

**Fill in this information to identify the case:**

Debtor Broadview Networks, Inc.

United States Bankruptcy Court for the: Southern District of New York  
(State)

Case number 19-22456

**Official Form 410  
Proof of Claim**

04/16

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

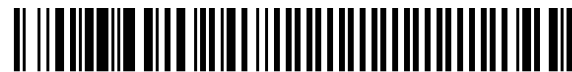
**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1: Identify the Claim**

1. <b>Who is the current creditor?</b>	<u>3HQ Partner LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. <b>Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. <b>Where should notices and payments to the creditor be sent?</b>	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>3HQ Partner LLC</u> <u>Mark Frankel</u> <u>c/o Backenroth Frankel Krinsky, LLP</u> <u>800 3rd Ave Fl 11</u> <u>NEW YORK, NY 100227651</u>	
	Contact phone <u>2125931100</u>	Contact phone _____
	Contact email <u>mfrankel@bfklaw.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. <b>Does this claim amend one already filed?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. <b>Do you know if anyone else has filed a proof of claim for this claim?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Who made the earlier filing? <u>3HQ Partner LLC</u>	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

7. How much is the claim? \$ 226,268. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Lease Rejection

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ 0.00

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/01/2019  
MM / DD / YYYY

/s/Mark Frankel  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Mark Frankel  
First name Middle name Last name

Title Attorney for the Claimant

Company BACKENROTH, FRANKEL KRINSKY LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 759-8815 | International (424) 236-7262

<b>Debtor:</b> 19-22456 - Broadview Networks, Inc.		
<b>District:</b> Southern District of New York, White Plains Division		
<b>Creditor:</b> 3HQ Partner LLC Mark Frankel c/o Backenroth Frankel Krinsky, LLP 800 3rd Ave Fl 11 NEW YORK, NY, 100227651 <b>Phone:</b> 2125931100 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> mfrankel@bfklaw.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> Yes <b>Related Claim Filed By:</b> 3HQ Partner LLC	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> Yes <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Lease Rejection	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 226,268	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> Yes, 0.00 <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Mark Frankel on 01-Nov-2019 3:09:14 p.m. Eastern Time <b>Title:</b> Attorney for the Claimant <b>Company:</b> BACKENROTH, FRANKEL KRINSKY LLP		

**Tenancy Schedule I**

Property: 3hqown As of Date: 07/01/2019 By Property Notes : 1. \* Future Active lease / Future Active Amendment 2. \*\* Pending Amendments 3. \*\*\* Past / Superseded Amendments

Property	Unit(s)	Lease	Lease Type	Area	Lease From	Lease To	Term	Tenancy	Monthly	Annual	
									Years	Rent	Rent
<b>3HQ Owner LLC (3hqown)</b>	<b>N304</b>	<b>BROADVIEW NETWORKS, INC. (t0010565)</b>	<b>Office - Gross</b>	<b>9,348.00</b>	<b>11/1/2018</b>	<b>12/31/2023</b>	<b>62.00</b>	<b>0.67</b>	<b>18,306.50</b>	<b>219,678.00</b>	
	Rent Steps	Charge	Type	Unit	Area Label	Area	From	To	Monthly Amt	Amount Owed	
		rent	Rent	N304	Rentable Square Feet	9,348.00	10/1/2019	10/31/2019	18,306.50	18,306.50	
		rent	Rent	N304	Rentable Square Feet	9,348.00	11/1/2019	10/31/2020	18,855.70	226,268.40	
		rent	Rent	N304	Rentable Square Feet	9,348.00	11/1/2020	12/31/2021	19,421.37	233,056.44	
		rent	Rent	N304	Rentable Square Feet	9,348.00	11/1/2021	10/31/2022	20,004.01	240,048.12	
		rent	Rent	N304	Rentable Square Feet	9,348.00	11/1/2022	10/31/2023	20,604.13	247,249.56	
		rent	Rent	N304	Rentable Square Feet	9,348.00	11/1/2023	12/31/2023	21,222.25	42,444.50	
									Total Due	<u><u>\$ 1,007,373.52</u></u>	

**Hines REIT Three Huntington Quadrangle LLC, Landlord**

**to**

**Broadview Networks, Inc., Tenant**

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**LEASE**

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Dated as of March \_\_\_\_, 2011

**LEASE**, dated as of March \_\_, 2011 ("Execution Date"), between Hines REIT Three Huntington Quadrangle LLC ("Landlord"), whose address is c/o Hines REIT Properties, L.P., c/o Hines Interests Limited Partnership, 2800 Post Oak Bend, Suite 5000, Houston, Texas 77056, Attn: Charles N. Hazen and Broadview Networks, Inc. (the "Tenant"), whose address is 800 Westchester Avenue, Suite N-501, Rye Brook, New York 10573.

## **WITNESSETH**

**WHEREAS**, Landlord is willing to lease to Tenant and Tenant is willing to hire and rent from Landlord, on the terms hereinafter set forth, certain space in the office building located at 3 Huntington Quadrangle, Melville, New York (the "Building") (the Building and all parking areas, plazas, sidewalks, curbs and common areas appurtenant thereto are collectively called the "Project").

**NOW, THEREFORE**, Landlord and Tenant agree as follows:

### **ARTICLE 1. Premises; Term; Use**

**1.01. Demise.** (a) Landlord hereby leases to Tenant and Tenant hereby hires from Landlord, subject to the terms and conditions of this Lease, Suite 304N, consisting of approximately 9,348 rentable square feet on the third floor in the North tower of the Project (the "Premises"), as more particularly shown on the plan attached as Exhibit A, together with the right to use the Building common areas. Landlord and Tenant hereby agree on the square footage of the Premises and deem such measurement to be conclusive.

(b) As used herein, "Building common areas" shall mean the non-assigned parking areas; lobby; elevator(s); fire stairs; public hallways; public laboratories; all other general Building facilities that service all tenants of the Building; air conditioning; fax rooms; janitor's closets; electrical closets; telephone closets; elevator shafts and machine rooms; flues; stacks; pipe shafts and vertical ducts with their enclosing walls.

**1.02. Term.** The term of this Lease (the "Term") shall commence on the Commencement Date (as defined below) and, subject to the terms of Section 4.01 herein, shall end, unless sooner terminated or extended as herein provided, on last day of the calendar month that is seven (7) years and seven (7) months after the Commencement Date, as defined herein (the "Expiration Date").

#### **1.03. Commencement Date.**

(a) "Commencement Date" means the date that is seven (7) calendar days after the date that Landlord substantially completes items (i) and (ii) of Landlord's Work as described in Section 4.01(b) below (i.e., repainting and re-carpeting of the Premises), which Landlord reasonably estimates to occur on or about March 15, 2011.

(b) If for any reason Landlord shall be unable to substantially complete items (i) and (ii) of Landlord's Work as described in Section 4.01(b) on or before March 15, 2011, Landlord

shall have no liability to Tenant therefore and the validity of this Lease shall not be impaired, nor shall the Term be extended, by reason thereof. Notwithstanding the foregoing, in the event Landlord is unable to substantially complete such items of Landlord's Work on or before March 15, 2011, Tenant shall be entitled to a day-for-day abatement of Fixed Rent for each day beyond March 15, 2011 that such items of Landlord's Work remain uncompleted, which abatement shall be credited towards Fixed Rent due upon the expiration of the Fixed Rent Abatement Period (defined herein); Tenant shall not be entitled to any such day-for-day abatement of Fixed Rent if Landlord's inability to substantially complete items (i) and (ii) of Landlord's Work is a result of a Tenant delay (including without limitations delays in selecting paint or carpet, or work simultaneously being performed at the Premises by Tenant). This Section 1.03 shall be an express provision to the contrary for purposes of Section 223-a of the New York Real Property Law and any other law of like import now or hereafter in effect.

**1.04. Use.** The Premises shall be used and occupied by Tenant (and its permitted subtenants and assignees) solely as general, administrative and executive office spaces for a communications provider provided, that in no event shall the Premises be used for any of the following: (a) bank or credit union branch location (b) a restaurant, bar or for the sale of food or beverages, (c) a school or classroom, (d) medical or psychiatric offices, (e) conduct of an auction, (f) gambling activities, (g) conduct of obscene, pornographic or similar disreputable activities, (h) offices of an agency, department or bureau of the United States Government, any state or municipality within the United States or any foreign government, or any political subdivision of any of them, (i) offices of any charitable, religious, union or other not-for-profit organization, or (j) offices of any tax exempt entity within the meaning of Section 168(h)(2) of the Internal Revenue Code of 1986, as amended, or any successor or substitute statute, or rule or regulation applicable thereto. The Premises shall not be used for any purpose which would tend to lower the first-class character of the Building, create unreasonable or excessive elevator or floor loads, materially impair or interfere with any of the Building operations or the proper and economic heating, ventilation, air-conditioning, cleaning or other servicing of the Building, constitute a public or private nuisance, materially interfere with, annoy or disturb any other tenant or Landlord, impair the appearance of the Building or violate the certificate of occupancy (temporary or permanent) issued for the Building or portion thereof of which the Premises form a part. Notwithstanding the foregoing, Landlord acknowledges that Tenant will dispatch technicians from the Premises.

**1.05** Landlord represents and warrants that it is the sole owner of the Building and the land on which the Building is located, that it has the full right and authority to enter into this Lease, and that the execution of this Lease by the officer executing it as Landlord's agent has been duly authorized by all required actions of Landlord's Board of Directors.

## **ARTICLE 2. Rent**

**2.01. Rent.** "Rent" shall consist of (i) Fixed Rent and (ii) Additional Charges.

**2.02. Fixed Rent.** The fixed rent ("Fixed Rent") shall be as follows:

- (a) With respect to the Premises, the Tenant shall pay to the Landlord, at the



address of the Landlord hereinabove set forth, without notice, demand, off-set or deduction, a basic rent as set forth on Exhibit B attached hereto, which is payable in advance on the first business day of the calendar month commencing on the Rent Commencement Date.

(b) Commencing on (i) the first day of the thirteenth (13<sup>th</sup>) month following the Commencement Date, where the Commencement Date is the first day of a calendar month, and/or (ii) the first day of the thirteenth (13<sup>th</sup>) month following the first day of the calendar month following the month in which the Commencement Date occurs, where the Commencement Date is not the first day of a calendar month, the Fixed Rent for the Premises shall increase by three percent (3%) per annum, on a compounding cumulative basis, so that on each twelve (12) month anniversary of such date, the applicable Fixed Rent shall increase by three percent (3%) over the then-prevailing Fixed Rent. The schedule set forth at Exhibit B includes the three percent (3%) increase referred to in this Section 2.02(b).

(c) Fixed Rent shall be payable by Tenant in equal monthly installments in advance on the first business day of each calendar month; provided that, simultaneously with its execution hereof, Tenant is paying the first full calendar month's Fixed Rent. The "Rent Commencement Date" shall be (i) the first day of the seventh (7<sup>th</sup>) calendar month following the Commencement Date, where the Commencement Date is the first day of a calendar month or (ii) the first day of the seventh (7<sup>th</sup>) calendar month following the month immediately following the month in which the Commencement Date occurs, where the Commencement Date is not the first day of a calendar month (the "Fixed Rent Abatement Period"). In the event that during the Fixed Rent Abatement Period there is a default by Tenant under this Lease which is not cured within the applicable cure period provided in this Lease, the remainder of the Fixed Rent Abatement Period shall be automatically rescinded, and Tenant's obligation to pay monthly installments of Fixed Rent shall automatically resume. In all events, payments of Additional Charges, including, without limit, electricity and Taxes, shall commence on the Commencement Date. If the Rent Commencement Date is not the first day of a month, then Fixed Rent for the month in which the Rent Commencement Date occurs shall be prorated, and shall be due on the Rent Commencement Date, in addition to the first full calendar month's Fixed Rent provided for herein.

**2.03. Additional Charges.** "Additional Charges" and/or "Additional Rent" means Tax Payments, electrical charges, as applicable, and all other sums of money, other than Fixed Rent, at any time payable by Tenant under this Lease, all of which Additional Charges shall be deemed to be rent.

#### **2.04. Tax Payments.**

(a) "Base Tax Year" means the Taxes actually due and payable with respect to the December 1, 2010-November 30, 2011 tax year for taxes payable on a fiscal year basis or such other period of twelve (12) months occurring during the Term as hereinafter may be adopted as the fiscal year for tax purposes of any governmental or municipal body having taxing authority over the Project. "Base Amount" shall mean the aggregate of the Taxes for the Base Tax Year.

(b) "Taxes" means (i) the real estate taxes, vault taxes, assessments and

special assessments levied, assessed or imposed upon or with respect to the Project by any federal, state, municipal or other government or governmental body or authority or any payments in lieu of taxes, (ii) any taxes, assessments or charges imposed upon or against the Project, Landlord or the owner of the Project with respect to any business improvement district (collectively, "Bid Taxes"), (iii) all taxes assessed or imposed with respect to the rentals payable under this Lease other than general income and gross receipts taxes; and (iv) any expenses incurred by Landlord in contesting such taxes or assessments and/or the assessed value of the Project, which expenses shall be allocated to the Tax Year to which such expenses relate. If at any time the method of taxation shall be altered so that in lieu of or as an addition to or as a substitute for, the whole or any part of such real estate taxes, assessments and special assessments now imposed on real estate, there shall be levied, assessed or imposed (x) a tax, assessment, levy, imposition, fee or charge wholly or partially as a capital levy or otherwise on the rents received therefrom, or (y) any other additional or substitute tax, assessment, levy, imposition, fee or charge, including, without limitation, business improvement district and transportation taxes, fees and assessments, then all such taxes, assessments, levies, impositions, fees or charges or the part thereof so measured or based shall be included in "Taxes". Except as permitted in this Section 2.04(b), "Taxes" shall not include any franchise capital stock or transfer tax imposed on Landlord. If the Bid Taxes are eliminated or reduced after the date hereof, then, as of the date of such elimination or reduction, the Base Tax Amount shall be recalculated to take into account the elimination or reduction of the Bid Taxes; provided, however, that if Bid Taxes are subsequently reimposed or increased, the Base Tax Amount shall be recalculated to take into account the reimposition or increase of the Bid Taxes.

(c) "Tax Year" means each calendar year in which occurs any part of the Term, or such other period of twelve (12) months occurring during the Term as hereafter may be adopted as the fiscal year for real estate tax purposes of the governmental bodies having taxing jurisdiction over the Project.

(d) "Tenant's Tax Share" means 2.337% (where the Premises consist of 9,348 rentable square feet and the gross rentable square feet of the Building are 400,000).

(e) (i) If Taxes for any Tax Year, including the Tax Year in which the Commencement Date occurs, shall exceed the Base Tax Amount, Tenant shall pay to Landlord (each, a "Tax Payment") Tenant's Tax Share of the amount by which Taxes for such Tax Year are greater than the Base Tax Amount. Landlord may furnish to Tenant, prior to the commencement of each Tax Year, a statement setting forth Landlord's reasonable estimate of the Tax Payment for such Tax Year. Tenant shall pay to Landlord on the first day of each month during such Tax Year, an amount equal to 1/12th of Landlord's estimate of the Tax Payment for such Tax Year. If Landlord shall not furnish any such estimate for a Tax Year or if Landlord shall furnish any such estimate for a Tax Year subsequent to the commencement thereof, then (i) until the first day of the month following the month in which such estimate is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section 2.04(e) in respect of the last month of the preceding Tax Year; (ii) after such estimate is furnished to Tenant, Landlord shall notify Tenant whether the installments of the Tax Payment previously made for such Tax Year were greater or less than the installments of the Tax Payment to be made in accordance with such

estimate, and (x) if there is a deficiency, Tenant shall pay the amount thereof within twenty (20) days after demand therefore, or (y) if there is an overpayment, Landlord shall refund to Tenant the amount thereof; and (iii) on the first day of the month following the month in which such estimate is furnished to Tenant and monthly thereafter throughout such Tax Year, Tenant shall pay to Landlord an amount equal to 1/12th of the Tax Payment shown on such estimate. Landlord may, during each Tax Year, furnish to Tenant a revised statement of Landlord's estimate of the Tax Payment for such Tax Year, and in such case, the Tax Payment for such Tax Year shall be adjusted and paid or refunded as the case may be, substantially in the same manner as provided in the preceding sentence. After the end of each Tax Year, Landlord shall furnish to Tenant a statement of Tenant's Tax Payment for such Tax Year (and shall endeavor to do so within ninety (90) days after the end of each Tax Year provided failure to so provide shall not be a waiver of any of Landlord's rights hereunder). If such statement shall show that the sums paid by Tenant, if any, under Section 2.04(e) exceeded the Tax Payment to be paid by Tenant for the applicable Tax Year, Landlord shall refund to Tenant the amount of such excess; and if such statement shall show that the sums so paid by Tenant were less than the Tax Payment to be paid by Tenant for such Tax Year, Tenant shall pay the amount of such deficiency within twenty (20) days after demand therefore. If there shall be any increase in the Taxes for any Tax Year, whether during or after such Tax Year, or if there shall be any decrease in the Taxes for any Tax Year, the Tax Payment for such Tax Year shall be appropriately adjusted and paid or refunded, as the case may be, in accordance herewith. In no event, however, shall Taxes be reduced below the Base Tax Amount.

(f) If Landlord shall receive a refund of Taxes for any Tax Year, Landlord shall pay to Tenant Tenant's Tax Share of the net refund (after deducting from such refund the reasonable costs and expenses of obtaining the same, including, without limitation, reasonable appraisal, accounting and legal fees, to the extent that such costs and expenses were not included in the Taxes for such Tax Year).

(g) The obligations of Landlord and Tenant under the provisions of this Section 2.04 shall survive the Expiration Date.

