

FIFTH AMENDMENT TO LEASE

AGREEMENT, dated as of [REDACTED] between [REDACTED] a Delaware limited liability company, having an office at [REDACTED] [REDACTED] ("Landlord") and [REDACTED] a Delaware corporation, having an office at [REDACTED] ("Tenant").

WITNESSETH:

WHEREAS, pursuant to an Agreement of Lease (the "Original Lease"), dated as of August 7, 1990, between [REDACTED] (predecessor-in-interest to Landlord) and [REDACTED] (predecessor-in-interest to Tenant), as amended by (a) Agreement, dated as of August 21, 1990 (the "First Amendment"), (b) Second Amendment to Lease, dated as of August 21, 1996 (the "Second Amendment"), (c) Third Amendment to Lease, dated as of February 28, 1997 (the "Third Amendment"); and (d) Fourth Amendment of Lease, dated as of February 15, 2000 (the "Fourth Amendment"); the Original Lease, as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment is collectively, the "Lease", Landlord is leasing to Tenant the entire [REDACTED] floors (the "Office Space") of the building located at [REDACTED] (the "Building"); and

WHEREAS, the term of the Lease is scheduled to expire on [REDACTED] (the "Original Expiration Date"); and

WHEREAS, the parties desire that the Lease be further amended to provide, among other things, that Landlord lease to Tenant and Tenant hire from Landlord an additional 1,440 rentable square feet on the basement level substantially as shown hatched on the plan annexed hereto as Exhibit A (the "Storage Space"; the Office Space and the Storage Space, collectively, the "Demised Premises"), and that the term of the Lease be extended, all upon the terms and conditions hereinafter set forth.

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

1. **Capitalized Terms.** All capitalized terms used herein but not defined shall have the meanings ascribed to them in the Lease.

2. **Storage Space.** (a) Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the Storage Space for a term to commence on the date of this Agreement and ending on the Extension Period Expiration Date (as hereinafter defined), unless sooner terminated in accordance with the Lease or at law. The parties acknowledge that for all purposes of the Lease, the Storage Space shall be deemed to contain 1,440 rentable square feet.

(b) Tenant's leasing of the Storage Space shall be upon all of the terms and conditions of the Lease, except that:

(i) in addition to all other rents due under the Lease, the reserved rent payable with respect to the Storage Space shall be, for the period commencing on the date of this Agreement to and including the Extension Period Expiration Date, \$30,240.00 per annum, payable in equal monthly installments of \$2,520.00;

(ii) from and after the date of this Agreement, Tenant shall pay for electricity utilized in the Storage Space in accordance with the provisions of Section 43 of the Original Lease; provided, that in respect of the Storage Space only, the "Initial Designated Factor" shall be deemed to mean \$1,440.00;

(iii) Tenant shall use the Storage Space for storage and for no other purpose;

(iv) Tenant shall not sublease the Storage Space except in conjunction with a sublease of all or any portion of the Office Space;

(v) Except for electricity sufficient for storage purposes and elevator service to permit access to the Storage Space, Landlord shall not be required to provide any service to the Storage Space; and

(vi) Tenant shall accept the Storage Space in its "as is" condition as of the date of this Agreement, and Landlord shall have no obligation to perform any work, to pay any amount, to install any fixtures or equipment or to render any services to make the Building or the Storage Space ready for occupancy by Tenant.

3. **Extension Period.** (a) The term of the Lease is hereby extended for an additional period (the "Extension Period") commencing on [REDACTED] (the "Extension Period Commencement Date") and ending, unless sooner terminated in accordance with the Lease or at law, [REDACTED] "Extension Period Expiration Date").

(b) During the Extension Period, Tenant shall lease the Demised Premises upon all of the terms and conditions set forth in the Lease, except as follows and as otherwise expressly set forth in this Amendment:

(i) the reserved rent payable with respect to the Office Space shall be as follows: (A) for the period commencing on [REDACTED] to and including [REDACTED], the sum of [REDACTED] per annum, payable in equal monthly installments of [REDACTED] (B) for the period commencing on [REDACTED] to and including April 30, 2016, the sum of [REDACTED] per annum, payable in equal monthly installments of [REDACTED] and (C) for the period commencing on [REDACTED] to and including the Extension Period Expiration Date, the sum of [REDACTED] per annum, payable in equal monthly installments of [REDACTED]

- (ii) the reserved rent payable in respect of the Storage Space shall be set forth in Section 2 above;
- (iii) provided Tenant is not then in default under the Lease beyond any applicable notice and cure periods, Tenant shall be entitled to an abatement of the reserved rent payable in respect of the Demised Premises for the period commencing on the Extension Period Commencement Date to and including [REDACTED];
- (iv) the term "Base Tax Year" shall mean the Tax Year commencing July 1, 2006, and ending June 30, 2007;
- (v) Sections 41(f) and 41(h) of the Original Lease shall be modified by deleting the percentage 13.66% and inserting in lieu thereof the percentage 13.30%;
- (vi) Section 42 of the Original Lease shall no longer apply and Tenant shall pay for increases in the operating expenses of the Building in accordance with the provisions of Section 7 below;
- (vii) Tenant shall pay for the cost of electricity provided to (A) the Office Space in accordance with Section 6 below and (B) the Storage Space in accordance with Section 3 above; and
- (viii) Tenant shall accept the Demised Premises on the Extension Period Commencement Dated in its "as is" condition on such date, and, except as expressly set forth in this Agreement, Landlord shall have no obligation to perform any work, to pay any amount, to install any fixtures or equipment or to render any service to make the Building or the Demised Premise ready for occupancy by Tenant.

4. **Landlord's Contribution.** (a) Landlord agrees to reimburse Tenant for the cost of any alterations or improvements performed by Tenant in the Demised Premises after the date of this Agreement (the "Tenant Improvements"), in an amount not to exceed \$1,091,985.00 ("Landlord's Contribution"); provided, that as of the date on which Landlord is required to make payment pursuant to Section 4(b) below: (i) the Lease is in full force and effect, and (ii) Tenant is not in default under the Lease beyond the expiration of all applicable notice and cure periods. Tenant shall pay all costs of the Tenant Improvements in excess of Landlord's Contribution. Landlord's Contribution shall be payable solely on account of labor directly related to the Tenant Improvements and materials delivered to the Demised Premises in connection with the Tenant Improvements and the actual architectural, consulting, space planning, engineering and related permit fees incurred by Tenant in connection therewith. Tenant shall not be entitled to receive any portion of Landlord's Contribution not actually

expended by Tenant in the performance of the Tenant Improvements in accordance with this Section 4, nor shall Tenant have any right to apply any unexpended portion of Landlord's Contribution as a credit against the reserved rent or any other obligation of Tenant hereunder.

(b) Landlord shall pay Landlord's Contribution to Tenant in installments as Tenant Improvements progress, but in no event more frequently than monthly and in no event shall any installment be paid before May 1, 2006. Installments of Landlord's Contribution shall be payable by Landlord within 30 days following Tenant's satisfaction of each of the conditions required for disbursement set forth in this Section 4(b). Prior to the payment of any installment, Tenant shall deliver to Landlord a request for disbursement which shall be signed by the chief financial officer of Tenant and accompanied by (i) copies of paid invoices covering the Tenant Improvements performed or incurred since the last disbursement of Landlord's Contribution, (ii) a written certification from Tenant's architect stating that (A) the Tenant Improvements described on such invoices have been completed substantially in accordance with the plans and specifications approved by Landlord and have not been the subject of a prior disbursement of Landlord's Contribution, (B) such work has been paid in full by Tenant, and (C) all contractors, subcontractors and materialmen have delivered to Tenant waivers of lien with respect to such work (copies of which shall be included with such architect's certification). Landlord shall be permitted to retain from each disbursement an amount equal to 10% of the amount requested to be disbursed by Tenant. The aggregate amount of the retainages shall be paid by Landlord to Tenant upon the completion of all Tenant Improvements and upon receipt from Tenant of (w) a written certification from Tenant's architect stating that (A) all of the Tenant Improvements have been completed substantially in accordance with the plans and specifications approved by Landlord, (B) such work has been paid in full by Tenant, and (C) all contractors, subcontractors and materialmen have delivered to Tenant general releases or waivers of liens with respect to such work (copies of which shall be included with such architect's certification), (x) proof of the satisfactory completion of all required inspections and the issuance of any required approvals and sign-offs by any federal, state, county and municipal governments, courts, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing with respect thereto, (y) final "as-built" plans and specifications for the Tenant Improvements prepared on the AutoCAD Computer Assisted Drafting and Design System, Version 12 or later (or such other system or medium as Landlord may accept), using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming convention as Landlord may accept) and magnetic computer media of such record drawings and specifications, translated into DXF format or another format acceptable to Landlord and (z) such other documents and information as Landlord may reasonably request. The right to receive Landlord's Contribution is for the exclusive benefit of Tenant, and in no event shall such right be assigned to or be enforceable by or for the benefit of any third party, including any contractor, subcontractor, materialman, laborer, architect, engineer, attorney or any other Person.

(c) If all or any portion of Landlord's Contribution shall not have been paid by Landlord to Tenant on or before May 1, 2007, and provided that the Lease is in full force and effect and Tenant is not in default under the Lease beyond the expiration of all applicable notice and cure periods, Tenant shall have the right to credit any unpaid portion of Landlord's Contribution against the next installments of reserved rent to come due under the Lease.

(d) In addition to Landlord's Contribution, Landlord shall reimburse Tenant for any costs incurred by Tenant to refurbish the core bathrooms on the [REDACTED] floors of the Building in an amount not to exceed [REDACTED] per floor. Any such reimbursement shall be made on all of the same terms and conditions as are applicable to the payment of Landlord's Contribution, except that payment in respect of each floor may be made before May 1, 2006, but only after substantial completion of all of the refurbishment to be performed on such floor.

5. **Renewal Option.** (a) **Renewal Right.** (i) Provided that on the date Tenant exercises the Renewal Option (as hereinafter defined) and at the commencement of the Renewal Term (as hereinafter defined) (A) the Lease shall not have been terminated, (B) Tenant shall not be in default under the Lease beyond the expiration of all applicable notice and cure periods and (C) Tenant, together with Tenant's Affiliates, shall be in actual occupancy of 48,000 or more rentable square feet of the Office Space, Tenant shall have the one-time option (the "**Renewal Option**") to extend the term of the Lease for an additional 5 year period (the "**Renewal Term**"), to commence on [REDACTED] and end on [REDACTED].

(ii) The Renewal Option shall be exercised with respect to the entire Demised Premises only and shall be exercisable by Tenant giving notice to Landlord (the "**Renewal Notice**") on or before [REDACTED]. Time is of the essence with respect to the giving of the Renewal Notice.

(b) **Renewal Rent and Other Terms.** (i) The Renewal Term shall be upon all of the terms and conditions set forth in the Lease, except that (A) the reserved rent shall be as determined pursuant to the further provisions of this **Section 5**; (B) Tenant shall accept the Demised Premises in its "as is" condition at the commencement of the Renewal Term, and Landlord shall not be required to perform any alterations or any other work, pay Landlord's Contribution or any other amount or render any services to make the Demised Premises ready for Tenant's use and occupancy or provide any abatement of reserved rental or any other additional rents or charges, in each case with respect to the Renewal Term; (C) Tenant shall have no option to renew the Lease beyond the expiration of the Renewal Term; (D) the Base Tax Year shall be the Tax Year ending immediately before the commencement of the Renewal Term and (E) the Base Operating Year shall be the Computation Year (as such terms are defined in **Section 7** below) ending immediately before the commencement of the Renewal Term.

(ii) The annual reserved rent for the Demised Premises for the Renewal Term shall be the greater of (A) the Fair Market Rent or (B) an amount (the "**Annual Rent**") equal to the reserved rent payable by Tenant for the 12 month period ending on the Extension Period Expiration Date (the greater of Fair Market Rent and Annual Rent is called the "**Rental Value**"). As used in this **Section 5**, "**Fair Market Rent**" means the fixed annual rent that a willing lessee would pay and a willing lessor would accept for the Premises during the Renewal Term, taking into account all relevant factors.

(iii) If Tenant timely exercises the Renewal Option, Landlord shall notify Tenant (the "**Rent Notice**") at least 120 days before the Extension Period Expiration Date of Landlord's determination of the Fair Market Rent ("**Landlord's Determination**"). If

Landlord's Determination exceeds the Annual Rent, then Tenant shall notify Landlord ("Tenant's Notice"), within 45 days after Tenant's receipt of the Rent Notice, whether Tenant accepts or disputes Landlord's Determination, and if Tenant disputes Landlord's Determination, Tenant's Notice shall set forth Tenant's determination of the Fair Market Rent (which shall not be less than the Annual Rent). If Tenant fails to give Tenant's Notice within such 45 day period, Tenant shall be deemed to have accepted Landlord's Determination.

(iv) If Tenant timely disputes Landlord's Determination and Landlord and Tenant fail to agree as to the Fair Market Rent within 20 days after the giving of Tenant's Notice, then the Fair Market Rent shall be determined in accordance with Section 8 of this Agreement.

(v) If Tenant disputes Landlord's Determination and if the final determination of Fair Market Rent shall not be made on or before the first day of the Renewal Term, then, pending such final determination, Tenant shall pay, as Fixed Rent for the Renewal Term, an amount equal to the Annual Rent. If, based upon the final determination of the Fair Market Rent, the Fixed Rent payments made by Tenant for such portion of the Renewal Term were (A) less than the Rental Value payable for the Renewal Term, Tenant shall pay to Landlord the amount of such deficiency within 10 days after demand therefor or (B) greater than the Rental Value payable for the Renewal Term, Landlord shall credit the amount of such excess against future installments of reserved rent payable by Tenant.

