect to Tenant's Mechanical Space, the Fixed Rent shall be the product of:**

- (x) the number of RSF contained in Tenant's Mechanical Space, multiplied by
- (y) (1) during the First Rent Period, per RSF,  
(2) during the Second Rent Period, per RSF,  
(3) during the Third Rent Period, per RSF; and  
(4) during the Fourth Rent Period, per RSF.

|                                                                                       |
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| FOR THE LESSOR                                                                        |
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| FOR THE LESSEE                                                                        |

**EXHIBIT C**

**HVAC SPECIFICATIONS**

A. Temperature and Humidity Conditions

1. Outside Design Conditions

|        |  |
|--------|--|
| Winter |  |
| Summer |  |

2. Inside Design Conditions-Heating\*

|  |  |
|--|--|
|  |  |
|  |  |

\* No humidification will be provided.

3. Inside Design Conditions-Cooling

|  |  |
|--|--|
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4. Air Filtration.

B. Outside Air Quality

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| FOR THE LESSOR |
| <i>W</i>       |
| FOR THE LESSEE |

**EXHIBIT D**

**DESCRIPTION OF LAND**

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, being more particularly bounded and described as follows:

- A. Commencing the corner formed by the intersection of the northerly side of Vesey Street (width varies) with the westerly side of Washington Street, said corner being the northeast corner of the Vesey Street Arcade parcel in Block 84, and said corner having the Borough President of Manhattan coordinates of North 5263.62 West 10392.22;
- B. Running hence, South 11 degrees 57 minutes 41 seconds West, a distance of 79.75 feet to the Place and Point of BEGINNING, said point having the Borough President of Manhattan coordinates of North 5185.60 West 10408.75;
1. Running thence South 89 degrees 59 minutes 54 seconds East a distance of 357.12 feet to a point;
  2. Running thence South 16 degrees 41 minutes 48 seconds East a distance of 214.25 feet to a point;
  3. Running thence North 89 degrees 59 minutes 54 seconds West a distance of 365.90 feet to a point;
  4. Running thence North 16 degrees 29 minutes 29 seconds West a distance of 58.83 feet to a point of curve;
  5. Running thence along the arc of a curve bearing to the right having a radius of 1231.85 feet a central angle of 03 degrees 15 degrees 30 seconds and a distance of 70.05 to a point of tangent;
  6. Running thence North 12 degrees 35 minutes 29 seconds West a distance of 83.11 feet to the point and Place of Beginning.

The coordinates and bearings set forth in the above description refer to the 10th Avenue Meridian as established by the Borough of Manhattan Topographical Bureau with Grid north being 28 degrees 59 minutes 13.5 seconds East of true north.

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| FOR THE LESSOR |
| <i>NY</i>      |
| FOR THE LESSEE |

**EXHIBIT E**

**INTENTIONALLY OMITTED**

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| INITIALED          |
| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

**EXHIBIT F**

**PREMISES DIAGRAM**

**[see attached pages]**

## EXHIBIT G

### BUILDING RULES AND REGULATIONS

1. Tenant shall not obstruct or encumber the sidewalks, entrances, passages, courts, elevators, vestibules, corridors and halls, nor shall such areas be used for any purpose other than ingress and egress to and from the Premises and for delivery of merchandise and equipment, which deliveries shall be completed in a prompt and efficient manner using elevators and passageways designated for such deliveries by Landlord.

2. No awnings, air-conditioning units, fans or other projections shall be attached to or project through the outside walls or windows of the Building. Tenant shall not attach, hang or use any curtains, blinds, shades or screens, other than either mylar shades or other curtains, blinds, shades or screens that conform to Building standards agreed to by Landlord and Tenant from time to time, without the prior written consent of Landlord. Tenant may not, under any circumstances apply mylar or other like films directly to Building glass. All electrical fixtures hung in offices or spaces along the perimeter of the Premises must be of a quality, type, design and bulb color agreed to by Landlord and Tenant.

3. Except for signage required by Legal Requirements or as otherwise provided in the Lease, Tenant shall not exhibit, inscribe, paint or affix any sign, advertisement, notice or other lettering (collectively, "Tenant Advertisement") on any part of the inside of the Premises if the same can be seen from the outside of the Premises. In no event may any Tenant Advertisement be exhibited, inscribed, painted or affixed to any part of the outside of the Premises or the Building.

4. Tenant shall not permanently or materially cover, blackout or obstruct the exterior windows that reflect or admit light and air into the Premises.

5. Tenant shall not, without Landlord's prior written consent, place any showcases or other articles in front of or affix such articles to any part of the exterior of the Building, nor place such articles in the halls, corridors or vestibules (other than within the Premises but in all events Tenant shall comply with Code), nor shall any article obstruct any air-conditioning supply or exhaust.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, acids or other substances shall be deposited therein. All damages resulting from any misuse of such fixtures shall be borne by Tenant unless caused by a Landlord Party.

7. Except as otherwise approved by Landlord or as otherwise permitted in accordance with the provisions of the Lease, Tenant shall not mark, paint, drill into, or in any way deface any part of the Premises or the Building, and no boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord.

8. Tenant, or any of Tenant's servants, employees, agents, sublessees, visitors or licensees, shall not at any time bring or keep upon the Premises any inflammable,

combustible or explosive fluid, chemical or substance except such as are incidental to usual office occupancy and are properly safeguarded.

9. Tenant shall not install any additional locks or bolts of any kind upon any of the doors or windows, nor shall Tenant change existing locks or the mechanism thereof, unless Tenant promptly provides Landlord with the key or combination thereto (except with respect to security areas). Tenant must, upon the termination of its tenancy, return to Landlord all keys to offices and toilet rooms and in the event of the loss of any keys furnished at Landlord's expense, pay the cost thereof. All Tenant entrance doors shall utilize the base Building key cylinders as specified by Landlord.

10. Tenant shall not bring into or store any bicycles, vehicles or animals of any kind except for seeing eye dogs in or about the Premises or the Building.

11. Tenant shall remove and bring any safes, freight, furniture or bulky matter of any description into or out of the Premises in the manner and during the hours (which must be scheduled in advance) that are agreed to by Landlord and Tenant. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles that violate any of these Rules and Regulations or the Lease. Landlord shall have the right to prescribe the weight and position of safes and other objects of excessive weight, and no safe or other object whose weight exceeds the lawful load for the area upon which it would stand shall be brought into or kept in the Premises. If, in the judgment of Landlord, it is necessary to distribute the concentrated weight of any heavy object, Landlord shall so advise Tenant.

12. Landlord reserves the right to exclude from the Building all persons who do not present a pass signed or approved by Landlord or Tenant or who otherwise do not comply with Building security procedures. Landlord may require any person leaving the Building with any package or other object to exhibit a pass from Tenant. Tenant shall comply with the security procedures implemented following the mutual agreement of Landlord and Tenant including provisions for approving companies delivering food and the manner of delivery.

13. No delivery persons or messengers shall be permitted to use the Building passenger elevators. Tenant shall utilize Landlord's package intercept/messenger center for all messenger deliveries and pick-ups in accordance with this Lease.

14. Tenant shall, at its expense, provide artificial light for the Landlord's employees doing janitor service or other cleaning, and making repairs or alterations in the Premises.

15. Tenant's requirements for above-standard services will be addressed only upon written notice delivered to Landlord's office at the Building. Building employees shall not perform any work or do anything outside of their regular duties unless under special instruction from the Landlord's office.

16. Canvassing, soliciting and peddling in the Building is prohibited and Tenant shall cooperate to prevent the same.

17. Tenant shall use commercially reasonable efforts to prevent the use in any space, or in the public halls of the Building, either by Tenant or by jobbers or others in the delivery or receipt of merchandise, of any hand trucks or food carts except those equipped with rubber tires and side guards. There shall be no food carts that are visible at any time to the public or other tenants in the Lobby of the Building.

18. Tenant shall control access to the Premises in accordance with reasonable security procedures implemented by Landlord.

19. Tenant shall use reasonable efforts to keep all blinds and shades in the Premises, if any, closed and lowered when and as reasonably required because of the position of the sun, during the operation of the Building HVAC System to cool or ventilate the Premises.

20. Tenant shall not install or permit the installation or use of any food, beverage, cigarette, cigar or stamp dispensing machine other than for the exclusive use of Tenant's employees and invitees.

21. Any person whose presence in the Building at any time shall, in the judgment of the Landlord, be prejudicial to the safety of the Building or of its tenants may be denied access to the Building or may be ejected therefrom. In case of invasion, riot, dangerous public excitement or other dangerous commotion, the Landlord may prevent all access to the Building during the continuance of same, by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building.

22. Smoking is prohibited at all times throughout the Building.

23. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Building by the use of any equipment, machinery, musical instrument, radio, television or in any other way.

24. Landlord shall have the right to prohibit any advertising that refers to the Building that, in Landlord's reasonable judgment, tends to impair the reputation of the Building and upon notice from Landlord, Tenant shall discontinue such advertising. The use of the Building address in the ordinary course of Tenant's business shall not constitute an advertisement.

25. In the event any of Tenant's contractors require access to the base Building electrical closets, Tenant shall notify the Building's management office in writing no later than 3:00 P.M. on the day before such contractors require such access, which notice must be signed by an authorized representative of Tenant.

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| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

## EXHIBIT H

### WORK LETTER

#### A. DEFINITIONS

All capitalized terms used herein that are not specifically defined herein shall have the meaning ascribed to them in the main body of the Lease (the "Lease") to which this Work Letter is attached and made a part. The provisions of this Work Letter are intended to constitute the binding obligations of Landlord and Tenant as of the Effective Date (i.e., notwithstanding that other obligations of the parties contained in the Lease may be applicable only during the Term). The following terms used herein are hereby defined as follows:

"Arbitrator" shall have the meaning set forth in Section K.1 of this Work Letter.

"Base Building Specifications" shall mean the architectural and engineering specifications for the Building attached as Schedule 1 annexed to this Work Letter, subject to change in Landlord's sole discretion; provided, however, that Landlord shall not change the Base Building Specifications in a way that will materially adversely affect the Premises, access to or intended public assembly use of the Premises, Tenant's Initial Alterations approved by Landlord after the delivery of the Six-Month Notice or services to Tenant under the Lease, in each case without first obtaining Tenant's written consent, such consent not to be unreasonably withheld, delayed or conditioned. With respect to any items of Tenant's Special Work performed by Landlord in accordance with this Work Letter, the Base Building Specifications shall be deemed modified by any Base Building Specification TSW Changes set forth in the approved Change Order for such item of Tenant's Special Work.

"Base Building Specification TSW Changes" shall have the meaning set forth in Section B.4 of this Work Letter.

"Basic Building Plans" shall mean the plans prepared by Landlord's Architect and engineers as of the date hereof that are described on Schedule 2 annexed to the Work Letter (as such drawings may be modified from time to time in Landlord's sole discretion; provided, however, that Landlord shall not change the Basic Building Plans in a way that will materially adversely affect the Premises, access to or intended public assembly use of the Premises, Tenant's Initial Alterations approved by Landlord after the delivery of the Six-Month Notice or services to Tenant under the Lease, in each case without first obtaining Tenant's written consent, such consent not to be unreasonably withheld, delayed or conditioned).

"Basic Construction" shall mean the work to be performed by Landlord's contractors as set forth in the Basic Building Plans and the Construction Documents, all of which shall, except to the extent specifically set forth in the Lease (including this Work Letter), be performed at Landlord's sole cost and expense.

"Change Costs" shall mean all actual, incremental costs or expenses reasonably incurred under the circumstances by Landlord as a result of any Tenant's Requested Change in the Basic Building Plans, the Construction Documents, the Basic Construction or as a result of a

request by Tenant or a change required by reason of Tenant's Plans or a Change Order or otherwise necessary in Landlord's reasonable opinion to accommodate Tenant, including, without limitation, (i) incremental costs associated with construction, design, architectural, engineering and General Conditions Costs; (ii) cancellation or modification of supply or fabricating contracts; (iii) incremental costs associated with any increase in USF or RSF resulting from Tenant's Plans or a Change Order; (iv) removal or alteration of work or plans, including, without limitation, the Construction Documents or the Basic Building Plans, completed or in process; (v) incremental additional costs to Landlord to complete the Basic Construction as set forth in any Change Order; (vi) any increased costs to Landlord resulting from Tenant's Delay; (vii) any incremental costs incurred by Landlord in performing Tenant's Special Work; and (viii) all costs incurred by Landlord in connection with Landlord's reviewing, processing and implementing such proposed changes.

"Change Order" shall have the meaning set forth in Section B.4 of this Work Letter.

"Completion Notice" shall have the meaning set forth in Section D.3 of this Work Letter.

"Construction Documents" shall mean the architectural and engineering working drawings and specifications, prepared at Landlord's expense, in respect of the Basic Construction, including, but not limited to, common and core areas, exterior of the Building, public lobbies and Building signage and floor levelness.

"Core and Shell TCO" shall mean a conditional or non-conditional Temporary Permit To Occupy or Use ("TPTO") permit for the Building core and shell and issuance from the Port Authority of all necessary TPTO permits for all Building mechanical spaces, or the functional equivalent thereof for each.

"Delivery Date" shall mean the date on which Landlord delivers possession of the Premises to Tenant with the Basic Construction Substantially Complete.

"General Conditions Costs" shall mean all actual incremental charges incurred by Landlord for on-the-job services performed and costs reasonably incurred (such as cleanup, tie-ins, system shutdowns, testing, establishment, maintenance and security of temporary toilet facilities, permit or filing fees, security, removal of waste and debris, salaries of on-site personnel, including project managers and superintendents, assistant superintendents for architectural/structural, assistant superintendent for mechanical/electrical and assistant project manager, protection of work in progress or completed, guard service, temporary maintenance services, insurance, financing and carry costs, utilities and use of freight elevators or passenger elevators and hoists) in connection with a Tenant's Requested Change. Notwithstanding anything contained herein to the contrary, whenever Tenant uses a service, equipment or other item that results in General Conditions Costs being incurred by Landlord to contractors or other third parties which are not Affiliates of Landlord, then, unless otherwise provided herein to the contrary, Tenant shall be obligated to pay an amount to Landlord equal to 105% of such General Conditions Costs paid by Landlord to such unaffiliated contractors or third parties.

"Inspection" shall have the meaning set forth in Section D.3 of this Work Letter.

"Landlord's Arbitrator" shall have the meaning set forth in Section K.1 of this Work Letter.

"Landlord's Architect" shall mean Skidmore, Owings & Merrill LLP and/or any other architect selected by Landlord as the primary or lead architect to design the Building.

"Landlord's Representative" shall have the meaning set forth in Section L.2 of this Work Letter.

"Landlord's Testing" shall have the meaning set forth in Section L.1 of this Work Letter.

"Move-In Schedule" shall mean the schedule provided by Tenant pursuant to Section D.1 of this Work Letter setting forth Tenant's anticipated move into the Premises after completion of Tenant's Initial Alterations.

"90-Day Notice" shall have the meaning set forth in Section D.1 of this Work Letter.

"Notice" shall mean any letter, memorandum, or other written communication that is either mailed or delivered to Landlord or Tenant, as the case may be, in the manner set forth in Article 24 of the Lease. All Notices delivered to Landlord or Tenant shall be simultaneously delivered to Landlord's Architect and Tenant's Architect, and such other parties (which in the aggregate shall not exceed two (2) parties for each of Landlord and Tenant) of which Landlord or Tenant, respectively, shall have been given notice in accordance with the requirements of Article 24 of the Lease. Unless otherwise notified pursuant to the provisions thereof, all notices shall initially be given to the parties listed in Article 24 of the Lease.