## **2.05. Tax Provisions.**

(a) In any case provided in Section 2.04 in which Tenant is entitled to a refund, Landlord may, in lieu of making such refund, credit against future installments of Rent any amounts to which Tenant shall be entitled. Nothing in this Article 2 shall be construed so as to result in a decrease in the Fixed Rent. If this Lease shall expire before any such credit shall have been fully applied, then (provided Tenant is not in default under this Lease) Landlord shall refund to Tenant the unapplied balance of such credit. Nothing contained in this Section 2.05(a) shall permit Landlord to retain any portion of such credit in excess of the amount necessary to cure any Tenant default then occurring.

(b) Landlord's failure to render or delay in rendering any statement with respect to any Tax Payment or installment thereof shall not prejudice Landlord's right to thereafter render such a statement, nor shall the rendering of a statement for any Tax Payment or installment thereof prejudice Landlord's right to thereafter render a corrected statement

therefore; provided, however, that Landlord waives any right to render any statement (whether original or corrected) with respect to any Tax Payment of installment therefore more than twenty-four (24) months after said statement was originally due.

(c) Landlord and Tenant confirm that the computations under this Article 2 are intended to constitute a formula for agreed rental escalation and may or may not constitute an actual reimbursement to Landlord for Taxes and other costs and expenses incurred by Landlord with respect to the Project. If the Building shall be condominiumized, then Tenant's Tax Payments shall, if necessary, be equitably adjusted such that Tenant shall thereafter continue to pay the same share of the Taxes of the Building as Tenant would pay in the absence of such condominiumization.

(d) Each Tax Payment in respect of a Tax Year which begins prior to the Commencement Date or ends after the expiration or earlier termination of this Lease, and any tax refund pursuant to Section 2.04(f), shall be prorated to correspond to that portion of such Tax Year occurring within the Term.

## **2.06. Electricity.**

(a) At the rates hereinafter set forth Landlord shall provide and Tenant shall purchase from Landlord energy service ("Energy Service") for Tenant's requirements. Energy Service is energy which does not exceed 4 watts, demand load per rentable square foot contained in the Premises ("Tenant's Allowable Use"). Of this amount, two (2) watts are allocated to Landlord supplied lighting and two (2) watts are allocated for Tenant's usual office equipment.

(b) (i) The charge for Energy Service is payable at the rate of \$3.25 per annum per square foot contained in the Premises and is subject to escalation as hereinafter provided. The charge for Energy Service is not included in the Fixed Rent set forth in Section 2.01. The Energy Service charge, together with any escalation thereto, shall be payable as Additional Charges. The Energy Service charge shall be paid, on the first business day of each calendar month, commencing on the Commencement Date. In the event the Commencement Date does not occur on the first day of a calendar month, the Energy Service charge for the partial calendar month in which the Commencement Date occurs shall be prorated on the basis of the number of days within such calendar month.

(ii) Escalation of Charges for Energy Service: the rates referred to in this Section 2.06 are based upon the average of the current monthly rates promulgated by the utility company during the twelve (12) month period immediately prior to the date hereof. All of the rates, fuel and adjustment costs, state and local government taxes, and all other component parts of the utility company charges referred to in this Section 2.06 are subject to increase to reflect increases in rate or classification or other component parts of the bill employed by the utility company providing services to the Building. Landlord shall have the right to bill Tenant and Tenant agrees to pay such increase in utility company charges monthly, as additional rent. Landlord shall give due notice to Tenant of any such increase in charge. Tenant shall not be or become entitled to such increase in charge. Tenant shall not be or become entitled to a reduction in Fixed Rent, Additional Charges or to other reimbursement in the event it uses less energy than

is contemplated by this Section 2.06.

(C) Landlord's energy management system will be conclusive evidence of the computation of Energy Service. However, Landlord hereby reserves to itself the right, from time to time, to use a reputable electric engineering company (the "Engineer") to make a survey of Tenant's energy usage requirements to determine whether the Tenant's Allowable Use limitation has been exceeded and, if so, to what extent. If these surveys indicate at the time that the cost to Landlord by reason thereof, computed on an annual basis at rates which would be charged by a public utility company servicing the Building for such purposes, is in excess of the initial cost similarly computed, then the Additional Charges provided for in this Section 2.06 shall be increased as provided for herein, commencing with the first day of the month immediately following the computation of such survey and the submission of a copy thereof to Tenant.

(D) Telephone and data transmission service (collectively, "Telephone/Data Service") shall be the responsibility of Tenant. Tenant shall make all arrangements for telephone/data service directly with a telecommunications company supplying said service, including the deposit requirement for the furnishing of service. Landlord shall not be responsible for any delays occasioned by the failure of said company to furnish such service. In the event Landlord has designated a company as the prime Telephone/Data Service provider for the Building, Tenant may use a different telephone/data service provider of its choice provided (A) such other provider shall be reasonably acceptable to Landlord, (B) the installation work of such provider shall be performed in accordance with the provisions of Section 4.02(b) of this Lease and (C) such provider shall install the equipment required to provide such service to Tenant inside the Premises and not in the common areas of the Building (except that the wiring and cabling to such equipment may be run through such common areas in the manner and location reasonably required by Landlord).

(E) At Landlord's option, it shall furnish and install all ballasts used in the Premises and Tenant shall pay Landlord's reasonable charges therefore, on demand, as Additional Charges. Tenant may, at its sole cost, furnish and install lighting tubes and bulbs, provided same is done in accordance with the provisions of this Lease.

(F) Landlord reserves the right to install an energy management system or from time to time to make modifications and/or upgrades to the existing energy management system in the Building and the Premises in order to measure Tenant's consumption of electric current and HVAC service in the Premises. The energy management system, whether presently existing or hereinafter installed, may cut off or curtail HVAC service within the Premises at the end of Business Hours but such HVAC service may be restored, at Tenant's election, by a means which shall record Tenant's use of HVAC service after Business Hours. The hours of usage recorded by such energy management system shall be conclusive evidence of Tenant's occupancy of the Premises after Business Hours.

(G) Landlord shall have full and unrestricted access to all air-conditioning and heating equipment, and to all other utility installations servicing the Building and the Demised Premises. Landlord reserves the right temporarily to interrupt, curtail, stop or

suspend air-conditioning and heating service, and all other utilities, or other services, because of Landlord's inability to obtain, or difficulty or delay in obtaining, labor or materials necessary therefore, or in order to comply with governmental restrictions in connection therewith, or for any other cause beyond Landlord's reasonable control, provided, however, that Landlord shall use commercially reasonable efforts to minimize any resultant disruption of Tenant's operations in the Premises. No diminution or abatement of Rent, additional rent, or other compensation shall be granted to Tenant, nor shall this Lease or any of the obligations of Tenant hereunder be affected or reduced by reason of such interruptions, stoppages or curtailments, the causes of which are hereinabove enumerated, nor shall the same give rise to a claim in Tenant's favor that such failure constitutes actual or constructive, total or partial, eviction from the Demised Premises, unless such interruptions, stoppages or curtailments have been due to the arbitrary, willful or negligent act, or failure to act, of Landlord or its agents.

**2.07. Manner of Payment.** (1) Tenant shall pay all Rent as the same shall become due and payable under this Lease either by wire transfer of immediately available federal funds as directed by Landlord or by check (subject to collection) drawn on a New York Clearing House Association member bank, in each case at the times provided herein without notice or demand and without setoff or counterclaim. All Rent shall be paid in lawful money of the United States to Landlord at the address provided above, or such other place as Landlord may from time to time designate. If Tenant fails timely to pay any Rent within seven (7) days of its due date, Tenant shall pay interest thereon from the date when such Rent became due to the date of Landlord's receipt thereof at the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law. In addition, if Tenant fails to pay any rent within five (5) days following the due date therefore, Tenant shall pay a late charge equal to five percent (5%) of such Rent. Any Additional Charges for which no due date is specified in this Lease shall be due and payable on the tenth (10th) day after the date of invoice. All bills, invoices and statements rendered to Tenant with respect to this Lease shall be binding and conclusive on Tenant unless, within sixty (60) days after receipt of same, Tenant notifies Landlord that it is disputing same.

**2.08. Security Deposit.**

(a) Tenant shall deliver has delivered to Landlord, as security for the performance of Tenant's obligations under this Lease, the sum of \$59,009.25, in certified or official bank check, subject to the provisions of Section 2.08(b) below, (the "Security Deposit"), which amount is equal to three (3) months' full Fixed Rent and three (3) months' Energy Service charge for electric. Landlord may draw on the Security Deposit to remedy defaults by Tenant in the payment or performance of any of Tenant's obligations under this Lease. If Landlord shall have so drawn upon the Security Deposit Tenant shall upon demand deposit with Landlord a sum equal to the amount so drawn by Landlord.

(b) Tenant may, at its option, provide Landlord with a clean, irrevocable, transferable and unconditional standby letter of credit in a form reasonably satisfactory to Landlord in lieu of the cash Security Deposit required pursuant to Section 2.08(a) (the "Letter of Credit"). The Letter of Credit shall be issued by and drawable upon any commercial bank, trust company, national banking association or savings and loan association (hereinafter referred to as

the "Issuing Bank") with offices for banking purposes in the New York City metropolitan area, reasonably satisfactory to Landlord. Landlord acknowledges that a Letter of Credit issued by Citibank, N.A. is satisfactory. The Letter of Credit shall name Landlord as beneficiary, be in the amount of the Security Deposit, have a term of not less than one (1) year, permit multiple drawings, be fully transferrable by Landlord without payment of any fees or charges, and otherwise be in form and content reasonably satisfactory to Landlord. If, upon any transfer, any fees or charges shall be so imposed, then such fees or charges shall be payable solely by Tenant and the Letter of Credit shall so specify. The Letter of Credit shall provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each thereafter during the Term, unless the Issuing Bank sends notice to Landlord that it elects not to have such Letter of Credit renewed (the "Non-Renewal Notice"), which Non-Renewal Notice shall be sent not less than thirty (30) days next preceding the then expiration date of the Letter of Credit by certified mail, return receipt requested or by nationally recognized overnight courier. Landlord shall have the right, exercisable fifteen (15) days after its receipt (or upon such shorter time after receipt of the Non-Renewal Notice if the expiration date of the Letter of Credit shall occur prior to the expiration of the fifteen (15) day period) of the Non-Renewal Notice to draw the full amount of the Letter of Credit, by sight draft on the Issuing Bank, and shall hold or apply the proceeds of the Letter of Credit pursuant to the terms of this Section 2.08. Landlord may draw upon the Letter of Credit in whole or in part to remedy defaults by Tenant in the payment or performance of any of Tenant's obligations under this Lease. If Landlord shall have so drawn upon the Letter of Credit, Tenant shall upon demand deposit with Landlord a sum equal to the amount so drawn by Landlord.

(c) Provided Tenant is not in default under this Lease and Tenant has surrendered the Premises to Landlord in accordance with all of the terms and conditions of this Lease: (i) Landlord shall return to Tenant the Security Deposit then held by Landlord or (ii) if Landlord shall have drawn upon such Security Deposit to remedy defaults by Tenant in the payment or performance of any of Tenant's obligations under this Lease, Landlord shall return to Tenant that portion, if any, of such Security Deposit remaining in Landlord's possession. Nothing contained in this Section 2.08(c) shall permit Landlord to retain any portion of the Security Deposit in excess of the amount necessary to cure any Tenant default then occurring.

(d) Tenant agrees that in the event of a sale of the Building or a leasing of the entire Building, Landlord may transfer the cash Security Deposit held by it to such party, and, with respect to the Letter of Credit, and within five (5) days after notice of such transfer, Tenant shall, at its sole cost, arrange for the transfer of the Letter of Credit to the new landlord, as designated by Landlord, or have the Letter of Credit reissued in the name of the new landlord (and upon such reissuance, Landlord shall return to Tenant the original Letter of Credit). Tenant thereafter agrees to look strictly to the successor Landlord for the return of the cash Security Deposit or Letter of Credit, as the case may be. Upon such transfer and upon the successor Landlord acknowledging receipt of the deposit, the transferring Landlord will be forever released.

(e) Tenant further agrees not to encumber or assign the Security Deposit hereunder and Landlord will not be bound by any such encumbrance or assignment.

## ARTICLE 3. Landlord Covenants

### 3.01. Landlord Services.

(a) From and after the Commencement Date, Landlord shall furnish Tenant with the following services (collectively, "Landlord Services"):

(i) heat, ventilation and air-conditioning to the Premises during Business Hours on Business Days; if Tenant shall require heat, ventilation or air conditioning services at any other times and shall provide the Building management office with at least twenty-four (24) hour notice of same, Landlord shall furnish the same and Tenant shall be obligated to pay Landlord's then established charges therefore;

(ii) (A) passenger elevator service to each floor of the Premises at all times during Business Hours on Business Days, with at least one passenger elevator subject to call at all other times and (B) freight elevator service to the Premises on a first come-first served basis (i.e., no advance scheduling) during Business Hours on Business Days, and on a reserved basis at all other times upon the payment of Landlord's then established charges therefore the use of all elevators shall be on a nonexclusive basis, which charges shall be applied in a non-discriminatory manner;

(iii) reasonable quantities of hot and cold water to the floor(s) on which the Premises are located for core lavatory and cleaning purposes only; if Tenant requires water for any other purpose, Landlord shall furnish cold water at the Building core riser through a capped outlet located on the floor on which the Premises is located (within the core of the Building), and the cost of heating such water, as well as the cost of piping and supplying such water to the Premises, shall be paid by Tenant, the heating costs of which shall be applied on a non-discriminatory basis; Landlord may install and maintain, at Tenant's expense, meters to measure Tenant's consumption of cold water and/or hot water for such other purposes in which event Tenant shall reimburse Landlord for the quantities of cold water and hot water shown on such meters (including Landlord's standard charge for the production of such hot water, if produced by Landlord), on demand;

(iv) electricity for lighting and usual office equipment as set forth in Section 2.06.

(v) cleaning services in accordance with Exhibit C attached hereto. Landlord's cleaning contractor shall have access to the Premises after 6:00 p.m. and before 8:00 a.m. and shall have the right to use, without charge therefore, all light, power and water in the Premises reasonably required to clean the Premises; together with the provision of ice and snow removal, lawn care, landscaping, daily refuse removal, and pest extermination and control.

(vi) Landlord hereby represents that it shall provide security twenty-four (24) hours a day, seven (7) days a week to the Building, at such staffing levels as reasonably determined by Landlord and as consistent with other similar buildings in the area.



(b) Landlord may stop or interrupt any Landlord Service, electricity, or other service and may stop or interrupt the use of any Building facilities and systems at such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, or the making of repairs, alterations or improvements, or inability to secure a proper supply of fuel, gas, steam, water, electricity, labor or supplies, or by reason of any other cause beyond the reasonable control of Landlord; provided, however, that Landlord shall use commercially reasonable efforts to minimize any resultant disruption of Tenant's operations in the Premises. Landlord shall have no liability to Tenant by reason of any stoppage or interruption of any Landlord Service, electricity or other service or the use of any Building facilities and systems for any reason. Landlord shall use reasonable diligence (which shall not include incurring overtime charges) to make such repairs as may be required to machinery or equipment within the Project to provide restoration of any Landlord Service and, where the cessation or interruption of such Landlord Service has occurred due to circumstances or conditions beyond the Project boundaries, to cause the same to be restored by diligent application or request to the provider.

(c) Without limiting any of Landlord's other rights and remedies, if Tenant shall be in default beyond any applicable grace period, Landlord shall not be obligated to furnish to the Premises any service outside of Business Hours on Business Days, unless Tenant pays for the same in advance.

(d) "Business Hours" means 8:00 a.m. to 6:00 p.m on Business Days and 8:00 a.m. to 1 p.m. on Saturdays (which are not legal holidays in (i) or (ii) below) for HVAC. "Business Days" means all days except Saturday, Sundays, and the following holidays: New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day and Christmas.

#### **ARTICLE 4. As is; Tenant Covenants**

##### **4.01. Initial Improvements.**

(a) Except as expressly set forth herein, Landlord has not made, and Tenant has not relied on, any representations or warranties in connection with the making of this Lease. Tenant had made whatever inspections or inquiries it deems necessary prior to the execution of this Lease. Tenant accepts the Premises on the date hereof in their "AS IS, WHERE IS" condition with any and all faults existing on the date hereof, and hereby acknowledges that Landlord is under no obligation to perform any work to the Premises to prepare same for Tenant's occupancy other than the items of work set forth in subsection (b) below. Notwithstanding the above, Landlord represents and warrants to Tenant that to its actual knowledge, as of the Commencement Date, the Building and the Premises will be fully compliant with all laws, ordinances, rules, order and regulations of any governmental, public or quasi-public authority and of the New York Board of Underwriters, the New York Fire Insurance Rating Organization and any other entity performing similar functions; in the event it is later determined that the Building and Premises were not compliant with same as of the Commencement Date, Landlord will be responsible, at its sole cost, for bringing the Building and/or Premises, as the case may be, into compliance.

(b) Notwithstanding anything to the contrary contained herein, Landlord shall perform the following items of work to prepare the Premises for Tenant's occupancy (collectively, "Landlord's Work"): (i) repaint the Premises in a color selected by Tenant from Landlord's Building standard choice of colors; (ii) re-carpet the Premises in carpet selected by Tenant from Landlord's Building standard choice of carpets; and (iii) erect certain internal walls and hallway walls in locations more fully set forth on Tenant's Plans annexed hereto as Exhibit D. The parties hereby expressly agree that items (i) and (ii) above shall be performed by Landlord prior to the Commencement Date, and further expressly agree that the work described in item (iii) above shall be performed by Landlord subsequent to the Commencement Date during non-business hours (i.e., from 6:00 PM to 6:00 AM) to minimize interference with Tenant's performance of work to prepare the Premises for its occupancy and/or the conduct of Tenant's business at the Premises, as the case may be, without any further abatement of rent beyond that provided in Section 2.02 of the Lease or claim for constructive eviction. Landlord shall exercise commercially reasonable efforts to seal off construction zones to prevent the escape of dust and debris into other portions of the Premises while performing the work described in item (iii) above, and shall exercise commercially reasonable efforts to complete item (iii) within sixty (60) days after the Commencement Date (subject to any delays caused by Tenant). Tenant agrees to reasonably cooperate with Landlord in the scheduling and performance of item (iii) above, and shall be responsible for moving, storing or otherwise securing its equipment, furniture and other personal property within the Premises during Landlord's performance of said work; Landlord shall not be liable to Tenant for any damage, loss, claim or the like with respect to Tenant's equipment, furniture or other personal property damaged as a result of Tenant's failure to move, store or secure same. All of Landlord's Work shall be performed at Landlord's sole cost and expense in a good and workmanlike manner in compliance with all applicable Laws.

