

overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever. There shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord, by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others making, or failing to make, any repairs, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances or equipment therein.

## ARTICLE 8

### INCREASES IN REAL ESTATE TAXES

#### **Section 8.1** Definitions. As used in this Article 8:

(a) "Landlord's Statement" means an instrument or instruments containing a comparison of the Base Taxes and the Taxes for any Tax Year.

(b) "Taxes" means the taxes and assessments imposed upon the Real Property, including assessments made as a result of the Real Property or any part thereof being within a business improvement district, other than any interest or penalties imposed in connection therewith, and all expenses, including fees and disbursements of counsel and experts, reasonably incurred by Landlord in connection with any application for a reduction in the assessed valuation for the Real Property or for a judicial review thereof (but in no event shall such expenses be included in the Base Taxes). If due to a future change in the method of taxation any franchise, income, profit or other tax shall be levied in substitution in whole or in part for or in lieu of any tax which would otherwise constitute a Tax, such franchise, income, profit or other tax shall be deemed to be a Tax for the purposes of this Lease.

(c) "Tax Year" means the 12 month period commencing July 1 of each year, or such other 12 month period as may be duly adopted as the fiscal year for real estate tax purposes by the City of New York.

**Section 8.2** Tax Payments. (a) If the Taxes payable for any Tax Year exceed the Base Taxes, Tenant shall pay to Landlord, as Additional Rent with respect to such Tax Year, an amount ("Tenant's Tax Payment") equal to Tenant's Proportionate Share of the amount by which the Taxes for such Tax Year exceed the Base Taxes. Landlord shall furnish to Tenant, prior to the commencement of each Tax Year, a Landlord's Statement setting forth Landlord's estimate of Tenant's Tax Payment for such Tax Year. Tenant shall pay to Landlord on the first day of June preceding such Tax Year and the first day of December of such Tax Year (each a "Payment Date"), an amount equal to one-half (1/2) of Landlord's estimate of Tenant's 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 (x) until the first Payment Date following the date on which such estimate is furnished to Tenant, Tenant shall pay to Landlord on each Payment Date, an amount equal to the amount due from Tenant on the immediately preceding Payment Date; (y) after such estimate is

furnished to Tenant, if any Tenant's Tax Payment previously made was greater or less than the Tenant's Tax Payment to be made in accordance with such estimate, then (1) if there is a deficiency, Tenant shall pay the amount thereof to Landlord within ten (10) Business Days after such estimate is furnished to Tenant, or (2) if there is an overpayment, Landlord shall credit such overpayment against the next installment of Rent due; and (z) on the first Payment Date following the date on which such estimate is furnished to Tenant, provided that such notice was furnished to Tenant at least 10 days prior to the date on which the Payment Date occurs (and otherwise within 30 days of such notice), Tenant shall make the Tenant's Tax Payment in accordance with the terms set forth above. Landlord may, during each Tax Year, furnish to Tenant a revised Landlord's Statement of Landlord's estimate of Tenant's Tax Payment for such Tax Year, and in such case, Tenant's Tax Payment for such Tax Year shall be adjusted and any deficiencies paid or overpayments credited, 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 Landlord's Statement of Taxes for such Tax Year (and upon Tenant's request, Landlord shall provide Tenant with copies of the relevant tax bills), and (A) if such Landlord's Statement shall show that the sums so paid by Tenant were less than Tenant's Tax Payment for such Tax Year, Tenant shall pay to Landlord the amount of such deficiency in Tenant's Tax Payment within ten (10) Business Days after such Landlord's Statement is furnished to Tenant, or (B) if such Landlord's Statement shall show that the sums so paid by Tenant were more than Tenant's Tax Payment for such Tax Year, Landlord shall credit such overpayment in Tenant's Tax Payment against the next installment of Rent payable by Tenant. If there shall be any increases 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, whether during or after such Tax Year, Tenant's Tax Payment for such Tax Year shall be appropriately adjusted and any deficiencies paid or overpayments credited, as the case may be, substantially in the same manner as provided in the preceding sentence. Landlord shall provide Tenant with copies of all relevant tax bills supporting such increase or decrease. If the Base Taxes are reduced at any time during the Term as a result of a reassessment or otherwise, then Tenant shall pay to Landlord, within ten (10) days of Tenant's receipt of written notice from Landlord of such reduction, an amount equal to the difference between (a) the amount of all of Tenant's Tax Payments that would theretofore have been payable had the reduced amount of the Base Taxes been used in calculating such Tenant's Tax Payment and (b) all of Tenant's Tax Payments theretofore actually made by Tenant. In the event that during the Term the City of New York changes the dates upon which Taxes are due, the Payment Dates shall be such dates upon which real estate taxes are payable to the City of New York. If, during the Term, Landlord shall elect to collect Tenant's Tax Payments, in full or in quarterly or bi-annual or other installments on any other date or dates than as presently required, then following Landlord's notice to Tenant, Tenant's Tax Payments shall be correspondingly revised.