#### 6. Electricity.

(a) On or prior to May 1, 2006, Landlord, at Landlord's expense, shall install submeters to measure Tenant's consumption of electrical energy with respect to the Office Space. From and after the Extension Period Commencement Date, the provisions of Section 43(a) of the Original Lease shall no longer apply, and the provisions of Sections 6(b), 6(c) and 6(d) below shall govern Tenant's use of electricity in the Office Space.

(b) Landlord shall redistribute or furnish electricity to or for the use of Tenant in the Office Space for the operation of Tenant's electrical systems and equipment in the Office Space, at a level sufficient to accommodate a connected load of 6 watts per useable square foot (but in no event less than the level supplied as of the date of this Agreement) in the Office Space, exclusive of electricity used for the Building's HVAC equipment (the "Permitted Capacity"). Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building. Tenant shall not use any electrical equipment which, in Landlord's reasonable judgment, would exceed the Permitted Capacity or interfere with electrical service to other tenants of the Building. Tenant shall not make or perform, or permit the making or performance of, any alterations to wiring installations or other electrical facilities in or serving the Demised Premises, or make any additions to the office equipment or other appliances in the Demised Premises which utilize electrical energy (other than ordinary office equipment) without the prior consent of Landlord, in each instance, and in compliance with the Lease.

(c) Tenant shall pay to Landlord, as additional rent, on demand, from time to time, but no more frequently than monthly, for Tenant's consumption of electrical energy in the Office Space, a sum equal to 103% of the product obtained by multiplying (i) the Cost Per

Rebate of kWh?

Kilowatt Hour, by (ii) the actual number of kilowatt hours of electric current consumed by Tenant in such billing period. "Cost Per Kilowatt Hour" means the actual total costs incurred by Landlord to provide electricity to the Building during a particular billing period, including energy charges, demand charges, surcharges, time-of-day charges, fuel adjustment charges, rate adjustment charges, taxes (regardless of whether included in the utility company's charges or paid separately by Landlord), rebates and any other factors used by the utility company in computing its charges to Landlord, divided by the total kilowatt hours purchased by Landlord to provide electricity to the Building for such period. For the purposes of this Section 6, the rate to be paid by Tenant on account of submetering shall include any taxes or other charges in connection therewith. If any tax shall be imposed upon Landlord's receipts from the sale or resale of electrical energy to Tenant, the pro rata share allocable to the electrical energy service received by Tenant shall be passed on to, included in the bill of, and paid by Tenant if and to the extent permitted by law.

(d) If any or all of the submeters measuring Tenant's consumption of electricity are not installed or operational with respect to any portion of the Demised Premises on or before May 1, 2006 (the "Non-Metered Space"), then Tenant shall pay \$2.50 per rentable square foot of such Non-Metered Space per annum (the "Interim Electric Charge"), on account of Tenant's use of electricity in the Non-Metered Space for the period commencing on the Extension Period Commencement Date and ending on the date that such submeters in the Non-Metered Space are installed and are operational. The Interim Electric Charge shall be paid by Tenant monthly within 30 days after submission of a bill therefor.

#### 7. Increases in Operating Expenses.

(a) As used in this Section 7:

"Base Expenses" means the Operating Expenses payable for the Base Operating Year.

"Base Rate" means the annual rate of interest publicly announced from time to time by Citibank, N.A., or its successor, in New York, New York as its "base rate" (or such other term as may be used by Citibank, N.A., from time to time, for the rate presently referred to as its "base rate").

"Base Operating Year" means the Computation Year commencing on January 1, 2006, and ending on December 31, 2006.

"Capital Improvements" means alterations, repairs, improvements, equipment or machinery installed (i) by reason of requirements of law enacted after the date of this Agreement (or enacted before the date of this Agreement but which first become applicable to Landlord or the Building after the date of this Agreement) or of a type that imposes recurring obligations on owners of real property (including New York City local laws) or (ii) for the purpose of reducing energy consumption or reducing other Operating Expenses or improving the safety and/or security of the Building, whether structural, ordinary or extraordinary, foreseen or unforeseen, and whether or not required by the Lease, amortized (with interest on the unamortized portion at the Base Rate plus 1 percent per annum) over the useful life of such

repair, replacement, equipment or improvement, as determined in accordance with generally accepted accounting principles; provided, that with respect to any capital improvement and/or any machines or equipment which is made or becomes operational after the Base Operating Year, and which was made or installed for the purpose of reducing the expenses which otherwise would be included in Operating Expenses, the amount included in Operating Expenses in any Computation Year until such improvement and/or machinery or equipment has been fully amortized, shall be the lesser of (x) the amortization of such capital improvement and/or machinery or equipment, which would have been included in Operating Expenses pursuant to the foregoing provisions or (y) the amount of savings, as reasonably estimated by Landlord, resulting from the installation and operation of such improvement and/or machine or equipment.

"Computation Year" means each calendar year in which any part of the term of the Lease occurs and, in the case of a termination of the Lease by reason of a default on the part of Tenant, in which any part of the term of the Lease would have occurred except for such termination.

"Landlord's Statement" means an instrument or instruments (including any corrected statement delivered pursuant to Section 7(f)) containing a comparison of the Base Expenses and the Operating Expenses for any Computation Year pursuant to the provisions of this Section 7.

"Operating Expenses" means the costs and expenses (and taxes, if any, thereon) paid or incurred by or on behalf of Landlord with respect to the operation, maintenance and repair of the Building and the land on which it is situated, including the costs incurred for: (i) air conditioning, ventilation, and heating; (ii) interior and exterior cleaning and rubbish removal; (iii) window washing; (iv) maintenance and repair of the elevators and escalators; (v) hand tools and other movable equipment; (vi) operating the building messenger center and messenger service; (vii) electricity (as indicated by meter, or if there is no meter, as determined by an independent electrical consultant designated by Landlord), gas, oil, steam, water rates, sewer rents and other utilities; (viii) association fees and dues; (ix) insurance premiums; (x) supplies; (xi) wages, salaries, disability benefits, pensions, hospitalization, retirement plans, severance packages and group insurance for employees of Landlord, up to and including the level of building manager and his or her immediate supervisor; provided, that to the extent that Landlord (or its agents) or any of their affiliates employs the services of any such persons at the Building and at additional locations other than the Building, then only a pro-rata portion (based on an equitable time estimate) of the foregoing expenses incurred on behalf of the Building shall be included in Operating Expenses; (xii) uniforms and working clothes for such employees and the cleaning thereof; (xiii) expenses imposed pursuant to any collective bargaining agreement with respect to such employees; (xiv) payroll, social security, unemployment and other similar taxes with respect to such employees; (xv) sales, use and similar taxes paid by Landlord on amounts otherwise includable in Operating Expenses; (xvi) charges of independent contractors performing work in connection with the operation, maintenance and repair of the Building and the land on which it is situated; (xvii) legal, accounting and other professional fees incurred in connection with the operation of the Building or the preparation of statements of a type required pursuant to the Lease (exclusive of fees and disbursements to attorneys in applying for reduction of Taxes); (xviii) installation, operation and maintenance of



holiday decorations; (xix) landscaping costs; (xx) management fees not in excess of the amount that would be paid to a property manager for managing a comparable first class office building in midtown Manhattan, or if no management fee is being charged, an imputed management fee not in excess of the amount that would be paid to a property manager for managing a comparable first class office building in midtown Manhattan (as of the date of this Agreement, the management fee is two percent of the gross revenue from the Building); and (xxi) the annual amortization (or such lesser amount as may be includable in accordance with the definition of Capital Improvements) of any Capital Improvement.

~~Operating Expenses shall not include~~ (1) Taxes, any succession, gains, recording, special assessments and franchise, transfer, income, inheritance, capital stock, excise, excess profits, occupancy or rent, estate, gift, vault charges, foreign ownership or control, payroll or stamp tax of Landlord, any other taxes imposed upon or measured by the income or profits of Landlord, or any charges and/or taxes which are paid by individual tenants; (2) depreciation of the Building, and the costs of all items (other than Capital Improvements) which should be capitalized in accordance with generally accepted accounting practices; (3) the cost of electrical energy furnished directly to Tenant and other tenants of the Building for rentable space in the Building (4) the costs of all work and services furnished to any other tenant of the Building on a "rent inclusion" basis which are not provided to Tenant on such basis; (5) the costs of all work or services performed for any tenant in the Building (including Tenant) at such tenant's cost and expense; (6) debt service, amortization of principal and penalties (or any recording or mortgage tax thereon), refinancing costs; (7) leasing commissions, advertising expenses, promotional expenses and other expenses incurred in connection with the leasing of space in the Building; (8) allowances, concessions and other costs of tenant installations and decorations incurred in connection with preparing space for any existing or new tenant in the Building, including any cash or other consideration paid by Landlord on account of, with respect to or in lieu of such leasehold improvements, workletters and concessions; (9) fixed rent payable under superior leases, if any; (10) wages, salaries and benefits paid to any employees of Landlord and Landlord's managing agent, above the level of the immediate supervisor of building manager; (11) legal fees relating to (i) disputes with tenants, prospective tenants or other occupants of the Building, (ii) disputes with purchasers, prospective purchasers, mortgagees or prospective mortgagees of the Building or any part thereof, or (iii) negotiations of leases, contracts of sale or mortgages; (12) auditing and accounting fees, other than auditing and accounting fees incurred in connection with the operation of the Building or the preparation of statements of a type required pursuant to the Lease; (13) ~~costs which are reimbursed by insurance, warranty, condemnation proceeds, or otherwise, or which are reimbursable by Tenant or other tenants or any other person other than pursuant to an expense escalation clause of a lease;~~ (14) costs in the nature of penalties or fines; (15) any cost stated in Operating Expenses representing an amount paid to Landlord or any affiliate or subsidiary of Landlord or Landlord's managing agent which is in excess of the costs that would be payable in an "arm's length" or unrelated transaction; (16) ~~the costs of installing, operating and maintaining a specialty improvement, such as (but not limited to) a cafeteria, lodging or private dining facility, or an athletic, luncheon or recreational club, including any compensation paid to clerks, attendants or other persons employed in such facilities;~~ (17) the costs or expenses (including fines, interest, penalties and legal fees) arising out of Landlord's failure to timely pay Operating Expenses; (18) the costs incurred in connection with the removal, encapsulation or other treatment of

asbestos or other hazardous materials (i) existing in the Demised Premises as of the date of this Agreement and required to be removed, encapsulated or treated under applicable legal requirements in effect as of the date of this Agreement or (ii) located in any other tenants' space in the Building; (19) financing costs in connection with any financing or refinancing of the Building, including prepayment penalties; (20) the cost of repairs or restoration necessitated by fire or other casualty or any condemnation in excess of the amount of any deductible carried under Landlord's insurance policies, to the extent such deductible is commercially reasonable; (21) cost of any repair made by Landlord to remedy damage caused by, or resulting from, the negligence of Landlord or its representatives (to the extent such cost is covered by insurance) or willful misconduct of Landlord or its representatives; (22) legal, space planner's and other professional fees and expenses, including costs of arbitrators, incurred (i) in preparing, negotiating and executing leases, amendments, terminations and extensions or in resolving any disputes with tenants and other occupants or enforcing lease obligations, including court costs and (ii) in obtaining consents from or providing reports and information to Mortgagees and Lessors; (23) expenses incurred by Landlord in connection with the transfer or disposition of the Real Property or Building or any ground, underlying or overriding lease, including transfer and deed taxes, or the conversion of the Building to a condominium, including costs of acquiring or selling air rights, transferable development rights, easements and other interests in real property; (24) bad debt loss, rent loss or reserves for either; (25) costs of acquiring sculptures, paintings or other objects of fine art; (26) Landlord's general corporate overhead and general and administrative expenses as the same are distinguished from the costs of operation of the Building, including accounting and legal expenses and costs of any disputes between Landlord and its employees; (27) overtime HVAC costs or electricity costs to the extent incurred for other Building tenants; (28) "takeover expenses" (i.e., expenses incurred by Landlord with respect to the leaseback by Landlord of space either located in another building or in the Building in connection with the leasing of space in the Building) and costs incurred by Landlord to relocate a tenant in the Building in order to consummate a specific lease or accommodate a specific tenant's request; (29) any improvement installed or work performed or any other costs or expense incurred by Landlord in order to comply with the requirements for the obtaining of a certificate of occupancy for the Building in connection with (i) converting retail space or showroom space into office space, (ii) converting office space into retail space or (iii) the particular manner of use by another tenant in the Building of its space; (30) the costs of any work or service performed for any facility other than the Building; (31) during any time that the management company for the Building is an affiliate of Landlord, the cost of any service provided by a company affiliated with Landlord that is customarily provided by a managing agent as part of its management fee; (32) any compensation paid to clerks, attendants or other persons in for profit commercial concessions operated by Landlord or its affiliates (i.e., not leased to a third party); (33) expenses of operating the garage in the Building; (34) expenses incurred by Landlord in constructing any addition to the Building which increases the rentable space thereof; (35) leased items which, if purchased, would be treated as capital items pursuant to generally accepted accounting principles consistently applied and would not constitute Capital Improvements; and (36) the costs of installation by Landlord of the back-up generator described in Section 17 below.