(c) Landlord shall permit Tenant access to the Premises promptly after the Execution Date in order to install cabling and air conditioning units in the Premises. Landlord shall permit Tenant access the Premises promptly following installation of carpeting in order to install modular furniture and deliver office furniture and equipment. All access and work performed by Tenant pursuant to this Section 4.01(c) shall be in compliance with the provisions of this Lease, including without limitation those with respect to alterations, insurance and compliance with Law. In the event the above referenced access and/or performance of the above referenced work by Tenant causes a delay in the completion of Landlord's Work, there shall be no liability to Landlord, nor shall there be any delay in the Commencement Date or the Rent Commencement Date, and Tenant shall not be entitled to the day-for-day abatement of rent set forth in Section 1.03(b).

#### **4.02. Alterations.**

(a) During the Term of this Lease, Tenant may make non-structural alterations to the Premises costing less than \$50,000.00 in the aggregate, without the consent of Landlord. In all other cases, Tenant shall not without first obtaining the written consent of Landlord, make any alterations, including without limitation, structural, electrical or mechanical alterations, additions or improvements in, to or about the Premises or the Building (collectively, "Alterations"); such consent shall not be unreasonably withheld, delayed or conditioned but such

consent may be conditioned upon review of plans and approval of contractors. In all events, any changes to the Building systems, including, without limit, sprinkler, life safety, plumbing, electrical, heating, mechanical or HVAC (collectively, "Systems Alterations"), shall be upon prior written consent of Landlord (not to be unreasonably withheld, delayed or conditioned) which Systems Alterations shall be performed by Landlord (which term as used in this Article 4 shall be deemed to include Landlord and/or Landlord's contractor), and Tenant shall pay Landlord for all costs and charges for such Systems Alterations (including, without limitation, the cost of any drawings, plans, layouts and/or specifications prepared by Landlord with respect to such Systems Alterations). "Material Alteration" means an Alteration that (i) is not limited to the interior of the Premises or which affects the exterior (including the appearance) of the Building, (ii) is structural or affects the strength of the Building, (iii) affects the usage or the proper functioning of any of the Building systems, (iv) has a cost greater than \$50,000.00, (v) requires the consent of any Superior Mortgagee or Superior Lessor or (vi) requires a change to the Building's certificate of occupancy.

(b) Tenant, in connection with any Alteration done by Tenant, shall comply with all rules and regulations established by Landlord for the Building from time to time. Tenant shall not proceed with any Alteration unless and until Landlord approves Tenant's plans and specifications therefore. Any review or approval by Landlord of plans and specifications with respect to any Alteration is solely for Landlord's benefit, and without any representation or warranty to Tenant with respect to the adequacy, correctness or efficiency thereof, its compliance with Laws or otherwise.

(c) Other than with respect to Landlord's Work Tenant pursuant to Section 4.01(b) above, Tenant shall pay to Landlord upon demand (x) Landlord's reasonable out-of-pocket costs and expenses (including, without limitation, the fees of any architect or engineer employed by Landlord or any Superior Lessor or Superior Mortgagee for such purpose) for reviewing plans and specifications and inspecting Permitted Alterations plus (y) a supervisory fee equal to ten percent (10%) of the cost of such Permitted Alterations (as reasonably determined by Landlord).

(d) Before proceeding with any Alteration that is also a Material Alteration (exclusive of the costs of 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 (as selected by Landlord): (i) a cash deposit, (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 a bank and in a form satisfactory to Landlord; each to be equal to 125% of the cost of the Alteration, estimated as set forth above. Any such letter of credit shall be for one year and shall be renewed by Tenant each and every year until the Alteration in question is completed and shall be delivered to Landlord not less than 30 days prior to the expiration of the then current letter of credit, failing which Landlord may present the then current letter of credit for payment. Upon (A) the completion of the Alteration in accordance with the terms of this Section 4.02 and (B) the submission to Landlord of (x) proof evidencing the payment in full for said Alteration, (y) written unconditional lien waivers of mechanics' liens and other liens on the Project from all contractors performing said Alteration and (z) all submissions required pursuant

to this Lease, the security deposited with Landlord pursuant to this Section 4.02(d) (or the balance of the proceeds thereof, if Landlord has drawn on the same) shall be returned to Tenant. Upon Tenant's failure properly to perform, complete and fully pay for any Alteration, as determined by Landlord, Landlord may, upon notice to Tenant, draw on the security deposited under this Section 4.02(d) to the extent Landlord deems necessary in connection with said Alteration, the restoration and/or protection of the Premises or the Project and the payment of any costs, damages or expenses resulting therefrom.

(e) Tenant shall obtain (and furnish copies to Landlord of) all necessary governmental permits and certificates for the commencement and prosecution of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, and in compliance with all Laws and with the plans and specifications approved by Landlord. Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the then standards for the Building established by Landlord. Alterations shall be performed by contractors first approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed); provided, that any Alterations in or to the systems of the Building shall be performed only by the contractor(s) designated by Landlord and the general contractor for any Alteration shall be a Designated Contractor. The performance of any Alteration shall not be done in a manner which would violate Landlord's union contracts affecting the Project, or create any work stoppage, picketing, labor disruption, disharmony or dispute or any interference with the business of Landlord or any tenant or occupant of the Building. Tenant shall immediately stop the performance of any Alteration if Landlord notifies Tenant that continuing such Alteration would violate Landlord's union contracts affecting the Project, or create any work stoppage, picketing, labor disruption, disharmony or dispute or any interference with the business of Landlord or any tenant or occupant of the Building. For the avoidance of any doubt, Landlord hereby acknowledges that Tenant will utilize its own employees to install cabling.

(f) Throughout the performance of Alterations, Tenant shall carry worker's compensation insurance in statutory limits, "all risk" Builders Risk coverage and general liability insurance, with completed operation endorsement, for any occurrence in or about the Project, under which Landlord and its agent and any Superior Lessor and Superior Mortgagee whose name and address have been furnished to Tenant shall be named as parties insured, in such limits as Landlord may reasonably require, with insurers reasonably satisfactory to Landlord. Tenant shall furnish Landlord with evidence that such insurance is in effect at or before the commencement of Alterations and, on request, at reasonable intervals thereafter during the continuance of Alterations.

(g) Should any mechanics' or other liens be filed against any portion of the Project by reason of the acts or omissions of, or because of a claim against, Tenant or anyone claiming under or through Tenant, Tenant shall cause the same to be canceled or discharged of record by bond or otherwise within 30 days after notice from Landlord. If Tenant shall fail to cancel or discharge said lien or liens within said 30 day period, Landlord may cancel or discharge the same and, upon Landlord's demand, Tenant shall reimburse Landlord for all costs incurred in canceling or discharging such liens, together with interest thereon at the Interest Rate from the date incurred by Landlord to the date of payment by Tenant, such reimbursement to be

made within 10 days after receipt by Tenant of a written statement from Landlord as to the amount of such costs. Tenant shall indemnify and hold Landlord harmless from and against all costs (including, without limitation, attorneys' fees and disbursements and costs of suit), losses, liabilities or causes of action arising out of or relating to any Permitted Alteration, including, without limitation, any mechanics' or other liens asserted in connection with such Alteration.

(h) Tenant shall deliver to Landlord, within 30 days after the completion of an Alteration, five sets of "as-built" drawings thereof prepared by Tenant's architect. During the Term, Tenant shall keep records of Alterations costing in excess of \$5,000.00 including plans and specifications, copies of contracts, invoices, evidence of payment and all other records customarily maintained in the real estate business relating to Alterations and the cost thereof and shall, within 30 days after demand by Landlord, furnish to Landlord copies of such records.

(i) All Alterations to and Fixtures installed by Tenant in the Premises shall be fully paid for by Tenant in cash and shall not be subject to conditional bills of sale, chattel mortgages, or other title retention agreements.

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

(a) All fixtures, equipment, improvements and appurtenances attached to or built into the Premises, whether or not at the expense of Tenant (collectively, "Fixtures"), shall be and remain a part of the Premises and shall not be removed by Tenant. All Fixtures constituting Improvements and Betterments, as defined herein, shall be the property of Tenant during the Term and, upon expiration or earlier termination of this Lease, shall become the property of Landlord. All Fixtures other than Improvements and Betterments shall, upon installation, be the property of Landlord. "Improvements and Betterments" means (i) all Fixtures, if any, installed at the expense of Tenant, whether installed by Tenant or by Landlord (i.e., excluding any Fixtures paid for by Landlord directly or as part of Landlord's Work or by way of an allowance) and (ii) all carpeting in the Premises.

(b) All movable partitions, business and trade fixtures, machinery and equipment, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively, "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided, that if any Tenant's Property is removed, Tenant shall repair any damage to the Premises or to the Building resulting from the installation and/or removal thereof. Notwithstanding the foregoing, any equipment or other property identified in this Lease or in any leasehold improvement agreement as having been paid for with any allowance or credit granted by Landlord to Tenant shall not be considered Tenant's Property and shall be and remain a part of the Premises, shall, upon the Expiration Date or earlier termination of this Lease, be the property of Landlord and shall not be removed by Tenant.

(c) At or before the Expiration Date, or within fifteen (15) days after any earlier termination of this Lease, Tenant, at Tenant's expense, shall remove Tenant's Property from the Premises (except such items thereof as Landlord shall have expressly permitted to remain, which shall become the property of Landlord), and Tenant shall repair any damage to the

Premises or the Building resulting from any installation and/or removal of Tenant's Property. Any items of Tenant's Property which remain in the Premises after the Expiration Date, or more than fifteen (15) days after an earlier termination of this Lease, may, at the option of Landlord, be deemed to have been abandoned, and may be retained by Landlord as its property or disposed of by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense.

(d) Landlord, by notice given to Tenant at any time prior to the Expiration Date or not later than thirty (30) days after any earlier termination of this Lease, may require Tenant, notwithstanding Section 4.03(a), to remove all or any Fixtures that do not constitute a standard office installation, such as, by way of example only, kitchens, vaults, safes, raised flooring and stairwells. If Landlord shall give such notice, then Tenant, at Tenant's expense, prior to the Expiration Date, or, in the case of an earlier termination of this Lease, within fifteen (15) days after the giving of such notice by Landlord, shall remove the same from the Premises, shall repair and restore the Premises to the condition existing prior to installation thereof and shall repair any damage to the Premises or to the Building due to such removal.

#### **4.04. Access and Changes to Building.**

(a) Landlord reserves the right, at any time, to make changes in or to the Project as Landlord may deem necessary or desirable, and Landlord shall have no liability to Tenant therefore, provided any such change does not deprive Tenant of access to the Premises and does not affect the first-class nature of the Project. Landlord may install and maintain pipes, fans, ducts, wires and conduits within or through the walls, floors or ceilings of the Premises. In exercising its rights under this Section 4.04, Landlord shall use reasonable efforts to minimize any interference with Tenant's use of the Premises for the ordinary conduct of Tenant's business. Tenant shall not have any easement or other right in or to the use of any door or any passage or any concourse or any plaza connecting the Building with any subway or any other building or to any public conveniences, and the use of such doors, passages, concourses, plazas and conveniences may, without notice to Tenant, be regulated or discontinued at any time by Landlord.

(b) Except for the space within the inside surfaces of all walls, hung ceilings, floors, windows and doors bounding the Premises, all of the Building, including, without limitation, exterior Building walls, core corridor walls and doors and any core corridor entrance, any terraces or roofs adjacent to the Premises, and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Premises, are reserved to Landlord and are not part of the Premises. Landlord reserves the right to name the Building and to change the name or address of the Building at any time and from time to time. For the avoidance of any doubt, Landlord hereby acknowledges that Tenant will install cabling in the ceilings, walls, and/or floors of the Premises; at Landlord's election, given prior to the expiration or sooner termination of this Lease, Tenant will remove all such cabling installed and repair and restore any damage caused by such removal.

(c) Landlord shall have no liability to Tenant if at any time any windows of

the Premises are either temporarily darkened or obstructed by reason of any repairs, improvements, maintenance and/or cleaning in or about the Building (or permanently darkened or obstructed if required by Law) or covered by any translucent material for the purpose of energy conservation, or if any part of the Building, other than the Premises, is temporarily or permanently closed or inoperable.

(d) Landlord and persons authorized by Landlord shall have the right, upon reasonable prior notice to Tenant (except in an emergency and except for cleaning services to be provided by Landlord), to enter the Premises during Tenant's normal business hours (together with any necessary materials and/or equipment), to inspect or perform such work as Landlord may reasonably deem necessary or to exhibit the Premises to prospective purchasers or, during the last twelve (12) months of the Term, to prospective tenants, or for any other purpose as Landlord may deem necessary or desirable. Landlord shall have no liability to Tenant by reason of any such entry.

**4.05. Repairs.** As part of Fixed Rent, Landlord, at its expense, shall perform all maintenance, repairs and replacements, to the Premises (excluding painting and decorating) as set forth in Exhibit C and to the common areas of the Building, the Building's exterior (including without limitation the Building systems and structural components located therein) and the Building core areas (such as, without limitation, the Building's elevator shafts and core HVAC duct work and the Building's foundation); provided that Tenant shall pay any costs incurred by Landlord in performing the same if caused by Tenant's (or its agents, representatives, contractors, employees, licensees or visitors) negligence or misuse. Tenant shall keep the Premises (including, without limitation, all Fixtures) in good condition and, upon Expiration Date shall surrender the same to Landlord in the same condition as when first occupied, reasonable wear and tear excepted. All repairs or maintenance in or around the Premises necessitated by misuse or neglect by Tenant or Tenant's agents, contractors, employees, licensees or visitors shall be made by Landlord, at Tenant's sole cost and expense. Tenant shall not commit or allow to be committed any waste or damage to any portion of the Premises or the Building.

**4.06. Compliance with Laws.**

(a) Tenant shall comply with all laws, ordinances, rules, orders and regulations (present, future, ordinary, extraordinary, foreseen or unforeseen) of any governmental, public or quasi-public authority and of the New York Board of Underwriters, the New York Fire Insurance Rating Organization and any other entity performing similar functions, at any time duly in force (collectively "Laws"), attributable to any work, installation, occupancy, use or manner of use by Tenant of the Premises or any part thereof. Nothing contained in this Section 4.06 shall require Tenant to make any structural changes unless the same are necessitated by reason of Tenant's manner of use of the Premises or the use by Tenant of the Premises for purposes other than normal and customary ordinary office purposes. Tenant shall procure and maintain all licenses and permits required for its business.

(b) Tenant shall comply strictly and in all respects with the applicable laws, statutes, ordinances, permits, orders, decrees, guidelines, rules, regulations and orders pertaining

to health or the environment ("Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA"), as each of the foregoing may be amended from time to time. Tenant does hereby, for itself and its heirs, legal representatives, successors and assigns agree to and hereby does indemnify, defend and hold harmless Landlord, and its heirs, legal representatives, successors and assigns, from any and all liabilities, assessments, suits, damages, costs and expenses, attorneys' fees and judgments related to or arising out of (a) the breach of any of the agreements of Tenant under this section, (b) the handling, installation, storage, use, generation, treatment or disposal of Hazardous Materials (as hereinafter defined), including any cleanup, remedial, removal or restoration work required by the Applicable Environmental Laws which is necessitated by Tenant's violation of the provisions of this Section 4.06 or (c) the assertion of any lien or claim upon the Premises of Landlord pursuant to the Applicable Environmental Laws which is not instituted due to any action of Landlord. The covenants and agreements of Tenant under this section shall survive the expiration or termination of this Lease. As used in this Lease, the term "Hazardous Materials" means any flammables, explosives, radioactive materials, asbestos-containing materials, petroleum products, the group of organic compounds known as polychlorinated biphenyls and other hazardous waste, toxic substances or related materials, including without limitation, substances defined as hazardous substances, hazardous materials, toxic substances or solid waste in CERCLA, the Hazardous Materials Transportation Act and RCRA, as each of the foregoing may be amended from time to time.

(c) Except to the extent the same is Tenant's responsibility pursuant to Section 4.06(a) or Section 4.06(b) above or elsewhere in this Lease, Landlord shall comply with all Laws in effect as of the Commencement Date applicable to the common corridors of the Building adjacent to the Premises and the common areas of the Building generally made available to tenants of the Building, but only if Tenant's use of the Premises shall be materially and adversely affected by noncompliance therewith, subject to Landlord's right to contest the applicability or legality of such Laws.

(d) To the extent applicable, Tenant and Landlord (each a "Representing Party") each represents and warrants to the other (i) that neither the Representing Party nor any person or entity that directly owns a 10% or greater equity interest in it nor any of its officers, directors or managing members is a person or entity (each a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under Regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "Executive Order") signed on September 24, 2001 and entitling Blocking Property and Prohibited Transactions with persons who Commit, Threaten to Commit, or Support Terrorism) or other governmental action, (ii) that the Representing Party's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended, from time to time, the "Money Laundering Act"), and (iii) that throughout the term of the Lease the Representing Party shall comply with the Executive Order and with the Money Laundering Act.