(b) Tenant shall be obligated to pay Tenant's Tax Payment regardless of whether Tenant may be exempt from the payment of taxes as the result of any reduction, abatement, or exemption from Taxes granted or agreed to by any Governmental Authority, or by reason of Tenant's diplomatic status or other tax exempt status. The benefit of any discount for any early payment of Taxes shall accrue solely to the benefit of Landlord.



(b) **Hazardous Materials.** Tenant or any Tenant Party shall not (i) cause or permit any Hazardous Materials to be brought into or onto the Real Property, (ii) cause or permit the storage or use of Hazardous Materials in any manner not permitted by any Requirements, or (iii) cause or permit the escape, disposal or release of any Hazardous Materials within or in the vicinity of the Real Property. Nothing herein shall be deemed to prevent Tenant's use of any Hazardous Materials customarily used in the ordinary course of Tenant's occupancy of the Premises for the Permitted Use, provided such use is in accordance with all Requirements. Tenant shall be responsible, at its expense, for all matters directly or indirectly based on, or arising or resulting from, the actual or alleged presence of Hazardous Materials in the Premises, the Building or the Real Property which is caused or permitted by Tenant or any Tenant Party. Tenant shall provide to Landlord copies of all communications received by Tenant or any Tenant Party with respect to any Requirements relating to Hazardous Materials, and any claims made in connection therewith. Landlord or its agents may perform environmental inspections of the Premises at any time. Landlord, at Landlord's expense, shall remove or abate any Hazardous Materials discovered in the Premises which were in the Premises prior to the Possession Date.

(c) **Landlord's Insurance.** Tenant shall not cause or permit any action or condition that would (i) invalidate or conflict with Landlord's insurance policies, (ii) violate applicable rules, regulations and guidelines of the Fire Department, Fire Insurance Rating Organization or any other authority having jurisdiction over the Real Property, (iii) cause an increase in the premiums for fire insurance then covering the Building over that payable with respect to comparable first-class office buildings (other than Tenant's use of the Premises for the Primary Use, which Landlord acknowledges is excluded from the scope of this clause (c)), or (iv) result in insurance companies of good standing refusing to insure the Building or any property therein in amounts and against risks as reasonably determined by Landlord. If the fire insurance premiums increase as a result of Tenant's failure to comply with the provisions of this Article 9, Tenant shall promptly cure such failure and shall reimburse Landlord for the increased fire insurance premiums paid by Landlord as a result of such failure by Tenant. In any action or proceeding to which Landlord and Tenant are parties, a schedule or "make up" of rates for the Building or the Premises issued by the appropriate Fire Insurance Rating Organization, or other body fixing such fire insurance rates, shall be conclusive evidence of the fire insurance rates then applicable to the Building.