"Tenant's Proportionate Share" means 14.58% (which Landlord and Tenant stipulate and agree is based on the Office Space containing 72,799 rentable square

feet and the Building containing 499,489 rentable square feet for purposes of computing Operating Expenses).

(b) If the Operating Expenses for any Computation Year exceed the Base Expenses, Tenant shall pay to Landlord, as additional rent with respect to such Computation Year, an amount ("Tenant's Operating Payment") equal to Tenant's Proportionate Share of the amount by which the Operating Expenses for such Computation Year exceed the Base Expenses. For each Computation Year, Landlord shall furnish to Tenant a statement setting forth Landlord's good faith estimate of Tenant's Operating Payment for such Computation Year, which statement shall include at least the detail set forth on Exhibit E annexed hereto ("Landlord's Estimate"). Tenant shall pay to Landlord, on the first day of each month during such Computation Year, an amount equal to one-twelfth of Landlord's Estimate for such Computation Year. If Landlord does not furnish Landlord's Estimate until after the commencement of the applicable Computation Year, then (i) until the first day of the month following the month in which Landlord furnishes such Landlord's Estimate 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 7(b) during the last month of the preceding Computation Year, (ii) promptly after Landlord furnishes such Landlord's Estimate to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant's Operating Payment previously made for such Computation Year were greater or less than the installments of Tenant's Operating Payment to be made for such Computation Year in accordance with such estimate, and (A) if there shall be a deficiency, Tenant shall pay the amount thereof within 20 business days after demand therefor or (B) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent installments of rent due under the Lease, and (iii) on the first day of the month following the month in which such estimate is furnished to Tenant, and on the first day of each month thereafter throughout the remainder of such Computation Year, Tenant shall pay to Landlord an amount equal to one-twelfth of Tenant's Operating Payment shown on such estimate.

(c) Landlord shall furnish to Tenant a Landlord's Statement of Operating Expenses for each Computation Year. If such Landlord's Statement shows that the sums paid by Tenant under Section 7(b) exceeded the actual amount of Tenant's Operating Payment for such Computation Year, Landlord shall credit the amount of such excess against subsequent installments of rent due under the Lease. If Landlord's Statement for such Computation Year shows that the sums so paid by Tenant were less than Tenant's Operating Payment for such Computation Year, Tenant shall pay the amount of such deficiency within 20 business days after Tenant's receipt of Landlord's Statement.

(d) If the Extension Period Commencement Date shall be a day other than January 1 or the Extension Period Expiration Date or other termination date of the Lease shall be a day other than December 31, or if there is any increase or decrease in the space demised under the Lease, then in each such event in applying the provisions of this Section 7 with respect to the Computation Year in which the event occurred, appropriate adjustments shall be made to reflect the result of such event on a basis consistent with the principles underlying the provisions of this Section 7, taking into consideration (i) the portion of such Computation Year,

as the case may be, which shall have elapsed prior to or after such event and (ii) the rentable area of the Demised Premises affected thereby.

(e) If during all or any part of any Computation Year (including the Base Operating Year), Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would constitute an Operating Expense) to a rentable portion of the Building (whether because such portion is not then leased or because the occupant of such portion itself provides such work or service or otherwise does not receive the service in question), Operating Expenses for such period shall include an amount equal to the costs and expenses which would reasonably have been incurred for such work or service during such period by Landlord if the Building had been 100% leased and occupied or Landlord has been providing such work or service to 100% of the occupants, as applicable; provided, that payments toward Operating Expenses actually collected from tenants of the Building shall not, as a result of the operation of this Section 7(e), exceed the actual Operating Expenses incurred, and only those Operating Expenses which vary based on the amount of space in respect of which such Operating Expenses were not incurred shall be adjusted under this Section 7(e), so as to make the comparison to the Base Operating Year equitable.

(f) Landlord's failure to render a Landlord's Statement on a timely basis with respect to any Computation Year shall not prejudice Landlord's right to thereafter render a Landlord's Statement with respect to such Computation Year or any subsequent Computation Year, nor shall the rendering of a Landlord's Statement prejudice Landlord's right to thereafter render a corrected Landlord's Statement for any Computation Year within 3 years after the conclusion of any such Computation Year (and 18 months after the conclusion of the final Computation Year, or portion thereof, of the term of the Lease).

(g) Within 150 days after a Landlord's Statement is sent to Tenant, and provided that Tenant shall have paid to Landlord when due the amount set forth in such Landlord's Statement, Tenant may send a notice to Landlord objecting to such statement (or in the case of a corrected Landlord's Statement, objecting to the correction effected thereby) and specifying the reasons for Tenant's claim that such statement is incorrect (an "Objection Notice"). Tenant shall have 120 days from the giving of an Objection Notice to examine, at Landlord's offices, Landlord's books and records concerning the Operating Expenses in dispute, but only to the extent reasonably necessary to verify such disputed Operating Expenses (the "Audit"). If Tenant shall fail (i) to pay when due the amount set forth in the applicable Landlord's Statement, (ii) to give an Objection Notice within 150 days after the applicable Landlord's Statement was sent to Tenant or (iii) to examine such books and records at Landlord's offices within 120 days after the giving of an Objection Notice, in each case time being of the essence, then in any such case the Landlord's Statement in question shall be conclusively binding upon Tenant. Tenant shall not employ, in connection with any dispute under the Lease, any person who is to be compensated, in whole or in part, on a contingency fee basis. If Landlord and Tenant are unable to resolve any such dispute within the 60 day period following the completion of the Audit, either party may refer the issues raised to an independent firm of certified public accountants selected by Landlord and reasonably acceptable to Tenant, and the decision of such accountants shall be conclusively binding upon Landlord and Tenant. In connection therewith, Tenant and such accountants shall execute and deliver to Landlord a

confidentiality agreement, in form and substance reasonably satisfactory to Landlord, whereby such parties agree not to disclose to any third party any of the information obtained in connection with such review, or the substance of any admissions or stipulations by any party in connection therewith, or of any resulting reconciliation, compromise or settlement. Tenant shall pay the fees and expenses relating to such procedure, unless such accountants shall determine that Landlord overstated the Operating Expenses by more than 3% for such Computation Year, as finally determined, in which case Landlord shall pay such fees and expenses.

(h) If Landlord shall receive any insurance proceeds as a reimbursement for an item previously included as an Operating Expense and in respect of which Tenant has made a Tenant's Operating Payment, Landlord shall give Tenant an appropriate credit in respect of such proceeds, either by deducting such proceeds from Operating Expenses for the Computation Year in which such proceeds are received, or by recomputing and correcting the Operating Expenses for the Computation Year in which such amount was previously included, in which case Landlord shall credit the amount to which Tenant is entitled by reason of such recomputation against subsequent installments of rent due under the Lease.

(i) Landlord shall not intentionally skew payment schedules or defer or "back-load" payments for the principal purpose of artificially lowering the Base Expenses and increasing Operating Expenses in subsequent Computation Years.

(j) The obligations of Landlord and Tenant under the provisions of this Section 7 shall survive the expiration or sooner termination of the Lease.

**8. Offer Space Option.** (a) As used herein:

(i) "Available" means, as to any space, that such space is vacant and free of any present or future possessory right now or hereafter existing in favor of any third party; provided, that Tenant's right of first offer pursuant to this Section 8 shall in all events be subordinate to Landlord's right to renew or extend the term of any lease to another tenant, whether or not pursuant to an option or right set forth in such other tenant's lease.

(ii) "Offer Period" means the period commencing on the date of this Agreement to and including the day before the 12<sup>th</sup> anniversary of the date of this Agreement.

(iii) "Offer Space" means (A) any space on the 5<sup>th</sup> through the 8<sup>th</sup> floors of the Building and (B) the 9<sup>th</sup> floor of the Building, but only from and after the date that neither Landlord nor any affiliate of Landlord is occupying any space on the 9<sup>th</sup> floor of the Building.

(b) Provided (i) the Lease shall not have been terminated, (ii) Tenant shall not be in default under the Lease beyond the expiration of all applicable notice and cure periods and (iii) Tenant, together with Tenant's Affiliates, shall be in actual occupancy of 48,000 or more rentable square feet of the Office Space, if at any time during the Offer Period any Offer Space either becomes, or Landlord reasonably anticipates that within the next 12 months (but not

later than the last day of the Offer Period) the Offer Space will become, Available, Landlord shall give to Tenant notice (an "Offer Notice") thereof, specifying (A) the location of such Offer Space, (B) Landlord's determination of the Fair Offer Rent for such Offer Space, (C) the date or estimated date that the Offer Space has or shall become Available and (D) such other matters as Landlord may deem appropriate for such Offer Notice. As used in this Section 8(b), "Fair Offer Rent" means the fixed annual rent that a willing lessee would pay and a willing lessor would accept for the applicable Offer Space, taking into account all relevant factors.

(c) Provided that on the date that Tenant exercises the Offer Space Option and on the Offer Space Inclusion Date (as such terms are hereinafter defined) (i) the Lease shall not have been terminated, (ii) Tenant shall not be in default under the Lease beyond the expiration of all applicable notice and cure periods, and (iii) Tenant, together with Tenant's Affiliates, shall be in actual occupancy of 48,000 or more rentable square feet of the Office Space, Tenant shall have the one-time option (the "Offer Space Option"), exercisable by notice (an "Acceptance Notice") given to Landlord on or before the date that is 10 days after the giving of the Offer Notice (time being of the essence) to include all of the applicable Offer Space in the Demised Premises. Tenant shall notify Landlord in the Acceptance Notice whether Tenant accepts or disputes Landlord's determination of the Fair Offer Rent, and if Tenant disputes Landlord's determination of the Fair Offer Rent, the Acceptance Notice shall set forth Tenant's determination thereof. If Tenant fails to object to Landlord's determination in the Acceptance Notice and to set forth Tenant's determination, then Tenant shall be deemed to have accepted Landlord's determination.

(d) If Tenant timely delivers the Acceptance Notice, then, subject to the provisions of Section 8(f) below, on the date on which Landlord delivers vacant possession of the applicable Offer Space to Tenant (the "Offer Space Inclusion Date"), such Offer Space shall become part of the Demised Premises, upon all of the terms and conditions set forth in the Lease, except that:

(i) from and after the Offer Space Inclusion Date, the annual reserved rent shall be increased by the Fair Offer Rent;

(ii) from and after the Offer Space Inclusion Date, the percentages in Sections 41(f) and (h) of the Original Lease shall be increased by a fraction, expressed as a percentage, the numerator of which is the rentable square footage of such Offer Space, and the denominator of which is 547,368;

(iii) (A) during the period, if any, from and after the Offer Space Inclusion Date to and including the day before the Extension Period Commencement Date, the rentable square footage of the Demised Premises for purposed of Section 42(d) of the Original Lease shall be increased by the rentable square footage of such Offer Space and (B) from and after the Extension Period Commencement Date, Tenant's Proportionate Share shall be increased by a fraction, the numerator of

which is the rentable square footage of such Offer Space and the denominator of which is 499,489;

(iv) during the period, if any, from and after the Offer Space Inclusion Date to and including the day before the Extension Period Commencement Date, and at all times during the term of the Lease if such Offer Space is a partial floor, the provisions of Section 6(c) above shall not govern Tenant's payment for electricity used in such Offer Space, but instead the provisions of Section 43(a) of the Original Lease shall govern such payment, except that in respect of such Offer Space only (A) the annual reserved rent shall be equal to the sum of (x) the Fair Offer Rent and (y) the product of the rentable square footage of such Offer Space multiplied by \$3.00 and (B) the Initial Designated Factor shall be equal to the product of the rentable square footage of such Offer Space multiplied by \$3.00 (provided, that in the case of a partial floor, Tenant may at any time notify Landlord that Tenant elects to pay for the cost of installing a submeter to measure Tenant's use of electricity in such Offer Space, in which case (1) Landlord shall promptly install such submeter, (2) Tenant shall reimburse Landlord for the cost of installing such submeter within 30 days after invoice from Landlord and (3) from and after the installation of such submeter, the provisions of Section 6(c) above shall govern Tenant's payment for electricity used in such Offer Space); if such Offer Space is a full floor, then the provisions of Section 6 above shall apply to such floor, except that the date by which Landlord shall install the submeter for such Offer Space shall be the later of (X) the Offer Space Inclusion Date therefor and (Y) 180 days after the date of the giving of the Acceptance Notice;

(v) Landlord shall not be required to perform any work, pay Landlord's Contribution or any other amount, or render any services to make the Building or such Offer Space ready for Tenant's use or occupancy, and Tenant shall accept the Offer Space in its "as is" condition on such Offer Space Inclusion Date; and

(vi) as may be otherwise set forth in the Offer Notice.

(e) If in the Acceptance Notice Tenant disputes Landlord's determination of Fair Offer Rent, and Landlord and Tenant fail to agree as to the amount thereof within 30 days after the giving of the Acceptance Notice, then the dispute shall be resolved by arbitration pursuant to Section 9 of this Agreement in the same manner as a dispute involving Fair Market Rent. If the dispute shall not have been resolved on or before the applicable Offer Space Inclusion Date, then pending such resolution, Tenant shall pay as reserved rent for the applicable Offer Space the Fair Offer Rent as determined by Landlord. Within 30 days after the final determination of Fair Offer Rent, an adjustment, if any, required to correct the amounts previously paid on account thereof shall be made by the appropriate party.