**4.07. Tenant Advertising and Signage.** Tenant shall not place or install any logo,



lettering or other signage on the exterior of the Building, nor shall Tenant place in any display case, windows, entrance doors or any other area visible to the public view from the outside of the Building or from the outside of the Premises, any such signage, without first obtaining in each instance Landlord's prior consent, which shall not be unreasonably withheld or delayed. Tenant shall not place any sign or lettering in the public corridors of the Building or on the doors, including, without limitation, the door to the Premises, except for Landlord's standard name plaque. Tenant shall promptly remove any signage if Landlord shall object thereto. If Landlord shall consent to requested proposed signage or advertising by Tenant, no change in the composition, dimensions or content of such signage or advertising may thereafter be made without first obtaining Landlord's consent in each instance. Tenant shall obtain and maintain throughout the Term all permits required by Laws for the installation, display and maintenance of any such signage. On the Expiration Date, Tenant shall (i) promptly remove all signage installed or displayed by Tenant, and (ii) promptly repair in a good and workmanlike manner in conformity with Laws and all applicable provisions of this Lease, all damage to the Building caused by such removal. Tenant shall not use, and shall cause each of its Affiliates not to use, the name or likeness of the Building or the Project in any advertising (by whatever medium) without Landlord's consent (not to be unreasonably withheld or delayed). Upon Tenant's request, Tenant shall be entitled to up to two (2) Building standard identifying listings in the Building directory, at no charge. Any subsequent changes to such directory listings requested by Tenant shall be made at Tenant's expense. Landlord's acceptance of any name for listing on the directory will not be deemed, nor will it substitute for, Landlord's consent, as required by this Lease, to any sublease, assignment or other occupancy of the Premises.

**4.08. Right to Perform Tenant Covenants.** If Tenant fails to perform any of its obligations under this Lease, Landlord, any Superior Lessor or any Superior Mortgagee, both as defined herein, (each, a "Curing Party") may perform the same at the expense of Tenant (a) immediately and without notice in the case of emergency or in case such failure interferes with the use of space by any other tenant in the Building or with the efficient operation of the Building or may result in a violation of any Law or in a cancellation of any insurance policy maintained by Landlord and (b) in any other case if such failure continues beyond any applicable grace period. If a Curing Party performs any of Tenant's obligations under this Lease, Tenant shall pay to the Curing Party (as Additional Charges) the costs thereof, together with interest at the Interest Rate from the date incurred by the Curing Party until paid by Tenant, within ten (10) days after receipt by Tenant of a statement as to the amounts of such costs. If the Curing Party effects such cure by bonding any lien which Tenant is required to bond or otherwise discharge, Tenant shall obtain and substitute a bond for the Curing Party's bond and shall reimburse the Curing Party for the cost of the Curing Party's bond. "Interest Rate" means the lesser of (i) the base rate from time to time announced by Citibank, N.A. (or, if Citibank, N.A. shall not exist, such other bank in New York, New York, as shall be designated by Landlord in a notice to Tenant) to be in effect at its principal office in New York, New York plus 4% or (ii) the maximum rate permitted by law.

## ARTICLE 5. Assignment and Subletting

### 5.01. Assignment; Etc.

(a) Subject to Section 5.02 and any encumbrance created in connection with financing obtained by Tenant which is secured by all or substantially all of Tenant's assets, neither this Lease nor the term and estate hereby granted, nor any part hereof or thereof, shall be assigned, mortgaged, pledged, encumbered or otherwise transferred voluntarily, involuntarily, by operation of law or otherwise, and neither the Premises, nor any part thereof, shall be subleased, be licensed, be used or occupied by any person or entity other than Tenant or be encumbered in any manner by reason of any act or omission on the part of Tenant, and no rents or other sums receivable by Tenant under any sublease of all or any part of the Premises shall be assigned or otherwise encumbered, without the prior consent of Landlord, which consent shall not be unreasonably withheld or delayed. The dissolution or direct transfer of a majority of the ownership interests in, or control of, Tenant (however accomplished including, by way of example, the admission of new partners or members or withdrawal of existing partners or members, or transfers of interests in distributions of profits or losses of Tenant, issuance of additional stock, redemption of stock, stock voting agreement, or change in classes of stock) shall be deemed an assignment of this Lease regardless of whether the transfer is made by one or more transactions, or whether one or more persons or entities hold the controlling interest prior to the transfer or afterwards. An agreement under which another person or entity becomes responsible for all or a portion of Tenant's obligations under this Lease shall be deemed an assignment of this Lease. No assignment or other transfer of this Lease and the term and estate hereby granted, and no subletting of all or any portion of the Premises shall relieve Tenant of its liability under this Lease or of the obligation to obtain Landlord's prior consent to any further assignment, other transfer or subletting. Any attempt to assign this Lease or sublet all or any portion of the Premises in violation of this Article 5 shall be null and void.

(b) Notwithstanding Section 5.01(a), without the consent of Landlord, this Lease may be assigned to (i) an entity created by merger, reorganization or recapitalization of or with Tenant or (ii) a purchaser of all or substantially all of Tenant's assets; provided, in the case of both clause (i) and clause (ii), that (A) Landlord shall have received a notice of such assignment from Tenant, (B) the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease, (C) such assignment is for a valid business purpose and not to avoid any obligations under this Lease, and (D) the assignee is a reputable entity of good character and shall have, immediately after giving effect to such assignment, an aggregate net worth (computed in accordance with GAAP) at least equal to the aggregate net worth (as so computed) of Tenant immediately prior to such assignment or on the date of this Lease, whichever is greater.

(c) Notwithstanding Section 5.01(a), without the consent of Landlord, Tenant may assign this Lease or sublet all or any part of the Premises to an Affiliate of Tenant; provided, that (i) Landlord shall have received a notice of such assignment or sublease from Tenant; and (ii) in the case of any such assignment, (A) the assignment is for a valid business purpose and not to avoid any obligations under this Lease, and (B) the assignee assumes by written instrument satisfactory to Landlord all of Tenant's obligations under this Lease; and (iii)

an assignment made to an Affiliate which is a corporation or other entity which is permitted to provide financial, investment or insurance services and products to Tenant's members regardless of control, is limited to no more than 25% of the demised premises and no exterior signage. "Affiliate" means, as to any designated person or entity, any other person or entity which controls, is controlled by, or is under common control with, such designated person or entity, and a corporation or other entity which provides financial, investment or insurance services and products to Tenant's members as part of Tenant's regular business regardless of control. "Control" (and with correlative meaning, "controlled by" and "under common control with") means ownership or voting control of 50% or more of the voting stock, partnership interests or other beneficial ownership interests of the entity in question.

## **5.02. Landlord's Right of First Offer.**

(a) If Tenant desires to assign this Lease or sublet all or part of the Premises (other than in accordance with Section 5.01(b) or Section 5.01(c)), Tenant shall give to Landlord notice ("Tenant's Offer Notice") specifying the terms of the offer received by Tenant from an unaffiliated third-party, specifying (i) in the case of a proposed subletting, the location of the space to be sublet, the sublease rent to be paid, the name of the subtenant and the term of the subletting of such space, or (ii) (A) in the case of a proposed assignment, the name of the assignee and the consideration to be paid to Tenant for such assignment.

(b) Tenant's Offer Notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may (i) sublease such space from Tenant (if the proposed transaction is a sublease of all or part of the Premises for less than all or substantially all of the remaining Term), (ii) terminate this Lease (if the proposed transaction is an assignment or a sublease of all or substantially all of the Premises (or a sublease of a portion of the Premises which, when aggregated with other subleases then in effect, covers all or substantially all of the Premises) for all or substantially all of the remaining Term), or (iii) terminate this Lease with respect to the space covered by the proposed sublease (if the proposed transaction is a sublease of part of the Premises for all or substantially all of the remaining Term). Said option may be exercised by Landlord by notice to Tenant within 30 days after a Tenant's Offer Notice, together with all information required pursuant to Section 5.02(a), has been given by Tenant to Landlord.

(c) If Landlord exercises its option under Section 5.02(b)(ii) to terminate this Lease, then this Lease shall terminate on the proposed assignment or sublease commencement date specified in the applicable Tenant's Offer Notice and all Rent shall be paid and apportioned to such date.

(d) If Landlord exercises its option under Section 5.02(b)(ii) to have this Lease assigned to it (or its designee), then Tenant shall assign this Lease to Landlord (or Landlord's designee) by an assignment in form and substance reasonably satisfactory to Landlord, effective on the proposed assignment or sublease commencement date specified in the applicable Tenant's Offer Notice. Tenant shall not be entitled to consideration or payment from Landlord (or Landlord's designee) in connection with any such assignment. If the Tenant's Offer Notice provides that Tenant will pay any consideration or grant any concessions in connection with the proposed assignment, then Tenant shall pay such consideration and/or grant

any such concessions to Landlord (or Landlord's designee) on the date Tenant assigns this Lease to Landlord (or Landlord's designee).

(e) If Landlord exercises its option under Section 5.02(b)(iii) to terminate this Lease with respect to the space covered by a proposed sublease, then (i) this Lease shall terminate with respect to such part of the Premises on the effective date of the proposed sublease; (ii) from and after such date the Rent shall be adjusted, based upon the proportion that the rentable area of the Premises remaining bears to the total rentable area of the Premises and (iii) Tenant shall pay to Landlord, upon demand, the costs incurred by Landlord in demising separately such part of the Premises and in complying with any Laws relating to such demise.

(f) If Landlord exercises its option under Section 5.02(b)(i) to sublet the space Tenant desires to sublet, such sublease to Landlord or its designee (as subtenant) shall be in form and substance reasonably satisfactory to Landlord at the lower of (i) the rental rate per rentable square foot of Fixed Rent and Additional Charges then payable pursuant to this Lease or (ii) the rental set forth in the applicable Tenant's Offer Notice with respect to such sublet space, and shall be for the term set forth in the applicable Tenant's Offer Notice, and:

(A) shall be subject to all of the terms and conditions of Tenant's Offer Notice and all of the terms of this Lease except such as are irrelevant or inapplicable, and except as otherwise expressly set forth to the contrary in this Section 5.02(f);

(B) shall be upon the same terms and conditions as those contained in the applicable Tenant's Offer Notice and otherwise on the terms and conditions of this Lease, except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this Section 5.02(f);

(C) shall permit the sublessee, without Tenant's consent, freely to assign such sublease or any interest therein or to sublet all or any part of the space covered by such sublease and to make any and all alterations and improvements in the space covered by such sublease;

(D) shall provide that any assignee or further subtenant of Landlord or its designee may, at the election of Landlord, make alterations, decorations and installations in such space or any part thereof, any or all of which may be removed, in whole or in part, by such assignee or subtenant, at its option, prior to or upon the expiration or other termination of such sublease, provided that such assignee or subtenant, at its expense, shall repair any damage caused by such removal, and the; and

(E) shall provide that (i) the parties to such sublease expressly negate any intention that any estate created under such sublease be merged with any other estate held by either of said parties, (ii) any assignment or subletting by Landlord or its designee (as the subtenant) may be for any purpose or purposes that Landlord shall deem appropriate, (iii) Landlord, at Tenant's expense, may make such alterations as may be required or deemed necessary by Landlord to demise separately the subleased space and to comply with any Laws relating to such demise, and (iv) at the expiration of the term of such

sublease, Tenant shall accept the space covered by such sublease in its then existing condition, subject to the obligations of the sublessee to make such repairs thereto as may be necessary to preserve such space in good order and condition.

(g) In the case of a proposed sublease, Tenant shall not sublet any space to a third party at a rental which is less (on a per rentable square foot basis) than the rental (on a per rentable square foot basis) specified in Tenant's Offer Notice with respect to such space or which is on other terms less favorable to Tenant than those specified in Tenant's Offer Notice, without complying once again with all of the provisions of this Section 5.02 and re-offering such space to Landlord at such lower rental. In the case of a proposed assignment, Tenant shall not assign this Lease to a third party where Tenant pays greater consideration or grants a greater concession to such third party for such assignment than the consideration offered to be paid or concession offered to be granted to Landlord in Tenant's Offer Notice, or which is on other terms less favorable to Tenant than those specified in Tenant's Offer Notice, without complying once again with all of the provisions of this Section 5.02 and re-offering to assign this Lease to Landlord and pay such consideration or grant such concession to Landlord.

(h) Notwithstanding the terms of this Section 5.02, Landlord's right to recapture the Premises and terminate the Lease, shall only apply with respect to a Lease assignment, and, in connection with a proposed sublet, only to the extent that the portion of the Premises Tenant is seeking to sublet is more than twenty-five percent (25%) of the square footage of the Premises or to the extent that such desired sublet space, when taken into account with other sublet space, will aggregate more than twenty-five percent (25%) of the square footage of the Premises.

### **5.03. Assignment and Subletting Procedures.**

(a) If Tenant delivers to Landlord a Tenant's Offer Notice with respect to any proposed assignment of this Lease or subletting of all or part of the Premises and Landlord does not timely exercise any of its options under Section 5.02, and Tenant thereafter desires to assign this Lease or sublet the space specified in Tenant's Offer Notice, Tenant shall notify Landlord (a "Transfer Notice") of such desire, which notice shall be accompanied by (i) a copy of the proposed assignment or sublease and all related agreements, the effective date of which shall be at least thirty (30) days after the giving of the Transfer Notice, (ii) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the Premises, (iii) current financial information with respect to the proposed assignee or subtenant, including, without limitation, its most recent financial statement and (iv) such other information as Landlord may reasonably request, and Landlord's consent to the proposed assignment or sublease shall not be unreasonably withheld or delayed, provided that:

(i) such Transfer Notice shall be delivered to Landlord within six (6) months after the delivery to Landlord of the applicable Tenant's Offer Notice.

(ii) In Landlord's reasonable judgment the proposed assignee or subtenant will use the Premises in a manner that (A) is in keeping with the then standards of the Building, (B) is limited to the use expressly permitted under this Lease, and (C) will not violate

any negative covenant as to use contained in any other Lease of space in the Building.

(iii) The proposed assignee or subtenant is, in Landlord's judgment, a reputable person or entity of good character and with sufficient financial worth considering the responsibility involved.

(iv) Neither the proposed assignee or sublessee, nor any Affiliate of such assignee or sublessee, is then an occupant of any part of the Building.

(v) The proposed assignee or sublessee is not a person with whom Landlord is then negotiating or has within the prior 3 months negotiated to lease space in the Building.

(vi) The form of the proposed sublease shall be reasonably satisfactory to Landlord and shall comply with the applicable provisions of this Article 5.

(vii) There shall not be more than 1 subtenant of the Premises.

(viii) The aggregate rent to be paid by the proposed subtenant is not less than seventy-five percent (75%) of the fair rental value of the sublet space as if such space were being leased directly by Landlord.

(ix) Tenant shall reimburse Landlord on demand for customary actual reasonable costs incurred by Landlord in connection with said assignment or sublease, including, without limitation, the costs of making investigations as to the acceptability of the proposed assignee or subtenant, and legal costs incurred in connection with the granting of any requested consent and preparation of documents related thereto.

(b) If Landlord consents to a proposed assignment or sublease and Tenant fails to execute and deliver the assignment or sublease to which Landlord consented within sixty (60) days after the giving of such consent, then Tenant shall again comply with this Article 5 before assigning this Lease or subletting all or part of the Premises.

#### **5.04. General Provisions.**

(a) If this Lease is assigned, whether or not in violation of this Lease, Landlord may collect rent from the assignee. If the Premises or any part thereof are sublet or occupied by anybody other than Tenant, whether or not in violation of this Lease, Landlord may, after default by Tenant, and expiration of Tenant's time to cure such default, collect rent from the subtenant or occupant. In either event, Landlord may apply the net amount collected against Rent, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of Section 5.01(a), or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease.

(b) No assignment or transfer shall be effective until the assignee delivers to Landlord (i) evidence that the assignee, as Tenant hereunder, has complied with the requirements of Section 7.02 and Section 7.03, and (ii) an agreement in form and substance satisfactory to Landlord whereby the assignee assumes Tenant's obligations under this Lease.

(c) Notwithstanding any assignment or transfer, whether or not in violation of this Lease, and notwithstanding the acceptance of any Rent by Landlord from an assignee, transferee, or any other party, the original named Tenant and each successor Tenant shall remain fully liable for the payment of the Rent and the performance of all of Tenant's other obligations under this Lease. The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant shall not be discharged, released or impaired in any respect by any agreement made by Landlord extending the time to perform, or otherwise modifying, any of the obligations of Tenant under this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of Tenant under this Lease.

(d) Each subletting by Tenant shall be subject to the following:

(i) No subletting shall be for a term (including any renewal or extension options contained in the sublease) ending later than one day prior to the Expiration Date.

(ii) No sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until there has been delivered to Landlord, both (A) an executed counterpart of such sublease, and (B) a certificate of insurance evidencing that (x) Landlord is an additional insured under the insurance policies required to be maintained by occupants of the Premises pursuant to Section 7.02, and (y) there is in full force and effect, the insurance otherwise required by Section 7.02.

(iii) Each sublease shall provide that it is subject and subordinate to this Lease, and that in the event of termination, reentry or dispossession by Landlord under this Lease Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be liable for, subject to or bound by any item of the type that a Successor Landlord is not so liable for, subject to or bound by in the case of an attornment by Tenant to a Successor Landlord under Section 6.01(a).

(e) Each sublease shall provide that the subtenant may not assign its rights thereunder or further sublet the space demised under the sublease, in whole or in part, without Landlord's consent and without complying with all of the terms and conditions of this Article 5, including, without limitation, Section 5.05, which for purposes of this Section 5.04(e) shall be deemed to be appropriately modified to take into account that the transaction in question is an assignment of the sublease or a further subletting of the space demised under the sublease, as the case may be.

(f) Tenant shall not publicly advertise the availability of the Premises or any

portion thereof as sublet space or by way of an assignment of this Lease, without first obtaining Landlord's consent, which consent shall not be unreasonably withheld or delayed provided that Tenant shall in no event advertise the rental rate or any description thereof.