**Section 9.2 Fire Alarm System; Sprinklers.** Tenant shall install, and thereafter maintain in good order and repair, a sprinkler system and fire-alarm and life-safety system in the Premises if and to the extent such systems have not been installed in the Premises as of the date of this Lease prior to the Commencement Date. Such installation and maintenance shall be performed by Tenant in accordance with this Lease, the Rules and Regulations and all Requirements. If the Fire Insurance Rating Organization or any Governmental Authority or any of Landlord's insurers requires any modifications or Alterations be made or any additional equipment be supplied in connection with the sprinkler system or fire-alarm and life-safety system serving the Building or the Premises by reason of Tenant's business, or the location of the partitions, trade fixtures, or other contents of the Premises, Landlord (to the extent such modifications or Alterations are structural, affect any Building System or involve the performance of work outside the Premises), or Tenant (to the extent such modifications or

Alterations are nonstructural, do not affect any Building System and do not involve the performance of work outside the Premises) shall make such modifications or Alterations, and supply such additional equipment, in either case at Tenant's expense.

**Section 9.3 Limitations on Rent.** If at any time during the Term, the Rent is not fully collectible by reason of any Requirements, Tenant shall take such other steps as Landlord may request, and as may be legally permissible, to permit Landlord to collect the maximum rents which may during the continuance of such restriction be legally permissible (but not in excess of the Rent reserved under this Lease). Upon the termination of such restriction during the Term, Tenant shall pay to Landlord, in addition to the Rent for the period following such termination, if legally permissible, the portion of Rent which would have been paid pursuant to this Lease but for such legal restriction, less the Rent paid by Tenant to Landlord while such restriction was in effect, together with interest thereon at the Base Rate.

## ARTICLE 10

### QUIET ENJOYMENT

Provided this Lease is in full force and effect and no Event of Default then exists, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any Person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease and all Superior Leases and Mortgages.

## ARTICLE 11

### SUBORDINATION

**Section 11.1 Subordination and Attornment.** (a) This Lease and Tenant's rights and the rights of any Tenant Party hereunder are subject and subordinate to all Mortgages and Superior Leases. At the request of any Mortgagee or Lessor, Tenant shall attorn to such Mortgagee or Lessor, its successors in interest or any purchaser in a foreclosure sale.

(b) If a Lessor or Mortgagee or any other Person shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action, or the delivery of a new lease or deed, then at the request of the successor landlord and upon such successor landlord's written agreement to accept Tenant's attornment and to recognize Tenant's interest under this Lease, Tenant shall be deemed to have attorned to and recognized such successor landlord as Landlord under this Lease. The provisions of this Article 11 are self-operative and require no further instruments to give effect hereto; *provided, however*, that Tenant shall promptly execute and deliver any instrument that such successor landlord may reasonably request (1) evidencing such attornment, (2) setting forth the terms and conditions of Tenant's tenancy, and (3) containing such other terms and conditions as may be required by such Mortgagee or Lessor, provided such terms and conditions do not increase the Rent, materially increase Tenant's non-Rent obligations or materially and adversely affect Tenant's rights under this Lease. Upon such attornment, this Lease shall continue in full force and effect as a direct



lease between such successor landlord and Tenant upon all of the terms, conditions and covenants set forth in this Lease except that such successor landlord shall not be:

(i) liable for any act or omission of Landlord (except to the extent such act or omission is a default under this Lease and continues beyond the date when such successor landlord succeeds to Landlord's interest and Tenant gives notice of such act or omission to such successor landlord);

(ii) subject to any defense, claim, counterclaim, set-off or offset which Tenant may have against Landlord;

(iii) bound by any prepayment of more than one month's Rent to any prior landlord;

(iv) bound by any obligation to make any payment to Tenant which was required to be made prior to the time such successor landlord succeeded to Landlord's interest;

(v) bound by any obligation to perform any work or to make improvements to the Premises except for (A) repairs and maintenance required to be made by Landlord under this Lease, and (B) repairs to the Premises as a result of damage by fire or other casualty, or partial condemnation, pursuant to the provisions of this Lease, but only to the extent that such repairs can reasonably be made from the net proceeds of any insurance or condemnation awards actually made available to such successor landlord;

(vi) bound by any modification, amendment or renewal of this Lease made without the consent of any Lessor or Mortgagee of which Tenant has been provided notice; or

(vii) obligated to return any security deposit not actually received by any successor landlord.