"Punch-List" shall have the meaning set forth in Section D.3(a) of this Work Letter.

"Punch-List Items" shall have the meaning set forth in Section D.3(b) of this Work Letter.

"Six-Month Notice" shall have the meaning set forth in Section D.1 of this Work Letter.

"Substantial Completion" or "substantially complete" shall mean:

(A) with respect to the Basic Construction, that (x) the Basic Construction has been completed within the Building to the extent required for Tenant to commence Tenant's Initial Alterations, and (y) a Core and Shell TCO shall have been issued. Substantial Completion with respect to the Basic Construction shall include the following requirements:

(i) A minimum of two (2) freight service elevators serving Tenant's Above Grade Space shall be installed and operational on a continual basis. One or more loading docks (or, prior to the completion of World Trade Center site improvements, other temporary reasonable means of access to the Building freight elevators) shall be available for Tenant's non-exclusive use. Landlord shall use reasonable efforts to make

passenger elevators available as soon as reasonably practicable following Substantial Completion.

(ii) All pipes, ducts, and conduits for the mechanical, HVAC, electrical, gas and plumbing systems in the Building shall be available for connection and use by Tenant on each floor of Tenant's Above Grade Space. Any such connection shall be at Tenant's sole cost and expense.

(iii) Phone and other telecommunications services will be available for connection and use by Tenant in accordance with the Base Building Specifications.

(iv) The Building's curtain wall shall be properly installed and weatherproofed.

(v) Sufficient points of ingress/egress to the Building have been completed to allow Tenant reasonably adequate permanent access (subject to Force Majeure) to the Building. Sidewalks immediately surrounding the Building and within Landlord's control shall be completed within a reasonable time after Substantial Completion.

(vi) All core Building bathrooms on the floors where Tenant's Above Grade Space is located shall be operational (subject to certain core Building bathrooms being delivered without finishes or fixtures as provided in the Base Building Specifications).

(vii) Air handling systems at the top of the Building shall have been commissioned such that volatile organic compounds can be properly ventilated from the Building.

(viii) Tenant's Above Grade Space shall be vacant and broom clean.

(ix) Substantial completion of all items of Tenant's Special Work agreed to be performed in accordance with this Work Letter.

(B) with respect to Tenant's Initial Alterations, Tenant's Initial Alterations shall be deemed "substantially complete" when the work has been completed substantially in accordance with (i) the provisions of the Lease (including this Work Letter) applicable thereto; (ii) Tenant's Plans; and (iii) all applicable Legal Requirements, except for details of construction, decoration and mechanical adjustments, if any, which do not individually or in the aggregate, interfere in any material way with the intended use of the Premises.

"Tenant Mitigation Notice" shall have the meaning set forth in Section G.1 of this Work Letter.

"Tenant's Arbitrator" shall have the meaning set forth in Section K.1 of this Work Letter.

“Tenant’s Architect” shall mean Perkins Eastman Architects PC or any other architect selected by Tenant for Tenant’s Initial Alterations and approved by Landlord in accordance with Section 13.03 of the Lease.

“Tenant’s Change Notice” shall have the meaning set forth in Section B.3 of this Work Letter.

“Tenant’s Delay” or “Tenant Delay” shall have the meaning set forth in Section G.1 of this Work Letter.

“Tenant’s Initial Alterations” shall mean all of the materials and work set forth on Tenant’s Plans, all of which shall be performed by Tenant’s contractors at Tenant’s sole cost and expense, including, without limitation, any structural, electrical or plumbing work required to meet Tenant’s structural, electrical or plumbing requirements, any air-conditioning duct work and any other air-conditioning work required for Tenant’s needs to distribute HVAC on each floor of the Premises, painting, wall covering, paneling and cabinet work and the installation of Tenant’s telephone and other telecommunications and data processing systems. Tenant’s Initial Alterations shall be performed in accordance with all applicable terms and conditions of the Lease (including this Work Letter).

“Tenant’s Representative” shall have the meaning set forth in Section L.2 of this Work Letter.

“Tenant’s Requested Change” shall have the meaning set forth in Section B.3 of this Work Letter.

“Tenant’s Special Work” shall mean one or more items of work as more particularly set forth below that Tenant may request that Landlord perform as part of the Basic Construction in order that Tenant may perform Tenant’s Initial Alterations in accordance with Tenant’s Plans, which items of work, if included in the Basic Construction, shall be included at Tenant’s sole cost and expense. Landlord shall provide Tenant with reasonable documentation of such costs so as to permit Tenant to reasonably verify such costs. Tenant’s Special Work may consist of one or more of the following items of work:

- (i) widening of fire stair door openings on full floor portions of the Premises (“Door Widening Work”);
- (ii) upgrades to the Building HVAC System servicing the Premises (“HVAC Upgrades”) such that the base Building HVAC System shall provide the following capacities to the Premises:

| Floor | A/C Equipment | Outside Air CFM | Exhaust CFM |
|-------|---------------|-----------------|-------------|
| 69    |               |                 |             |
| 68    |               |                 |             |
| 67    |               |                 |             |
| 66    |               |                 |             |
| 65    |               |                 |             |
| 64    |               |                 |             |

- (iii) slab cuts and sleeves (as necessary to penetrate a shear wall or other openings in slabs or walls) required for additional internal staircases or elevators in the Premises (“Vertical Transportation Slab Cuts”);
- (iv) upgrades to the Building’s structural steel necessary to accommodate the following floor loads (“Structural Steel Work”):

| Floor              | Live Load |
|--------------------|-----------|
| 67 (full floor)    |           |
| 66 (full floor)    |           |
| 65 (full floor)    | f         |
| 64 (partial floor) |           |

- (v) installation of a gas line in the Gas Riser for connection by Tenant within the Premises (“Gas Line Work”);
- (vi) installation of a valved outlet connector on the Building’s low-pressure steam supply and return pipe risers for connection by Tenant to its kitchen equipment (the “Steam Valve Work”);
- (vii) installation of one (1) telecom conduit at each of the two (2) telecom risers reserved for Tenant’s exclusive use from the 20th floor to the 69th floor of the Building in accordance with Section 6.07 of the Lease (the “Telecom Conduit Work”);
- (viii) installation of shaft space for outside air capacity for Tenant’s Supplemental Kitchen AC Unit (to be furnished and installed by Tenant as part Tenant’s Initial Alterations) located at the floor mechanical floor and ducted to the floor (the “Kitchen Ventilation Work”);
- (ix) installation of shaft space for Tenant’s exclusive use for one kitchen exhaust unit (to be furnished and installed by Tenant as part Tenant’s Initial Alterations) located at the mechanical floor with a capacity of ducted from the oor to the exhaust unit and from the exhaust unit to the floor mechanical level (the “Kitchen Exhaust Work”); and
- (x) installation of approximately six (6) square feet of fire-rated shaft space for the venting of the hoistway and any associated elevator machine room for added service elevator(s) between the sixty-fifth and sixty-sixth floors referenced in Section 13.01(d)(ii) of the Lease, ducted from the top of the elevator hoistway at the 66th floor to the mechanical equipment floors at the and/or floors (the “Internal Elevator Ventilation Work”).

“Tenant’s Special Work Deadline” shall mean, respectively, the following deadlines for Tenant to submit a written request (accompanied by the additional information required to be submitted with such request as specified in the chart below) for the performance by Landlord of Tenant’s Special Work:

| Tenant’s Special Work Item         | Tenant’s Special Work Deadline | Required Information                                                                                                                                                                                     |
|------------------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Door Widening Work                 | 4/30/2009                      | Signed and sealed architectural drawings indicating affected fire doors, egress units and door widths required                                                                                           |
| HVAC Upgrades                      | 6/15/2009                      | Proposed system fully designed (signed and sealed 100% construction documents) including, but not limited to, proposed specifications, routing and support details                                       |
| Vertical Transportation Slab Cuts  | 4/30/2009                      | For elevator slab cuts:<br>signed and sealed architectural and vertical transportation documents indicating location, size of opening and loading requirements for each proposed elevator                |
|                                    |                                | For convenience stair slab cuts:<br>signed and sealed structural Professional Engineer drawings architectural drawings indicating location, size of opening and assumptions to be used for stair loading |
| Structural Steel Work              | 4/30/2009                      | None                                                                                                                                                                                                     |
| Gas Line Work                      | 6/15/2009                      | Proposed system fully designed (signed and sealed 100% construction documents) including, but not limited to, proposed specifications, routing, pipe size and support details                            |
| Kitchen Exhaust Work               | 6/15/2009                      | Proposed system fully designed (signed and sealed 100% construction documents) including, but not limited to, proposed specifications, routing, ducts and support details                                |
| Steam Valve Work                   | 6/15/2009                      | Narrative description including type and size of valve and location                                                                                                                                      |
| Telecom Conduit Work               | 6/15/2009                      | Signed and sealed electrical drawings indicating location of pull boxes                                                                                                                                  |
| Kitchen Ventilation Work           | 6/15/2009                      | Proposed system fully designed (signed and sealed 100% construction documents) including, but not limited to, proposed specifications, routing, ducts and support details                                |
| Internal Elevator Ventilation Work | 6/15/2009                      | Proposed system fully designed (signed and sealed 100% construction documents) including, but not limited to, proposed specifications, routing, ducts and support details                                |

“Twelve-Month Notice” shall have the meaning set forth in Section D.1 of this Work Letter.

"Work Letter Dispute" shall have the meaning set forth in Section K.2 of this Work Letter.

**B. PREPARATION AND APPROVAL OF PLANS**

B.1. Tenant acknowledges that it has received or had an opportunity to review the Basic Building Plans.

B.2. Landlord shall cause Landlord's Architect to prepare the Construction Documents that in Landlord's good-faith opinion, conform to the Basic Building Plans and Base Building Specifications in all material respects. Tenant shall have the right, upon written request to Landlord, to receive and review (but not approve, except as specifically provided herein), such Construction Documents at such times that the progress of the Construction Documents shall have reached the stages of no less than fifty percent (50%) and prior to one hundred percent (100%) completion. Landlord shall deliver to Tenant all bulletins issued with respect to the Basic Building Plans and notify Tenant in writing of any changes to, or additional, Construction Documents or plans (including, but not limited to, the Basic Building Plans) that will materially adversely affect the Premises, access to or intended public assembly use of the Premises, Tenant's Initial Alterations approved by Landlord after the delivery of the Six-Month Notice or services to Tenant under the Lease, which changes shall be subject to Tenant's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned.

B.3. Tenant shall have the right to request ("Tenant's Change Notice") that Landlord perform (or cause to be performed) Tenant's Special Work as part of the Basic Construction ("Tenant's Requested Change"). Any Tenant's Change Notice shall be given on or before the applicable Tenant's Special Work Deadline and shall include the information required under the definition of Tenant's Special Work Deadline to be submitted for the applicable item(s) of Tenant's Special Work. Thereafter, Tenant shall, within three (3) Business Days after request by Landlord, furnish any additional information reasonably required by Landlord to evaluate, design and bid the requested Tenant's Special Work.

B.4. If any item of Tenant's Special Work contained in Tenant's Change Notice shall result in any Change Costs, an increase in the RSF of the Building or in a Tenant's Delay, Landlord shall, within fifteen (15) Business Days after Landlord's receipt of Tenant's Requested Change or such longer time as is reasonably necessary with reasonable diligence to do so, notify Tenant of such an occurrence, which notice shall set forth an estimate of the Change Costs, an estimate of the increase in RSF (if any), the estimate of the length of the Tenant Delay (if any), and a confirmation of the changes in the Base Building Specifications that would be effected by the performance of such Tenant's Special Work ("Base Building Specification TSW Changes"). The estimate of the Change Costs shall be a reasonably itemized statement of Landlord's good-faith proposal for such Change Costs. Tenant shall have seven (7) Business Days after receipt of such notice from Landlord to rescind its request for such Tenant's Requested Change. If Tenant does not rescind its request for such Tenant's Requested Change, Landlord shall submit revised Construction Documents to Tenant within thirty (30) Business Days after Landlord's receipt of Tenant's Requested Change, or such longer time as is reasonably necessary with reasonable diligence to do so. Within ten (10) Business Days after delivery of the revised Construction Documents, or such longer time as is reasonably necessary with reasonable diligence to do so,

Landlord shall prepare a change order which shall set forth with reasonable specificity the Change Costs, an estimate of the increase in RSF (if any) and/or the estimate of the length of the Tenant Delay (if any) and/or the Base Building Specification TSW Changes (if any) (the "Change Order") and submit such Change Order to Tenant for Tenant's approval (such approval not to be unreasonably withheld or delayed). To the extent such Change Order estimates any of the Change Costs, an increase in RSF and/or the length of the Tenant Delay, Landlord shall use reasonable efforts to obtain good-faith estimates of such items and to update such estimates from time to time promptly after Landlord learns of increases in the amounts so estimated. Together with Landlord's delivery to Tenant of the Change Order, Landlord shall provide Tenant with a request for approval which shall set forth in bold letters the following statement: "IF TENANT FAILS TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN TENANT WILL BE DEEMED TO CONSENT TO THIS CHANGE ORDER." If Tenant shall fail to respond to Landlord's Change Order within ten (10) Business Days after receipt, such Change Order shall be deemed to be acceptable to Tenant. Tenant shall promptly pay Landlord, whether or not Tenant rescinds Tenant's Requested Change, or fails to approve the Change Order prepared by Landlord, within twenty (20) days following receipt of an invoice therefor, for the reasonable, out of pocket costs actually incurred by Landlord prior to the time of such rescission for developing pricing, design and review work, provided that Landlord shall not commence the construction of Tenant's Special Work (as contrasted with the design and pricing thereof) unless and until a Change Order is actually approved (or deemed approved) by Tenant as provided above in this paragraph. Tenant shall pay any Change Costs reflected on any Change Order approved (or deemed approved) by Tenant as Additional Rent within twenty (20) days after receipt by Tenant of an invoice therefor, provided that Tenant may apply a portion of Landlord's Contribution to such Change Costs in accordance with Section 31.04 of the Lease. Without limiting Landlord's remedies in the event Tenant fails to timely pay any such Change Costs, any delay in payment therefor shall entitle Landlord to postpone the performance of the applicable Tenant's Special Work until such Change Costs are paid and to treat such period of postponement as a Tenant Delay. In the event that any such invoice includes estimates of any Change Costs, and if upon receipt by Landlord of the actual bills therefor the estimated amount of such Change Costs resulted in (i) an underpayment by Tenant, Tenant shall pay to Landlord the amount of such underpayment within twenty (20) days after notice from Landlord, or (ii) an overpayment by Tenant, Landlord shall pay to Tenant the amount of the overpayment within thirty (30) days after determination of the amount of such overpayment. In the event any Tenant's Requested Change causes a delay in the completion of Basic Construction pursuant to the provisions of this Work Letter, the same shall constitute a Tenant Delay and the Commencement Date and the Rent Commencement Date shall be deemed to have occurred on the date it otherwise would have occurred but for such Tenant Delay (subject to any Permitted RCD Extension and/or any extensions of the Rent Commencement Date pursuant to Section H of this Work Letter). Once a Change Order is approved, Landlord shall perform Tenant's Special Work in accordance with the Change Order at Tenant's sole cost and expense computed as provided in this Work Letter. In the event of a dispute between Landlord and Tenant as to any amount owed to Landlord under this Section B, Tenant shall pay the full amount claimed by Landlord and the dispute with respect to the difference shall be deemed a Work Letter Dispute.