#### **5.05. Assignment and Sublease Profits.**

(a) If the aggregate of the amounts payable as fixed rent and as additional rent on account of Taxes and electricity by a subtenant under a sublease of any part of the Premises and the amount of any Other Sublease Consideration (as defined herein) payable to Tenant by such subtenant, whether received in a lump-sum payment or otherwise shall be in excess of Tenant's Basic Cost (as defined herein) therefore at that time then, promptly after the collection thereof, Tenant shall pay to Landlord in monthly installments as and when collected, as Additional Charges, 50% of such excess. Tenant shall deliver to Landlord within 60 days after the end of each calendar year and within 60 days after the expiration or earlier termination of this Lease a statement specifying each sublease in effect during such calendar year or partial calendar year, the rentable area demised thereby, the term thereof and a computation in reasonable detail showing the calculation of the amounts paid and payable by the subtenant to Tenant, and by Tenant to Landlord, with respect to such sublease for the period covered by such statement. "Tenant's Basic Cost" for sublet space at any time means the sum of (i) the portion of the Fixed Rent and Tax Payments which is attributable to the sublet space, plus (ii) the amount payable by Tenant on account of electricity in respect of the sublet space, plus (iii) the amount of any costs reasonably incurred by Tenant in making changes in the layout and finish of the sublet space for the subtenant amortized on a straight-line basis over the term of the sublease plus (iv) the amount of any reasonable brokerage commissions and reasonable legal fees paid by Tenant in connection with the sublease amortized on a straight-line basis over the term of the sublease. "Other Sublease Consideration" means all sums paid for the furnishing of services by Tenant and the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture or other personal property less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns.

(b) Upon any assignment of this Lease, Tenant shall pay to Landlord 50% of the Assignment Consideration (as defined herein) received by Tenant for such assignment, after deducting therefrom the amount of any reasonable brokerage commissions and reasonable legal fees paid by Tenant in connection with the assignment. "Assignment Consideration" means an amount equal to all sums and other considerations paid to Tenant by the assignee for or by reason of such assignment (including, without limitation, sums paid for the furnishing of services by Tenant and the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, less, in the case of a sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns).

**5.06. Partnership Tenant.** If Tenant is a partnership the following shall apply: (a) the liability of each of the parties comprising Tenant shall be joint and several, (b) each of the parties comprising Tenant hereby consents to, and agrees to be bound by, any written instrument which may hereafter be executed, changing, modifying or discharging this Lease, in whole or in part, or surrendering all or any part of the Premises to Landlord or renewing or extending this Lease



and by any notices, demands, requests or other communications which may hereafter be given, by Tenant or by any of the parties comprising Tenant, (c) any bills, statements, notices, demands, requests or other communications given or rendered to Tenant or to any of the parties comprising Tenant shall be deemed given or rendered to Tenant and to all such parties and shall be binding upon Tenant and all such parties, (d) if Tenant shall admit new partners, all of such new partners shall, by their admission to Tenant, be deemed to have assumed performance of all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed, (e) Tenant shall give prompt notice to Landlord of the admission of any partner or partners, and upon demand of Landlord, shall cause each such partner to execute and deliver to Landlord an agreement in form satisfactory to Landlord, wherein each such new partner shall assume performance of all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed (but neither Landlord's failure to request any such agreement nor the failure of any such new partner to execute or deliver any such agreement to Landlord shall vitiate the provisions of this Section 5.06, and (f) on request, Tenant shall deliver to Landlord a list of all partners together with their current residential addresses.

## **ARTICLE 6. Subordination; Default; Indemnity**

### **6.01. Subordination.**

(a) This Lease is subject and subordinate to each mortgage (a "Superior Mortgage") and each underlying lease (a "Superior Lease") which may now or hereafter affect all or any portion of the Project or any interest therein. The lessor under a Superior Lease is called a "Superior Lessor" and the mortgagee under a Superior Mortgage is called a "Superior Mortgagee". Tenant shall execute, acknowledge and deliver any instrument reasonably requested by Landlord, a Superior Lessor or Superior Mortgagee to evidence such subordination, but no such instrument shall be necessary to make such subordination effective. Tenant shall execute any amendment of this Lease reasonably requested by a Superior Mortgagee or a Superior Lessor, provided such amendment shall not result in a material increase in Tenant's obligations under this Lease or a material reduction in the benefits available to Tenant. In the event of the enforcement by a Superior Mortgagee of the remedies provided for by law or by such Superior Mortgage, or in the event of the termination or expiration of a Superior Lease, Tenant, upon request of such Superior Mortgagee, Superior Lessor or any person succeeding to the interest of such mortgagee or lessor (each, a "Successor Landlord"), shall automatically become the tenant of such Successor Landlord without change in the terms or provisions of this Lease (it being understood that Tenant shall, if requested, enter into a new lease on terms identical to those in this Lease); provided, that any Successor Landlord shall not be (i) liable for any act, omission or default of any prior landlord (including, without limitation, Landlord); (ii) liable for the return of any monies paid to or on deposit with any prior landlord (including, without limitation, Landlord), except to the extent such monies or deposits are delivered to such Successor Landlord; (iii) subject to any offset, claims or defense that Tenant might have against any prior landlord (including, without limitation, Landlord); (iv) bound by any Rent which Tenant might have paid for more than the current month to any prior landlord (including, without limitation, Landlord) unless actually received by such Successor Landlord; (v) bound by any covenant to perform or complete any construction in connection with the Project or the Premises or to pay any sums to Tenant in connection therewith; or (vi) bound by any waiver or

forbearance under, or any amendment, modification, abridgement, cancellation or surrender of, this Lease made without the consent of such Successor Landlord.

(b) Upon request by such Successor Landlord, Tenant shall execute and deliver an instrument or instruments, reasonably requested by such Successor Landlord, confirming the attornment provided for herein, but no such instrument shall be necessary to make such attornment effective, provided expressly that as long as Tenant is not in default under this Lease beyond the applicable grace or cure periods, any mortgagee, purchaser or transferee in foreclosure, or any ground lessor in the event of default under any group lease, (i) shall honor this Lease in accordance with its terms, (ii) shall not disturb Tenant in its possession of the Premises, (iii) shall not name Tenant in any foreclosure proceedings, (iv) shall cause Landlord's obligations under this Lease to be performed from and after the date of any such foreclosure, purchase or transfer, and (v) shall use any insurance proceedings from a fire or casualty, or any condemnation awards, for the purpose of restoring the Premises and Building in accordance with this Lease.

(c) Landlord shall use commercially reasonable efforts to obtain from any presently existing mortgagees and ground lessors properly executed and acknowledged, recordable Nondisturbance Agreements in form and substance reasonably acceptable to Tenant, stating that as long as Tenant is not in default under the Lease beyond the applicable grace or cure periods, each of them (i) shall honor this Lease in accordance with its terms, (ii) shall not disturb Tenant in its possession of the Premises, (iii) shall not name Tenant in any foreclosure proceedings, (iv) shall cause Landlord's obligations under this Lease to be performed from and after the date of any foreclosure, purchase or transfer, and (v) shall use any insurance proceedings resulting from a fire or casualty, or any condemnation awards, for the purpose of restoring the Premises and Building in accordance with this Lease. Landlord shall promptly notify Tenant prior to Landlord's execution of any new mortgage(s) or ground lease(s) on the Building or Project. Promptly after the execution of any new mortgage or ground lease, Landlord use commercially reasonable efforts to deliver to Tenant a properly executed, acknowledged, recordable Nondisturbance Agreement in form and substance reasonably acceptable to Tenant in accordance with this Section 6.01 from such new mortgagee or ground lessor. Landlord's failure to deliver such Nondisturbance Agreements shall in no way affect the validity of this Lease or the automatic subordination and attornment provisions contained in this Section 6.01.

(d) Tenant shall give each Superior Mortgagee and each Superior Lessor a copy of any notice of default served upon Landlord, provided that Tenant has been notified of the address of such mortgagee or lessor. If Landlord fails to cure any default as to which Tenant is obligated to give notice pursuant to the preceding sentence within the time provided for in this Lease, then each such mortgagee or lessor shall have an additional 30 days after receipt of such notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if, within such 30 days, any such mortgagee or lessor has commenced and is diligently pursuing the remedies necessary to cure such default (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. Nothing herein shall be deemed to imply that Tenant has any right

to terminate this Lease or any other right or remedy, except as may be otherwise expressly provided for in this Lease.

**6.02. Estoppel Certificate.** Each party shall, at any time and from time to time, within ten (10) business days after request by the other party, execute and deliver to the requesting party (or to such person or entity as the requesting party may designate) a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the Commencement Date, Expiration Date, Rent Commencement Date and the dates to which the Fixed Rent and Additional Charges have been paid and stating whether or not, to the best knowledge of such party, the other party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which such party has knowledge, it being intended that any such statement shall be deemed a representation and warranty to be relied upon by the party to whom such statement is addressed. Landlord and Tenant also shall include or confirm in any such statement such other information concerning this Lease as the other may reasonably request.

**6.03. Default.** This Lease and the term and estate hereby granted are subject to the limitation that:

(a) if Tenant defaults in the payment of any Rent for a period of five (5) days after Landlord has sent Tenant notice of such default (however, if: (i) Landlord shall have sent to Tenant a notice of such default on at least two (2) occasions during any particular Lease Year (as defined herein), even though the same shall have been cured and this Lease not terminated; and (ii) during the same Lease Year in which said notices of default have been sent by Landlord to Tenant, Tenant thereafter shall again default in any monetary payment, such third (3<sup>rd</sup>) default shall be deemed to be an automatic Event of Default without any further action being required by Landlord, and no five (5) day notice and grace period set forth above shall be required), or

(b) if Tenant defaults in the keeping, observance or performance of any covenant or agreement (other than a default of the character referred to in Section 6.03(a), (c), (d), (e), (f), (g) or (h)), and if such default continues and is not cured within thirty (30) days after Landlord gives to Tenant a written notice specifying the same, or, in the case of a default which for causes beyond Tenant's reasonable control cannot with due diligence be cured within such period of thirty (30) days, if Tenant shall not promptly upon the receipt of such notice, (i) advise Landlord of Tenant's intention duly to institute all steps necessary to cure such default and (ii) institute and thereafter diligently prosecute to completion all steps necessary to cure the same, or

(c) if this Lease or the estate hereby granted would, by operation of law or otherwise, devolve upon or pass to any person or entity other than Tenant, except as expressly permitted by Article 5, or

(d) intentionally omitted, or

(e) if a default of the kind set forth in Section 6.03(a), (b) or (g) shall occur and have been cured, and if a similar default shall occur more than twice within the next three

hundred sixty-five (365) days, whether or not such similar defaults are cured within the applicable grace period, or

(f) if a default in the keeping, observance or performance of any covenant or agreement under Section 4.02 occurs and if such default continues and is not cured within 5 days after Landlord gives to Tenant a notice specifying the same, or

(g) if Tenant fails to deliver to Landlord any Security Deposit or amounts necessary to replenish any Security Deposit upon draw-down of same by Landlord within the time period required under Section 2.08,

then, in any of (a) through (g) of this Section 6.03, in addition to any other remedies available to Landlord at law or in equity, Landlord shall be entitled to give to Tenant a notice of intention to end the Term at the expiration of 5 days from the date of the giving of such notice if such default is not cured within said five (5) days, and, in the event such notice is given and the default is not timely cured, this Lease and the term and estate hereby granted shall terminate upon the expiration of such 5 days with the same effect as if the last of such 5 days were the Expiration Date, but Tenant shall remain liable for damages as provided herein or pursuant to law.

**6.04. Re-entry by Landlord.** If Tenant defaults in the payment of any Rent and such default continues for 5 days after Tenant's receipt of written notice, to the extent notice is required hereunder, or if this Lease shall terminate as in Section 6.03 provided, Landlord or Landlord's agents and servants may immediately or at any time thereafter re-enter into or upon the Premises, or any part thereof, either by summary dispossession proceedings or by any suitable action or proceeding at law, without being liable to indictment, prosecution or damages therefore, and may repossess the same, and may remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Premises. The words "re-enter" and "re-entering" as used in this Lease are not restricted to their technical legal meanings. Upon such termination or re-entry, Tenant shall pay to Landlord any Rent then due and owing (in addition to any damages payable under Section 6.05).

**6.05. Damages.** If this Lease is terminated under Section 6.03, or if Landlord re-enters the Premises under Section 6.04, Tenant shall pay to Landlord as damages, at the election of Landlord, either:

(a) sums equal to the Rent that would have been payable by Tenant through and including the Expiration Date had this Lease not terminated or had Landlord not reentered the Premises, payable upon the due dates therefore specified in this Lease; provided, that if Landlord shall relet all or any part of the Premises for all or any part of the period commencing on the day following the date of such termination or re-entry to and including the Expiration Date, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred or paid by Landlord in terminating this Lease and of re-entering the Premises and of securing possession thereof, as well as the expenses of reletting, including, without limitation, altering and preparing the Premises for new tenants,

brokers' commissions, and all other expenses properly chargeable against the Premises and the rental therefrom in connection with such reletting, it being understood that any such reletting may be for a period equal to or shorter or longer than said period; provided, further, that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord under this Lease, (ii) in no event shall Tenant be entitled, in any suit for the collection of damages pursuant to this Section 6.05(a), to a credit in respect of any net rents from a reletting except to the extent that such net rents are actually received by Landlord prior to the commencement of such suit, (iii) if the Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot rentable area basis shall be made of the rent received from such reletting and of the expenses of reletting and (iv) Landlord shall have no obligation to so relet the Premises or mitigate damages and Tenant hereby waives any right Tenant may have, at law or in equity, to require Landlord to so relet the Premises or mitigate damages. Suit or suits for the recovery of any damages payable hereunder by Tenant, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall require Landlord to postpone suit until the date when the Term would have expired but for such termination or re-entry; or

(b) in the event Landlord has relet all or any part of the Premises for all or any part of the period commencing on the day following the date of the Lease termination or re-entry to and including the Expiration Date, a sum which, at the time of such reletting, represents the then value of the excess, if any, of (x) the aggregate of the Rent which, had this Lease not terminated, would have been payable hereunder by Tenant for the period commencing on the day following the date of such termination or re-entry to and including the Expiration Date over (y) the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents allocable to such reletting the expenses incurred or paid by Landlord in terminating this Lease and of re-entering the Premises and of securing possession thereof, as well as the expenses of reletting, including, without limitation, altering and preparing the Premises for new tenants, brokers' commissions, and all other expenses properly chargeable against the Premises and the rental therefrom in connection with such reletting, it being understood that any such reletting may be for a period equal to or shorter or longer than said period; provided, further, that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord under this Lease, (ii) in no event shall Tenant be entitled, in any suit for the collection of damages pursuant to this Section 6.05(b), to a credit in respect of any net rents from a reletting, (iii) if the Premises or any part thereof should be relet in combination with other space, then proper apportionment on a square foot rentable area basis shall be made of the rent received from such reletting and of the expenses of reletting and (iv) Landlord shall have no obligation to so relet the Premises or mitigate damages and Tenant hereby waives any right Tenant may have, at law or in equity, to require Landlord to so relet the Premises or mitigate damages. Suit or suits for the recovery of any damages payable hereunder by Tenant may be brought by Landlord from time to time at its election, and nothing contained herein shall require Landlord to postpone suit until the date when the Term would have expired but for such termination or re-entry.

**6.06. Other Remedies.** Nothing contained in this Lease shall be construed as limiting or precluding the recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by

reason of any default hereunder on the part of Tenant. Anything in this Lease to the contrary notwithstanding, during the continuation of any default by Tenant, Tenant shall not be entitled to exercise any rights or options, or to receive any funds or proceeds being held, under or pursuant to this Lease.

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

**6.08. Certain Waivers.** Tenant waives and surrenders all right and privilege that Tenant might have under or by reason of any present or future law to redeem the Premises or to have a continuance of this Lease after Tenant is dispossessed or ejected therefrom by process of law or under the terms of this Lease or after any termination of this Lease. Tenant also waives the provisions of any law relating to notice and/or delay in levy of execution in case of any eviction or dispossession for nonpayment of rent, and the provisions of any successor or other law of like import. Landlord and Tenant each waive trial by jury in any action in connection with this Lease.

**6.09. No Waiver.** Failure by either party to declare any default immediately upon its occurrence or delay in taking any action in connection with such default shall not waive such default but such party shall have the right to declare any such default at any time thereafter. Any amounts paid by Tenant to Landlord may be applied by Landlord, in Landlord's discretion, to any items then owing by Tenant to Landlord under this Lease. Receipt by Landlord of a partial payment shall not be deemed to be an accord and satisfaction (notwithstanding any endorsement or statement on any check or any letter accompanying any check or payment) nor shall such receipt constitute a waiver by Landlord of Tenant's obligation to make full payment. No act or thing done by Landlord or its agents shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord and by each Superior Lessor and Superior Mortgagee whose lease or mortgage provides that any such surrender may not be accepted without its consent.

**6.10. Holding Over.** If Tenant holds over without the consent of Landlord after expiration or termination of this Lease, Tenant shall (a) pay as holdover rental for each month of the holdover tenancy an amount equal to one hundred fifty percent (150%) of the greater of (i) the fair market rental value of the Premises for such month (as reasonably determined by Landlord) or (ii) the Rent which Tenant was obligated to pay for the month immediately preceding the end of the Term; and (b) be liable to Landlord for and indemnify Landlord against (i) any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") by reason of the late delivery of space to the New Tenant as a result of Tenant's holding over or in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant, (ii) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding

over by Tenant and (iii) any claim for damages by any New Tenant. No holding over by Tenant after the Term shall operate to extend the Term. Notwithstanding the foregoing, the acceptance of any rent paid by Tenant pursuant to this Section 6.10 shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding.