(c) Any Mortgagee may elect that this Lease shall have priority over the Mortgage that it holds and, upon notification to Tenant by such Mortgagee, this Lease shall be deemed to have priority over such Mortgage, regardless of the date of this Lease. In connection with any financing of the Real Property, or of the interest of the lessee under any Superior Lease, Tenant shall consent to any reasonable modifications of this Lease requested by any lender, provided such modifications do not increase the Rent, materially increase Tenant's non-Rent obligations or materially and adversely affect Tenant's rights under this Lease. Upon notice to Tenant from any Mortgagee or Lessor that Landlord's license to collect Rent has been revoked, Tenant shall be authorized to pay Rent to such Mortgagee or Lessor, as the case may be.

(d) Landlord shall request for Tenant from any future Lessor and Mortgagee a non-disturbance and attornment agreement in such Lessor's and Mortgagee's standard form (a "Non-Disturbance Agreement"). If Landlord is unable in good faith to obtain such a Non-

Disturbance Agreement by making such a request, Landlord shall have no liability to Tenant, it being intended that Landlord's sole obligation shall be to request that the holder of each Mortgage enter into such Non-Disturbance Agreement and, in no event shall Landlord be required to expend any sums in its effort to obtain such Non-Disturbance Agreement. In no event shall Landlord be required to commence any litigation in order to obtain a Non-Disturbance Agreement, nor shall Landlord be required to take any step which may, in Landlord's judgment, have an adverse effect on its relationship with the holder of such Mortgage. If any Mortgagee shall impose any fee as a condition of entering into such Non-Disturbance Agreement, Landlord may withdraw its request therefor unless, within 10 days after Landlord's advice to Tenant as to such fee and the amount thereof, Tenant shall deliver to Landlord the full amount of such fee. If Tenant fails to deliver to Landlord the full amount of such fee within such period, Landlord may withdraw its request for such Non-Disturbance Agreement, in which event Landlord shall have no further obligation to obtain such Non-Disturbance Agreement.

**Section 11.2 Termination by Tenant.** As long as any Superior Lease or Mortgage shall exist, Tenant shall not seek to terminate this Lease by reason of any act or omission of Landlord (i) until Tenant shall have given notice of such act or omission to all Lessors and/or Mortgagees, and (ii) until a reasonable period of time shall have elapsed following the giving of notice of such default and the expiration of any applicable notice or grace periods (unless such act or omission is not capable of being remedied within a reasonable period of time) during which period such Lessors and/or Mortgagees shall have the right, but not the obligation, to remedy such act or omission. If any Lessor or Mortgagee elects to remedy such act or omission of Landlord, Tenant shall not seek to terminate this Lease so long as such Lessor or Mortgagee is proceeding with reasonable diligence to effect such remedy.

**Section 11.3 Future Condominium Declaration.** This Lease and Tenant's rights hereunder are and will be subject and subordinate to any condominium declaration, by-laws and other instruments (collectively, the "Declaration") which may be recorded in order to subject the Building to a condominium form of ownership pursuant to Article 9-B of the New York Real Property Law or any successor statute, provided that the Declaration does not by its terms increase the Rent, increase (other than to a *de minimis* extent) Tenant's non-Rent obligations or adversely affect (other than to a *de minimis* extent) Tenant's rights under this Lease. At Landlord's request, and subject to the foregoing proviso, Tenant will execute and deliver to Landlord an amendment of this Lease confirming such subordination and modifying this Lease to conform to such condominium regime.

**Section 11.4 Applicability.** The provisions of this Article 11 shall (i) inure to the benefit of Landlord, any future owner of the Real Property, any Lessor or Mortgagee and any successor or assign thereof, and (ii) apply notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any Superior Lease or the foreclosure of any Mortgage.