### C. FILING OF PLANS

Landlord shall, at Landlord's sole cost and expense, with reasonable speed and diligence, file with the Port Authority and any Governmental Authorities having jurisdiction therefor, all drawings for the Basic Construction and all other documents and instruments required to be filed in connection therewith (and in connection with any changes or revisions made thereto, whether at Landlord's or Tenant's request but Tenant shall reimburse Landlord for all Change Costs as provided herein) and the performance of the Basic Construction for approval and promptly thereafter furnish to Tenant copies of any documents so filed. Subject to Tenant's Delay and Unavoidable Delay, Landlord shall obtain the Core and Shell TCO prior to the Delivery Date. Tenant is responsible for obtaining all TCOs necessary for occupancy of the Premises after Tenant's completion of Tenant's Initial Alterations. Landlord shall pay all costs associated with such filings, all costs associated with any required permits and all expediting fees associated with the Basic Construction (other than any Change Costs as a result of Tenant's Requested Change, which shall be Tenant's responsibility as provided herein).

### D. CONSTRUCTION

D.1. Landlord will complete the Basic Construction substantially in accordance with the Base Building Specifications, Basic Building Plans and the Construction Documents; provided, however, that Landlord shall not change the Base Building Specifications, Basic Building Plans or the Construction Documents in a way that will materially adversely affect the Premises, access to or intended public assembly use of the Premises, Tenant's Initial Alterations approved by Landlord after the delivery of the Six-Month Notice or services to Tenant under the Lease, in each case without first obtaining Tenant's written consent, such consent not to be unreasonably, withheld, or conditioned. Landlord has provided Tenant with a current construction schedule for the Basic Construction and shall provide Tenant with written notices containing a good faith estimate of the Delivery Date no later than (i) December 31, 2012, (ii) the date which is twelve (12) months prior to the estimated Delivery Date (the "Twelve-Month Notice"), (iii) the date which is six (6) months prior to the estimated Delivery Date (the "Six-Month Notice"), and (iv) the date which is ninety (90) days prior to the estimated Delivery Date (the "90-Day Notice"); provided that, except as provided in Section H of this Work Letter, Landlord shall have no liability to Tenant in the event the projected Delivery Date contained in any of the aforementioned notices is incorrect. Within twenty (20) days following receipt by Tenant of the 90-Day Notice, Tenant shall furnish Landlord, for Landlord's reasonable approval, a construction schedule, logistics plan and Move-In Schedule prepared by Tenant or Tenant's general contractor or construction manager.

D.2. (a) Upon Substantial Completion of the Basic Construction, Tenant shall conduct the Inspection in accordance with Section D.3 of this Work Letter in order to verify that Substantial Completion of the Basic Construction has occurred. In the event that Landlord and Tenant shall disagree as to whether or not Substantial Completion of the Basic Construction shall have occurred, such dispute shall be deemed a Work Letter Dispute.

(b) Unless Tenant has commenced dispute proceedings for a Work Letter Dispute or otherwise notifies Landlord in writing (in either case within ten (10) days after the Delivery Date), Tenant shall be deemed for all purposes to have accepted as satisfactory (except

for Punch-List Items) Substantial Completion of the Basic Construction if Tenant takes possession of the Premises, exercises dominion and control over the Premises, or commences to perform Tenant's Initial Alterations with regard to the Premises, except for so-called "latent defects" of which Tenant gives Landlord written notice within twelve (12) months after the Commencement Date. Tenant shall, pending the resolution of any dispute with respect to Substantial Completion, proceed with Tenant's Initial Alterations to the extent such Tenant's Initial Alterations may be completed in the normal course of Tenant's construction schedule and logistics plan (as approved by Landlord pursuant to Section D.1 of this Work Letter) without affecting or being affected by the item in dispute.

D.3. (a) Not less than thirty (30) days prior to the anticipated Delivery Date, Landlord shall provide Tenant with a preliminary notice of the anticipated Delivery Date. Thereafter Landlord shall give Tenant a second notice not less than ten (10) days prior to the Delivery Date (the "Completion Notice"), specifying (i) the date upon which Landlord anticipates that the Substantial Completion of the Basic Construction shall occur, and (ii) notifying Tenant's Representative of the time (during normal business hours) and date (such date to be the last day prior to the anticipated Delivery Date) on which any of Landlord's Representative, Tenant's Representative, Tenant's Architect and Tenant's construction manager may review the Basic Construction in the Premises (the "Inspection") for the purpose of verifying that Substantial Completion of the Basic Construction has occurred and preparing a single punch-list of any minor details of construction, decoration and mechanical adjustments, if any, the non-completion of which do not, either individually or in the aggregate, interfere in any material way with the commencement and continuation of the performance of Tenant's Initial Alterations (the "Punch-List"). Tenant shall respond, by notice to Landlord, given within three (3) Business Days of the receipt by Tenant of the Completion Notice, confirming the time for the Inspection. On the date of the Inspection, Landlord's Representative, Tenant's Representative and Tenant's Architect shall inspect the Basic Construction. Tenant shall prepare the Punch-List as quickly as possible, but in no event later than seven (7) Business Days after the date of the Inspection.

(b) Landlord shall proceed with reasonable diligence and in a good and workerlike manner to complete all items listed on the Punch List (collectively, the "Punch-List Items") (excepting those Punch-List Items which in accordance with good construction practice should not be completed at such time, in which case the same shall be completed when appropriate in accordance with good construction practice) within ninety (90) days following the receipt of the Punch-List, unless Landlord shall notify Tenant that Landlord disputes any such Punch-List Item in accordance with Section D.2(a) of this Work Letter or such Punch-List Item is not capable of completion within such ninety (90) day period, in which event Landlord shall proceed diligently to complete such Punch-List Item as soon as practicable thereafter. Landlord shall have the right to enter the Premises at reasonable times and upon prior reasonable notice (except in an emergency) to complete the Punch-List Items, and entry by Landlord, its employees, agents and/or contractors or subcontractors for such purpose shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or reduction in Fixed Rent or Additional Rent or relieve Tenant of any obligation under the Lease (including this Work Letter). Landlord shall promptly repair any damage caused by such completion of the Punch-List Items, except to the extent such damage is caused by Tenant's acts or omissions. Landlord shall use its commercially reasonable efforts to minimize interference

with Tenant's access and use or occupancy of the Premises (including interference that might be occasioned to Tenant's performance of Tenant's Initial Alterations) in completing the Punch-List Items, and all of the foregoing shall be performed by Landlord with all reasonable diligence, provided, however, that Landlord shall have no obligation to employ contractors or labor at so-called overtime or other premium pay rates or to incur any other overtime costs or expenses whatsoever, unless Landlord is requested to do so by Tenant and it is reasonably practicable to do so, in which event Tenant will reimburse Landlord, as Additional Rent within twenty (20) days of demand, for any such overtime or similar costs incurred by Landlord at Tenant's request.

D.4. The terms and/or conditions of this Section D.4 shall be applicable from the period commencing on the Delivery Date and ending on the date Tenant initially takes occupancy of the Premises for the conduct of business ("Tenant's Initial Occupancy"). Tenant shall be permitted to use (i) freight elevator service in accordance with Section 6.03 (b) of the Lease, and (ii) passenger elevators converted temporarily into freight elevators in shared elevator banks (which Landlord agrees to make available to Tenant on a reserved basis to the extent not required in Landlord's judgment to service occupants of other floors served by such elevators), for Tenant's move into the Premises or the receiving of furniture and equipment deliveries to the Premises, provided that in each case (A) Tenant shall comply with (x) the Rules and Regulations and all other reasonable rules and regulations of Landlord regarding the use of such passenger and freight elevators for such purpose promulgated in accordance with Article 26 of the Lease, including rules and regulations designed to protect the interior of the passenger or freight elevator cabs against damage, (y) all applicable Legal Requirements, and (z) all applicable union contracts at the Building, (B) Tenant shall have the right, at Tenant's sole cost and expense, to inspect the passenger and freight elevator cars upon delivery of such elevators to Tenant for Tenant's use and Tenant shall deliver a copy of any inspection report prepared as a result thereof promptly to Landlord, and (C) upon Landlord's request, Tenant shall cease its use of any passenger elevators converted temporarily into freight elevators and shall relinquish such elevators to Landlord if Landlord determines such elevators are required to service occupants of other floors. Upon Tenant's return of such elevators to Landlord, Landlord shall cause the elevators to be inspected, at Landlord's cost and expense, and shall promptly deliver a copy of the inspection report to Tenant. To the extent that such inspection evidences any damage to such elevators (including, without limitation, damage to the prismatic glass panels in the elevator cabs) during Tenant's exclusive use (or caused by Tenant or its employees or contractors during Tenant's non-exclusive use) (I) in excess of ordinary wear and tear of typical use for passenger elevators or freight elevators, as applicable, and (II) other than damage that existed at the time such elevators were delivered to Tenant for Tenant's exclusive use and of which Tenant gave notice to Landlord (including, without limitation, distorting car guide rail alignments or entrance frames, damage to (i) door sills, (ii) binding or hoist ropes, (iii) doors and frames, (iv) car interior, (v) car operating devices and fixtures, (vi) hall button stations, (vii) governor rope, (viii) cables, (ix) car communication systems, (x) car or counterweight buffers, or (xi) electrical wiring in motor room, hoistway and car, twisting platforms, excessive machine brake lining wear, distortion of car frame geometry and car platform, broken car safety apparatus, water damage to printed circuit boards in car controllers, group controllers, power converters and car top circuits), Landlord shall repair such damage at Tenant's sole cost and expense. Landlord will make the freight elevator available to Tenant during other than Operating Hours (subject to the Rules and Regulations and any prior reservations made by other tenants and occupants of the Building, Landlord or Landlord's contractors) upon request by Tenant in advance for use (i) the same

evening, (ii) the next morning, or (iii) upon at least 24-hours' notice, any succeeding day, and Tenant shall pay all charges actually and reasonably incurred by Landlord in connection with such use within twenty (20) days after receipt of demand therefor. Tenant shall be responsible for retaining and compensating any union elevator operators or other personnel required for the use of such passenger and freight elevators under any such union contract, at Tenant's sole cost and expense (provided that Landlord shall reasonably allocate such costs among Tenant and any other tenants or occupants who requested the use of such passenger or freight elevators during the same time periods). Tenant shall be responsible for, and shall pay to Landlord as Additional Rent within twenty (20) days after receipt of demand therefor, (A) the costs of repairing any damage to the passenger and freight elevators (including the interior of the passenger elevator cars) as provided above and any appurtenances to the passenger and freight elevators arising out of Tenant's use, (B) the costs of maintaining the passenger and freight elevators in connection with such use of the passenger and freight elevators by Tenant, including the incremental cost of maintaining a passenger elevator mechanic and a freight elevator mechanic at the Building, if necessary (provided that Landlord shall reasonably allocate such costs among Tenant and any other tenants or occupants who requested the use of such passenger or freight elevators during the same time periods), and (C) in the case of the passenger elevators only, all incremental costs and expenses incurred by Landlord in connection with the preparation and operation of the passenger elevators for Tenant's use (including, without limitation, temporary swing gates, temporary elevator controls, temporary elevator cabs and temporary labor) during the construction period (as opposed to permanent passenger elevator usage for office space use), provided that Landlord shall reasonably allocate such costs among Tenant and any other tenants or occupants who requested the use of such passenger elevators for such purposes during the same time periods.

D.5. Notwithstanding anything to the contrary in this Work Letter, (i) Landlord shall complete construction of the Lobby and the skylobby located on the 64th floor in accordance with the Basic Building Plans and Base Building Specifications prior to Tenant's Initial Occupancy and (ii) Tenant acknowledges that such completion of the Lobby and the skylobby located on the 64th floor may occur after the Delivery Date.

#### **E. TENANT'S INITIAL ALTERATIONS**

E.1. Tenant shall promptly pay to Landlord, within twenty (20) days following receipt of an invoice therefor, all incremental out-of-pocket costs reasonably incurred by Landlord for cleanup, tie-ins, system shutdowns, testing, maintenance and security of any toilet facilities, permit or filing fees, security, removal of waste and debris, salaries of on-site personnel, including superintendents and assistant superintendents for architectural/structural, superintendents and assistant superintendents for mechanical/electrical and assistant project manager, protection of work in progress or completed, guard service, temporary maintenance services, insurance, utilities and use of freight elevators or passenger elevators and hoists) resulting principally and predominantly from Tenant's Initial Alterations unless otherwise reimbursed to Landlord. Landlord shall give Tenant notice of the occurrence (or potential occurrence) of any costs to be incurred pursuant to this Section E.1 with reasonable promptness after Landlord has received actual knowledge thereof. Landlord shall provide Tenant with reasonable documentation of such costs so as to permit Tenant to reasonably verify such costs. Notwithstanding anything contained herein to the contrary, whenever Landlord and Tenant share

the use of a service, equipment or other item that results in a cost being incurred, then the cost shall be allocated between Landlord and Tenant in proportion to each party's use of such service, equipment or other item.

E.2. All Tenant's Initial Alterations shall be effected in accordance with (i) the requirements of the Lease (including this Work Letter), including, without limitation, Articles 11 and 13 of the Lease, and (ii) the requirements of all Governmental Authorities, including, without limitation, obtaining Net Lessor consent when required. Landlord shall have no responsibility for performance or supervision of any Tenant's Initial Alterations. Any failure to complete Tenant's Initial Alterations shall not in any way result in a postponement of the Rent Commencement Date or the payment of any Rent, but the foregoing shall not be deemed to relieve Landlord for liability for any default under the Lease or this Work Letter or Tenant's right to a Permitted RCD Extension or an extension of the Rent Commencement Date pursuant to Section H of this Work Letter.

**F. LIMITED ACCESS BY TENANT PRIOR TO DELIVERY DATE**

Notwithstanding anything in the Lease to the contrary, at any time after the delivery of the 90-Day Notice, and subject to the applicable terms and conditions of the Lease (including this Work Letter), Tenant and its contractors and design team shall have the right from time to time upon not less than two (2) Business Days' notice to Landlord to enter the Premises, to (i) make preliminary measurements of the Premises and (ii) stock the floors; provided, however, that (A) such entry will not cause or result in a delay in the Landlord's ability to complete Basic Construction, (B) Landlord shall designate the area of the floor in which Tenant may store such material, equipment, etc., and (C) Landlord shall designate times for Tenant's entry onto the Premises. Landlord shall not in any event be responsible for any lost or damaged material or equipment stored in the Building. Tenant shall cooperate with Landlord during the times of such entry so as to perform such measurements and stocking without disrupting Landlord's performance of Basic Construction. In the event Landlord notifies Tenant that such access is causing or is likely to cause a Tenant Delay, Tenant shall immediately discontinue such access until after the Delivery Date.