**6.11. Attorneys' Fees.** If either party incurs attorneys' fees and disbursements in enforcing any of its rights or obligations in or under this Lease, and such party prevails in any such litigation, the losing party agrees to reimburse the prevailing party for the reasonable costs of such fees and disbursements, it being understood that the rights accorded in this Section 6.11 are reciprocal. Notwithstanding the foregoing, in the event Landlord incurs attorneys fees and disbursements in enforcing any of Tenant's payment obligations, Landlord shall be reimbursed by Tenant the reasonable costs of such fees and disbursements notwithstanding that litigation may not have been commenced.

If Landlord places the enforcement of this Lease or any part thereof, or the collection of any Rent due or to become due hereunder, or recovery of the possession of the Premises, in the hands of an attorney, or files suit upon the same, or in the event any bankruptcy, insolvency or other similar proceeding is commenced involving Tenant, Tenant shall, upon demand, reimburse Landlord for Landlord's reasonable attorneys' fees and disbursements and court costs.

**6.12. Nonliability and Indemnification.**

(a) Neither Landlord, any Superior Lessor or any Superior Mortgagee, nor any direct or indirect member, partner, director, officer, shareholder, principal, agent, servant or employee of Landlord, any Superior Lessor or any Superior Mortgagee (whether disclosed or undisclosed), shall be liable to Tenant for (i) any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, nor shall the aforesaid parties be liable for any loss of or damage to property of Tenant or of others entrusted to employees of Landlord; provided, that, except to the extent of the release of liability and waiver of subrogation provided in Section 7.03 hereof, the foregoing shall not be deemed to relieve Landlord of any liability to the extent resulting from the gross negligence or willful misconduct of Landlord, its agents, servants or employees in the operation or maintenance of the Premises or the Building, (ii) any loss, injury or damage described in clause (i) above caused by other tenants or persons in, upon or about the Building, or caused by operations in construction of any private, public or quasi-public work, or (iii) even if negligent, consequential damages arising out of any loss of use of the Premises or any equipment, facilities or other Tenant's Property therein.

(b) Tenant shall indemnify and hold harmless Landlord, all Superior Lessors and all Superior Mortgagees and each of their respective direct and indirect members, partners, directors, officers, shareholders, principals, agents and employees (each, an "Indemnified Party"), from and against any and all claims arising from or in connection with (i) the conduct or management of the Premises or of any business therein, or any work or thing done, or any condition created, in or about the Premises (other than work by Landlord or its contractors or the agents or employees of either), (ii) any act, omission or negligence of Tenant or any person

claiming through or under Tenant or any of their respective direct or indirect members, partners, shareholders, directors, officers, agents, employees or contractors, (iii) any accident, injury or damage occurring in, at or upon the Premises, (iv) any default by Tenant in the performance of Tenant's obligations under this Lease and (v) any brokerage commission or similar compensation claimed to be due by reason of any proposed subletting or assignment by Tenant (irrespective of the exercise by Landlord of any of the options in Section 5.02(b)); together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys' fees and disbursements; provided, that the foregoing indemnity shall not apply to the extent such claim results from the negligence (other than negligence to which the release of liability and waiver of subrogation provided in Section 7.03 below applies) or willful misconduct of the Indemnified Party. If any action or proceeding is brought against any Indemnified Party by reason of any such claim, Tenant, upon notice from such Indemnified Party shall resist and defend such action or proceeding (by counsel reasonably satisfactory to such Indemnified Party).

(c) Subject to Section 6.12(b) hereof, Landlord shall indemnify and hold harmless Tenant and its direct or indirect members, partners, directors, officers, shareholders, principals, agent and employees (collectively, "Tenant Indemnitees") from and against any and all claims against Tenant Indemnitees to the extent arising from any work done by Landlord, its contractors, agent or employees (other than by Tenant, its contractors, agents, employees or as otherwise directed by Tenant) or any damage to the Premises or any bodily injury resulting from the negligence of Landlord, its contractors, agents or employees. If any action or proceeding is brought against any Tenant Indemnitee by reason of any such claim, Landlord, upon notice from such Tenant Indemnitee shall resist and defend such action or proceeding (by counsel reasonably satisfactory to such Tenant Indemnitee).

(d) Neither Tenant nor Landlord shall have any liability to each other for any consequential damages arising from a breach under this Lease, except as set forth in Section 6.10.

## **ARTICLE 7. Insurance; Casualty; Condemnation**

### **7.01. Compliance with Insurance Standards.**

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

(b) If, by reason of any failure of Tenant to comply with this Lease, the premiums on Landlord's insurance on the Project shall be higher than they otherwise would be,



Tenant shall reimburse Landlord, on demand, for that part of such premiums attributable to such failure on the part of Tenant. A schedule or "make up" of rates for the Project or the Premises, as the case may be, issued by the New York Fire Insurance Rating Organization or other similar body making rates for insurance for the Project or the Premises, as the case may be, shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rate then applicable to the Project or the Premises, as the case may be.

**7.02. Tenant's Insurance.** Tenant shall maintain at all times during the Term (a) "all risk" property insurance covering all present and future Tenant's Property, Fixtures and Tenant's Improvements and Betterments to a limit of not less than the full replacement cost thereof, and (b) commercial general liability insurance, including a contractual liability endorsement, and personal injury liability coverage, in respect of the Premises and the conduct or operation of business therein, with Landlord and its managing agent, if any, and each Superior Lessor and Superior Mortgagee whose name and address shall have been furnished to Tenant, as additional insureds, with limits of not less than \$5,000,000 combined single limit for bodily injury and property damage liability in any one occurrence and (c) boiler and machinery insurance, if there is a boiler, supplementary air conditioner or pressure object or similar equipment in the Premises, with Landlord and its managing agent, if any, and each Superior Lessor and Superior Mortgagee whose name and address shall have been furnished to Tenant, as additional insureds, with limits of not less than \$5,000,000 and (d) when Alterations are in process, the insurance specified in Section 4.02(f) hereof. The limits of such insurance shall not limit the liability of Tenant. Tenant shall deliver to Landlord and any additional insureds, at least ten (10) days prior to the Commencement Date, such fully paid-for policies or certificates of insurance, in form reasonably satisfactory to Landlord issued by the insurance company or its authorized agent. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord and any additional insureds such renewal policy or a certificate thereof at least fifteen (15) days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business in New York State and rated by Best's Insurance Reports or any successor publication of comparable standing as A-/VIII or better or the then equivalent of such rating, and all such policies shall contain a provision whereby the same cannot be canceled, allowed to lapse or modified unless Landlord and any additional insureds are given at least thirty (30) days' prior written notice of such cancellation, lapse or modification. Tenant shall cooperate with Landlord in connection with the collection of any insurance monies that may be due in the event of loss and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may be required to recover any such insurance monies. Landlord may from time to time require that the amount of the insurance to be maintained by Tenant under this Section 7.02 be increased, so that the amount thereof adequately protects Landlord's interest.

**7.03. Subrogation Waiver.** Landlord and Tenant shall each include in each of its insurance policies (insuring the Building in case of Landlord, and insuring Tenant's Property, Fixtures and Improvements and Betterments in the case of Tenant, against loss, damage or destruction by fire or other casualty) a waiver of the insurer's right of subrogation against the other party during the Term or, if such waiver should be unobtainable or unenforceable, (a) an express agreement that such policy shall not be invalidated if the assured waives the right of recovery against any party responsible for a casualty covered by the policy before the casualty or

(b) any other form of permission for the release of the other party. Each party hereby releases the other party with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damage or destruction with respect to its property occurring during the Term to the extent to which it is, or is required to be, insured under a policy or policies containing a waiver of subrogation or permission to release liability. Nothing contained in this Section 7.03 shall be deemed to relieve either party of any duty imposed elsewhere in this Lease to repair, restore or rebuild or to nullify any abatement of rents provided for elsewhere in this Lease.

#### **7.04. Condemnation.**

(a) If there shall be a total taking of the Building in condemnation proceedings or by any right of eminent domain, this Lease and the term and estate hereby granted shall terminate as of the date of taking of possession by the condemning authority and all Rent shall be prorated and paid as of such termination date. If there shall be a taking of any material (in Landlord's reasonable judgment) portion of the Land or the Building (whether or not the Premises are affected by such taking), then either Tenant or Landlord may terminate this Lease and the term and estate granted hereby by giving notice to the other party within sixty (60) days after the date of taking of possession by the condemning authority. If there shall be a taking of the Premises of such scope (but in no event less than twenty percent (20%) thereof) that Tenant would not be able to operate its business in the untaken part of the Premises, then Tenant may terminate this Lease and the term and estate granted hereby by giving notice to Landlord within sixty (60) days after the date of taking of possession by the condemning authority. If either Landlord or Tenant shall give a termination notice as aforesaid, then this Lease and the term and estate granted hereby shall terminate as of the date of such notice and all Rent shall be prorated and paid as of such termination date. In the event of a taking of the Premises which does not result in the termination of this Lease (i) the term and estate hereby granted with respect to the taken part of the Premises shall terminate as of the date of taking of possession by the condemning authority and all Rent shall be appropriately abated for the period from such date to the Expiration Date and (ii) Landlord shall with reasonable diligence restore the remaining portion of the Premises (exclusive of Tenant's Property) as nearly as practicable to its condition prior to such taking.

(b) In the event of any taking of all or a part of the Building, Landlord shall be entitled to receive the entire award in the condemnation proceeding, including, without limitation, any award made for the value of the estate vested by this Lease in Tenant or any value attributable to the unexpired portion of the Term, and Tenant hereby 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; provided, that nothing shall preclude Tenant from intervening in any such condemnation proceeding to claim or receive from the condemning authority any compensation to which Tenant may otherwise lawfully be entitled in such case in respect of Tenant's Property or moving expenses, provided the same do not include any value of the estate vested by this Lease in Tenant or of the unexpired portion of the Term and do not reduce the amount available to Landlord or materially delay the payment thereof.

(c) 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 which 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 which represents reimbursement for the cost of restoration of the Premises. This Lease shall remain unaffected by such taking and Tenant shall continue responsible for all of its obligations under this Lease to the extent such obligations are not affected by such taking 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 which represents compensation for the use and occupancy of the Premises shall be apportioned between Landlord and Tenant as of the Expiration Date. Any award for temporary use and occupancy for a period beyond the date to which the Rent has been paid shall be paid to, held and applied by Landlord as a trust fund for payment of the Rent thereafter becoming due.

(d) In the event of any taking which does not result in termination of this Lease, (i) Landlord, whether or not any award shall be sufficient therefore, shall proceed with reasonable diligence to repair the remaining parts of the Building and the Premises (other than those parts of the Premises which constitute Tenant's Property) to substantially their former condition to the extent that the same may be feasible (subject to reasonable changes which Landlord deems desirable) and so as to constitute a complete and rentable Building and Premises and (ii) Tenant, whether or not any award shall be sufficient therefore, shall proceed with reasonable diligence to repair the remaining parts of the Premises which constitute Tenant's Property, to substantially their former condition to the extent that the same may be feasible, subject to reasonable changes which shall be deemed Alterations.

#### **7.05. Casualty.**

(a) If the Building or the Premises shall be partially or totally damaged or destroyed by fire or other casualty (each, a "Casualty") and if this Lease is not terminated as provided below, then (i) Landlord shall repair and restore the Building and the Premises (excluding Tenant's Improvements and Betterments, Fixtures and Tenant's Property) with reasonable dispatch (but Landlord shall not be required to perform the same on an overtime or premium pay basis) after notice to Landlord of the Casualty and the collection of the insurance proceeds attributable to such Casualty and (ii) Tenant shall repair and restore in accordance with Section 4.02 all Tenant's Property, Fixtures and Improvements and Betterments with reasonable dispatch after the Casualty.

(b) If all or part of the Premises shall be rendered untenable by reason of a Casualty, and Tenant does not terminate the Lease in accordance herewith, the Fixed Rent and the Additional Charges under Section 2.04 shall be abated in the proportion that the untenable area of the Premises bears to the total area of the Premises, for the period from the date of the Casualty to the earlier of (i) the date the Premises is made tenantable (provided, that if the Premises would have been tenantable at an earlier date but for Tenant having failed to cooperate with Landlord in effecting repairs or restoration or collecting insurance proceeds, then the Premises shall be deemed to have been made tenantable on such earlier date and the abatement shall cease) or (ii) the date Tenant or any subtenant reoccupies a portion of the Premises (in

which case the Fixed Rent and the Additional Charges allocable to such reoccupied portion shall be payable by Tenant from the date of such occupancy). Landlord's determination of the date the Premises is tenantable shall be controlling unless Tenant disputes same by notice to Landlord within 10 days after such determination by Landlord, and pending resolution of such dispute, Tenant shall pay Rent in accordance with Landlord's determination. Notwithstanding the foregoing, if by reason of any act or omission by Tenant, any subtenant or any of their respective partners, directors, officers, servants, employees, agents or contractors, Landlord, any Superior Lessor or any Superior Mortgagee shall be unable to collect all of the insurance proceeds (including, without limitation, rent insurance proceeds) applicable to the Casualty, then, without prejudice to any other remedies which may be available against Tenant, there shall be no abatement of Rent. Nothing contained in this Section 7.05 shall relieve Tenant from any liability that may exist as a result of any Casualty.

(c) If by reason of a Casualty (i) the Building shall be totally damaged or destroyed, (ii) the Building shall be so damaged or destroyed (whether or not the Premises are damaged or destroyed) that repair or restoration shall require more than two hundred ten (210) days or the expenditure of more than twenty percent (20%) of the full insurable value of the Building (which, for purposes of this Section 7.05(c), shall mean replacement cost less the cost of footings, foundations and other structures below the street and first floors of the Building) immediately prior to the Casualty or (iii) more than thirty percent (30%) of the Premises shall be damaged or destroyed (as estimated in any such case by a reputable contractor, architect or engineer designated by Landlord), then in any such case Landlord or Tenant may terminate this Lease by notice given to the other within one hundred eighty (180) days after the Casualty.

(d) Landlord shall not carry any insurance on Tenant's Property, Fixtures or on Tenant's Improvements and Betterments and shall not be obligated to repair or replace Tenant's Property, Fixtures or Improvements and Betterments. Tenant shall look solely to its insurance for recovery of any damage to or loss of Tenant's Property, Fixtures or Tenant's Improvements and Betterments. Tenant shall notify Landlord promptly of any Casualty in the Premises.

(e) This Section 7.05 shall be deemed an express agreement governing any damage or destruction of the Premises by fire or other casualty, and Section 227 of the New York Real Property Law providing for such a contingency in the absence of an express agreement, and any other law of like import now or hereafter in force, shall have no application.

7.06. [Intentionally Omitted.]

## ARTICLE 8. Miscellaneous Provisions

**8.01. Notice.** All notices, demands, consents, approvals, advices, waivers or other communications which may or are required to be given by either party to the other under this Lease shall be in writing and shall be deemed to have been given upon receipt or refusal if sent with a nationally recognized overnight courier for next day delivery or by United States mail, certified or registered, postage prepaid, return receipt requested, and addressed to the party to be notified at the address for such party specified in the first paragraph of this Lease or to such other

place as the party to be notified may from time to time designate by at least 5 days' notice to the notifying party and (a) in the case of each notice to Landlord, to the attention of Charles N. Hazen with copies to Moritt Hock & Hamroff LLP, 400 Garden City Plaza, Garden City, New York 11530, Attention: Gary C. Hisiger, Esq.; and (b) in the case of each notice to Tenant, to the attention of Jacquie Broth, with copies to 800 Westchester Avenue, Suite N-501, Rye Brook, New York 10573, Attention: General Counsel. Notices from Landlord may be given by Landlord's managing agent, if any, or by Landlord's attorney, in each case with the same force and effect as if given by Landlord.

**8.02. Building Rules.** Tenant shall comply with, and Tenant shall cause its licensees, employees, contractors, agents and invitees to comply with, the rules of the Building, as the same may be reasonably modified or supplemented by Landlord from time to time for the safety, care and cleanliness of the Premises and the Building and for preservation of good order therein. Landlord shall not enforce the rules of the Building in a manner which discriminates against Tenant. If any rule of the Building shall conflict with any provision of this Lease, such provision of this Lease shall govern. In no event shall any rule or regulation be construed to prevent Tenant from using the Premises for any of the uses permitted under this Lease

**8.03. Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

**8.04. Certain Definitions.**

(a) "Landlord" means only the owner, at the time in question, of the Building or that portion of the Building of which the Premises are a part, or of a lease of the Building or that portion of the Building of which the Premises are a part, so that in the event of any transfer or transfers of title to the Building or of Landlord's interest in a lease of the Building or such portion of the Building, the transferor shall be and hereby is relieved and freed of all obligations of Landlord under this Lease accruing after such transfer, and it shall be deemed, without further agreement, that such transferee has assumed all obligations of Landlord during the period it is the holder of Landlord's interest under this Lease.

(b) "Landlord shall have no liability to Tenant" or words of similar import mean that Tenant is not entitled to terminate this Lease, or to claim actual or constructive eviction, partial, or total, or to receive any abatement or diminution of Rent, or to be relieved in any manner or any of its other obligations under this Lease, or to be compensated for loss or injury suffered or to enforce any other right or kind of liability whatsoever against Landlord under or with respect to this Lease or with respect to Tenant's use or occupancy of the Premises.

**8.05. Quiet Enjoyment.** Tenant shall and may peaceably and quietly have, hold and enjoy the Premises, subject to the other terms of this Lease and to Superior Leases and Superior Mortgages, provided that Tenant pays the Fixed Rent and Additional Charges to be paid by Tenant and performs all of Tenant's covenants and agreements contained in this Lease.

**8.06. Limitation of Landlord's Personal Liability.** Tenant shall look solely to Landlord's interest in the Project for the recovery of any judgment against Landlord, and no other property or assets of Landlord or Landlord's partners, officers, directors, shareholders or principals, direct or indirect, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease.

**8.07. Counterclaims.** If Landlord commences any summary proceeding or action for nonpayment of Rent or to recover possession of the Premises, Tenant shall not interpose any counterclaim of any nature or description in any such proceeding or action, unless Tenant's failure to interpose such counterclaim in such proceeding or action would result in the waiver of Tenant's right to bring such claim in a separate proceeding under applicable law.