## ARTICLE 12

### SERVICES



**Section 12.1 Heating, Ventilation and Air Conditioning.** Tenant, at Tenant's expense, shall install all required heating, ventilating and air conditioning units in the Premises (collectively, the "HVAC Unit") which HVAC Unit shall be of a type manufactured by a manufacturer, and installed by a contractor, reasonably approved in each case by Landlord. The HVAC Unit shall be self-contained and shall not be connected to, tied into or otherwise make use of any of the Building's systems including, without limitation, any Building ductwork, chilled water or equipment. Tenant shall keep, maintain, repair and replace the HVAC Unit and all of the ducts, dampers, registers, grilles, wiring and appurtenances utilized in connection therewith to the extent necessary to provide heating, cooling and ventilation to the Premises which is in keeping with the operation of a first-class retail facility. Tenant shall contract for and maintain throughout the Term regular service of the HVAC Unit and related equipment with a recognized maintenance company reasonably acceptable to Landlord and shall forward to Landlord copies of such contract and all renewals and modifications thereof. Such contract shall include the servicing of the system in accordance with the manufacturer's recommended requirements. The HVAC Unit and all ducts, dampers, registers, grilles, wiring and appurtenances utilized in connection with the HVAC Unit, whether within or outside the Premises, shall, upon the installation thereof, become part of the Premises and shall be deemed the property of Landlord.

**Section 12.2 Water.** Landlord, at Landlord's expense, shall provide cold water to the Premises. Landlord, at Tenant's expense, shall install a meter to measure Tenant's water consumption. Tenant shall pay for all of its water usage in accordance with the rates set forth by the Department of Environmental Protection. Landlord may elect, at any time during the Term, to have Tenant purchase water directly from the Department of Environmental Protection. Tenant shall pay the cost of such installation, and for all maintenance, repairs and replacements thereto, and for the reasonable charges of Landlord for the water or steam furnished. Tenant shall also pay Landlord's reasonable charge for any required pumping or heating thereof, and any sewer rent, tax and/or charge now or hereafter assessed or imposed upon the Premises or the Real Property pursuant to any Requirements. If any tax is imposed upon Landlord's receipts from the sale or resale of water or steam to Tenant, Tenant shall reimburse Landlord for such tax, if and to the extent permitted by law.

**Section 12.3 Refuse and Rubbish Removal.** Tenant shall (a) cause Tenant's garbage and other refuse to be removed from the Premises and the Building, at such times, from such place and in such manner as Landlord shall designate, by Landlord's designated cartage service (provided Tenant shall not be required to pay more than the competitive rate for such service charged in comparable buildings in midtown Manhattan, and provided further that Tenant shall not be in default if Landlord's designated cartage service fails to perform at the times and in the manner required by Landlord) and (b) otherwise keep the Premises clean and in a neat, orderly, safe and sanitary condition. At Landlord's option, all or any portion of such services may be furnished by a contractor employed by Landlord who shall perform such services at Tenant's expense. Tenant shall pay to Landlord on demand the reasonable costs incurred by Landlord for (i) cleaning work in the Premises required because of misuse or neglect on the part of Tenant, Tenant's subtenants or their respective employees or visitors, and (ii) removal from the Premises and the Building of any refuse and rubbish of Tenant.



**Section 12.4 Exterior Maintenance.** Tenant, at Tenant's expense, and subject to Section 5.5, shall cause the exterior of the windows and storefronts, glass, plate glass and doors (including, in each case, the frames therefor) of the Premises to be cleaned and maintained. If Tenant shall fail to satisfactorily carry out the provisions of this Section 12.4, Landlord may undertake to perform such cleaning and maintenance, and Tenant shall pay to Landlord, on demand, the cost therefor, which cost shall be competitive with those of other window cleaning contractors in first class office buildings in midtown Manhattan. Without limiting any of the foregoing, Tenant shall, at Tenant's sole cost and expense, maintain all metalwork installed on the exterior of the storefront including, without limitation, polishing all brass in accordance with the standards of a first-class building.