**G. TENANT'S DELAYS**

G.1. "Tenant's Delay" or "Tenant Delay" shall mean any actual delay in Landlord's completing Basic Construction or fulfilling any obligation under the Lease (including this Work Letter) with respect thereto that results from (A) any act, negligence, failure to act (where the Lease (including this Work Letter) or Legal Requirements impose a duty to act) or omission of any Tenant Party (except to the extent any of same are permitted hereunder), including (i) delays caused by Tenant due to changes in or additions to, or interference with, any work to be done by Landlord; (ii) delays by Tenant in submission of information (including, without limitation, construction schedules and logistics plans), approving estimates or giving authorizations or approvals required to be submitted by Tenant hereunder, in any such event, only to the extent such failure extends beyond the specific time periods for such submissions, authorizations or approvals specifically set forth herein; (iii) delays caused by any delay in submitting Tenant's Plans or any change or request for change by Tenant in the Basic Building Plans, Construction Documents or Tenant's Plans and the review and implementation thereof beyond the specific

time periods applicable thereto; and (iv) delays caused by Tenant's Requested Change or for an item of Tenant's Special Work that causes any delay in Landlord's performance of Basic Construction; or (B) any written request by Tenant that Landlord hold up proceeding with any item of Basic Construction required by Landlord to Substantially Complete Basic Construction in accordance with the Landlord's construction schedule and logistics plan or as otherwise required hereunder; provided, however, that no delay shall constitute a Tenant's Delay to the extent such delay (x) could have been avoided or mitigated by Landlord's use of reasonable prudence and diligence (including sound construction scheduling and construction practice), or (y) occurs principally and predominantly by reason of any act or omission of any nature of Landlord, its agents or contractors, or (z) occurs as a result of Force Majeure or Unavoidable Delay that would have delayed Substantial Completion of the Basic Construction even in the absence of the circumstances constituting Tenant Delay. By way of clarification, a Tenant Delay can only (except with respect to Punch-List Items) be created by an event or series of events that began prior to the Delivery Date. If Tenant believes that a Tenant's Delay might be avoided or mitigated by the expenditure of additional money by or on behalf of Landlord (it being agreed that such expenditure shall in no event include overtime or premium labor other than as specifically provided herein), Tenant may give notice to the Landlord ("Tenant Mitigation Notice") setting forth such belief and an estimate of the actual reasonable direct out-of-pocket costs thereof, and Tenant may elect to have Landlord make (at Tenant's expense) such expenditure by notice to Landlord given within ten (10) days after the giving of the Tenant Mitigation Notice. If Tenant shall have timely elected to have Landlord make such expenditure, Landlord shall make such expenditure in order to attempt to avoid or mitigate the Tenant's Delay and Tenant shall reimburse Landlord for the actual reasonable direct out-of-pocket costs thereof within twenty (20) days after the rendition of a statement therefor, which statement shall be accompanied by reasonable supporting documentation so Tenant can verify the cost and the fact that it was expended pursuant to the Tenant Mitigation Notice.

G.2. Landlord shall give Tenant notice of the occurrence (or potential occurrence) of any Tenant Delay (including, without limitation, in all Change Orders as provided herein) with reasonable promptness after Landlord has received actual knowledge thereof in order to provide to Tenant an opportunity to end, avoid or minimize the consequences of any such Tenant Delay together with a description of the basis of Landlord's claim of Tenant Delay in reasonable detail; provided, however, that so long as Landlord so notifies Tenant with reasonable promptness after Landlord has received actual knowledge of any such delay, a Tenant Delay shall be measured from the date that such Tenant Delay first occurred and not the date that notice of such Tenant Delay is given to Tenant.

G.3. In the event that a Tenant Delay occurs, Tenant shall reimburse Landlord for any incremental, actual out-of-pocket costs, without duplication, reasonably incurred by Landlord directly related to Basic Construction or Tenant's Special Work and arising out of or as a result of Tenant's Delay, including, without limitation, any increases in construction costs, Change Costs, or the cost of Basic Construction or Tenant's Special Work arising out of such Tenant's Delay. Notwithstanding anything contained herein to the contrary, whenever Landlord and Tenant share the use of a service, equipment or other item that results in a cost being incurred, then the cost shall be allocated between Landlord and Tenant in proportion to each party's use of such service, equipment or other item. Landlord shall provide Tenant with reasonable documentation of such costs so as to permit Tenant to reasonably verify such costs.

G.4. If such a Tenant Delay occurs, and such Tenant Delay causes a delay in the Substantial Completion of Basic Construction and/or the fulfillment of any other condition for the occurrence of the Delivery Date, any such affected item of work shall be deemed to have been Substantially Completed and/or any such other condition for the occurrence of any such date, shall be deemed to have been fulfilled, and (notwithstanding any provision of the Lease (including this Work Letter) to the contrary) any of such dates shall be deemed (for all purposes of the Lease (including this Work Letter)) to have occurred, on the date on which Landlord would have fulfilled any such condition but for such Tenant's Delay; provided, however, that nothing in this Section G.4 shall relieve Landlord of its obligations to actually cause such Substantial Completion to occur.

G.5. In the event that Tenant's Delay causes a delay in the construction schedule of more than five (5) days, Tenant shall pay Landlord such reasonable and customary overtime charges or premiums as shall be incurred by Landlord in trying to meet Landlord's construction schedule.

G.6. Any dispute between the parties as to the respective responsibilities of Landlord and Tenant for any delay, and/or with respect to the length of such delay and additional cost to Landlord with respect thereto shall be deemed a Work Letter Dispute. Pending resolution of such Work Letter Dispute, Landlord's determination of such matters shall control, subject to retroactive adjustment following resolution.

#### **H. TENANT'S REMEDIES FOR DELAY IN OCCURRENCE OF DELIVERY DATE**

H.1. In the event that the Delivery Date has not occurred (or is not deemed to have occurred by reason of the occurrence of one or more Tenant Delays) on or before the date (the "Penalty Delivery Date") which is thirty (30) days following the date projected by Landlord in the 90-Day Notice, and provided the failure of the Delivery Date to have occurred on or before the Penalty Delivery Date is not due to Unavoidable Delay, then Landlord shall credit to Tenant the sum of \$10,000 per day (which credit shall be applied against the first installment(s) of Fixed Rent payable following the Rent Commencement Date) for each day following such thirtieth (30th) day until the Delivery Date occurs or is deemed to have occurred.

H.2. In the event that the Delivery Date has not occurred (or is not deemed to have occurred by reason of the occurrence of one or more Tenant Delays) on or before December 31, 2014, and provided the failure of the Delivery Date to have occurred on or before December 31, 2014 is not due to Unavoidable Delay, then (unless the Lease shall subsequently be terminated pursuant to Section H.3 of H.4 of this Work Letter) the Rent Commencement Date shall be extended:

(A) by one additional day for each day from and after January 1, 2015 to the earlier of (i) the date on which the Delivery Date occurs (or is deemed to have occurred), and (ii) September 30, 2015; and

(B) by one and one-half additional days from each day from and after October 1, 2015 to earlier of (i) the date on which the Delivery Date occurs (or is deemed to have occurred), and (ii) December 31, 2015.

H.3. In the event that the Delivery Date has not occurred (or is not deemed to have occurred by reason of the occurrence of one or more Tenant Delays) on or before July 1, 2015, and provided the failure of the Delivery Date to have occurred on or before July 1, 2015 is not due to Unavoidable Delay, then Tenant shall have the right, as its sole remedy on account of such failure of the Delivery Date to have occurred, to terminate the Lease by giving Landlord a written notice of such election at any time thereafter until the Delivery Date occurs. In the event Tenant so notifies Landlord, the Lease shall be automatically terminated as of the date which is thirty (30) days after the delivery of such notice (unless the Delivery Date occurs within such thirty (30) day period), Landlord shall return the Security Letter to Tenant, and thereupon neither party shall have any further rights or obligations under this Lease other than such rights or obligations that expressly survive the termination of the Lease. If the Lease is terminated pursuant to this Section H.3, Landlord shall, within thirty (30) days after receipt of an invoice therefor from Tenant setting forth in reasonable detail (and accompanied by copies of paid invoices evidencing) Tenant's Lease Expenses and LC Fees incurred as of July 1, 2015, reimburse Tenant for such Lease Expenses and LC Fees, provided that Landlord shall not be obligated to reimburse Tenant for (x) Lease Expenses in excess of \$5,000,000 or (y) LC Fees in excess of \$50,000 plus 2% per annum of the face amount of the Security Letter in effect as of July 1, 2015. The provisions of this Section H.3 shall survive the termination of the Lease.

H.4. In the event that the Delivery Date has not occurred (or is not deemed to have occurred by reason of the occurrence of one or more Tenant Delays) on or before December 31, 2015, and provided the failure of the Delivery Date to have occurred on or before December 31, 2015 is not due to Unavoidable Delay, then this Lease shall automatically terminate on December 31, 2015. Notwithstanding the foregoing, Tenant shall have the right to extend the December 31, 2015 termination date referred to in this Section H.4 to December 31, 2016, provided Tenant shall give Landlord written notice of such extension not later than November 30, 2015, it being acknowledged and agreed that Tenant is in no event entitled to extensions of the Rent Commencement Date (other than a Permitted RCD Extension) for delays in the occurrence (or deemed occurrence) of the Delivery Date beyond December 31, 2015. In the event the Lease shall be automatically terminated as of December 31, 2015 or December 31, 2016, as the case may be, pursuant to this Section H.4, Landlord shall return the Security Letter to Tenant, and thereupon neither party shall have any further rights or obligations under this Lease other than such rights or obligations that expressly survive the termination of the Lease. If the Lease is terminated pursuant to this Section H.4, Landlord shall, within thirty (30) days after receipt of an invoice therefor from Tenant setting forth in reasonable detail (and accompanied by copies of paid invoices evidencing) Tenant's Lease Expenses and LC Fees incurred as of December 31, 2015 (whether this Lease shall automatically terminate as of December 31, 2015 or December 31, 2016 pursuant to this Section H.4), reimburse Tenant for such Lease Expenses and LC Fees, provided that Landlord shall not be obligated to reimburse Tenant for (x) Lease Expenses in excess of \$5,000,000 or (y) LC Fees in excess of \$50,000 plus 2% per annum of the face amount of the Security Letter in effect as of December 31, 2015 or December 31, 2016 (as the case may be). The provisions of this Section H.4 shall survive the termination of the Lease.

H.5. Notwithstanding anything to the contrary contained in the Lease (including this Work Letter), in no event shall the Rent Commencement Date occur until such time as: (1) all Building Systems servicing the Premises (including, without limitation, passenger elevators, mechanical systems, HVAC, plumbing, electrical, and gas) shall be available for connection and

use by Tenant, (2) reasonable means of access through the Lobby and the skylobby on the 64<sup>th</sup> floor to the Premises shall be available to Tenant and (3) completion of construction of the Lobby and the skylobby located on the 64th floor in accordance with the Basic Building Plans and Base Building Specifications.

H.6. Notwithstanding anything to the contrary contained in the Lease (including this Work Letter), in the event that Landlord fails to Substantially Complete (or is delayed in Substantially Completing) Basic Construction or any component thereof, or in the event of any breach, default or consequence as a result of any of the foregoing, then Tenant's remedies therefor will be limited solely to those remedies set forth in this Section H. The remedies set forth or referred to in this Section H are intended to and represent Tenant's agreement to limit the remedies available to Tenant arising out of any such breach, failure, default or delay.

#### **I. CONFIRMATION OF BUILDING MEASUREMENTS**

I.1. Within ninety (90) days after the Delivery Date, Landlord shall (i) cause Landlord's Architect to calculate the USF and RSF, on a floor-by-floor basis, in the Building and Premises and (ii) submit Landlord's Architect's calculation (which shall be set forth in reasonable detail) to Tenant. If Tenant disputes Landlord's Architect's determination, Tenant shall notify Landlord thereof within thirty (30) days after receipt of such calculation by Tenant, in which notice Tenant shall set forth Tenant's Architect's determination (in reasonable detail) of those floors as to which Tenant disputes Landlord's Architect's calculation. Tenant's Architect and Landlord's Architect shall meet to resolve the dispute. If such dispute is not resolved within sixty (60) days after Tenant shall have notified Landlord of Tenant's Architect's determination, either party may then elect to treat such dispute as a Work Letter Dispute. Pending resolution or arbitration, Landlord's determination of the USF and RSF of the Building and the Premises shall be utilized for the calculation of Rent, Tenant's Tax Share, Tenant's Operating Expense Share and Landlord's Contribution under the Lease. Within fifteen (15) days after final resolution of the USF and RSF of the Building and the Premises, the parties shall make appropriate adjustments to any amounts previously paid by Tenant that were based upon incorrect calculations of USF and RSF, and Landlord shall credit any overpayment by Tenant against the next installment(s) of Rent. The parties agree that if Landlord has caused Landlord's Architect to calculate the USF and RSF in the Building or Premises and has provided Tenant with written notice of Landlord's Architect's calculation within ninety (90) days after the Delivery Date as provided above, and Tenant does not send a written notice disputing Landlord's Architect's calculation to Landlord within thirty (30) days after the delivery of such notice of Landlord's Architect's calculation to Tenant, then the amount of USF and RSF stated in such notice to Tenant shall be deemed correct for all purposes of the Lease and shall no longer be subject to change. Landlord and Tenant hereby agree that all measures of USF and RSF as determined pursuant to this Work Letter shall be deemed conclusive and binding on Landlord and Tenant.

I.2. Upon finalization of the calculation of the USF and RSF of the Building, the parties agree, within ten (10) days after written request of either party, to enter into an amendment to the Lease specifying the final plans of each of the floors of the Premises, the Rent hereunder, floor-by-floor USF and RSF measurements, Tenant's Tax Share, Tenant's Operating Expense Share, Landlord's Contribution and any other items that are based on the USF or RSF in the Premises and the Building, but the failure to do so shall not affect in any manner whatsoever

the finalization of the calculation of the RSF of the Premises or the Building.

I.3. Notwithstanding anything to the contrary contained in this Work Letter, the parties agree that the method of measuring USF and RSF set forth in the definitions of "USF" and "RSF" set forth in Section 1.01 of the Lease shall be binding upon Landlord, Landlord's Architect, Tenant, Tenant's Architect, and any arbitrators to whom a dispute under this Section I is submitted.

I.4. Notwithstanding anything in the Lease (including this Work Letter) to the contrary, if the final USF and RSF for any full floor portion of the Premises (or, in the case of any shared floor, the entire portion of the Premises located on such shared floor) determined in accordance with this Section I shall exceed 103% of the USF and RSF for such space set forth in the definitions of "Premises" and "Initial Expansion Space" in the Lease, then, solely for the purposes of calculating Fixed Rent, Tenant's Tax Share and Tenant's Operating Expense Share, the USF and RSF for such space shall be equal to 103% of the USF and RSF for such space set forth in the definitions of "Premises" and "Initial Expansion Space" in the Lease. The foregoing cap shall not be applicable if and to the extent the increase in RSF and USF shall have been necessitated by reason of Tenant's Initial Alterations or Tenant's Special Work.

**J. INTENTIONALLY DELETED.**

**K. DISPUTES**

K.1. Within thirty (30) days after written request by either party following notice of a Work Letter Dispute, (i) Landlord shall designate an arbitrator ("Landlord's Arbitrator") and shall promptly notify Tenant of such designation and (ii) Tenant shall designate an arbitrator ("Tenant's Arbitrator") and shall promptly notify Landlord of such designation. Landlord's Arbitrator and Tenant's Arbitrator shall meet within thirty (30) days of their designation to select an independent architect or engineer or other person, having at least ten (10) years' experience in their field, including the design or construction of office buildings or office interiors in Manhattan, who shall serve as the arbitrator to settle any Work Letter Dispute (the "Arbitrator"). If Landlord's Arbitrator and Tenant's Arbitrator are unable to agree on the Arbitrator, either party may petition the AAA for the appointment of an independent architect or engineer or other person, having at least ten (10) years' experience in their field, including the design or construction of office buildings or office interiors in Manhattan, to serve as the Arbitrator. Such Arbitrator shall serve as the arbitrator for the Work Letter Dispute in question and all subsequent Work Letter Disputes. If, at any time, the Arbitrator shall resign or be unable to fulfill its obligations under this Work Letter, the parties will select an arbitrator in accordance with the terms of this Section K.1 to replace the Arbitrator.

K.2. "Work Letter Dispute" means any dispute explicitly deemed a "Work Letter Dispute" under the Lease, as well as any other dispute between Landlord and Tenant as to the obligations imposed or rights conferred upon either party by any provision of this Work Letter or as to the performance or failure of performance of any such obligations (including disputes relating to the determination of the Delivery Date, Rent Commencement Date or the occurrence and/or length or effect of any Tenant's Delay), or whenever Landlord's or Tenant's approval or consent is required under this Work Letter and the same is withheld or disputed.