**8.08. Survival.** All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to Tax Payments and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

**8.09. Certain Remedies.** If Tenant requests Landlord's consent and Landlord fails or refuses to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where this Lease provides that Landlord shall not unreasonably withhold its consent. No dispute relating to this Lease or the relationship of Landlord and Tenant under this Lease shall be resolved by arbitration unless this Lease expressly provides for such dispute to be resolved by arbitration.

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

**8.11. Captions; Construction.** The table of contents, captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. This Lease may be executed in multiple counterparts, each of which shall constitute an

original and all of which, when taken together, shall constitute one and the same instrument.

**8.12. Amendments.** This Lease may not be altered, changed or amended, except by an instrument in writing signed by the party to be charged.

**8.13. Broker.** Each party represents to the other that such party has dealt with no broker other than CB Richard Ellis, Inc. and Lincoln Property Company/Lincoln Harris CSG (collectively, the "Broker") in connection with this Lease or the Building. Landlord shall indemnify and hold Tenant harmless from and against all loss, cost, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) arising out of any claim for a commission or other compensation by any broker (including Broker) who alleges that it has dealt with Landlord in connection with this Lease or the Building. Tenant shall indemnify and hold Landlord harmless from and against all loss, cost, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) arising out of any claim for a commission or other compensation by any broker (other than Broker) who alleges that it has dealt with Tenant in connection with this Lease or the Building. Landlord shall enter into a separate agreement with Broker which provides that, if this Lease is executed and delivered by both Landlord and Tenant, Landlord shall pay a commission to Broker to be agreed upon between Landlord and Broker, subject to, and in accordance with, the terms and conditions of such agreement.

**8.14. Merger.** Tenant acknowledges that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease. This Lease embodies the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements, understanding and statements, oral or written, with respect thereto are merged in this Lease.

**8.15. Successors.** This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, its successors, and to the extent that an assignment may be approved by Landlord, Tenant's assigns.

**8.16. Applicable Law.** This Lease shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any principles of conflicts of laws.

**8.17. No Development Rights.** Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Project, and Tenant consents, without further consideration, to any utilization of such rights by Landlord. Tenant shall promptly execute and deliver any instruments which may be requested by Landlord, evidencing such acknowledgment and consent.

**8.18. [Intentionally Omitted.]**

**8.19. Parking Areas.**

(a) Tenant shall be entitled to use on a non-exclusive basis, four (4) parking spaces in the parking area per 1,000 rentable square feet of the Premises (i.e., 36 parking spaces) (the "Parking Allocation"), for the parking of automobiles of Tenant, and its agents, employees, contractors, licensees and invitees in the portions of the parking areas designated by Landlord for Tenant's use. Tenant shall use commercially reasonable efforts to not use nor permit any of its agents, employees, contractors and licensees to use any parking spaces in excess of the Parking Allocation. Such parking shall be on a "first come, first served" basis. Landlord reserves the right at all times to relocate or alter the portions of the parking areas designated for use as the Parking Allocation. Tenant and its personnel shall not, and Tenant shall cause persons making deliveries to Tenant to not, at any time park any trucks or delivery vehicles in any of the parking areas except loading areas and areas specifically marked for such vehicles. Tenant shall upon request promptly furnish to Landlord the license numbers of the cars operated by Tenant and its personnel.

(b) All parking spaces and the parking facilities, roadways and driveways used by Tenant, its personnel and visitors will be at their own risk, and Landlord shall not be liable for any injury to person or property, or for loss or damage to any automobile or its contents, resulting from theft, collision, vandalism or any other cause whatsoever. Except as expressly provided for herein, Landlord shall have no obligation whatsoever to provide a guard or any other personnel or device to patrol, monitor, guard or secure any parking areas; if Landlord does so provide, it shall be solely for Landlord's convenience, and Landlord shall in no way whatsoever be liable for any acts or omissions of such personnel or device in failing to prevent any such theft, vandalism, or loss or damage by other cause.

(c) There shall be no overnight parking except in that portion, if any, of the parking area designated by Landlord for overnight parking ("Overnight Parking Area"), and Tenant shall, and shall cause its personnel and visitors to, remove their automobiles from the parking area except any overnight parking area at the end of the working day. If any automobile owned by Tenant or by its personnel or visitors remain in the parking area overnight, except in any Overnight Parking Area, and the same interferes with the cleaning or maintenance of said area (snow or otherwise), any costs or liabilities incurred by Landlord in removing said automobile to effectuate cleaning or maintenance, or any damages resulting to said automobile or to Landlord's equipment or equipment owned by others by reason of the presence of or removal of said automobile during such cleaning or maintenance shall be paid by Tenant to Landlord, as additional rent on the rent payment date next following the submission of a bill therefore.

(d) Landlord shall have the right to require that all cars exhibit such identification as Landlord may from time to time deem reasonably necessary to control the use of the parking areas. Landlord shall have the right to tow, at Tenant's sole cost and expense, any of Tenant's, or its employees', visitors' or invitees' cars not exhibiting such identification if required or otherwise not complying with the parking rules and regulations established by Landlord from time to time. Landlord reserves the right to prohibit the use of the parking area by any person who regularly and/or chronically violates Landlord's rules and regulations.

**8.20. No Memorandum of Lease.** Neither Tenant nor Landlord shall record this Lease



or any memorandum or notice hereof without the agreement of the other.

**8.21. Access.** Subject to force majeure, Tenant shall have access to and use of the Premises twenty-four (24) hours per day, seven (7) days per week, subject to Tenant's obligations hereunder to pay for increased costs outside of Business Hours.

**8.22. Relocation of Premises.**

(a) Landlord, at any time, may elect upon not less than thirty (30) days' notice to Tenant, to substitute for the Premises other office space in the Building (the "Substitute Premises") designated by Landlord, provided that the Substitute Premises contains at least the same usable square foot area as the Premises. Landlord's notice shall be accompanied by a plan of the Substitute Premises, and such notice or the plan shall set forth the usable square foot area of the Substitute Premises. Tenant shall vacate and surrender the Premises and shall occupy the Substitute Premises promptly (and, in any event, not later than thirty (30) days) after Landlord has substantially completed the work to be performed by Landlord in the Substitute Premises pursuant to Section 8.22(b). Tenant shall pay the same Fixed Rent and Additional Charges under Article 2 with respect to the Substitute Premises as were payable with respect to the Premises, without regard to the usable square foot area of the Substitute Premises.

(b) Landlord shall have no liability to Tenant by reason of any such relocation, including, without limitation, as a result of any inconvenience or interference with Tenant's business, but Landlord shall, at Landlord's expense, do the following: (i) furnish and install in the Substitute Premises fixtures, improvements and appurtenances at least equal in kind and quality to those contained in the Premises at the time such notice of substitution is given by Landlord, (ii) provide to Tenant personnel to perform under Tenant's direction the moving of Tenant's Property from the Premises to the Substitute Premises, (iii) promptly reimburse Tenant for Tenant's actual and reasonable out-of-pocket costs incurred by Tenant in connection with the relocation of any telephone or other communications equipment from the Premises to the Substitute Premises, and (iv) promptly reimburse Tenant for any other actual and reasonable out-of-pocket costs incurred by Tenant in connection with Tenant's move from the Premises to the Substitute Premises provided such costs are approved by Landlord in advance, which approval shall not be unreasonably withheld. Tenant shall cooperate with Landlord so as to facilitate the prompt completion by Landlord of its obligations under this Section 8.22 and the prompt surrender by Tenant of the Premises. Without limiting the generality of the preceding sentence, Tenant shall (A) provide to Landlord promptly any approvals or instructions, and any plans and specifications or any other information reasonably requested by Landlord, and (B) promptly perform in the Substitute Premises any work to be performed therein by Tenant to prepare the same for Tenant's occupancy.

(c) From and after the date that Tenant shall actually vacate and surrender the Premises to Landlord, this Lease (i) shall no longer apply to the Premises, except with respect to obligations which accrued on or prior to such surrender date, and (ii) shall apply to the Substitute Premises as if the Substitute Premises had been the space originally demised under this Lease.

**8.23. Option to Renew.**

(a) Provided Tenant is not in default of this Lease beyond the expiration of all applicable cure periods on the date of the notice exercising its renewal option or on the Expiration Date, and on such dates shall be in occupancy of the entire Premises, Tenant shall have the right and option, exercisable upon irrevocable written notice to Landlord no later than twelve (12) months prior to the Expiration Date set forth above, to extend the Term for one (1) renewal period of five (5) years (such period being hereinafter called the "Renewal Period") upon the same terms and conditions as are herein set forth, except that the Fixed Rent payable by Tenant during the first year of the Renewal Period shall be equal to the greater of (i) ninety-five percent (95%) of the Fair Market Rental Value (as defined herein) for the Premises for the first year of the Renewal Term and (ii) the Fixed Rent payable hereunder for the year in which the Expiration Date occurs. The Fixed Rent as so determined for the first year of the Renewal Period shall increase by three percent (3%) per annum on a cumulative basis during each successive year of the Renewal Period in accordance with Section 2.02(b) above. The option to renew set forth in this Section 8.23 is personal to Broadview Networks, Inc. and shall not inure to the benefit of any third party. **Time shall be of the essence** for the exercise of such renewal option.

(b) The Fair Market Rental Value ("FMRV") for the first year of the Renewal Period shall be the fair market rental value of premises comparable to the Premises in the neighborhood, taking into account (a) that no or a reduced brokerage commission shall be payable, (b) that there shall be no free rent period or other rent concession, (c) that there shall be no Landlord work contribution, and (d) all other relevant factors and circumstances.

(c) If Tenant exercises its renewal option, then beginning twelve (12) months prior to the beginning of the Renewal Period, Landlord and Tenant shall use good faith efforts to attempt to agree upon the FMRV of the Premises. If, within sixty (60) days following such date, they are unable to agree upon the FMRV for the Renewal Period, Landlord and Tenant shall each hire a licensed and reputable real estate broker or appraiser having at least ten (10) years experience with retail real estate in Suffolk County (respectively, "Landlord's Broker" and "Tenant's Broker"). If, Landlord's Broker and Tenant's Broker are unable to agree upon a determination of the FMRV for the Premises for the Renewal Period by the ninetieth (90th) day prior to the beginning of the Renewal Period, then they shall select a mutually acceptable third licensed real estate broker or appraiser having at least ten (10) years experience with retail real estate in Suffolk County (the "Third Broker") (and if they are unable to so agree on a Third Broker, the selection shall be made, upon application of Landlord or Tenant, by the American Arbitration Association having a chapter closest to the Premises), which Third Broker shall within thirty (30) days choose either the determination of the FMRV of Landlord's Broker or Tenant's Broker to be the FMRV for the Premises and such choice shall be binding on Landlord and Tenant; provided, however, if the determination of the FMRV for the Renewal Period of Landlord's Broker and Tenant's Broker differ by \$25,000 or less per year, then the FMRV for the Premises shall be deemed to be the average of the two estimates and there shall be no need for the Third Broker. Landlord and Tenant shall each pay the fee of their own broker and shall share equally the cost of the Third Broker and of any proceedings necessary to select the Third Broker.

(d) If the Renewal Period commences prior to the determination of the Fixed

Rent for the Renewal Period, then the amount to be paid by Tenant on account of Fixed Rent from the commencement of the Renewal Period until such determination has been made shall be the Fixed Rent payable for the year in which the Expiration Date occurred. After the Fixed Rent during the Renewal Period has been determined as aforesaid, any resulting shortfall due from Tenant shall be remitted to Landlord within twenty (20) days after such determination.

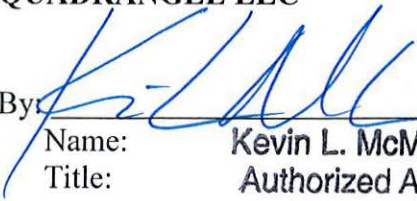
**8.24 Counterparts.** This Lease may be signed by the parties hereto in counterparts.

[Remainder of Page Intentionally Left Blank.]

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

Landlord:

**HINES REIT THREE HUNTINGTON  
QUADRANGLE LLC**

By:   
Name: **Kevin L. McMeans**  
Title: **Authorized Agent**

Tenant:

**BROADVIEW NETWORKS, INC.**

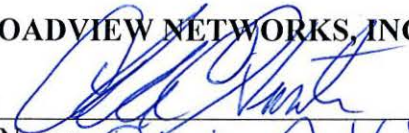
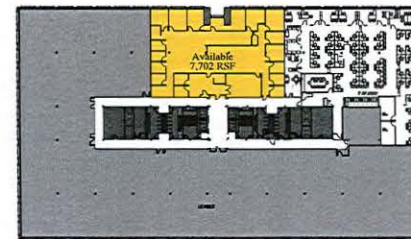
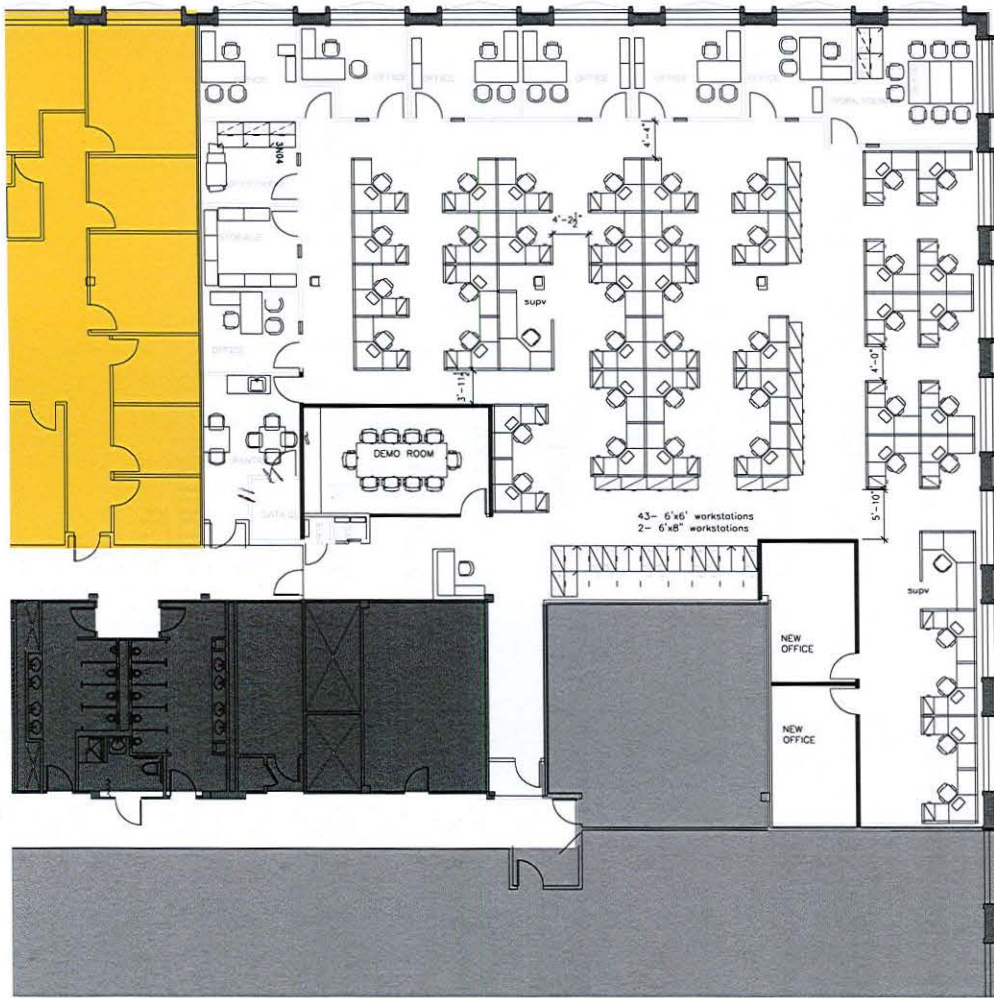
By:   
Name: **Charles C. Hunter**  
Title: **EVP**