**Section 12.5 Service Interruptions.** Landlord reserves the right to suspend any Building service when necessary, by reason of Unavoidable Delays, accidents or emergencies, or for repairs, alterations or improvements which, in Landlord's reasonable judgment, are necessary or appropriate, until such Unavoidable Delay, accident or emergency shall cease or such repairs, alterations or improvements are completed, and Landlord shall not be liable to Tenant for any interruption, curtailment or failure to supply services. Landlord shall use reasonable efforts to restore such service, remedy such situation and minimize interference with Tenant's business, provided that Landlord shall have no obligation to employ contractors or labor at overtime or other premium pay rates, or to incur any other overtime costs or additional expenses whatsoever. The exercise of any such right or the occurrence of any such failure by Landlord shall not (i) constitute an actual or constructive eviction, in whole or in part, (ii) entitle Tenant to any compensation, abatement or diminution of Rent, (iii) relieve Tenant from any of its obligations under this Lease, or (iv) impose any liability upon Landlord by reason of inconvenience to Tenant, or interruption of Tenant's business, or otherwise.

**Section 12.6 No other Services.** Except as provided in this Article 12, Landlord shall not be required to provide any services to the Premises.

## ARTICLE 13

### **INSURANCE, PROPERTY LOSS OR DAMAGE; REIMBURSEMENT**

**Section 13.1 Tenant's Insurance.** (a) Tenant, at its expense, shall obtain and keep in full force and effect during the Term:

(i) a policy of commercial general liability insurance on an occurrence basis against claims for bodily injury, death and/or property damage occurring in or about the Premises or the Real Property, under which Tenant is named as the insured and Landlord, Landlord's managing agent, any Lessors, any Mortgagees and any other parties whose names shall have been furnished by Landlord to Tenant from time to time are named as additional insureds, which insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of Landlord, Landlord's managing agent or any Lessors or Mortgagees named as additional insureds, and Tenant agrees to obtain blanket broad-form contractual liability coverage to insure its



indemnity obligations set forth in Article 32 hereof. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than \$5,000,000.00; *provided, however*, that Landlord may require Tenant to increase such coverage, from time to time, to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by landlords for similar space in first-class buildings in the Borough of Manhattan. If the aggregate limit applying to the Premises is reduced by the payment of a claim or establishment of a reserve equal to or greater than 50% of the annual aggregate, Tenant shall immediately arrange to have the aggregate limit restored by endorsement to the existing policy or the purchase of an additional insurance policy unless, in Landlord's reasonable judgment, Tenant maintains sufficient concurrent excess liability insurance to satisfy the liability requirements of this Lease without the reinstatement of the aggregate limit;

(ii) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of "all risk" property insurance policies, insuring Tenant's Property, and all Alterations and improvements to the Premises for the full insurable value thereof or replacement cost value thereof, whichever is greater, having a deductible amount, if any, of not more than \$10,000.00;

(iii) during the performance of any Alteration, until completion thereof, Builder's risk insurance on an "all risk" basis and on a completed value form including a Permission to Complete and Occupy endorsement, for full replacement value covering the interest of Landlord and Tenant (and their respective contractors and subcontractors), any Mortgagee and any Lessor in all work incorporated in the Building and all materials and equipment in or about the Premises;

(iv) Workers' Compensation Insurance, as required by law;

(v) New York State disability benefits as required by law;

(vi) Business Interruption Insurance;

(vii) Plate Glass Insurance covering all plate glass in the Premises; and

(viii) such other insurance in such amounts as Landlord, any Mortgagee and/or any Lessor may reasonably require from time to time but not in excess of that required from time to time of restaurant tenants by Landlords of first-class office buildings with ground floor retail in midtown Manhattan.