K.3. In the event that either Landlord's or Tenant's approval or consent is required under this Work Letter and such party does not give such approval or consent, then (a) such party shall give to the other a written notice specifying in detail the reasons for such disapproval or non-consent and such notice will also state what modifications, if any, would make same acceptable to it and (b) said party shall be deemed to have given its approval or consent unless it notifies the other of such disapproval or non-consent, together with the notice in the preceding clause (a), within such periods of time as shall be specifically provided in the applicable section of this Work Letter or, if no time period shall have been provided, then within fifteen (15) Business Days after delivery to it of the item(s), request(s) or notification(s) as to which its approval or consent is required.

K.4. In the event of any Work Letter Dispute, the parties shall meet within two (2) Business Days after notice by either party to the other requesting a meeting to resolve such Work Letter Dispute by agreement. If the parties are unable so to agree and resolve the Work Letter Dispute, they shall refer the matter to the Arbitrator and the determination of the Arbitrator shall be binding upon the parties hereto. The arbitration shall commence two (2) Business Days thereafter and shall be limited to a total of seven (7) hours on the date of commencement until completion, with each party having no more than a total of two (2) hours to present its case and to cross-examine or interrogate persons supplying information or documentation on behalf of the other party. The Arbitrator shall make a determination within three (3) Business Days after the conclusion of the presentation of Landlord's and Tenant's cases, which determination shall be limited to a decision upon (A) whether Landlord or Tenant acted reasonably in withholding its consent or approval, or (B) the specific dispute presented to the Arbitrator, as applicable. The Arbitrator's determination shall be final and binding upon the parties, whether or not a judgment shall be entered in any court. All actions necessary to implement or begin to implement such decision shall be undertaken as soon as possible, but in no event later than ten (10) Business Days after the rendering of such decision and thereafter the obligated party will diligently proceed with such action until completion. Any monetary award shall be paid to the prevailing party within thirty (30) days of the resolution of the Work Letter Dispute with interest at the Prime Rate from the date incurred by the prevailing party until paid by the other party. The Arbitrator's determination may be entered in any court having jurisdiction thereof.

K.5. All fees payable to the AAA for services rendered (if any) in connection with the resolution of any Work Letter Dispute shall be borne equally by Landlord and Tenant. All costs and expenses of resolving any Work Letter Dispute will be borne equally by Landlord and Tenant, except that each party shall bear the expense of its own counsel, experts, and presentations of proof. The performance of the work shall continue as scheduled during the pendency of such Work Letter Dispute.

## L. MISCELLANEOUS

L.1. All required testing, adjusting and balancing of the mechanical plant of the Building and base building mechanical, electrical, plumbing, fire protection, fire safety and sprinkler systems serving the Premises ("Landlord's Testing"), shall be conducted at such times as shall reasonably be required or required by Governmental Authorities (it being understood that Tenant shall cooperate with Landlord and the testing entity in connection with such testing, adjusting or balancing); provided, however, that Landlord shall use reasonable efforts, to the

extent that such testing is capable of being performed at such time and that scheduling is within Landlord's control, to (i) complete Landlord's Testing prior to the Delivery Date and (ii) to the extent Landlord's Testing shall not be complete prior to Tenant's Initial Occupancy, to conduct Landlord's Testing at such times as will minimize interference with Tenant's business and as otherwise provided in the Lease.

L.2. Within thirty (30) days of the Effective Date, Landlord and Tenant shall each designate a "representative" who shall serve as its representative during construction ("Landlord's Representative" and "Tenant's Representative," respectively). Landlord and Tenant may substitute Landlord's Representative and Tenant's Representative respectively on five (5) Business Days' notice to the other party. Landlord's Representative shall manage the administrative aspects of the Basic Construction. Tenant's Representative shall manage the administrative aspects of Tenant's Initial Alterations. All instructions to Landlord shall be directed by Tenant's Representative to Landlord's Representative, and Tenant shall be responsible for such directions. All instructions to Tenant shall be directed by Landlord's Representative to Tenant's Representative, and Landlord shall be responsible for such directions.

L.3. Landlord's Representative and Tenant's Representative shall schedule and attend regular project meetings at the Building (or such other location as shall be mutually acceptable to all parties) with Tenant's Architect, Tenant's project manager, Landlord's Architect, and other Tenant's and Landlord's consultants, at such times as the parties shall mutually agree.

L.4. Upon Substantial Completion of Basic Construction, Landlord shall provide to Tenant the manufacturer's or supplier's warranties and guaranties as would be customarily provided by a prudent landlord in a Comparable Building, and, except with respect to Punch-List items affecting the same and except for so-called "latent defects" of which Tenant gives Landlord written notice within twelve (12) months after the Commencement Date, Tenant shall look to such manufacturer or supplier with respect to the items covered by such warranties and guaranties as to defects in workmanship or materials. Landlord shall use commercially reasonable efforts for so long as Landlord has the benefit of such warranties and guaranties to enforce for the benefit of Tenant all of said warranties and guaranties.

L.5. All schedules attached to this Work Letter are hereby incorporated into this Work Letter by reference. In the event of any conflict between the provisions of the main body of this Work Letter, the schedules attached hereto and/or the other exhibits to the Lease, the provisions of the main body of this Work Letter shall prevail.

L.6. Tenant acknowledges and agrees that the provisions of Section 28.10 of the Lease (Confidentiality) shall apply to the Base Building Specifications, the Basic Building Plans, the Change Costs, the General Conditions Costs, the Construction Documents, Tenant's Plans, or any information obtained from Landlord or Landlord's contractors regarding the Basic Construction.

## SCHEDULE 1

### Base Building Specifications

The following specifications represent maximum allowances to be provided. Allowance quantities are based on the rentable area of the Premises. Landlord shall have the right to make reasonable substitutions for the particular items described in this Schedule 1. To the extent there is any conflict between the Basic Building Plans and these Base Building Specifications, the Basic Building Plans shall control.

#### 1. Structural Design.

a. Building Structure. The building currently known as One World Trade Center (the "Building") will be supported by a dual system superstructure, including a centrally located core reinforced concrete core shear wall and a steel moment-frame system at the perimeter of the tower. The frame system will provide rigidity to the overall building structure while providing column-free interior spans for maximum flexibility.

i. Moment-Frame System. The perimeter moment-frame system, consisting of beams and columns connected by a combination of welding and bolting, will provide additional system strength.

ii. Shell. The Building will be structured on a 200 ft by 200 ft square base – the same size as the footprint of the original World Trade Center buildings. The corners of the Building will be chamfered at 45°, transforming the square base into 8 triangular side elevations. At its middle, the tower forms an octagon and then culminates in a square-shaped roof, rotated 45° from the base.

b. Substructure. The foundation system will be positioned immediately below the lowest basement level of the Building. The system for the tower columns and concrete core walls will consist of spread footings on rock. Rock anchors will be installed at core wall and auxiliary shear wall foundation systems. Tower steel columns will be encased in reinforced concrete.

c. Building Exterior. The Building exterior will be a custom curtain wall.

i. Materials. Primary materials for the exterior will include aluminum with glass mullions with structural silicone glazing and heat-strengthened insulating glass units. Stainless steel panels will be utilized along corner columns of the Building. The tower base will be composed of high quality glass placed upon an aluminum screen and supported by stainless steel fittings.

d. Building Interior.

i. Tenant Areas. All office floors contain thirty (30) pounds of "super-imposed dead load" capacity and fifty (50) pounds of "live load" per square foot. All

office floors will feature ADA-compliant men's and women's core bathrooms. All floors will be leveled to meet industry standards for class A office building concrete construction, scraped and patched to remove significant imperfections consistent with industry standards. All Building-standard multi-tenant corridors and common areas on any multi-tenanted floor (or any other required areas), including demising walls, will be constructed to the fire rating required by Legal Requirements and insurance requirements. All core walls shall be furred with gypsum board finish, taped, spackled and ready-for-paint, except where standard building finishes for ceramic tile, marble and other standard finishes for toilet rooms and the like apply.

2. Architectural Design.

a. Typical Floor Condition. All floors will be designed and maintained in accordance with standards for Class A office space.

3. Mechanical Design. All Base Building Systems, including HVAC, plumbing, electric, security and fire safety systems, will be in operating order in conformance with all applicable codes and meet all Lease specifications. Landlord shall provide a reasonably sufficient number of Class E fire alarm tie in points for Tenant's initial build out and use.

a. Cooling Systems.

i. HVAC. Each office floor will be equipped with two (2) all-air variable volume packaged water-cooled direct expansion air-conditioning units (DX HVAC), including the following capacities: \_\_\_\_\_ tons/unit (for floors \_\_\_\_\_) and \_\_\_\_\_ tons/unit (for floors \_\_\_\_\_). All HVAC trunk duct(s) will be stubbed from air handlers to Building core at each floor.

ii. HVAC Features. The DX HVAC units will be complete with water economizing coils, high efficiency particulate filters and carbon-based chemical filters and high-efficiency variable speed motor and drives.

iii. Cooling Tower. A cooling tower, sized for the refrigeration tonnage required for the Building load plus additional capacity for supplemental Tenant fit-out loads, will be located on the roof and will provide supplemental cooling capacity to Tenant in accordance with Section 6.02(d) of the Lease.

b. Heating Systems.

i. Heating Systems. The Building will be heated by systems located at the base of the façade wall at each floor.

ii. Hot Water. Hot water for the office floor heating systems will be generated via a pair of low-pressure steam-to-hot water heat exchangers located in the Mechanical Rooms at the base and top of the Building.

c. Electrical.

i. Design. The electrical system for general office space will be distributed through a vertical bus-duct system.

ii. Demand Load. Space tenants will be allocated electric riser capacity of six (6) watts per RSF for their lighting and utility power requirements.

iii. Metering. Landlord's power usage will be directly metered. Space tenants will be submetered for electrical usage.

d. Gas Service.

i. A central gas service will be extended from an adjacent street into a common meter room on the B-II level for tenants.

ii. Tenants requiring natural gas will be required to install a gas meter and distribution system from the meter room to their gas-fired equipment.

e. Emergency Generators.

i. Power Loss. In the event of normal power loss, the power for life safety related loads (such as stair and exit lighting, elevator, smoke exhaust, fire pump and fire alarm system) will be provided by the building's diesel-driven emergency generators.

f. Plumbing.

i. Water Service. Two domestic water services will supply water to plumbing fixtures in the building, including makeup water for the cooling towers and supply to hot water heaters and the distribution system, and Tenant uses permitted under this Lease. Each service will be metered, cross-connected and extended to a 30,000 gallon two-compartment concrete domestic water suction tank.

ii. Grey Water System. A grey water system to utilize rainwater and steam condensate will also be integrated as a source of water for cooling towers and supplementary water during dry weather periods.

iii. Waste Water. A complete soil, waste and vent system will be provided from plumbing fixtures, mechanical equipment and floor drains within the Building. The sanitary system will be arranged to flow to a single point of connection with the NYC municipal sewer system.

g. Fire Protection. The Building will be protected with a combined fire standpipe and sprinkler system.

i. Automated Sprinkler System. All areas (except for elevator hoistways and stairs) will be protected by automatic sprinklers. Each core restroom will feature a temporary sprinkler loop as well as sprinkler distribution.

ii. Standpipe System. All floors will provide standpipe risers and hoses to ensure that all areas of the floor are within reach by hose.

h. Vertical Transportation Systems. The Building will be served by fifty-four (54) 3,500 pound capacity high-speed Thyssenkrupp passenger elevators grouped into five (5) separate zones with crossover floors to accommodate multi-floor tenants.

i. Passenger Elevators. The passenger elevators will be grouped into nine (9) elevator banks, will be coordinated by a Destination Control System to most efficiently manage the distribution of passengers and will have the following capacities:

|                 | Elevator No. | Quantity | Capacity | Speed | Levels Served   |
|-----------------|--------------|----------|----------|-------|-----------------|
| Bank A          | A1-A5        | 5        |          | 1000  | 1, 20-27        |
| Bank B          | B1-B5        | 5        |          | 1000  | 1, (27T) 28-35  |
| Bank C          | C1-C5        | 5        |          | 1400  | 1, (35T) 36-42  |
| Bank D          | D1-D5        | 5        |          | 1400  | 1, (42T) 43-49  |
| Bank E          | E1-E5        | 5        |          | 1800  | 1, (49T) 50-56  |
| Bank F          | F1-F5        | 5        |          | 1800  | 1, (56T) 57-63  |
| Bank G Shuttles | G1-G10       | 10       |          | 1800  | 1, TF (64)      |
| Bank H          | H1-H7        | 7        |          | 500   | TF, 65-76       |
| Bank I          | I1-I7        | 7        |          | 800   | TF, (76T) 77-88 |

TF= Transfer Floor

ii. Service Elevators. The Building will also feature five (5) service elevators that facilitate delivery of building materials and large furniture with weight capacities ranging from . . . to . . . pounds.

#### 4. Additional Features.

a. Key Structural Enhancements. The Building features:

i. enhanced structural connections at the core and columns, alternate load paths, and hardened columns and slabs at grade and below grade spaces to increase structural robustness;

ii. increased fireproofing on structural steel;

iii. reinforced exterior walls;

iv. expanded fire reserve water tanks to provide twice the code-required water storage capacity;

v. an interconnected stair system to allow for multiple Building exit points; and

vi. layered air filtering systems.

**SCHEDULE 2**

**Schedule of Basic Building Plans**

**[see attached pages]**

## EXHIBIT I

### CLEANING SPECIFICATIONS

#### DAY CLEANING

##### **Public & Commons Areas - Daily Services**

Clean and police all public areas of the Building including but not limited to Lobby, skylobby on 64<sup>th</sup> floor, corridors, elevators, sidewalks, curbs, stairs, utility and loading dock areas.

Police and maintain elevator cabs.

Keep entrance door glass and frames in clean condition.

Clean and polish standpipes and sprinkler Siamese connections.

Wipe down all exterior metal, marble, and similar material up to first horizontal level as required.

Twice daily, inspect and police all men's and ladies' lavatories on all floors throughout the Building.

Set out mats in inclement weather, keep in clean condition.

#### NIGHTLY SERVICES

##### **Main Entrance Lobby and Skylobby on 64<sup>th</sup> Floor**

Dust sweep flooring with specially treated cloths to insure dust-free floors.

Wash ceramic tile, marble and terrazzo flooring in the Building entrance and foyers.

Damp mop and spot clean resilient tile floors.

Wax, buff and apply sealer on floor finish as required.

Wipe down all metal and glass surfaces in the lobby interior using appropriate metal cleaner.

Dust lobby decorative motif and clean protection glass.

Clean entrance and lobby glass doors including mirrors and directory glass.

Damp wipe and clean all cigarette urns. Screen and replace sand as necessary for sand urns.

Wipe clean all monitoring devices and telephone units.

Wash all rubber mats and vacuum wool or nylon runners when down.

### **Elevator Cabs**

Clean saddles, door and frames of elevators at lobby.

Remove all gum, foreign matter and unauthorized writing from elevators.

Clean metal and sides of elevator cabs.

Wash and refinish resilient floor in elevator, and if carpeted, vacuum and spot clean.

### **Public Areas (if multi-tenant floors)**

Maintain public area walls in clean condition. Public areas shall also include elevator lobbies, including skylobby on the 64<sup>th</sup> floor, on multiple tenant floors.

Vacuum clean all carpets in public areas. If flooring, sweep floors with treated mop to maintain in clean condition throughout the public areas.