(f) If Landlord is unable to deliver possession of any Offer Space to Tenant for any reason on or before the date on which Landlord anticipates that such Offer Space shall be Available as set forth in the applicable Offer Notice, the Offer Space Inclusion Date shall be the date on which Landlord is able to so deliver possession and Landlord shall have no liability to Tenant therefor and the Lease shall not in any way be impaired; provided, that if such Offer Space Inclusion Date shall not have occurred on or before the date which is eight months after the date set forth in the applicable Offer Notice on which Landlord anticipated such Offer Space to be available, then Tenant may thereafter terminate Tenant's exercise of the Offer Space Option with respect to the relevant Offer Space by giving to Landlord not less than 30 days notice of such contemplated termination and, if the Offer Space Inclusion Date for such Offer Space shall not occur on or before the date set forth in Tenant's notice for such termination, then (i) Tenant's exercise of the Offer Space Option with respect to the relevant Offer Space shall be deemed canceled and terminated effective as of the date set forth in Tenant's notice for such termination, and (ii) neither party shall have any further liabilities or obligations to the other with respect to the exercise of the Offer Space Option in question by Tenant. This Section 8(f) constitutes "an express provision to the contrary" within the meaning of Section 223(a) of the New York Real Property Law and any other law of like import now or hereafter in effect.

(g) If Tenant fails timely to give an Acceptance Notice, then (i) Landlord may enter into one or more leases of the Offer Space with third parties on such terms and conditions as Landlord shall determine, and Landlord shall have no further obligation to offer the applicable Offer Space to Tenant, and (ii) Tenant shall, upon demand by Landlord, execute an instrument confirming Tenant's waiver of the applicable Offer Space Option, but the failure by Tenant to execute any such instrument shall not affect the provisions of clause (i) above.

(h) Promptly after the occurrence of any Offer Space Inclusion Date, Landlord and Tenant shall confirm the occurrence thereof and the inclusion of the applicable Offer Space in the Demised Premises by executing an instrument reasonably satisfactory to Landlord and Tenant; provided, that failure by Landlord or Tenant to execute such instrument shall not affect the inclusion of the Offer Space in the Demised Premises in accordance with this Section 8.

(i) Anything in the Lease to the contrary notwithstanding this Section 8 shall be null and void and of no force or effect if (A) HarperCollins Publishers, Inc. is not the tenant under the Lease or (B) HarperCollins Publishers, Inc. and/or its Affiliates at any time fail to occupy at least 80% of the rentable square feet in the Demised Premises. "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. "Control" (and with correlative meaning, "controlled by" and "under common control with") means ownership or voting control, directly or indirectly, 50% percent or more of the voting stock, partnership interests or other beneficial ownership interests of the entity in question.

9. Arbitration. Any disputes regarding Fair Market Rent or Fair Offer Rent shall be resolved by arbitration conducted in accordance with the Commercial Dispute Resolution Procedures (Expedited Procedures) of the AAA, except that the provisions of this



Section 9 shall supersede any conflicting or inconsistent provisions of said rules. The party requesting arbitration shall do so by giving notice to that effect to the other party, specifying in said notice the nature of the dispute, and that said dispute shall be determined in the City of New York, by a single impartial arbitrator in accordance with this Section 9. Landlord and Tenant shall agree upon an arbitrator within 7 days after the giving of notice by either party. If the parties fail to do so, then either Landlord or Tenant may request the AAA to appoint an arbitrator who shall be impartial within 14 days of such request and both parties shall be bound by any appointment so made within such 14 day period. If no such arbitrator shall have been appointed within such 14 days, either Landlord or Tenant may apply to any court having jurisdiction to make such appointment. The arbitrator shall subscribe and swear to an oath fairly and impartially to determine such dispute. Within 7 days after the arbitrator's appointment, Landlord and Tenant shall submit to the arbitrator their respective proposals of the Fair Market Rent or Fair Offer Rent, as applicable. Within 14 days after such submission, the arbitrator shall conduct such hearings and investigations as he or she may deem appropriate and shall select either Landlord's proposal or Tenant's proposal of Fair Market Rent or Fair Offer Rent, whichever the arbitrator believes is closest to the Fair Market Rent or Fair Offer Rent in question. The determination of the arbitrator shall be final and binding on the parties. The fees and expenses of any arbitration pursuant to this Section 9 shall be borne by the parties equally, but each party shall bear the expense of its own attorneys and experts and the additional expenses of presenting its own proof. The arbitrator shall not have the power to add to, modify or change any of the provisions of the Lease. The arbitrator shall have at least 10 years' experience in leasing and valuation of properties which are similar in character to the Building. After a determination has been made of the Fair Market Rent or Fair Offer Rent, the parties shall execute and deliver an instrument setting forth the Fair Market Rent or Fair Offer Rent, but the failure to so execute and deliver any such instrument shall not effect the determination of Fair Market Rent or Fair Offer Rent.

10. Signage.

(a) Landlord shall, at the request of Tenant, maintain listings on the directory located in the Building lobby of the names of Tenant and any officers or employees of Tenant, provided that the number of listings shall be in the same proportion to the capacity of the directory as the rentable square foot area of the Demised Premises is to the rentable square foot area of the Building. Tenant has heretofore delivered to Landlord a list of all names to be included in the directory. Tenant may deliver revised listings to Landlord from time to time throughout the term of the Lease (but Landlord shall not be obligated to revise the directory more often than once a month), and Tenant shall pay Landlord's then established charge therefor.

(b) Tenant shall have the exclusive right to place Tenant identification signage (the "Monument Sign") on a monument to be installed by Landlord on the plaza of the Building (the "Monument"). The size, color and materials of the Monument Sign shall be subject to Landlord's approval. A rendering of the Monument Sign is shown on Exhibit B annexed hereto. The Monument Sign shall be installed, maintained and repaired by Landlord at Landlord's expense.

(c) Anything contained herein to the contrary notwithstanding, the provisions of Section 10(b) above shall be null and void and of no further force or effect, and Landlord shall have the right at any time to remove the Monument Sign theretofore installed pursuant to Section 10(b) from the Monument, if (i) the tenant under the Lease is not HarperCollins Publishers, Inc., (ii) the Office Space consists of less than 48,000 rentable square feet, (iii) Tenant, together with Tenant's Affiliates, shall not be in actual occupancy of 48,000 or more rentable square feet of the Office Space or (iv) the term of the Lease shall expire or terminate (the conditions in clauses (i) through (iv) above are collectively called the "Signage Conditions").

(d) So long as all of the Signage Conditions are satisfied, Landlord shall not permit any Competitor of HarperCollins Publishing Inc. to have any signage or other identification on the plaza, on the exterior or in the lobby, of the Building, other than (i) Building directory devices and (ii) tenant identification signs within the first floor elevator lobbies for tenants located on floors served by such elevators. "Competitor" means any person or entity principally engaged in the publication of books, but only if such person or entity is not leasing in the Building more rentable square footage than the rentable square footage then contained in the Demised Premises; provided, that a person or entity principally engaged in the publication of children's books shall in all events be deemed a "Competitor" regardless of the amount of space leased by such person or entity.

(e) The illuminated "1350" sign on the Sixth Avenue façade of the Building is turned on and off by means of a mechanism (the "Lighting Mechanism") located in an office on the second floor of the Office Space. Without Tenant's permission, Landlord shall not (except in case of emergency) perform repairs and/or maintenance on the Lighting Mechanism at any time other than on weekends. Landlord shall give Tenant reasonable notice of the performance of any such repairs or maintenance and, if none of Tenant's employees shall be present at the time of such maintenance or repair, then any contractor employed by Landlord shall be accompanied by an employee of Landlord while in the Demised Premises.

11. Additional Lease Amendments. Effective as of the date of this Agreement, the Lease is hereby amended as follows:

(a) The term "Expiration Date" shall mean the Extension Period Expiration Date.

(b) The following is added at the end of Article 3 of the Original Lease:

"Landlord will not unreasonably withhold its consent to alterations so long as such alterations (i) are non-structural and do not affect the Building systems, (ii) are performed only by Landlord's designated contractors or by contractors approved by Landlord to perform such alterations, (iii) affect only the Demised Premises and are not visible from outside of the Demised Premises or the Building, (iv) do not affect the certificate of occupancy issued for the Building, (v) are consistent with the design, construction and

equipment of the Building, and (vi) do not adversely affect any service furnished by Landlord in connection with the operation of the Building. Landlord shall not charge Tenant any supervisory or other fees in connection with alterations, except that Tenant shall pay to Landlord, within 30 days after demand, all out-of-pocket costs actually incurred by Landlord in connection with Tenant's alterations, including costs incurred in connection with (A) Landlord's review of the plans therefor, and (B) the provision of Building personnel during the performance of any alterations required by trade union policy or otherwise, to operate elevators or otherwise to facilitate Tenant's alterations."

(c) The phrase "So long as Tenant is not in default under the Lease" is deleted from Section 40(a) of the Original Lease. The phrase "to 5:30 P.M. and on Saturdays from 8:30 A.M. to 1:00 P.M." in Section 40(a) of the Original Lease is deleted and "to 6:00 P.M." is inserted in lieu thereof.

(d) The following is added at the end of Article 49 of the Original Lease:

"Notwithstanding the foregoing, Tenant may, together with the submission to Landlord for approval of the plans and specifications for an alteration, submit a notice to Landlord inquiring whether Tenant shall be required to remove any portion of the alteration in question under this Section 49. If Tenant gives such notice, Landlord shall advise Tenant together with Landlord's approval of the plans and specifications in question whether or not Tenant shall be required to remove any portion of such alteration, which advice shall be binding on Landlord. If Landlord shall approve the plans and specifications in question but shall fail to respond to such inquiry, Landlord shall be deemed to have advised Tenant that Tenant shall not be required to remove such alteration upon the expiration or earlier termination of this Lease."

Landlord agrees that Tenant shall have no obligation to remove or restore the staircases existing on the date of this Agreement which connect the second through the fourth floors of the Demised Premises.

(e) The provisions of Articles 52, 53, 54, 55, 56, 57 and 59 of the Original Lease shall not apply to any space leased on or after the date of this Agreement.

(f) Article 65 of the Original Lease is deleted in its entirety.

(g) The phrase "of \$350.00" in Section 66(d)(iv) of the Original Lease is deleted and the phrase "in a reasonable amount" is inserted in lieu thereof.

Lease: (h) The following is added at the end of Section 66(d) of the Original

“(v) Neither the proposed assignee or subtenant nor any Person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or subtenant is then an occupant of the Building, unless Landlord does not then have available, and does not reasonably expect within the next 6 months to have available, comparable space for a comparable term;

(vi) The proposed assignee or subtenant is not a Person (or Affiliate of a Person) with whom Landlord or Landlord’s agent is then, or has been within the prior six months, negotiating in connection with the rental of space in the Building, unless Landlord does not then have available, and does not reasonably expect within the next 6 months to have available, comparable space for a comparable term; and

(vii) In Landlord’s reasonable judgment, the proposed assignee or subtenant is engaged in a business or activity, and the Demised Premises will be used in a manner, which does not violate any restrictions set forth in the Lease, any mortgage or superior lease.”

(i) Section 66(e) of the Original Lease is hereby deleted in its entirety and replaced with the following:

“(e) In connection with any sublease of all or any portion of the Demised Premises, Tenant shall in consideration therefor, pay to Landlord (as and when paid by the subtenant to Tenant), as additional rent hereunder, 50% of Tenant’s Profit. “Tenant’s Profit” means the amount, if any, by which (i) the sum of (A) all rents, additional rents and other consideration paid under the sublease to Tenant by the sublessee and (B) all other sums and consideration paid to Tenant or its designee for or by reason of such subletting (excluding sums paid for the sale or rental of Tenant’s fixtures, leasehold improvement contributions, equipment, furniture or other personal property, provided that in no event shall such sums exceed the fair market value of same) exceeds (ii) the sum of (X) that part of the reserved rent and additional rent hereunder allocable to the subleased space and accruing for the corresponding period during the term of the sublease and (Y) any actual and reasonable costs and

expenses incurred by Tenant in obtaining and consummating such sublease, including without limitation, leasehold improvements, rent concessions, lease takeover agreements, brokerage fees and commissions and legal fees and disbursements."

(j) Articles 76, 77, 78, 79, 80 and 81 of the Original Lease are deleted in their entirety.

(k) The phrase "and 4" in the last line of paragraph 3 under the heading "HVAC" on Exhibit D of the Original Lease is deleted, and paragraphs 2, 3 and 4 under the heading "Miscellaneous" on Exhibit D of the Original Lease are deleted.

12. **Security Deposit.** (a) Upon the execution of this Agreement, Tenant shall deposit with Landlord [REDACTED] (the "Security Deposit") in cash as security for the faithful performance and observance by Tenant of the terms, covenants and conditions of the Lease, including the surrender of possession of the Demised Premises to Landlord as herein provided.