(b) All insurance required to be carried by Tenant pursuant to the terms of this Lease (i) shall contain a provision that (A) no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (B) the policy shall be noncancellable and/or no material change in coverage shall be made thereto unless Landlord, Lessors and Mortgagees, each of whose names and addresses shall have been previously provided to Tenant by Landlord, shall have received 30 days' prior notice of the same and (C) Tenant shall be solely responsible for the payment of all premiums under such policies and

Landlord, Lessors and Mortgagees shall have no obligation for the payment thereof, and (ii) shall be effected under valid and enforceable policies issued by reputable and independent insurers permitted to do business in the State of New York, and rated in Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a national reputation) as having a Best's Rating of "A-" and a "Financial Size Category" of at least "X" or if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time consider appropriate. Tenant shall have the right to insure and maintain the insurance coverages set forth in this Section 13.1 under blanket insurance policies covering other premises occupied or owned by Tenant and its Affiliates, so long as such blanket policies comply as to terms and amounts with the insurance provisions set forth in this Lease without co-insurance, and provided that upon request, Tenant shall deliver to Landlord a certificate of Tenant's insurer evidencing the portion of such blanket insurance allocated to the Premises.

(c) On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate certificates of insurance, including evidence of waivers of subrogation, required to be carried by Tenant pursuant to this Article 13. Evidence of each renewal or replacement of a policy shall be delivered by Tenant to Landlord at least 10 days prior to the expiration of such policy. In lieu of the policies of insurance required to be delivered to Landlord pursuant to this Article 13 (the "Policies"), Tenant may deliver to Landlord a certification from Tenant's insurance company (on the form currently designated "Acord 27", or the equivalent), with such certification evidencing coverage, and which shall expressly provide that such certification (i) conveys to Landlord and any other named insured and/or additional insureds thereunder (the "Insured Parties") all the rights and privileges afforded under the applicable Policies as primary insurance, and (ii) contains an unconditional obligation of the insurance company to advise all Insured Parties in writing at least 30 days in advance, of any termination of or change to the applicable Policies that would materially and adversely affect the interest of any of the Insured Parties.

**Section 13.2 Waiver of Subrogation.** Landlord and Tenant shall each procure an appropriate clause in or endorsement to any property insurance covering the Premises, the Building and personal property, fixtures and equipment located therein, wherein the insurance companies shall waive subrogation or consent to a waiver of right of recovery, and Landlord and Tenant agree not to make any claim against, or seek to recover from, the other for any loss or damage to its property or the property of others resulting from fire and other hazards to the extent covered by such property insurance; *provided, however*, that the release, discharge, exoneration and covenant not to sue contained herein shall be limited by and coextensive with the terms and provisions of the waiver of subrogation or waiver of right of recovery. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for, (i) damage to any Alterations or improvements to the Premises, (ii) Tenant's Property, and (iii) any loss suffered by Tenant due to interruption of Tenant's business.

## ARTICLE 14

### DESTRUCTION - FIRE OR OTHER CAUSE



**Section 14.1 Restoration.** If the Premises are damaged by fire or other casualty, or if the Building is damaged such that Tenant is deprived of reasonable access to the Premises, Tenant shall give prompt notice to Landlord, and the damage shall be promptly repaired by Landlord, at its expense, to substantially the condition of the Premises prior to the damage, subject to the provisions of any Mortgage or Superior Lease, but Landlord shall have no obligation to repair or restore (i) Tenant's Property, or (ii) any Alterations or improvements to the Premises. Until the restoration of the Premises is Substantially Completed or would have been Substantially Completed but for Tenant Delay, Fixed Rent and Tenant's Tax Payment shall be reduced in the proportion by which the area of the part of the Premises which is not useable (or accessible) and is not used by Tenant bears to the total area of the Premises.

**Section 14.2 Landlord's Termination Right.** Notwithstanding anything to the contrary contained in Section 14.1, if the Premises are totally damaged or are rendered wholly untenable, or if the Building is so damaged that in Landlord's opinion, substantial alteration, demolition, or reconstruction of the Building is required (whether or not the Premises are so damaged or rendered untenable), then in either of such events, Landlord may, not later than 60 days following the date of the damage, give Tenant a notice terminating this Lease, provided that if the Premises are not damaged, Landlord may not terminate this Lease unless Landlord similarly terminates leases (including this Lease) affecting at least 50% of the rentable area of the Building (excluding any rentable area leased by Landlord or its Affiliates). If this Lease is so terminated, (i) the Term shall expire upon the date set forth in Landlord's notice, which shall not be less than 30 days after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord no later than the date set forth in the notice, (ii) Tenant's liability for Rent shall cease as of the date of the damage, and (iii) any prepaid Rent for any period after the date of the damage shall be refunded by Landlord to Tenant.