Inspect and maintain cleanliness of fire hoses, extinguishers and other similar equipment.

Remove finger marks from all doors and elevator cabs.

### **Tenant Office Areas**

Sweep all uncarpeted flooring using chemically treated dust mop to prevent dust dispersion.

Carpet sweep carpeted areas and rugs four (4) nights each week and vacuum once each week, moving light furniture other than desks, file cabinets, etc.

Hand dust and wipe clean with a treated cloth, mitt, or duster, all furniture, file cabinets, desk lamps, window sills and convector enclosed tops.

Move and dust under all desk equipment and phones, replacing and dusting said equipment with approved anti-bacterial cloth.

Scour and wash clean all water coolers and fountains.

Clean all glass furniture tops.

Empty and clean all waste basket and disposal receptacles and remove waste to designated areas of the Building.

Remove all smudges, finger marks and other marks from painted surfaces on doors and areas around electrical light wall switches and door jambs.

Sweep private stairways within premises.

Damp mop all stone, ceramic tile, slate and other types of unwaxed flooring

### **Lavatories**

Scour, wash and disinfect all basins, bowls and urinals with approved germicidal detergent solution using spray tank method.

Wash and disinfect both sides of all toilet seats with approved germicidal detergent solution.

Wash and polish with a non-acid polish all mirrors, powder shelves, bright work and enamel surfaces, etc. including flushometers, piping and toilet scat hinges.

Hand dust and wash all partitions, dispensers and receptacles.

Sweep and wash all lavatory flooring with an approved disinfectant.

Empty and clean all paper towels, sanitary disposal receptacles, transporting waste to the designated location.

Fill all toilet tissue holders, paper towel dispensers, sanitary napkin and soap dispensers.

Remove all waste paper and refuse to a designated area in the premises, using rubber janitorial carts with rubber edges.

Machine scrub flooring, scrub tile walls and scrub partitions once per month.

High dusting once per month, including, but not limited to, lighting fixtures.

### **WEEKLY SERVICES**

#### **Main Entrance Lobby and Skylobby on 64<sup>th</sup> Floor**

Dust all lobby walls.

Hand dust all louvers and ventilating louvers.

Remove all finger marks from all painted surfaces near light switches, entrance doors and the like.

### **Elevator Cabs**

Clean saddles and frames on floors above and below the main lobby.

Clean lights in cabs.

Dust elevator doors above lobby.

### **Tenant Office Areas**

Vacuum all carpet areas including common areas.

Spot clean soil and finger marks from painted or washable surfaces on and around door handle and light switches.

Dust all baseboards.

## **MONTHLY OR QUARTERLY CLEANING**

### **Main Entrance Lobby and Skylobby on 64<sup>th</sup> Floor (Quarterly)**

High dust all electrical and air-conditioning ceiling fixtures.

### **Elevators (Monthly)**

Shampoo carpets using extraction vacuum method.

### **Public Areas (if multi-tenant floors) (Monthly)**

Wash, strip and refinish all floors in public corridors. Public corridors shall also include elevator lobbies, including skylobby on the 64<sup>th</sup> floor, on multiple-tenant floors.

### **Tenant Office Area (Quarterly)**

Hand dust all pictures, frames, charts, graphs and similar wall hangings not reached in nightly or weekly cleaning.

Dust venetian blinds.

Dust surfaces not reached in nightly cleaning above 5 feet.

Dust overhead pipes, air-conditioning louvers and ducts, etc.

Dust all lighting fixtures and window frames.

### **Lavatories (base building) (Monthly)**

Machine scrub flooring.

Hand dust, clean and wash all tile walls.

High dust lights, walls, grilles, etc.

Dust all lighting fixtures.

Scrub partitions.

**PEST CONTROL**

Pest Control treatment in all public areas, lavatories on multi-tenant floors, and service sink rooms will be done once a month. All service will be rendered by operators licensed by Board of Health of the City of New York.

Services shall be rendered at such times as will not interfere with Tenant's normal business and use of its premises during business hours.

**WINDOW CLEANING**

Cleaning of the inside surface of the windows from the main floor to the roof will be done as required by Tenant, but not more than four (4) times per year.

Cleaning of the outside surface of the windows from the main floor to the roof will be done three (3) times per year.

Services shall be rendered at such times as will not interfere with Tenant's normal business and use of its premises during business hours.

**GENERAL NOTE**

The cleaning specification described above shall be rendered as scheduled but only on Monday through Friday excluding union and legal holidays. Areas not covered as part of normal cleaning services are:

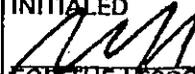
Retail Stores

Restaurants

Special Concession Areas

Vault Areas

Private dining rooms, cafeterias, kitchens, bathrooms or shower rooms or athletic facilities.

|                                                                                       |
|---------------------------------------------------------------------------------------|
| INITIALED                                                                             |
|  |
| FOR THE LESSOR                                                                        |
|  |
| FOR THE LESSEE                                                                        |

## EXHIBIT J

### ALTERATIONS RULES AND REGULATIONS

1. Noise that is disruptive to other tenants will not be allowed during building occupancy hours. Contractors are expected to work around these hours. The building management will make the final determination if noise is disruptive.
2. No construction, demolition, or alterations will be allowed to begin without written permission from building management.
3. Permits must be obtained through the jurisdiction in which the Building is located, when applicable, for any work performed in the building, and such permits shall be posted on a wall of the construction site while work is being performed. A set of approved blueprints must be submitted to building management for review and approval prior to the start of the work to be performed. These blueprints will remain the property of the building and will be placed in the building files for future reference.
4. No connections to any base building systems (water, air, electric, fire alarm) can be made without 72 hours' prior notice to building management. Tie-ins to the fire alarm system must be performed by building management's approved contractors. No electrical services are to be put on the emergency circuit without specific written approval from Landlord.
5. All tests involving the activation of the base building fire alarm system must be conducted during non-occupancy hours (see #1 above) and will be at the sole cost and expense of the contractor and/or tenant. This includes the final test for the Temporary Permit to Occupy or Use or Permit to Occupy or Use, as applicable.
6. Package air conditioning units must be water-cooled. No air-cooled units are permitted. Fan powered, or other VAV boxes, cannot be connected to the interior air system. Existing boxes that are uncovered during construction must be removed.
7. All material, including cabling, installed in the ceiling must be plenum rated due to the return air ceiling plenum in the building.
8. An independent air balance is recommended anytime changes are made to the air distribution systems. This should include balancing the return air as well as the supply. Comfort adjustment should be part of the air balance contract.
9. CFM readings must be taken before work is started and after work is completed any time changes are made to an air supply system that serves another tenant.
10. All abandoned equipment above the ceiling and behind the walls (water lines, electrical lines, duct work, etc.) must be removed (taken back to the nearest junction box or riser) as they are discovered.
11. Any single piece of electrical equipment (copier, mail sorter, etc.) drawing 1 kw or greater of power must be submetered, or tied into an existing tenant-owned submetered panel.

12. All electrical devices installed in the building must have the Underwriter's Laboratories (UL) designation, where applicable.

13. Building standard door signs are to be ordered through the building management office. Requests for any deviation from this standard must be submitted, in writing, to building management for approval.

14. The Building uses restricted keys and lock cylinders as part of its master key system. Keys and lock cylinders can only be ordered through the building management office to insure that the building stays on the master key system.

15. In no event shall the building's passenger elevators be used to move material or contractor personnel. Arrangements for the use of the freight elevator must be made through the management office.

16. All proposed telephone and/or communication installations must be approved in writing by the management office. Plans and specifications must be submitted to the building management, allowing ten (10) working days for review.

17. All of Tenant's contractors performing work within the Premises must notify the security desk for the Building prior to any work that may affect the Building's fire alarm system.

18. ANY AND ALL core drilling must be performed before or after building occupancy hours (8:00 a.m. to 8:00 p.m. Monday through Friday, and 9:00 a.m. to 4:00 p.m. Saturday).

19. All penetrations must be waterproofed and have firestop installed.

20. Any and all equipment and cabling installed in ceilings cannot be supported by the suspended ceiling or any existing guy wires. They must be secured to the underside of the slab and comply with all National Fire Safety Codes.

21. All waste lines that create condensation due to ice machines, ice tables, refrigerators, etc., must be insulated to prevent leaks. Repairs performed due to uninsulated lines will be charged to the tenant.

22. It is the responsibility of the contractor and/or tenant to replace any broken or missing ceiling tiles.

23. Drywall and demolition material can only be moved through the building after 5:30 p.m. The contractor is responsible for maintaining the cleanliness of elevator cab(s) and floors. Masonite floor coverings must be used when moving equipment across carpet and in common areas.

24. There will be no sweating or welding during the building operating hours - THE FIRE ALARM SYSTEM CANNOT BE OVERRIDDEN FOR THIS PURPOSE DURING OPERATING HOURS.

25. The Contractor, before commencing work, must provide the building management with Certificates of Insurance as evidence of having in force Workers' Compensation providing statutory benefits for Contractor's employees as required by applicable law, and will be endorsed to waive subrogation against Landlord and its Agents; Broad Form Commercial General Liability with a combined single limit of not less than \$2,000,000 per occurrence, including products/completed operations, contractual insurance and broad form property damage; and Automobile Liability Insurance with minimum limits of \$1,000,000 each occurrence for bodily injury and for property damage. Coverage will include all owned, non-owned and hired vehicles, if applicable. Liability policy shall name Landlord and its Agents as additional insureds. The insurance provided by Contractor hereunder shall be primary and non-contributing with any other insurance available to, or carried by, Landlord or its Agents. The additional insured must read as follows (No abbreviations):

\_\_\_\_\_ (Owner)  
\_\_\_\_\_ (Managing Agents)  
\_\_\_\_\_ (Advisors)

26. The contractor agrees to abide by the following ENVIRONMENTAL COMPLIANCE rules:

27. Contractor represents, warrants, and covenants to Landlord that Contractor shall at no time use or permit the Property to be used in violation of any Legal Requirements dealing with the environment ("Environmental Regulations"). Contractor shall assume sole and full responsibility for, and shall remedy at its sole cost and expense, all such violations, provided that Landlord's approval of any remedial actions shall first be obtained, in writing. Contractor shall at no time use, generate, release, store, treat, dispose of, or otherwise deposit, in, on, under or about the Property, any material or substance that may be hazardous or toxic as determined from time to time by any governmental body or by Landlord ("Hazardous Materials"), or permit or allow any third party to do so, without Landlord's express, prior, and written consent. Contractor's compliance with the terms of this Paragraph and with all Environmental Regulations shall be at Contractor's sole cost and expense. Contractor shall pay or reimburse Landlord for any costs or expense incurred by Landlord, including reasonable attorneys', engineers', consultants' and other experts' fees and disbursements incurred or payable to determine, review, approve, consent to or monitor the requirements for compliance with Environmental Regulations, including, without limitation, above and below ground testing.

28. Any and all chemical containers, vessels or other equipment supplied by Contractor for use by building personnel and/or for use on the Property, shall remain the property of Contractor. Upon notification from Landlord, Contractor shall cause such items to be removed from the Property and properly disposed of, in accordance with Legal Requirements, at Contractor's sole expense and responsibility.

29. If Contractor fails to comply with the provisions of this Paragraph, Landlord and its Managing Agents shall have the right, but not the obligation, without in any way limiting their other rights and remedies, to take such actions as Landlord deems necessary or advisable to clean up, remove, resolve, or minimize the impact of, or otherwise deal with, any Hazardous Materials on or affecting the Property following the receipt of any notice or information asserting the

existence of any Hazardous Materials. All reasonable costs and expenses paid or incurred by Landlord or its managing agents in the exercise of any such rights shall be payable by Contractor to Landlord upon demand.

30. Public area corridor and carpeting is to be protected by plastic runners or a series of walk-off mats from the elevator to the suite under construction.

31. Walk-off mats are to be provided at suite entrance doors.

32. Contractors will remove their trash and debris daily, or as often as necessary to maintain cleanliness in the building. Building trash containers are not to be used for construction debris. Landlord reserves the right to bill Tenant for any cost incurred to clean up debris left by the general contractor or any subcontractor. Further, the building staff is instructed to hold the driver's license of any employee of the contractor while using the freight elevator to ensure that all debris is removed from the elevator.

33. When utility meters are installed, the general contractor must provide the managing agent with a copy of the operating instructions for that particular meter.

34. Landlord will be notified of all work schedules of all workmen on the job and will be notified, in writing, of the names of those who may be working in the building after "normal" business hours. Contractors or personnel will use loading dock area for all deliveries and will not use the loading dock for vehicle parking. Contractors shall be responsible for parking their vehicles, and neither Landlord nor any managing agent shall have any obligation to provide any parking to any contractor.

35. Contractors will be responsible for daily removal of waste foods, milk and soft drink containers, etc. to a trash room and will not use any building trash receptacles except trash receptacles supplied by them.

36. No building materials are to enter the building by way of the Lobby, and no materials are to be stored in any lobbies at any time.

37. Construction personnel are not to eat in the lobby or in front of building nor are they to congregate in the lobby or in front of building. No access to the Building's interior lobby or corridors will be permitted at any time.

38. Landlord is to be contacted by the Tenant when work is completed for inspection. All damage to the building will be determined at that time. There will be no radios allowed on the job site. All workers are required to wear a shirt, shoes, and full length trousers.

39. Protection of hallway carpets, wall coverings, and elevators from damage with masonite board, carpet, cardboard, or pads is required.

40. Public spaces -- corridors, elevators, bathrooms, lobby, etc. -- must be cleaned immediately after use. Construction debris or materials found in public areas will be removed at the Tenant's cost. All construction materials or debris must be stored within the project confines or in an approved lock-up.

41. There will be no alcohol or controlled substances allowed or tolerated.

42. The general contractor and Tenant shall be responsible for all loss of their materials and tools and shall hold Landlord harmless for such loss and from any damages or claims resulting from the work. If an unfinished leased space has two doors, one must be locked. Passage can occur through the door most convenient to the freight elevator and should have a temporary foot mat.

43. All unused entry doors to vacant areas must be closed at all times and locked.

44. Noisy operations such as chopping, etc. are to be done after hours, unless prior consent is given.

Every effort must be made to avoid disturbance of any other tenant's normal business operations. Punch list corrections must be performed only with the Tenant's permission, in advance. If an operation underway proves disturbing to a tenant it must be discontinued immediately and performed outside normal business hours.

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| INITIALED                                                                             |
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| FOR THE LESSOR                                                                        |
| XV                                                                                    |
| FOR THE LESSEE                                                                        |

**EXHIBIT K**

INTENTIONALLY OMITTED

|                    |
|--------------------|
| INITIALED          |
| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

**EXHIBIT L**

**FORM OF SECURITY LETTER OF CREDIT**

1 World Trade Center LLC  
c/o The Port Authority of New York & New Jersey  
225 Park Avenue South, 12<sup>th</sup> Floor  
New York, NY 10003

Date \_\_\_\_\_

Attn: CREDIT MANAGER

CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_ (C) \_\_\_\_\_

At the request of \_\_\_\_\_ (A) \_\_\_\_\_, we \_\_\_\_\_ (B) \_\_\_\_\_ hereby open this CLEAN IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ (C) \_\_\_\_\_ in your favor up to an aggregate of \_\_\_\_\_ (D) \_\_\_\_\_ U.S. Dollars, available by your draft(s) on us at sight.