(b) In lieu of a cash deposit, Tenant may deliver the Security Deposit to Landlord in the form of a clean, irrevocable, non-documentary and unconditional letter of credit in the amount of the Security Deposit in the form attached hereto as Exhibit D (the "Letter of Credit") issued by and drawable upon any commercial bank, trust company, national banking association or savings and loan association with offices for banking and drawing purposes in the City of New York (the "Issuing Bank"), which has outstanding unsecured, uninsured and unguaranteed indebtedness, or shall have issued a letter of credit or other credit facility that constitutes the primary security for any outstanding indebtedness (which is otherwise uninsured and unguaranteed), that is then rated, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, "Aa" or better by Moody's Investors Service and "AA" or better by Standard & Poor's Ratings Service (and is not on credit-watch with negative implications), and has combined capital, surplus and undivided profits of not less than \$500,000,000. The Letter of Credit shall (i) name Landlord as beneficiary, (ii) be in the amount of the Security Deposit, (iii) have a term of not less than one year, (iv) permit multiple drawings, (v) be fully transferable by Landlord multiple times without the consent of Tenant and without the payment of any fees or charges, (vi) be payable to Landlord or an authorized representative of Landlord upon presentation of only the Letter of Credit and a sight draft and shall not contain as a condition to a draw the requirement of Landlord's certification or other statement as to the existence of Tenant's default, and (vii) otherwise be in form and content satisfactory to Landlord; *provided, however*, that Landlord shall in no event be obligated to accept a Letter of Credit for any amount less than \$50,000. If upon any transfer of the Letter of Credit, 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 year each thereafter during the Term through the date that is at least 60 days after the Expiration Date, unless the Issuing Bank sends a notice (the "Non-Renewal Notice") to Landlord by certified mail, return receipt requested, not less than 60 days prior to the then-current expiration date of the Letter of Credit,

stating that the Issuing Bank has elected not to renew the Letter of Credit. Landlord shall have the right, upon receipt of a Non-Renewal Notice, to draw the full amount of the Letter of Credit, by sight draft on the Issuing Bank, and shall thereafter hold or apply the cash proceeds of the Letter of Credit pursuant to the terms of this Section 12. The Letter of Credit shall state that drafts drawn under and in compliance with the terms of the Letter of Credit will be duly honored upon presentation to the Issuing Bank at an office location in New York City. The Letter of Credit shall be subject in all respects to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590. Tenant shall cooperate, at Tenant's expense, with Landlord to promptly execute and deliver to Landlord any and all modifications, amendments and replacements of the Letter of Credit, as Landlord may reasonably request to carry out the intent, terms and conditions of this Section 12.

(c) If Tenant defaults in the payment or performance of any of the terms, covenants or conditions of the Lease, including the payment of rent, Landlord may use, apply or retain the whole or any part of the cash Security Deposit or may notify the Issuing Bank and thereupon receive all or a portion of the Security Deposit represented by the Letter of Credit, and use, apply, or retain the whole or any part of such proceeds, as the case may be, to the extent required for the payment of any rent or any other sum as to which Tenant is in default, including (i) any sum which Landlord may expend or may be required to expend by reason of Tenant's default, and (ii) any damages to which Landlord is entitled pursuant to the Lease or applicable legal requirements, whether such damages accrue before or after summary proceedings or other reentry by Landlord. If Landlord uses, applies or retains any part of the Security Deposit, Tenant, upon demand, shall deposit with Landlord the amount so applied or retained so that Landlord shall have the full Security Deposit on hand at all times during the term of the Lease. If Tenant shall fully and faithfully comply with all of the terms, covenants and conditions of the Lease, the Security Deposit (or so much thereof as remains) shall be returned to Tenant after the Expiration Date and after delivery of possession of the Demised Premises to Landlord in the manner required by the Lease. Tenant expressly agrees that Tenant shall have no right to apply any portion of the Security Deposit against any of Tenant's obligations to pay rent hereunder.

(d) Upon a sale or leasing of the Building, or any financing of Landlord's interest therein, Landlord shall have the right to transfer the cash Security Deposit or the Letter of Credit, as applicable, to the vendee, lessee or lender. With respect to the Letter of Credit, within 10 days after notice from Landlord of any such anticipated sale, leasing or financing, Tenant, at Tenant's sole cost, shall arrange for the transfer of the Letter of Credit to the new landlord or lender, as designated by Landlord in the foregoing notice, or to have the Letter of Credit reissued in the name of the new landlord or lender. Tenant shall look solely to the new landlord or lender for the return of such cash Security Deposit or Letter of Credit, and the provisions of this Section 12(d) shall apply to every transfer or assignment made of the Security Deposit to a new landlord. Tenant will not assign or encumber, or attempt to assign or encumber, the cash Security Deposit or Letter of Credit, and neither Landlord nor its successors or assigns shall be bound by any such actual or attempted assignment or encumbrance.

13. Pre-Existing Insurance Claim. Within 10 days after the execution and delivery of this Agreement by Landlord and Tenant, Landlord shall pay to Tenant \$100,000 to reimburse Tenant for costs incurred by Tenant by reason of certain water damage

suffered by Tenant on June 22, 2001 (the "Reimbursement"), which costs represent the deductible amount not covered by Tenant's insurance. Tenant, in return, shall deliver to Landlord, upon receipt of the Reimbursement, a general release in respect of such water damage. Tenant shall diligently pursue any and all claims available to Tenant against the manufacturer or installer of the water heater that caused such damage, but shall have the full and absolute discretion to settle or discontinue such claims upon the good faith advice of Tenant's attorneys. If at any time Tenant receives any money in respect of such water damage as a result of the pursuit of such claims against such manufacturer or installer, then to the extent the total amount received by Tenant (inclusive of the Reimbursement) exceeds \$100,000, after deducting from all such amounts (including from the Reimbursement) any amounts required to be paid therefrom by Tenant to Tenant's insurers and attorneys, Tenant shall promptly pay such excess (but in no event more than \$100,000) to Landlord. The provisions of this Section 13 shall in no way be construed as an acknowledgement or admission of any responsibility whatsoever on the part of Landlord with respect to such damage.

14. Eighth Floor Space. The parties acknowledge that the space on the 8th floor of the Building shown hatched on Exhibit C annexed hereto ("Suite 816") is leased on the date of this Agreement by Bynam Wood LLC for a term expiring January 31, 2006 (the "Bynam Wood Lease"). Upon the expiration or earlier termination of the term of the Bynam Wood Lease, Landlord shall lease to Tenant, and Tenant shall hire from Landlord, Suite 816, and Suite 816 shall thereupon constitute part of the Office Space and the Demised Premises, upon all of the terms and conditions set forth in the Lease (as amended by this Agreement), except that:

(a) the term of the lease of Suite 816 shall commence on February 1, 2006;

(b) in addition to all other rents due under the Lease, the reserved rent payable with respect to Suite 816 shall be: (i) for the period commencing on February 1, 2006, to and including [REDACTED] the sum of [REDACTED] per annum, payable in equal monthly installments of [REDACTED] (and the rent abatement referred to in Section 3(b)(iii) above shall not apply in respect of Suite 816); (ii) for the period commencing [REDACTED] to and including [REDACTED] the sum of [REDACTED] per annum, payable in equal monthly installments of [REDACTED]; and (iii) for the period commencing on [REDACTED] to and including the Extension Period Rent Expiration Date, the sum of [REDACTED] per annum, payable in equal monthly installments of [REDACTED];

(c) from and after the Extension Period Commencement Date, the percentages in Sections 41(f) and (h) of the Original Lease shall be increased by 0.27%;

(d) from and after the Extension Period Commencement Date, Tenant's Proportionate Share shall be increased by 0.30%;

(e) from and after the Extension Period Commencement Date, Tenant shall pay for electricity utilized in Suite 816 in accordance with the provisions of Section 43 of the Original Lease; provided, that in respect of Suite 816 only, the "Initial Designated Factor" shall be deemed to mean \$4,482.00 (provided, that Tenant may at any time notify Landlord that Tenant elects to pay for the cost of installing a submeter to measure Tenant's use of electricity in

Suite 816, in which case (i) Landlord shall promptly install such submeter, (ii) Tenant shall reimburse Landlord for the cost of installing such submeter within 30 days after invoice from Landlord and (iii) from and after the installation of such submeter, (A) the provisions of Section 6(c) above shall govern Tenant's payment for electricity used in such Offer Space and (B) the annual reserved rent for Suite 816 shall be reduced by \$4,482.00 or such greater amount as is then equal to the "Subsequent Designated Factor" applicable to Suite 816 under Section 43 of the Original Lease);

(f) Landlord shall reimburse Tenant for the cost of Tenant Improvements performed by Tenant in Suite 816 in accordance with Sections 4(a) and (b) above, except that in respect of Suite 816 only, Landlord's Contribution shall be deemed to mean [REDACTED] and

(g) Landlord shall not be required to perform any work, to pay any amount (except as set forth in Section 14(f) above), to install any fixtures or equipment or to render any services, to make the Building or Suite 816 ready for occupancy by Tenant, and Tenant shall accept Suite 816 in its "as is" condition as of the expiration of the Byram Wood Lease.

15. Notices. Article 28 of the Original Lease is hereby deleted in its entirety and replaced with the following:

(a) Except as otherwise expressly provided in the Lease, any consents, notices, demands, requests, approvals or other communications given under the Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand (provided a signed receipt is obtained) or if sent by registered or certified mail (return receipt requested) or by a nationally recognized overnight delivery service making receipted deliveries, addressed as follows:

(i) if to Tenant, at 10 East 53rd Street, New York, New York 10022-5299, Attention: Chief Operating Officer, with copies to (A) HarperCollins Publishers Inc., 10 East 53rd Street, New York, New York 10022-5299, Attention: General Counsel and (B) Michael R. Kleinerman, Esq., Hogan & Hartson L.L.P., 875 Third Ave, New York, New York 10022;

(ii) if to Landlord, at Landlord's address set forth on the first page of the Lease, Attention: Property Management, and with copies to (A) Reckson Associates Realty Corp., 225 Broadhollow Road, Melville, New York 11747, Attention: Jason Barnett, Esq., Office of General Counsel, (B) Reckson Associates Realty Corp., 1350 Avenue of the Americas, 18th Floor, New York, New York 10019, Attention: Building Management Office and (C) any mortgagee or lessor which shall have requested copies of notices, by notice given to Tenant in accordance with the provisions of this Article, at the address designated by such mortgagee or lessor; or

(iii) to such other address(es) as either Landlord or Tenant or any mortgagee or lessor may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this Article. Any such consent,



notice, demand, request or other communication shall be deemed to have been given on the date of receipted delivery or refusal to accept delivery as provided in this Section 15, or the date delivery is first attempted but cannot be made due to a change of address of which no notice was given.

(b) Rent statements, if any, and bills for any additional rent or charges shall be delivered to Tenant at the following address: HarperCollins Publishers Inc., 10 East 53<sup>rd</sup> Street, New York, New York 10022-5299, Attention: John Antonio, Director of Facility Management, telephone number: (212) 207-7445.

16. Brokers. Each of Landlord and Tenant represents and warrants to the other that it has not dealt with any broker in connection with the Lease other than [REDACTED] and [REDACTED] (collectively, the "Broker") and that, to the best of its knowledge and belief, no other broker, finder or like entity procured or negotiated the Lease or is entitled to any fee or commission in connection herewith. Each of Landlord and Tenant shall indemnify, defend, protect and hold the other party harmless from and against any and all loss, cost, liability and expense (including, without limitation, reasonably attorneys' fees and disbursements), which the indemnified party may incur by reason of any claim of or liability to any broker, finder or like agent (other than the Broker) arising out of any dealings claimed to have occurred between the indemnifying party and the claimant in connection with the Lease, or the above representation being false. Landlord shall be responsible for the commission due and payable to the Broker pursuant to a separate agreement.

17. Back-Up Generator. Landlord, at Landlord's expense, shall install a back-up generator, on or prior to the Extension Period Commencement Date, to provide power to the Building's life safety system in the event that electricity is not being provided to the Building from the public utility or other usual provider.

18. Subordination and Non-Disturbance. (a) Within 90 days after the date of this Agreement, Landlord shall obtain from the holder of the mortgage on the Building as of the date of this Agreement, a non-disturbance agreement in favor of Tenant as described in Section 61 of the Original Lease.

(b) Anything contained in the Lease to the contrary notwithstanding, provided that Tenant shall not be in default under the Lease beyond the expiration of all applicable notice and cure periods, with respect to any sublease (but not a further subletting), excluding any sublease to an Affiliate of Tenant, to which Landlord has given (or is deemed to have given) its consent, and which (i) is for one or more full contiguous floors, (ii) either (A) includes the lowest floor or the highest floor of the largest contiguous block of floors then constituting the Demised Premises, or (B) if Landlord has previously executed and delivered a recognition agreement under this Section 18(b) which is then in effect, then the proposed subleased premises in question is contiguous to other space which is the subject of such a recognition agreement, (iii) is for a term of not less than 10 years, (iv) provides for a rental which, after taking into account any free rent periods, credits, offsets or deductions to which the subtenant may be entitled thereunder, is equal to or in excess (on a per rentable square foot basis) of the fixed rent and recurring additional rent payable hereunder by Tenant from time to time

throughout the term of the Lease (or if less (on a per rentable square foot basis) than the fixed rent and recurring additional rent payable hereunder by Tenant, if such subtenant agrees, in the recognition agreement hereinafter referred to, that such rental will automatically and without condition become so equal, if, as and when the attornment provided for in such recognition agreement becomes effective between Landlord and the subtenant following the termination of the Lease) and (v) provides for other obligations of the subtenant at least substantially identical to the obligations of Tenant under the Lease or for conversion to such terms upon recognition, Landlord shall, at Tenant's request and at Tenant's expense, execute and deliver to such subtenant a recognition agreement providing that Landlord shall recognize such subtenant as the direct tenant of Landlord in the event of the termination of the Lease prior to the scheduled expiration thereof, provided and upon condition that (A) Tenant has furnished to Landlord satisfactory proof that the subtenant has a financial worth sufficient in Landlord's judgment to timely fulfill its obligations under such sublease as a primary tenant of Landlord (and not as a subtenant of Tenant), including any increase in such financial obligations which may become effective pursuant to clause (iv) above, and (B) the subtenant executes and delivers to Landlord such recognition agreement. Notwithstanding anything to the contrary set forth in this Section 18(b), any recognition agreement delivered by Landlord pursuant to this Section 18(b) shall (x) be personal to the subtenant named in such recognition agreement and (y) expressly contain the condition such that, in the event of any termination of the Lease other than by reason of Tenant's default (e.g., by reason of a casualty or a condemnation), then such recognition agreement shall, automatically and without further act of the parties, terminate and be of no further force or effect from and after the applicable termination date.