**Section 14.3 Tenant's Termination Right.** If 25% or more of the Premises are unusable by Tenant, or if the Building shall be so damaged that Tenant is deprived of reasonable access to the Premises, and if Landlord does not elect to terminate this Lease in accordance with Section 14.2 above, Landlord shall, within 60 days following the date of the damage, cause a contractor or architect selected by Landlord to give notice (the "Restoration Notice") to Tenant of the date by which such contractor or architect estimates the restoration of the Premises (excluding any Alterations) shall be Substantially Completed. If such date, as set forth in the Restoration Notice, is more than 12 months from the date of such damage, then Tenant shall have the right to terminate this Lease by giving notice (the "Termination Notice") to Landlord not later than 60 days following Tenant's receipt of the Restoration Notice. If Tenant delivers a Termination Notice to Landlord, this Lease shall be deemed to have terminated as of the date of the giving of the Termination Notice, in the manner set forth in the second sentence of Section 14.2.

**Section 14.4 Final 24 Months.** Notwithstanding anything set forth to the contrary in this Article 14, in the event that any damage rendering the Premises wholly untenable occurs during the final 24 months of the Term, either Landlord or Tenant may terminate this Lease by notice to the other party within 30 days after the occurrence of such damage and this Lease shall expire on the 30th day after the date of such notice. For purposes of this Section 14.4, the



Premises shall be deemed wholly untenantable if due to such damage, Tenant shall be precluded from using more than 50% of the Premises for the conduct of its business and Tenant's inability to so use the Premises is reasonably expected to continue until at least the earlier of the (i) Expiration Date, or (ii) the 90th day after the date when such damage occurs.

**Section 14.5 Waiver of Real Property Law §227.** This Article constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like nature and purpose now or hereafter in force, shall have no application in any such case.

**Section 14.6 Inability to Collect.** Notwithstanding any of the foregoing provisions of this Article 14, if Landlord or any Lessor or Mortgagee shall be unable to collect all of the insurance proceeds (including rent insurance proceeds) applicable to damage or destruction of the Premises or the Building by reason of any action or inaction on the part of Tenant or any Tenant Party, then, without prejudice to any other remedies which may be available against Tenant, (i) there shall be no abatement of Rent, and (ii) Landlord shall have no obligation to restore the Premises.

**Section 14.7 Landlord's Liability.** Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property and neither Landlord nor any of the Indemnitees shall be liable for any damage to such property, or for the loss of or damage to any property of Tenant by theft or otherwise. None of the Indemnitees shall be liable for any injury or damage to persons or property or interruption of Tenant's business resulting from fire or other casualty, any damage caused by other tenants or persons in the Building or by construction of any private, public or quasi-public work, or any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in Article 7). No penalty shall accrue for delays which may arise by reason of adjustment of fire insurance on the part of Landlord or Tenant, or Unavoidable Delays, in connection with any repair or restoration of any portion of the Premises or of the Building. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of any such repair or restoration; *provided, however*, Landlord shall have no obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever. Nothing in this Section 14.7 shall affect any right of Landlord to be indemnified by Tenant under Article 32 for payments made to compensate for losses of third parties.

**Section 14.8 Windows.** If at any time any windows of the Premises are temporarily closed, darkened or covered over by reason of repairs, maintenance, alterations or improvements to the Building, or any of such windows are permanently closed, darkened or covered over due to any Requirements, Landlord shall not be liable for any damage Tenant may sustain and Tenant shall not be entitled to any compensation or abatement of any Rent, nor shall the same release Tenant from its obligations hereunder or constitute an actual or constructive eviction.