We warrant to you that all your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us at \_\_\_\_\_ (E) \_\_\_\_\_ on or before the expiration date set forth below or future expiration date as indicated below. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement thereto, or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under \_\_\_\_\_ (B) \_\_\_\_\_ Letter of Credit No. \_\_\_\_\_ (C) \_\_\_\_\_ dated \_\_\_\_\_". Partial drawings under this Letter of Credit are permitted.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on \_\_\_\_\_ (F) \_\_\_\_\_

This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended without amendment for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing not less than sixty (60) days before such date that we elect not to extend the Letter of Credit for such additional period, such notice to be sent by registered or certified mail to you at the address herein. Upon receipt by you of such notice you may draw on us at sight for the balance remaining in this Letter of Credit within the then applicable

expiration date, no statement required. However, in any event, this CLEAN IRREVOCABLE LETTER OF CREDIT will not be extended beyond its final expiration date: \_\_\_\_\_.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

BANK OFFICER/REPRESENTATIVE

LEGEND:

- A – INSERT APPLICANT NAME, I.E. TENANT OR LESSEE NAME
- B – INSERT NAME OF ISSUING BANK
- C – INSERT L/C IDENTIFICATION NUMBER
- D – INSERT DOLLAR VALUE OF INSTRUMENT
- E – INSERT EXACT ADDRESS OF LOCAL BANK BRANCH
- F – INSERT EXPIRATION DATE-ONE YEAR FROM ISSUE DATE

\*\*\* Please instruct your Bank to have the Letter of Credit issued in the above format in "Draft" form and fax to Michael Mayurnik, Credit Manger, at (212) 435-5846 for approval PRIOR to issuance in "Original" form or email a Word file to MMayumi@PANYNJ.Gov. **If the draft is not reviewed in advance, the Letter of Credit can be rejected.** If you are in need of further assistance, Mr. Mayurnik can be reached at (212) 435-5838. \*\*\*\*

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|----------------|
| INITIALED      |
| <i>MM</i>      |
| FOR THE LESSOR |
| <i>N</i>       |
| FOR THE LESSEE |

\* Date to be inserted is 6 months following the Expiration Date of the Initial Term, subject to Tenant's obligation to provide an extension or new security letter in the event the Term is extended pursuant to Article 35 or Article 36.

**EXHIBIT L.1**

**FORM OF SECURITY LETTER OF CREDIT  
(Pre-Delivery Only)**

1 World Trade Center LLC  
c/o The Port Authority of New York & New Jersey  
225 Park Avenue South, 12<sup>th</sup> Floor  
New York, NY 10003

Date \_\_\_\_\_

Attn: CREDIT MANAGER

CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO.  
\_\_\_\_\_ (C) \_\_\_\_\_

At the request of \_\_\_\_\_ (A) \_\_\_\_\_, we \_\_\_\_\_ (B) \_\_\_\_\_ hereby open this CLEAN IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ (C) \_\_\_\_\_ in your favor up to an aggregate of \_\_\_\_\_ (D) \_\_\_\_\_ U.S. Dollars, available by your draft(s) on us at sight, accompanied by a written statement in the form annexed hereto as Exhibit 1 purportedly signed by an authorized signatory of you.

We warrant to you that all your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us at \_\_\_\_\_ (E) \_\_\_\_\_ on or before the expiration date set forth below or future expiration date as indicated below, accompanied by a written statement in the form annexed hereto as Exhibit 1 purportedly signed by an authorized signatory of you. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement thereto, or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under \_\_\_\_\_ (B) \_\_\_\_\_ Letter of Credit No. \_\_\_\_\_ (C) \_\_\_\_\_ dated \_\_\_\_\_". Partial drawings under this Letter of Credit are permitted.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on \_\_\_\_\_ (F) \_\_\_\_\_

This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended without amendment for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing not less than sixty (60) days before such date that we elect not to extend the Letter of Credit for such additional period, such notice to be sent by registered or certified mail to you at the address herein. Upon receipt by you of such notice you may draw on us at sight for the balance remaining in this Letter of Credit within the then applicable

expiration date, no statement required. However, in any event, this CLEAN IRREVOCABLE LETTER OF CREDIT will not be extended beyond its final expiration date: July 1, 2015.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

BANK OFFICER/REPRESENTATIVE

LEGEND:

- A – INSERT APPLICANT NAME, I.E. TENANT OR LESSEE NAME
- B – INSERT NAME OF ISSUING BANK
- C – INSERT L/C IDENTIFICATION NUMBER
- D – INSERT DOLLAR VALUE OF INSTRUMENT
- E – INSERT EXACT ADDRESS OF LOCAL BANK BRANCH
- F – INSERT EXPIRATION DATE-ONE YEAR FROM ISSUE DATE

\*\*\* Please instruct your Bank to have the Letter of Credit issued in the above format in "Draft" form and fax to Michael Mayurnik, Credit Manger; at (212) 435-5846 for approval **PRIOR** to issuance in "Original" form or email a Word file to MMayurni@PANYNJ.Gov. **If the draft is not reviewed in advance, the Letter of Credit can be rejected.** If you are in need of further assistance, Mr. Mayurnik can be reached at (212) 435-5838. \*\*\*\*

Exhibit 1 [to Exhibit L.1]

1 WORLD TRADE CENTER LLC  
c/o The Port Authority of New York & New Jersey  
225 Park Avenue South, 12th Floor  
New York, NY 10003

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Re: Clean Irrevocable Standby Letter of Credit No. \_\_\_\_\_

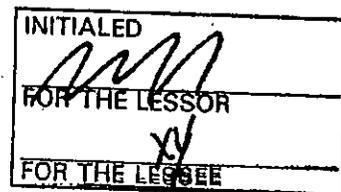
Ladies and Gentlemen:

We hereby confirm to you that the amounts requested to be drawn upon the above referenced Letter of Credit pursuant to the draft submitted simultaneously herewith are authorized to be drawn down pursuant to that certain Lease dated as of March \_\_, 2009 by and between 1 World Trade Center LLC, Landlord, and China Center New York LLC, a Delaware limited liability company, as Tenant, as the same may have been amended.

1 WORLD TRADE CENTER LLC,  
a Delaware limited liability company

By: THE PORT AUTHORITY OF NEW  
YORK AND NEW JERSEY,  
its sole member

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





THE PORT AUTHORITY OF NY & NJ

## MEMORANDUM

Quality Assurance Division

**To:** Thomas P. Maher, Assistant Director, World Trade Center Redevelopment  
**From:** Saroj Bhol  
**Date:** February 24, 2009  
**Subject:** China Center New York LLC Lease No. WA-002  
**Copy:** N. Houselog, M. Palmieri, J. Potter, H. Vadi

The Port Authority of New York & New Jersey Quality Assurance Division (QAD) has received the preliminary design (test fits) dated February 6, 2009 provided by Perkins Eastman on behalf of China Center New York LLC (CCNY).

Please be advised QAD only approves the actual construction documents that are submitted during the Tenant Alteration Application (TAA) process and not the preliminary design or test fits. However, based on our review of the occupant load study, stacking plans, and analysis, we do not have any issues with the type of occupancies nor the number of CCNY program occupants presented in the preliminary design and therefore do not see any reason for this program not to continue forward.

QAD presumes that any base building modifications required to achieve noted occupancy types will be implemented (i.e. widening selected fire stair doors, increasing the live load carrying capacity of structural steel members on selected floors or parts of floors, etc.).

Please note, QAD has not reviewed the preliminary design for overall constructability, potential impacts to the base building systems, and feasibility of accommodating CCNY program required equipment and systems.

QAD will perform a detailed review for code compliance and provide comments, if any, and approval for construction when CCNY submits the actual construction documents during the TAA process.

Subject to the foregoing, QAD acknowledges that CCNY is entitled to rely on this memo.

Saroj Bhol  
Manager, Construction Design Standards  
Quality Assurance Division

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|----------------|
| INITIALED      |
|                |
| FOR THE LESSOR |
|                |
| FOR THE LESSEE |

**EXHIBIT N**

**FORM OF COMMENCEMENT DATE AGREEMENT**

**[See attached pages]**

## COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT (this "Agreement") made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between 1 WORLD TRADE CENTER LLC, a Delaware limited liability company ("Landlord"), having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue, 15th Floor, New York, New York 10003, as landlord, and CHINA CENTER NEW YORK LLC, a Delaware limited liability company ("Tenant"), having an office at \_\_\_\_\_, as tenant

WITNESSETH:

### WHEREAS,

A. Landlord and Tenant entered into a Lease dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Lease") pursuant to which Landlord leased to Tenant and Tenant hired from Landlord the Premises (as defined in the Lease); and

B. Section 2.04 of the Lease provides that the parties shall execute an agreement confirming the Commencement Date, Rent Commencement Date and Expiration Date when the Commencement Date has been determined.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

2. Landlord and Tenant hereby confirm that:

(i) the Commencement Date is \_\_\_\_\_;

(ii) the Rent Commencement Date is \_\_\_\_\_;

(iii) the First Lease Year commences on \_\_\_\_\_ and ends on \_\_\_\_\_;

and

(iv) the Expiration Date of the Initial Term is \_\_\_\_\_.

3. As hereby modified, all of the terms, covenants and conditions of the Lease shall continue in full force and effect and are hereby ratified and confirmed in all respects.

4. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which when taken together, shall constitute one and the same instrument.

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

LANDLORD:

1 WORLD TRADE CENTER LLC,  
a Delaware limited liability company

By: THE PORT AUTHORITY OF NEW  
YORK AND NEW JERSEY,  
its sole member

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

TENANT:

CHINA CENTER NEW YORK LLC,  
a Delaware limited liability company

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

|                                                                                       |
|---------------------------------------------------------------------------------------|
| INITIALED                                                                             |
|  |
| FOR THE LESSOR                                                                        |
|  |
| FOR THE LESSEE                                                                        |

EXHIBIT O

**CHINA CENTER MEMBERSHIP REQUIREMENTS**

Any Person that pays the normal initiation fees and annual dues as customary for other first-class private clubs in Manhattan for membership in the China Center in accordance with Tenant's standard membership admittance policies and membership pricing, provided that such policies shall not include memberships for one-time use of China Center facilities or any other policies which could be used to change the nature of the Private Club Facilities as a private club not available to "off the street" customers.

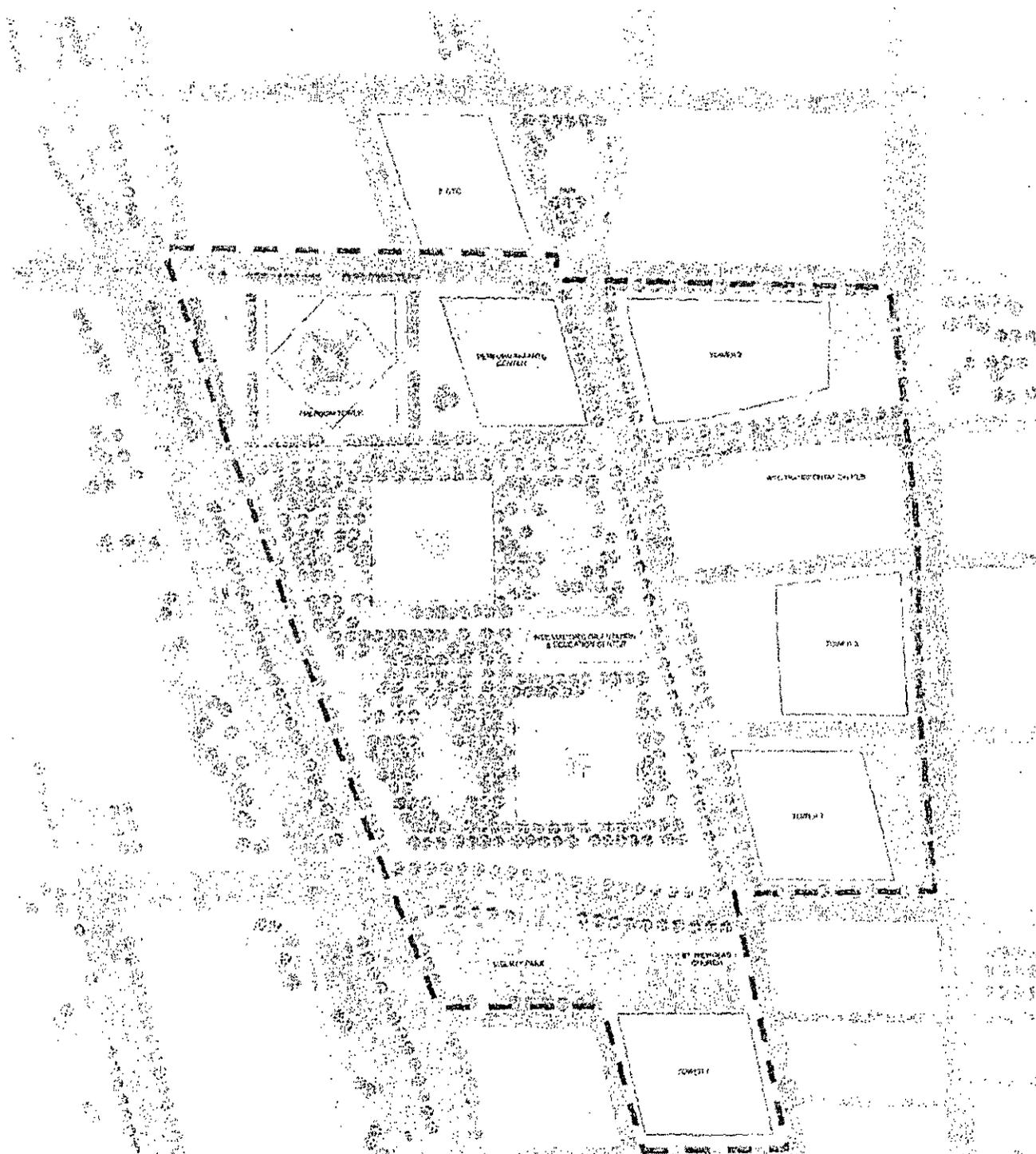
|                    |
|--------------------|
| INITIALED          |
| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

**EXHIBIT P**

**DEPICTION OF THE WORLD TRADE CENTER**

**[see attached page]**

# World Trade Center Site



|                    |
|--------------------|
| INITIALED          |
| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

EXHIBIT Q  
STACKING PLAN

|                        |                                                          |
|------------------------|----------------------------------------------------------|
| 69 <sup>th</sup> Floor | Office Suite Areas                                       |
| 68 <sup>th</sup> Floor | Office Suite Areas                                       |
| 67 <sup>th</sup> Floor | Conference Facilities                                    |
| 66 <sup>th</sup> Floor | Private Club Facilities                                  |
| 65 <sup>th</sup> Floor | Catering Area                                            |
| 64 <sup>th</sup> Floor | reception area /<br>conference rooms /<br>ancillary uses |

|                    |
|--------------------|
| INITIALED          |
| <i>[Signature]</i> |
| FOR THE LESSOR     |
| <i>[Signature]</i> |
| FOR THE LESSEE     |

**EXHIBIT R**

**FORM OF NET LESSOR SNDA**

**NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

This NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_ by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic, created by Compact between the States of New Jersey and New York (together with its successors and assigns, the "Port Authority"), with the consent of the Congress of the United States of America, and having an office at 225 Park Avenue, 15<sup>th</sup> Floor, New York, New York 10003, and CHINA CENTER NEW YORK LLC, a Delaware limited liability company (together with its successors and assigns, the "Space Tenant"), having an office at One Battery Park Plaza, 5<sup>th</sup> Floor, New York, New York 10004.