19. **Full Force and Effect.** Except as expressly set forth in this Agreement, the Lease is unmodified and is in full force and effect, and the Lease as modified herein is ratified and confirmed. All references in the Lease to "this Lease" (or similar phrase) shall hereafter be deemed to refer to the Lease as defined herein as amended by this Agreement.

[NO FURTHER TEXT ON THIS PAGE]

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

LANDLORD:

1350 LLC

By: 1350 Mezzanine LLC

By: Metropolitan Operating Partnership, L.P.

By: Metropolitan Partners, LLC

By: 

Name: Philip M. Waterman III  
Title: Executive Vice President

TENANT:

HARPERCOLLINS PUBLISHERS INC.

By: 

Name: THOMAS R. HOPKE  
Title: V.P. ADMINISTRATION

1350 Avenue of the Americas  
OPERATING EXPENSES  
For the period ending December 31, 200\_

Esimated

UTILITIES

JANITORIAL

PAYROLL

HVAC

GENERAL BUILDING - R&M

ELEVATOR

SECURITY

GENERAL ADMINISTRATION

INSURANCE

MANAGEMENT FEES

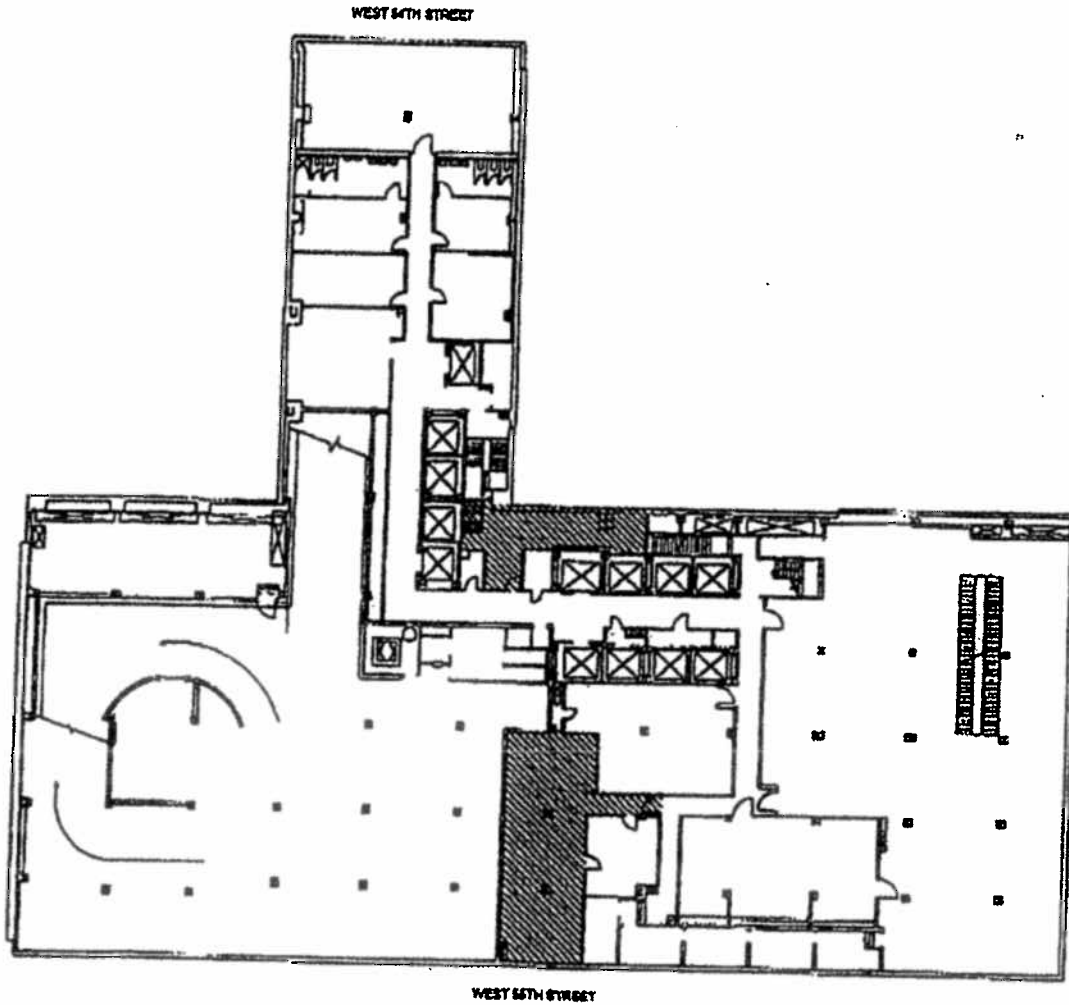
C:\Documents and Settings\kleinmr\Local Settings\Temporary Internet Files\OLKE\Harper Collins

EXHIBIT A

STORAGE SPACE FLOOR PLAN

The floor plan which follows is intended solely to identify the general location of the Storage Space, and should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.

EXHIBIT A



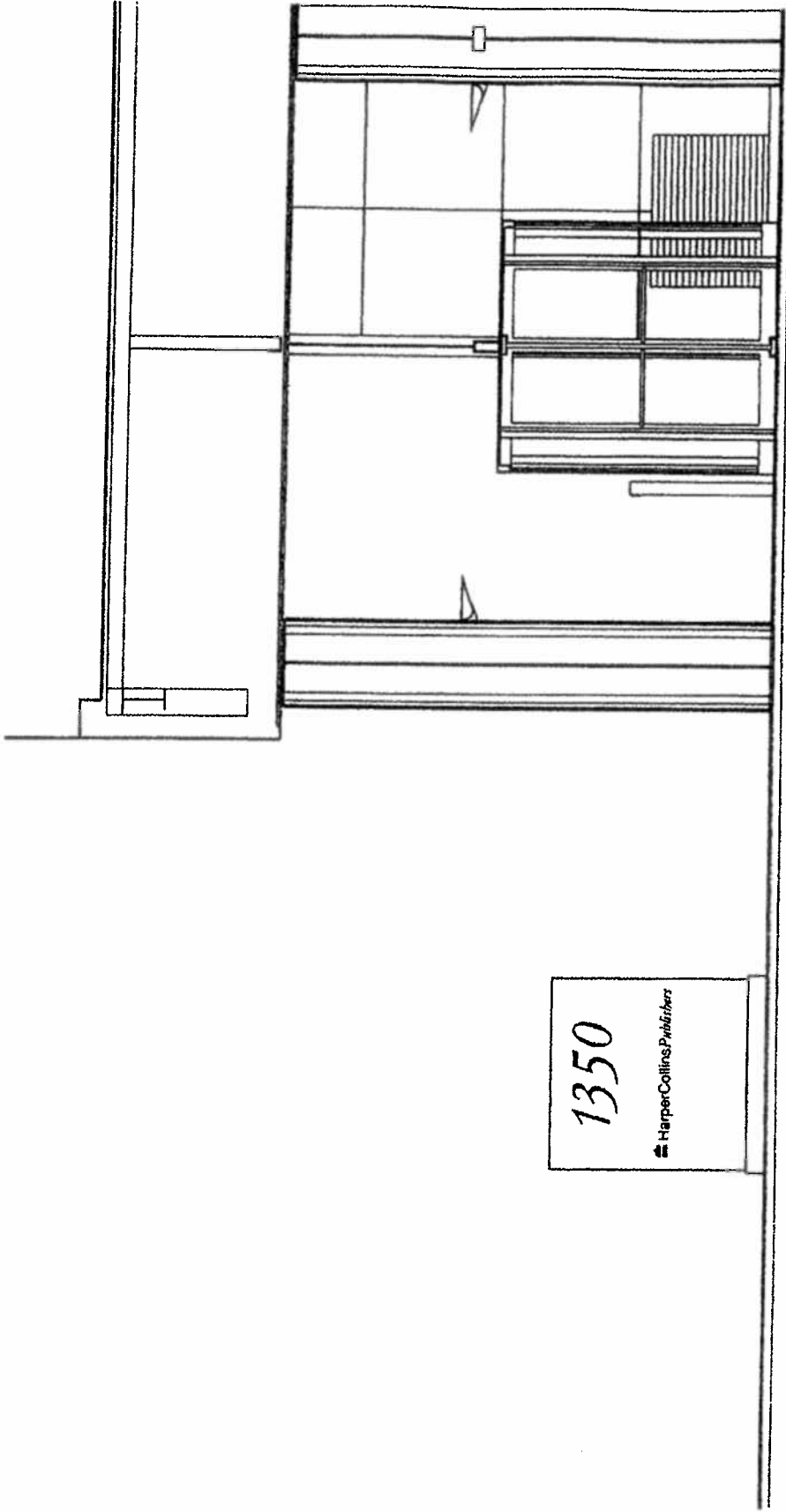
RECKSON ASSOCIATES  
REALTY CORP.



Cellar Plan  
1350 6th Avenue

EXHIBIT B

MONUMENT SIGN RENDERING

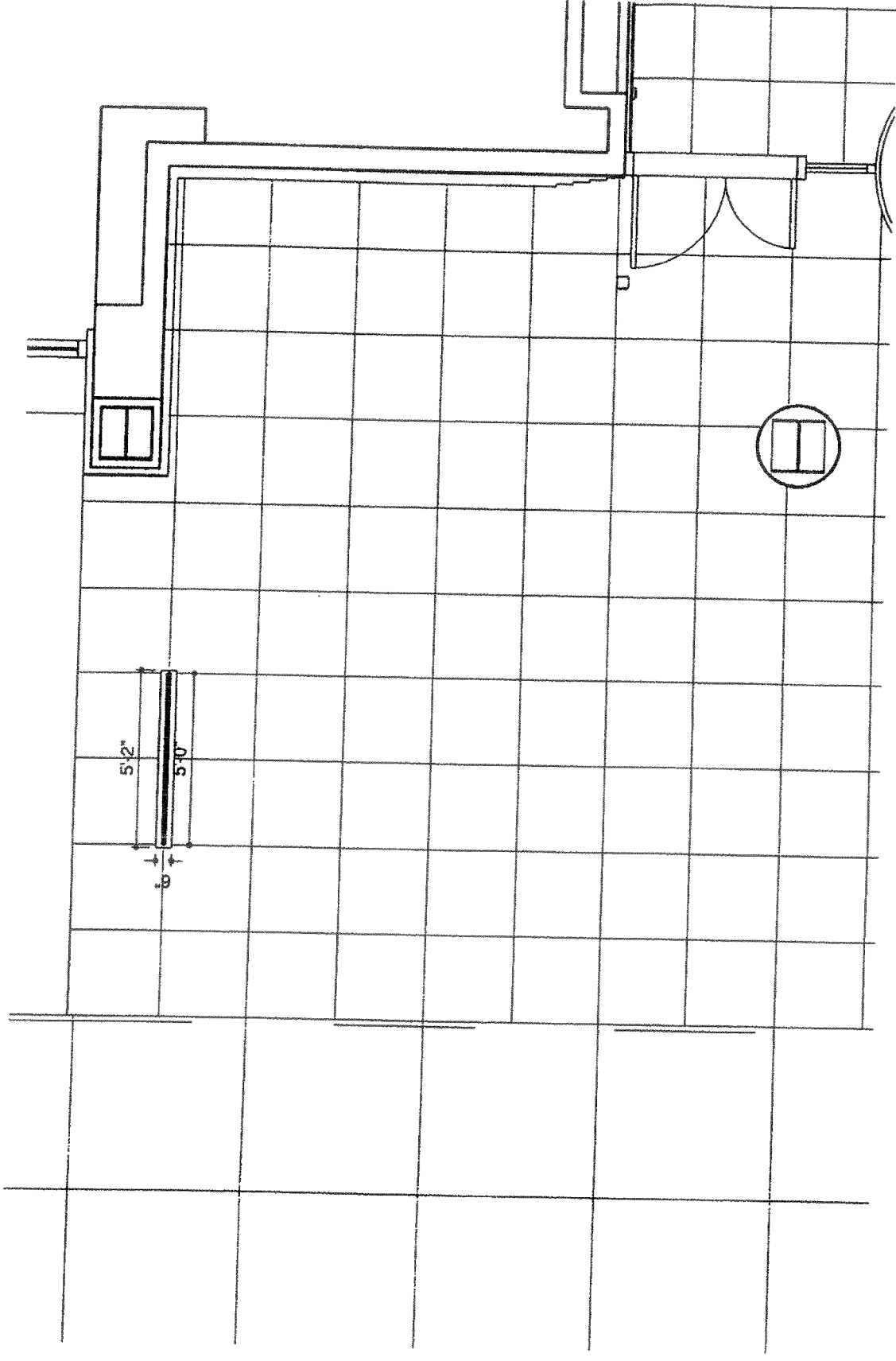


1350 Ave of the Americas **SK-3**  
Reckson Associates Realty Corp

NEW SIGN AT ENTRY - ELEVATION 04.05.25  
1/4" = 1'-0"  
Architects P.C.