EXHIBIT A  
FLOOR PLAN



KEYPLAN

PRELIMINARY LAYOUT- BROADVIEW NETWORKS

Project No.:3511035-00  
 Drawing No.: SK04  
 Date : 2.16.11  
 Scale: NTS



**Hines**

**CBRE**  
 CB RICHARDELLIS

88 Froehlich Farm Blvd.  
 Woodbury, NY 11797  
 T 516-677-1700 F 516-364-6943  
 www.cbre.com

3 HUNTINGTON QUADRANGLE  
 THIRD FLOOR- NE CORNER

**T | P | G**  
 ARCHITECTURE

B. All landscaping, gardening, exterior lighting and irrigation systems will have regular care and servicing.

#### **IV. EQUIPMENT SERVICE:**

A. All air-conditioning and heating equipment and elevators will be regularly serviced and maintained.

B. Plumbing and electrical facilities, doors, hinges and locks will be repaired as necessary.

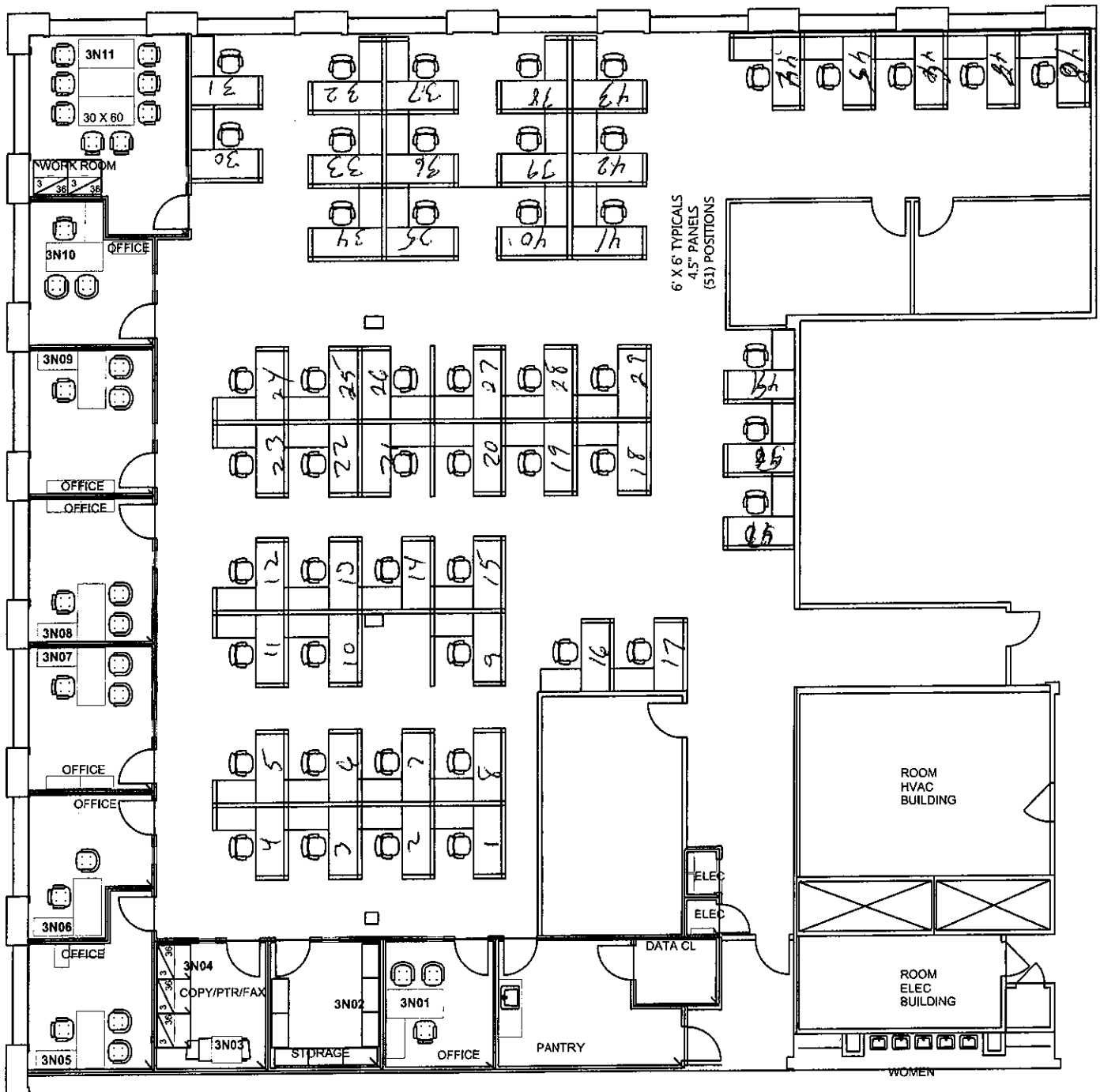
C. All appurtenances, such as rails, stairs, etc. will be maintained in a safe condition.

D. Light bulb changes, ballast changes and other electrical repairs located within the Premises will be replaced as needed at Tenant's expense.

E. Tenant, at its cost and expense, shall maintain all fire extinguishers.

#### **V. EXTRA CLEANING SERVICES AND MAINTENANCE**

Tenant shall pay to Landlord, on demand, Landlord's charges for (a) cleaning work in the Premises required because of (i) misuse or neglect on the part of Tenant or its employees or visitors, (ii) use of portions of the Premises for preparation, serving or consumption of food or beverages, or other special purposes requiring greater or more difficult cleaning work than office areas; (iii) unusual quantity of interior glass surfaces; (iv) non-building standard materials or finishes installed by Tenant or at its request; (v) increases in frequency or scope in any item set forth in this Exhibit C as shall have been requested by Tenant; and (b) removal from the Premises and Building of (i) so much of any refuse and rubbish of Tenant as shall exceed that normally accumulated in the routine of ordinary business office activity and (ii) all of the refuse and rubbish of any eating facility requiring special handling (wet garbage).





**FIRST LEASE MODIFICATION AGREEMENT**

This First Lease Modification Agreement (this “Agreement”) is executed by and between **3HQ PARTNERS LLC** (“Landlord”) and **BROADVIEW NETWORKS, INC.** (“Tenant”) as of \_\_\_\_\_ with reference to the following facts:

**WHEREAS**, Hines REIT Three Huntington Quadrangle LLC (“Hines”) and Tenant previously entered into a certain lease dated as of March, 2011 (the “Lease”) with respect to certain premises (the “Premises”) designated as Suite 304N located on the third (3<sup>rd</sup>) floor in the building commonly known as 3 Huntington Quadrangle, Melville, New York (the “Building”); and

**WHEREAS**, Tenant has requested, and Landlord, as successor to Hines, has agreed, to extend the term of the Lease for the Premises on the terms and conditions hereinafter provided;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereafter set forth, Landlord and Tenant agree as follows:

1. Except to the extent modified by this Agreement, all capitalized terms contained in this Agreement shall, for the purposes hereof, have the same meanings ascribed to those terms in the Lease. The Lease shall not be modified, or deemed modified, in any respect except as specifically set forth herein.

2. The term of the Lease is hereby extended for a period of five (5) years and two (2) months, from November 1, 2018 (the “Extended Term Commencement Date”) to and including December 31, 2023 (the Extended Term Commencement Date through December 31, 2023 is hereinafter referred to as the “Extended Term”). The Rent for the Extended Term is as follows:

<b>PERIOD</b>	<b>FIXED ANNUAL RENT</b>	<b>MONTHLY RENT</b>
11/1/2018 - 10/30/2019	\$219,678.00	\$18,306.50
11/1/2019 - 10/30/2020	\$226,268.34	\$18,855.70
11/1/2020 - 10/30/2021	\$233,056.39	\$19,421.37
11/1/2021 - 10/30/2022	\$240,048.08	\$20,004.01
11/1/2022 - 10/30/2023	\$247,249.52	\$20,604.13
11/1/2023 - 12/31/2023	\$254,667.01	\$21,222.25

3. Tenant shall be entitled to an abatement of Annual Rent (but not of the charge for Energy Service to the Premises) during the first two (2) months of the Extended Term. If Tenant shall, at any time, default in any monetary obligation under the Lease or hereunder beyond the expiration of any applicable grace period and such default is not cured such that Landlord terminates the Lease (as amended hereby), Tenant will automatically and without need of any further notice from Landlord, (i) forfeit any rent abatement provided in this section not yet used by Tenant and (ii) be liable to Landlord for the amount of any rent abatement used by Tenant as of the date of default, it being expressly understood and agreed that Landlord shall have the right to obtain a judgment against Tenant for such amounts in any court of competent jurisdiction.

4. The first two sentences of paragraph 2.06(b)(i) of the Lease are hereby deleted in their entirety and replaced with the following language: “The charge for Energy Service is payable at the rate of \$3.50 per annum per square foot contained in the Premises and is subject to escalation as hereinafter provided. The charge for Energy Service is not included in the Fixed Annual Rent or Monthly Rent set forth in paragraph 2 above.”

*SM MJR JS*

5. (a) As Tenant is presently occupying the Premises, Tenant is familiar with the same and therefore Tenant continues to accept the Premises in its "AS IS" state and condition without any representation or warranty, express or implied, in fact or by law, by Landlord and without recourse to Landlord, and without any warranty with respect to the nature, condition, usability or as to the use or occupancy of the Premises.

(b) Notwithstanding the foregoing, Landlord shall, at Landlord's sole cost and expense, perform the following work in the Premises (collectively, "Landlord's Work"):

- (i) Replace existing carpet with new, Building Standard 26 oz. nylon loop carpet with vinyl cove base. Carpet to be selected from Landlord's samples: one (1) color for entire Premises. Carpet to be glued per manufacturer's specifications.
- (ii) Paint entire Premises one (1) coat latex primer and one (1) finish coat. Door frames and door frames painted same color as walls; semi-gloss finish. Finish coat to be latex flat paint, color selected from Landlord's Building Standard paint chart (Benjamin Moore Regal Wall Satin Standard White Colors), one (1) color for entire Premises, NO CUSTOM COLORS. Additional colors for individual areas shall be paid by the Tenant at a cost of the paint plus \$350.00 per room.
- (iii) Replace all existing ceiling tiles in the Premises with new, Building Standard ceiling tiles utilizing the existing ceiling grid.
- (iv) Provide and install new, Building Standard LED indirect basket light fixtures pursuant to Landlord's architect's ceiling plan design.

(c) For purposes hereof, "Building Standard" shall mean material, manufacture, design, capacity and finish as established by Landlord's standards of the Building.

(d) Landlord shall commence Landlord's Work promptly after the Extended Term Commencement Date and receipt of notice from Tenant that Tenant has moved Tenant's Possessions (defined below). Tenant shall cooperate with Landlord in all respects with regard to the performance of Landlord's Work. Landlord shall use commercially reasonable efforts to minimize any material interference with Tenant's business during its performance of Landlord's Work, however, Tenant acknowledges that at no time shall Landlord's Work be deemed a violation of Tenant's right to quiet enjoyment of the Premises, or any part thereof, nor shall rent at any time be abated or reduced in any manner during the time of Landlord's Work. Tenant shall be responsible to move all computers and personalty of any kind (collectively "Tenant's Possessions") that require to be moved around, within or from the Premises for Landlord's Work; provided, however, that Landlord shall be responsible for any relocation or lifting of the workstations and furniture within the Premises for the performance of Landlord's Work. Tenant acknowledges that at no time shall Landlord be responsible for any damage caused to Tenant's Possessions in connection with and during Landlord's Work unless such damage is caused by the gross negligence or willful misconduct of Landlord or its contractors.

6. Effective as of the Extended Term Commencement Date, the definition of "Base Tax Year" as described in Section 2.04 of the Lease is hereby deleted and replaced with the following: " 'Base Tax Year' means Taxes actually due and payable with respect to the December 1, 2018 - November 30, 2019 tax year for taxes payable on a fiscal year basis or such other period of twelve (12) months occurring during the Extended Term as hereinafter may be adopted as the fiscal year for tax purposes of any governmental or municipal body having taxing authority over the Project."

*SM MJR JS*

7. Section 7.02 of the Lease is hereby modified to delete Tenant's requirement to obtain boiler and machinery insurance. In addition, and notwithstanding anything to the contrary contained in Section 7.02 of the Lease, Tenant shall have the right to self-insure against any and all perils and/or liabilities against which it would otherwise be required to insure and it shall also have the right to effect any such insurance means of so called "blanket" or "umbrella" policies of insurance. Tenant shall provide Landlord with a written affirmation that Tenant shall indemnify Landlord from any and all cost, loss and expense for all matters which would otherwise be covered by the required insurance. The right to self-insure is personal to Tenant and shall not inure to any assignee of, or sublessee under, this Lease.

8. The first sentence of paragraph 8.01 of the Lease is hereby deleted in its entirety and replace with the following language: "All notices, demands, consents, approvals, advices, waivers or other communications which may or are required to be given by either party to the other under this Lease shall be in writing and shall be deemed to have been given upon receipt or refusal if sent with a nationally recognized overnight courier for next day delivery or by United States mail, certified or registered, postage prepaid, return receipt requested, and addressed to the following party (or to such other place at the party to be notified may from time to time designate by at least five (5) days' notice to the notifying party): (a) in the case of each notice to Landlord, to 200 Garden City Plaza, Suite 325, Garden City, New York 11530, Attn: Legal Department, and (b) in the case of each notice to Tenant, to Windstream, 4001 N. Rodney Parham Road, Little Rock, AR 72212, Attn: Corporate Real Estate, with a copy to Broadview Networks, Inc. c/o Windstream, 4001 N. Rodney Parham Road, Little Rock, AR 72212, Attn: Legal-Corporate Real Estate Support. Notwithstanding the foregoing, all Tenant invoices and statements shall be sent electronically to [corp.cre@windstream.com](mailto:corp.cre@windstream.com)."

9. Tenant represents and warrants that it has not consulted or negotiated with any broker, finder or agent with regard to the Lease extension except Newmark Knight Frank and Treeline Leasing LLC (collectively, the "Brokers"), which is representing Landlord. Landlord has agreed pursuant to a separate agreement to pay a commission to the Brokers in connection with the Lease extension. Landlord shall hold Tenant harmless for any commissions to become due to the Brokers with respect to this Agreement. Landlord has not agreed to pay any other broker, finder, or agent any leasing commissions, fees, or other charges with respect to the Lease extension or this Agreement. Tenant agrees to hold Landlord harmless and indemnify Landlord against all costs, expenses, attorneys' fees, or other liability for any commissions or charges Tenant has agreed, or may be legally obligated, to pay any other brokers, finders or agents (except for the Brokers) claiming the same by, through or under Tenant, and such indemnity shall survive the expiration or earlier termination of the Lease.

10. This Agreement and the Lease constitute the only agreements between Landlord and Tenant relating to the leasing of the Premises, and there are no other agreements, written or oral, currently existing between the parties hereto relating to the leasing of all or any portion of the Premises. Except as specifically modified by this Agreement, all of the terms and conditions of the Lease are hereby ratified and confirmed. All references to the "Lease" in any future correspondence, notice or dealings between the parties hereto shall be deemed to refer to the Lease, as amended by this Agreement.

11. The agreements, terms and conditions contained in this Agreement shall be binding upon, and inure to the benefit of, Tenant, Tenant's permitted successors and assigns, Landlord and Landlord's successors and assigns.

12. This Agreement may not be changed orally, but only by a writing signed by both parties hereto.

13. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York.

*SM MJR JS*

14. This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument. The counterparts of this Agreement may be executed by electronic signature, and the electronic signature shall be deemed to have the same legal effect as delivery of an original executed counterpart of this Lease.

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

**LANDLORD:**  
**3HQ PARTNERS LLC**

**TENANT:**  
**BROADVIEW NETWORKS, INC.**

*DC* By: Michael Schor  
Michael I. Schor, Duly Authorized Signatory

By: Bob Gunderman  
Bob Gunderman, CEO

*DC*

*SM MJR JS*

**Hines REIT Three Huntington Quadrangle LLC  
c/o Hines REIT Properties, L.P.  
c/o Hines Interests Limited Partnership  
2800 Post Oak Bend, Suite 5000  
Houston, Texas 77056**

*Security  
side letter*

Dated as of March \_\_\_, 2011

Broadview Networks, Inc.  
800 Westchester Avenue, Suite N-501,  
Rye Brook, New York 10573

**Re: Lease dated March \_\_, 2011, between Hines REIT Three Huntington Quadrangle LLC, as landlord ("Landlord"), and Broadview Networks, Inc., as tenant ("Tenant"), affecting a Suite 304N in the building known as 3 Huntington Quadrangle, Melville, New York (said lease referred to herein as the "Lease")**

Ladies and Gentlemen:

Reference is hereby made to the Lease. This letter is written to set forth our understandings with respect to the Lease as follows:

FIRST: Tenant and Landlord acknowledge that Tenant has elected to deliver the security deposit required pursuant to Section 2.08 of the Lease by way of a Letter of Credit, which Letter of Credit is to be delivered to Landlord upon the execution and delivery of the Lease, but Tenant has not yet been able to deliver to Landlord such Letter of Credit. In order to induce Landlord to close the Lease transaction, Tenant has agreed to wire to Landlord, simultaneously with the execution and delivery hereof to Landlord by Tenant, the sum of FIFTY NINE THOUSAND NINE AND 25/100 (\$59,009.25) DOLLARS (the "Interim Cash Security") and requests that Tenant be allowed to deliver to Landlord a Letter of Credit which complies with the provisions of Section 2.08 of the Lease on or prior to May 2, 2011, time being of the essence. Landlord has agreed to accept the Interim Cash Security which shall be held by Landlord and may be used by Landlord in the same manner as Cash Security pursuant to the terms and conditions of Section 2.08 of the Lease. It is acknowledged and agreed that no interest shall accrue with respect to the Interim Cash Security between the date hereof and May 2, 2011.

SECOND: Tenant acknowledges and agrees that, in the event a Letter of Credit which complies with the provisions of Section 2.08 of the Lease is not delivered to Landlord on or prior to May 2, 2011, time being of the essence, the Interim Cash Security shall continue to be held by Landlord and may be used by Landlord in the same manner as the cash Security Deposit pursuant to the terms and conditions of Section 2.08 of the Lease and Landlord shall have no obligation to return the Interim Cash Security until such time as Landlord would otherwise be required to return the cash Security Deposit to Tenant pursuant to the terms and conditions of Section 2.08 of the Lease. Landlord acknowledges and agrees that, in the event such Letter of Credit is timely delivered as aforesaid, Landlord shall return to Tenant the Interim Cash Security, to the extent Landlord has not applied all or any portion of the Interim Cash Security as permitted under the Lease.

THIRD: Except to the extent hereinabove expressly modified, Tenant acknowledges and agrees that the Lease is hereby ratified and confirmed in all respects. All capitalized terms used in this letter agreement shall have the same meanings ascribed to them in the Lease unless otherwise indicated. This letter agreement may not be modified, amended or terminated and Tenant's obligations hereunder shall in no way be discharged, except by written instrument executed by the parties hereto. This letter agreement shall be governed by and construed in accordance with the laws of the State of New York. This letter agreement may be signed in one or more multiple counterparts, each of which taken together shall constitute one and the same instrument.

[Signature page immediately follows]

Signature Page to Side Letter Re: Cash Security

Your signature at the foot hereof shall indicate your agreement with the foregoing.

Very truly yours,

**HINES REIT THREE HUNTINGTON  
QUADRANGLE LLC**

By: 

Name:

Title:

**Kevin L. McMeans  
Authorized Agent**

Agreed to and Acknowledged:

**BROADVIEW NETWORKS, INC.**

By: 

Name:

Title:

**Charles Hunter  
EVP**