WHEREAS, the Port Authority and 1 World Trade Center LLC, a Delaware limited liability company (together with its successors and assigns, the "Lessee"), having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue, 15<sup>th</sup> Floor, New York, New York 10003, have heretofore entered into that certain Agreement of Lease, dated as of July 16, 2001, between the Port Authority, as lessor, and Lessee, as lessee, as amended by that certain First Amendment to Agreement of Lease, dated as of July 24, 2001, and as further amended by that certain Amendment to Lease and Reciprocal Easement and Operating Agreement, dated as of December 15, 2003 (such lease as so amended being hereinafter referred to as the "Original Net Lease");

WHEREAS, the Port Authority and the Lessee executed on November 16, 2006 that certain Amended and Restated Agreement of Lease dated as of July 16, 2001 which amended and restated in its entirety the Original Net Lease (as the same may hereafter be supplemented, amended or modified from time to time, is hereinafter called the "Net Lease"), covering the Lessee's leasehold interest in and to the improvements and property of a portion of a certain facility commonly known as The World Trade Center, located in the Borough of Manhattan, City, County, and State of New York (hereinafter called the "Facility");

WHEREAS, pursuant to and in accordance with the terms of the Net Lease, the Lessee and the Space Tenant have heretofore entered into that certain Agreement of Lease dated as of [\_\_\_\_\_, 2009] (as the same may hereafter be supplemented, amended or modified from time to time, is hereinafter called the "Space Lease") covering the Space Tenant's occupancy of a portion of the 64th Floor and the entire 65th through 69th floors (and the entire 70<sup>th</sup> and 71<sup>st</sup> floors in the event Space Tenant exercises its right to lease the Initial Expansion Space) of One World Trade Center, a portion of the Facility (said space being more particularly described in the Space Lease and hereinafter referred to as the "Sublet Premises"); and

WHEREAS, the Space Tenant has requested that the Port Authority agree that, subject to the conditions hereinafter set forth, the Space Tenant will be assured of possession under the Space Lease of the Sublet Premises in the event the Port Authority succeeds to the interests of the Lessee by reason of a default by Lessee under the Net Lease or otherwise (collectively, a

“Succession”) and elects to terminate the Net Lease pursuant to Section 21 thereof (entitled “Events of Default and Termination”), or otherwise by reason of the Lessee’s default thereunder, and in fact obtains possession of the Sublet Premises;

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, the Port Authority and the Space Tenant hereby agree as follows:

1. Subordination. Subject to the provisions hereof, the Space Tenant agrees that the Space Lease shall in all respects be, and is hereby expressly made, subject and subordinate at all times to the Net Lease and to all of the terms, conditions and provisions thereof.

2. Attornment.

a. In the event that the Port Authority acquires or succeeds to the interests of the Lessee under the Space Lease by reason of a Succession by the Port Authority, the Space Tenant shall be bound to the Port Authority under all of the terms, covenants and conditions of the Space Lease, except as provided in this Agreement, for the balance of the term thereof remaining, with the same force and effect as if the Port Authority were the Lessee, and the Space Lease shall continue in full force and effect as a direct lease between the Port Authority and the Space Tenant. The Space Tenant hereby agrees, upon the consummation of a Succession, to (i) attorn to the Port Authority as its landlord on such terms, (ii) affirm its obligations under the Space Lease, and (iii) make payments of all sums thereafter becoming due under the Space Lease to the Port Authority. Said attornment, affirmation and agreement is to be effective and self-operative, without the execution of any further instruments, upon the Port Authority succeeding to the interests of the Lessee under the Space Lease.

b. The Space Tenant agrees to execute and deliver at any time and from time to time, upon the request of the Port Authority or Lessee, any instrument or certificate deemed to be necessary or appropriate to evidence such attornment.

c. From and after such attornment, the Port Authority shall be bound to the Space Tenant under all the terms, covenants and conditions of the Space Lease as amended or otherwise modified, provided, however, the Port Authority shall not be:

i. obligated to cure any defaults under the Space Lease of any prior landlord (including, without limitation, the Lessee) which occurred prior to the date the Port Authority obtained legal possession or physical possession of the Sublet Premises, except for defaults which continue subsequent to the Port Authority obtaining such legal possession or physical possession;

ii. liable for any acts or omissions of any prior landlord (including, without limitation, the Lessee) which occurred prior to the date the Port Authority obtained legal possession or physical possession of the Facility, except for acts or omissions which continue subsequent to the Port Authority obtaining such legal possession or physical possession,

iii. subject to any offsets or defenses which the Space Tenant may have against any prior landlord (including, without limitation, the Lessee),

iv. bound by any payment of rent which the Space Tenant might have made for more than one (1) month in advance to any prior landlord (including, without limitation, the Lessee), other than security deposits and rent payments, to the extent such security deposits and rent payments are received by the Port Authority,

v. bound by any covenant to undertake or complete any construction of the Sublet Premises or any portion thereof demised by said Space Lease, except for (i) Landlord's Work and Tenant's Special Work, (ii) repair and maintenance obligations thereafter arising, (iii) repair obligations due to a casualty, but only to the extent insurance proceeds are received by the Port Authority, and (iv) repair obligations due to a condemnation, to the extent such condemnation proceeds are made available to, and are received by, the Port Authority, or

vi. bound by any obligation to make any payment to Space Tenant, except for (i) Landlord's Contribution, (ii) any payments due from Landlord pursuant to the provisions of Article 40 of the Space Lease and Section H of the Work Letter (as defined in the Space Lease) and (iii) services, repairs, maintenance and restoration provided for under the Space Lease to be performed after a Succession and which landlords of like properties ordinarily perform at the landlord's expense.

d. Anything herein or in the Space Lease to the contrary notwithstanding, in the event of a Succession, the Port Authority shall have no obligation, nor incur any liability, beyond the Port Authority's then interest, if any, in the Real Property (including any rent and casualty insurance proceeds and condemnation awards), and the Space Tenant shall look exclusively to such interest of the Port Authority in the Real Property for the payment and discharge of any obligations which may be imposed upon the Port Authority hereunder or under the Space Lease.

3. Non-Disturbance. Provided the Space Tenant is not in default under the terms of the Space Lease (after notice and beyond any applicable grace period) and complies with this Agreement, the Port Authority agrees that in the event of a Succession, (i) the Space Tenant's possession and occupancy of the Sublet Premises and the Space Tenant's rights and privileges under the Space Lease shall not be disturbed, subject to limitations or conditions set forth in this Agreement, (ii) the Port Authority shall recognize the Space Lease and the Space Tenant's rights thereunder, (iii) the Space Tenant's subleasehold estate under the Space Lease shall not be diminished, interfered with, disturbed or terminated, and (iv) the Port Authority shall not join the Space Tenant as a party defendant in any action or proceeding which may be instituted or taken by the Port Authority under the Net Lease, by reason of any default of the Lessee thereunder, to terminate the Net Lease, to remove or evict the Lessee or to recover possession of the Sublet Premises, unless required by law in order to make such action or proceeding effective. Subject to the limitations and conditions contained herein, the Port Authority upon Succession shall be deemed to be the lessor under the Space Lease and shall assume the obligations of the Lessee under the Space Lease thereafter arising or accruing.

4. Notices.

a. All notices, demands and requests (collectively the "Notices") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given if personally delivered or delivered by a nationally recognized overnight courier or mailed by certified mail, return receipt requested, postage prepaid or delivered by facsimile and shall be deemed delivered as of the date of such Notice if (i) delivered to the party intended; (ii) delivered to the then current address of the party intended; or (iii) rejected at the then current address of the party intended, provided such Notice was sent prepaid. The addresses of the parties are:

If to the Port Authority:      The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: Director of Real Estate

With a copy to:                The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: General Counsel – 15<sup>th</sup> Floor

If to Space Tenant:            Until Space Tenant occupies the Sublet Premises:  
China Center New York LLC  
One Battery Park Plaza  
Fifth Floor  
New York, New York 10004  
Attention: Xue Ya

Thereafter:  
China Center New York LLC  
One World Trade Center  
New York, New York \_\_\_\_\_

With a copy to:                Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Attention: Peter W. Herman, Esq.

If to Lessee:                    The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: Executive Director – 15<sup>th</sup> Floor

With a copy to:                The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: General Counsel – 15<sup>th</sup> Floor

b. Upon at least ten (10) days prior written Notice, each party shall have the right to change its address to any other address within the United States of America.

5. Miscellaneous. This Agreement (i) contains the entire agreement with respect to the subject matter hereof; (ii) may not be modified or terminated, nor may any provision hereof be waived, orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors, administrators and assigns; and (iii) shall inure to the benefit of, and be binding upon, the parties hereto, and their successors and assigns (including, without limitation, (a) Space Tenant's permitted assignees and (b) any successor to the Port Authority).

6. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

7. Liability. Neither the Commissioners of the Port Authority, any officer, agent or employee of the Port Authority, shall be held personally liable to any of the parties hereto under any term or provisions of this Agreement or because of its execution or because of any breach or alleged breach hereof.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which when taken together shall constitute but one and the same instrument.

9. Consent. The Port Authority hereby approves the Permitted Uses set forth in the Space Lease and the proposed headcounts and uses reflected on the test-fits referred to in the QAD Letter referred to in Section 5.04(c)(ii) of the Space Lease, provided, however, that Space Tenant acknowledges that the Port Authority has not approved the specific layouts or Alterations reflected in such uses or test-fits.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Port Authority and the Space Tenant have executed this Agreement effective as of the day and year first above written.

**PORT AUTHORITY:**

THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY

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

**SPACE TENANT:**

CHINA CENTER NEW YORK LLC,  
a Delaware limited liability company

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

(SEAL)



## EXHIBIT S

### CONVERTED RESTAURANT SPACE FMV

**Section S.01. Determination of Converted Restaurant Space FMV.** The initial determination of the Converted Restaurant Space FMV shall be made by Landlord. Landlord shall give notice (hereinafter referred to as a "Restaurant Rent Notice") to Tenant of the proposed Converted Restaurant Space FMV within thirty (30) days following the Restaurant Adjustment Date. The Converted Restaurant Space FMV so determined by Landlord shall be deemed conclusive and binding upon Tenant unless on or before the date that is thirty (30) days after Landlord gives to Tenant the Restaurant Rent Notice (a) Tenant gives to Landlord notice (hereinafter referred to as the "Restaurant Dispute Notice") that Tenant disputes the Converted Restaurant Space FMV so determined by Landlord, or (b) Landlord and Tenant agree in writing (which agreement (hereinafter referred to as a "Restaurant FMV Agreement") shall be duly executed and delivered by Landlord and Tenant) upon the Converted Restaurant Space FMV. If Tenant sends to Landlord a Restaurant Dispute Notice within the time and in the manner hereinbefore provided, and if Landlord and Tenant fail to so agree upon the Converted Restaurant Space FMV within twenty (20) days thereafter, the Converted Restaurant Space FMV shall be determined by arbitration pursuant to Section S.02 below.

**Section S.02. Dispute Regarding Converted Restaurant Space FMV.** If Tenant gives to Landlord a Restaurant Dispute Notice in respect of the Converted Restaurant Space FMV so determined by Landlord as provided in Section S.01 above, and Landlord and Tenant fail to execute and deliver a Restaurant FMV Agreement within twenty (20) days thereafter, then the Converted Restaurant Space FMV shall be determined by arbitration as follows:

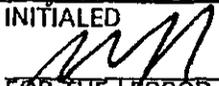
(a) Landlord and Tenant shall each appoint an arbitrator by written notice given to the other party hereto not later than thirty (30) days after the delivery of the Restaurant Dispute Notice, which arbitrators may then be regularly employed or engaged by Landlord or Tenant, but shall be unaffiliated with such party. If either Landlord or Tenant fail to appoint an arbitrator within such period of time and thereafter fail to do so by written notice given within a period of five (5) days after notice by the other party requesting the appointment of such arbitrator, then such arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York), upon request of either Landlord or Tenant, as the case may be;

(b) the two (2) arbitrators appointed as above provided shall attempt to reach an agreement as to the Converted Restaurant Space FMV, and in the event that the two (2) arbitrators are unable to do so within thirty (30) days after their joint appointment, then they shall appoint a third (3<sup>rd</sup>) arbitrator and give written notice of such designation to both Landlord and Tenant, and, if they fail to do so by written notice given within sixty (60) days after their joint appointment, such third (3<sup>rd</sup>) arbitrator shall be appointed by the AAA (the branch office of which is located in or closest to the City and State of New York). Such third (3<sup>rd</sup>) arbitrator shall not then be employed or engaged by either Landlord or Tenant or any of their respective affiliates;

(c) all of such arbitrators shall be New York State licensed real estate brokers having not less than ten (10) years' experience in representing owners or tenants in commercial leasing transactions in respect of first class, high quality "sit down" restaurants in downtown Manhattan; and

(d) the arbitrators, selected as aforesaid, shall convene and render their decision in accordance with the then-applicable rules of the AAA, which decision shall be strictly limited to a determination of the Converted Restaurant Space FMV, within thirty (30) days after the appointment of the second (2<sup>nd</sup>) arbitrator or the third (3<sup>rd</sup>) arbitrator, as the case may be. The decision of such arbitrators shall be in writing. If the first two (2) arbitrators appointed as above provided reach an agreement as to the Converted Restaurant Space FMV, said agreement shall be the decision of the arbitrators. If a third (3<sup>rd</sup>) arbitrator is appointed as above provided, then such third (3<sup>rd</sup>) arbitrator's decision shall be limited to a choice that is either the determination of the Converted Restaurant Space FMV made by the first (1<sup>st</sup>) arbitrator or the determination of the Converted Restaurant Space FMV made by the second (2<sup>nd</sup>) arbitrator. Insofar as the same is in compliance with the provisions and conditions of this Article, the decision of the arbitrators shall be binding upon Landlord and Tenant. Duplicate original counterparts of such decision shall be sent forthwith by the arbitrators by certified mail, return receipt requested, to both Landlord and Tenant. The arbitrators, in arriving at their decision (including the third (3<sup>rd</sup>) arbitrator, notwithstanding the fact that the third (3<sup>rd</sup>) arbitrator's decision is limited as hereinbefore provided), shall be entitled to consider all testimony and documentary evidence that may be presented at any hearing, as well as facts and data that the arbitrators may discover by investigation and inquiry outside such hearings. If, for any reason whatsoever, a written decision of the arbitrators shall not be rendered within sixty (60) days after the appointment of the third (3<sup>rd</sup>) arbitrator, then, at any time thereafter before such decision shall have been rendered, either party may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, by action, proceeding or otherwise (but not by a new arbitration proceeding) as may be proper, to determine the question in dispute consistently with the provisions of this Lease. The cost and expense of such arbitration, action, proceeding, or otherwise shall be borne equally by Landlord and Tenant, but Landlord and Tenant shall each pay their own arbitrators' and attorneys' fees and disbursements and witnesses fees.

**Section S.03. FMV Pending Resolution of Dispute.** If Tenant gives to Landlord a Restaurant Dispute Notice in respect of the Converted Restaurant Space FMV so determined by Landlord as provided in Section S.01, then, pending resolution of the dispute, the Fixed Rent payable by Tenant for the Converted Restaurant Space following the Restaurant Adjustment Date, subject to adjustment as herein provided, shall be the Minimum Restaurant Fixed Rent, and once the Converted Restaurant Space FMV is finally determined pursuant to the terms of Section S.02, there shall be a retroactive adjustment between the parties, and Tenant, within thirty (30) days after Landlord's demand therefor, shall pay to Landlord an amount equal to the difference between (x) the sum of the actual Fixed Rent payments paid to Landlord in respect of the Converted Restaurant Space after the Restaurant Adjustment Date before such final determination and (y) the sum of the Fixed Rent payments that would have been payable by Tenant if the Fixed Rent had been finally determined prior to the Restaurant Adjustment Date.

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| FOR THE LESSEE                                                                        |