**MOED de ARMAS & SHANNON**  
67 Wall Street, New York, NY 10005



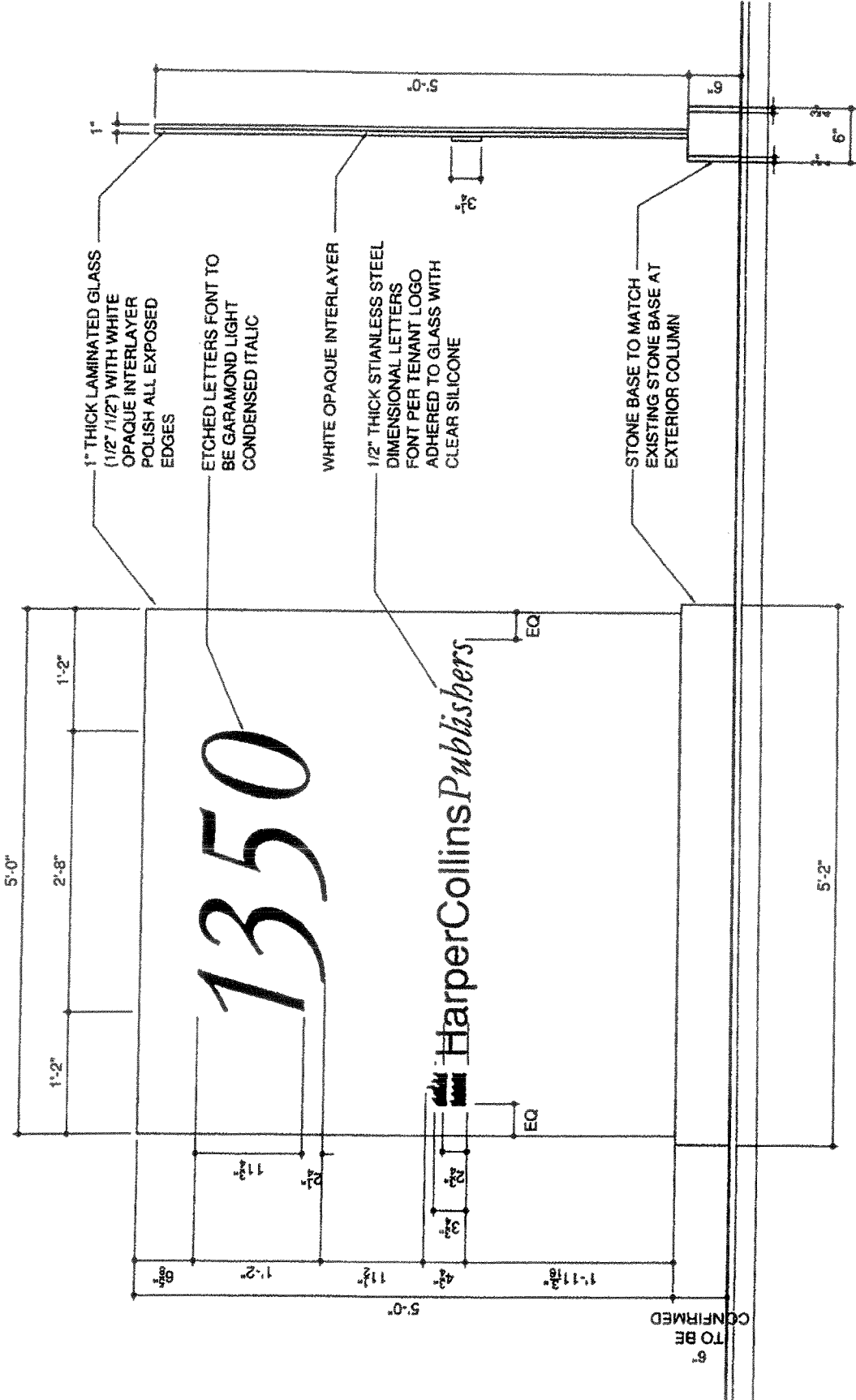


1350 Ave of the Americas **SK-4**  
Reckson Associates Realty Corp

NEW SIGN AT ENTRY - PLAN

04.05.25  
1/4" = 1'-0"  
Architects P.C.

**MOED de ARMAS & SHANNON**  
67 Wall Street, New York, NY 10005



**1350 Ave of the Americas SK-5**  
 Reckson Associates Realty Corp

**NEW SIGN AT ENTRY - ELEVATION**      04.05.25  
 3/4" = 1'-0"  
 Architects P.C.

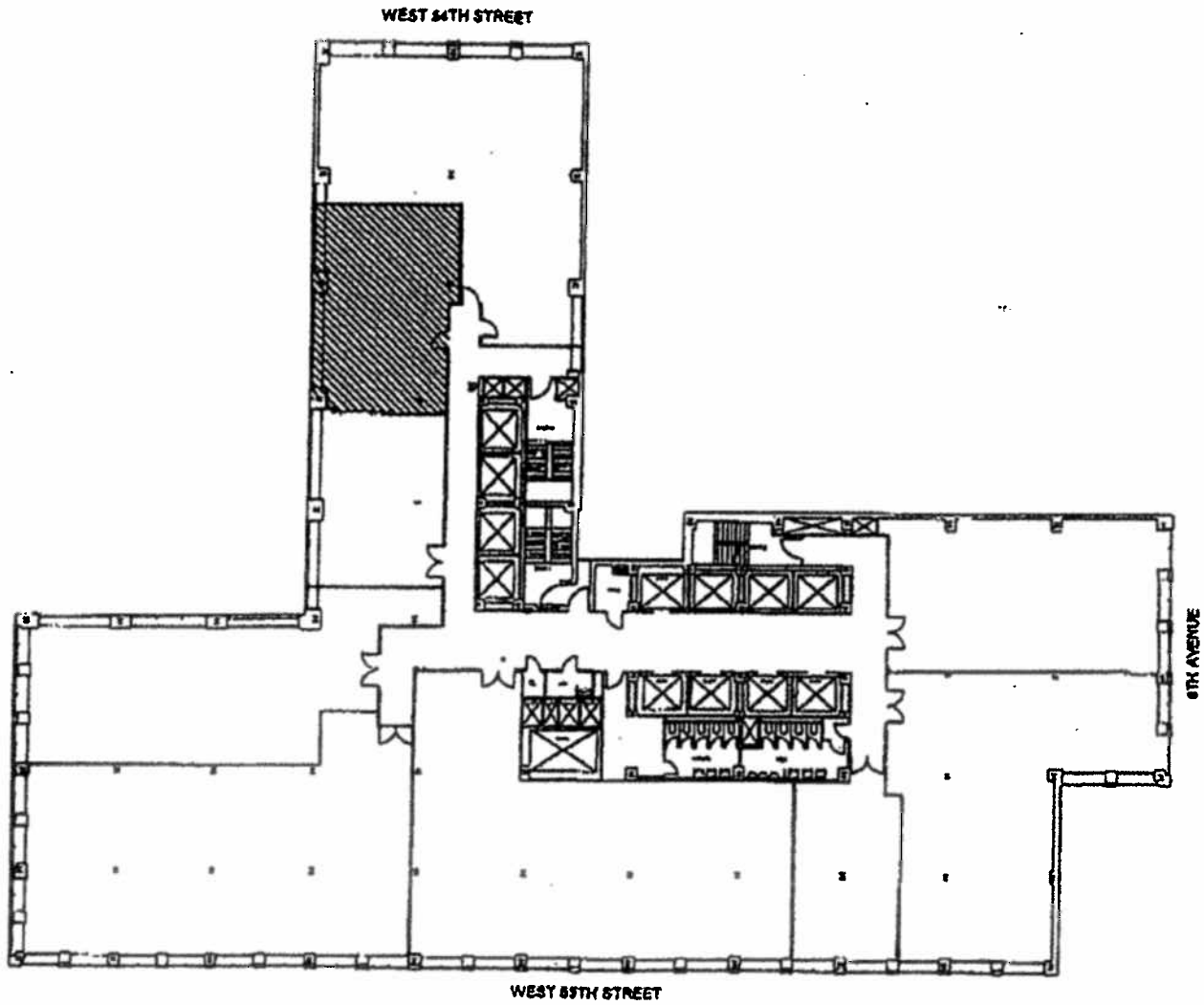
**MOED de ARMAS & SHANNON**  
 67 Wall Street, New York, NY 10005

TO BE  
 CONFIRMED

EXHIBIT C

SUITE 816 FLOOR PLAN

EXHIBIT C



RECKSON ASSOCIATES  
REALTY CORP.



Floor 00  
1350 6th Avenue

EXHIBIT D

FORM LETTER OF CREDIT

[LETTERHEAD OF ISSUER OF LETTER OF CREDIT]

\_\_\_\_\_, 20\_\_

Applicant: [Tenant]

Beneficiary: 1350 LLC  
c/o Reckson Associates Realty Corp.  
225 Broadhollow Road  
Melville, New York 11747  
Attention: Tom Carey, Corporate Controller

REF: IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

GENTLEMEN:

WE HEREBY OPEN OUR UNCONDITIONAL IRREVOCABLE CLEAN LETTER OF CREDIT NO. \_\_\_\_\_ IN YOUR FAVOR AVAILABLE BY YOUR DRAFT(S) AT SIGHT FOR AN AMOUNT NOT TO EXCEED IN THE AGGREGATE \$ \_\_\_\_\_ EFFECTIVE IMMEDIATELY.

ALL DRAFTS SO DRAWN MUST BE MARKED "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT OF [ISSUING BANK], NO. \_\_\_\_\_, DATED \_\_\_\_\_, 20\_\_."

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR OFFICE AT \_\_\_\_\_, NEW YORK CITY, N.Y. OR SUCH OTHER OFFICE IN NEW YORK CITY, N.Y. AS WE MAY DESIGNATE BY WRITTEN NOTICE TO YOU, AND EXPIRES WITH OUR CLOSE OF BUSINESS ON \_\_\_\_\_. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED FOR ADDITIONAL TWELVE MONTH PERIODS THROUGH \_\_\_\_\_ **160 DAYS AFTER LEASE EXPIRATION**], UNLESS WE INFORM YOU IN WRITING BY REGISTERED MAIL DISPATCHED BY US AT LEAST 60 DAYS PRIOR TO THE THEN EXPIRATION DATE THAT THIS LETTER OF CREDIT SHALL NOT BE EXTENDED. IN THE EVENT THIS LETTER OF CREDIT IS NOT EXTENDED FOR AN ADDITIONAL PERIOD AS PROVIDED ABOVE, YOU MAY DRAW HEREUNDER. SUCH DRAWING IS TO BE MADE BY MEANS OF A DRAFT ON US AT SIGHT WHICH MUST BE PRESENTED TO US BEFORE THE THEN EXPIRATION DATE OF THIS LETTER OF CREDIT. THIS

LETTER OF CREDIT CANNOT BE MODIFIED OR REVOKED WITHOUT YOUR CONSENT. THIS LETTER OF CREDIT IS PAYABLE IN MULTIPLE DRAFTS AND SHALL BE TRANSFERABLE BY YOU WITHOUT ADDITIONAL CHARGE.

WE HEREBY DO UNDERTAKE TO PROMPTLY HONOR YOUR SIGHT DRAFT OR DRAFTS DRAWN ON US, INDICATING OUR LETTER OF CREDIT NO.

\_\_\_\_\_ FOR THE AMOUNT AVAILABLE TO BE DRAWN ON THIS LETTER OF CREDIT UPON PRESENTATION OF YOUR SIGHT DRAFT IN THE FORM OF *SCHEDULE A* ATTACHED HERETO DRAWN ON US AT OUR OFFICES SPECIFIED ABOVE DURING OUR USUAL BUSINESS HOURS ON OR BEFORE THE EXPIRATION DATE HEREOF.

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENTS, REQUIREMENTS OR QUALIFICATION. OUR OBLIGATION UNDER THIS LETTER OF CREDIT IS OUR INDIVIDUAL OBLIGATION AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO OR UPON OUR ABILITY TO PERFECT ANY LIEN, SECURITY INTEREST OR ANY OTHER REIMBURSEMENT.

IN THE EVENT THE APPLICANT BECOMES A DEBTOR IN A CASE UNDER TITLE 11 OF THE UNITED STATES CODE (THE "BANKRUPTCY CODE"), OR IN ANY OTHER INSOLVENCY OR SIMILAR PROCEEDING, OUR OBLIGATIONS TO THE BENEFICIARY HEREUNDER SHALL NOT BE REDUCED, LIMITED, IMPAIRED, DISCHARGED, DEFERRED, SUSPENDED, STAYED, TERMINATED OR OTHERWISE AFFECTED BY REASON THEREOF OR BY REASON OF ANY PROVISIONS OF THE BANKRUPTCY CODE (INCLUDING BUT NOT LIMITED TO, SECTIONS 362 AND 502(B) OF THE BANKRUPTCY CODE), OR THE PROVISIONS OF ANY OTHER INSOLVENCY OR SIMILAR LAW.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590, AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER, AND AS TO MATTERS NOT GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. LAW.

[ISSUER OF LETTER OF CREDIT]

SCHEDULE A TO LETTER OF CREDIT

FOR VALUE RECEIVED

PAY AT SIGHT BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE  
FUNDS TO \_\_\_\_\_ THE SUM OF U.S. \_\_\_\_\_ DRAWN UNDER  
IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ DATED \_\_\_\_\_,  
2000 ISSUED BY \_\_\_\_\_

TO: [ISSUER OF LETTER OF CREDIT]

NEW YORK, NEW YORK

EXHIBIT E

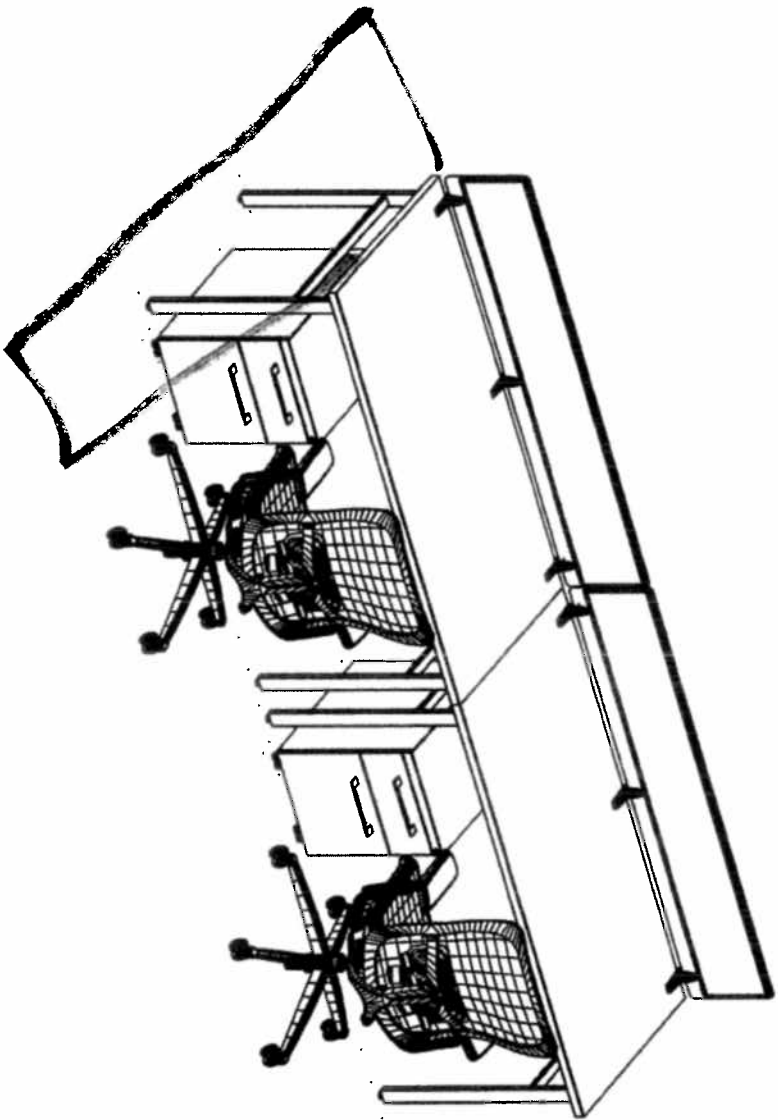
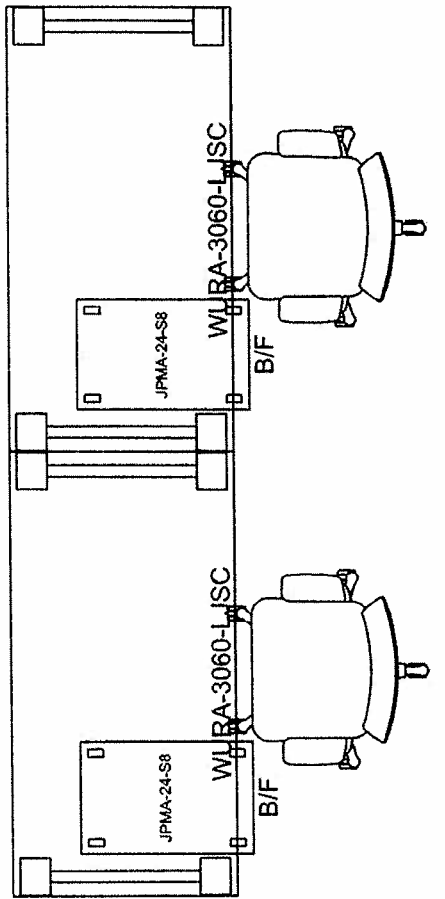
FORM OF LANDLORD'S ESTIMATE STATEMENT



3rd FLOOR



<b>THINKSPACENY</b> Office Interior Solutions <small>100 West 29th Street, New York, NY 10001</small>	
134 West 29th Street 10th Floor New York, NY 10001 (T) 212.730.0033 (F) 212.840.0542	
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<b>Revisions:</b> 01: BY - 0000000	
<b>PROJECT:</b> NYC OFFICE SUITE 1350 AVENUE OF THE AMERICAS NEW YORK, N.Y.	
<b>Sales Rep:</b> SCOTT G.	<b>Date:</b> 07.02.09
<b>Project No.:</b>	<b>Owner/Arch:</b> K/SB/MS
<b>Scale:</b> N.T.S.	<b>Series:</b>
<b>FLOOR NO.</b> 3RD	
<b>AREA</b>	



**THINKSPACENCY**  
Office Interior Solutions  
An office fit. Company.

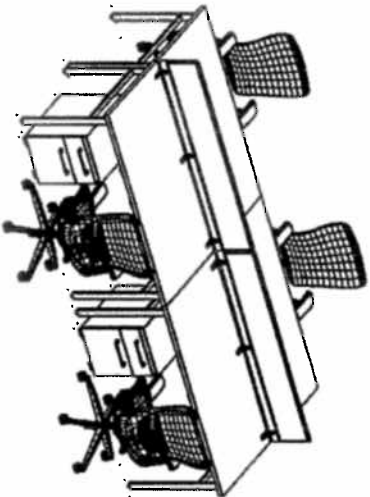
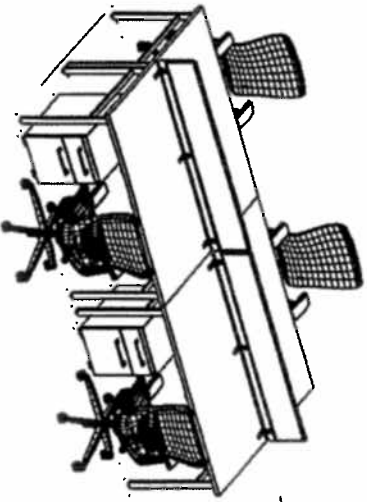
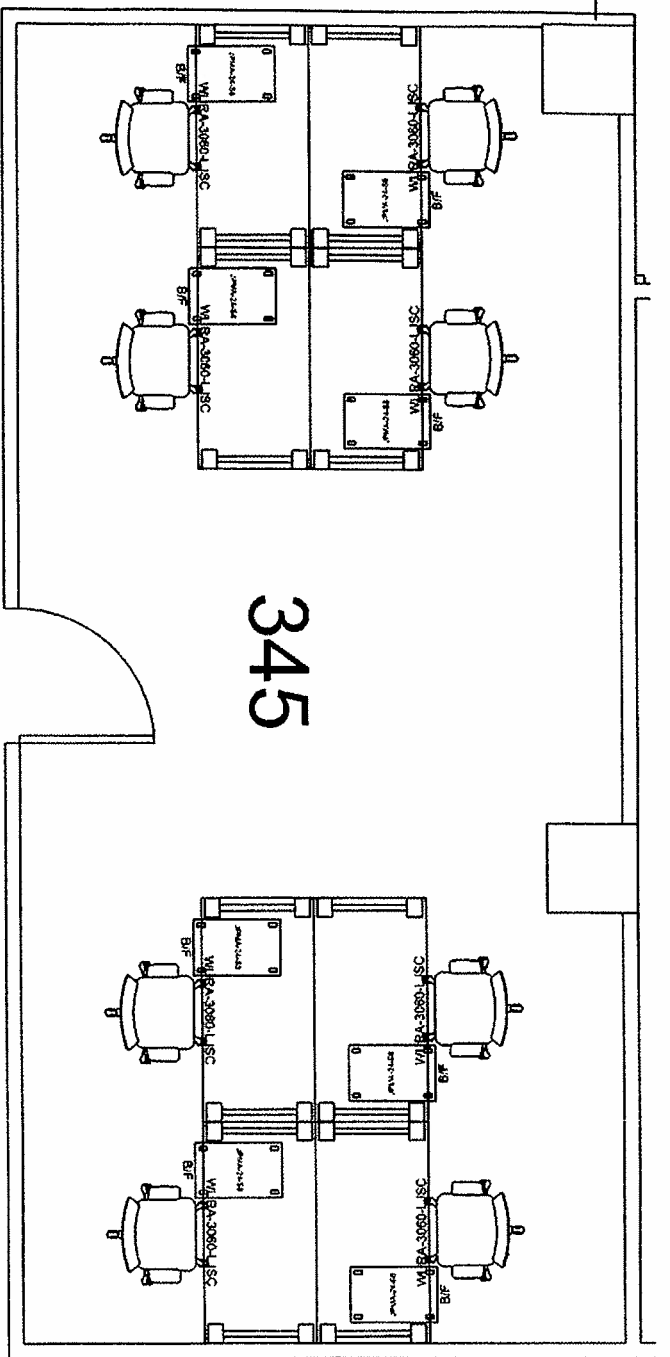
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Revisions:  
01: By - 0000000

PROJECT:  
NYC OFFICE SUITE  
TYPICAL SHARED OFFICE

Sales Rep: SCOTT G.  
Project No:  
Date: 07.06.09  
Drawn by: KUBICS  
Scale: 1/8"=1'-0"  
FLOOR NO.  
3RD  
AREA



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An office by design

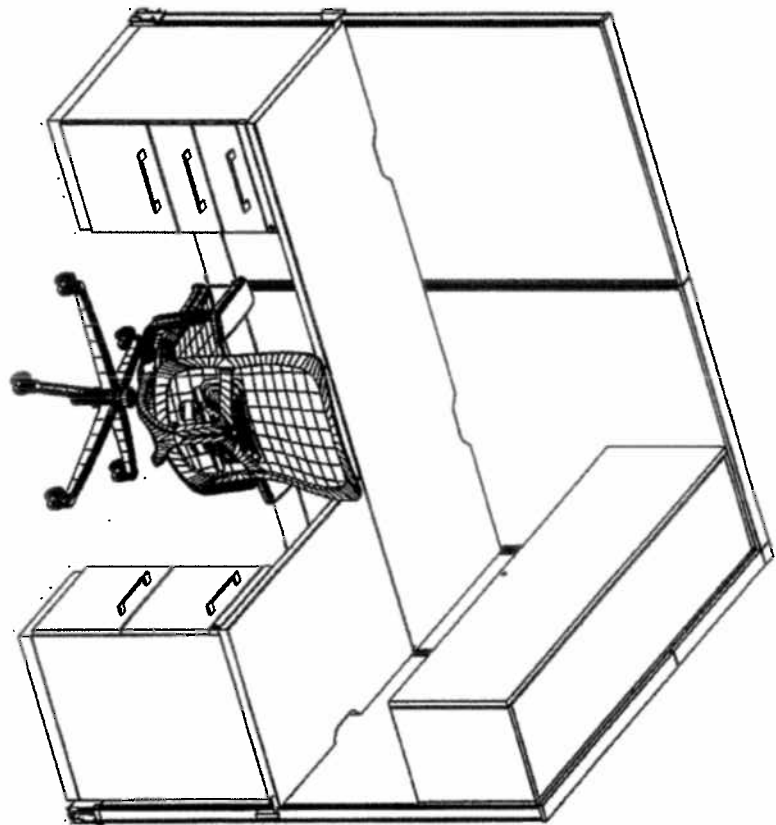
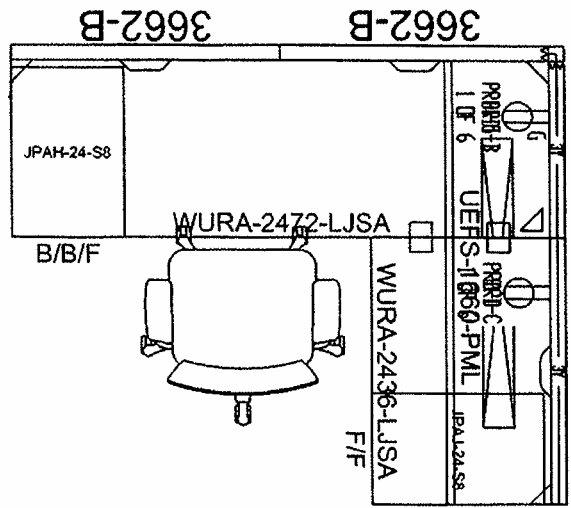
134 West 29th Street  
10th Floor  
New York, NY 10001  
(T) 212.730.0033  
(F) 212.940.0542

Revisions:  
01: By - 00/00/00

PROJECT:  
NYC OFFICE SUITE  
TYPICAL TEAM ROOM

Sales Rep: SCOTT G.  
Project No:  
Date: 07.06.09  
Drawn by: KUBICS  
Scale: 1/8"=1'-0"  
FLOOR NO.  
3RD  
AREA

2462-BY 3662-BY



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Office Interior Solutions  
At-Your-Service

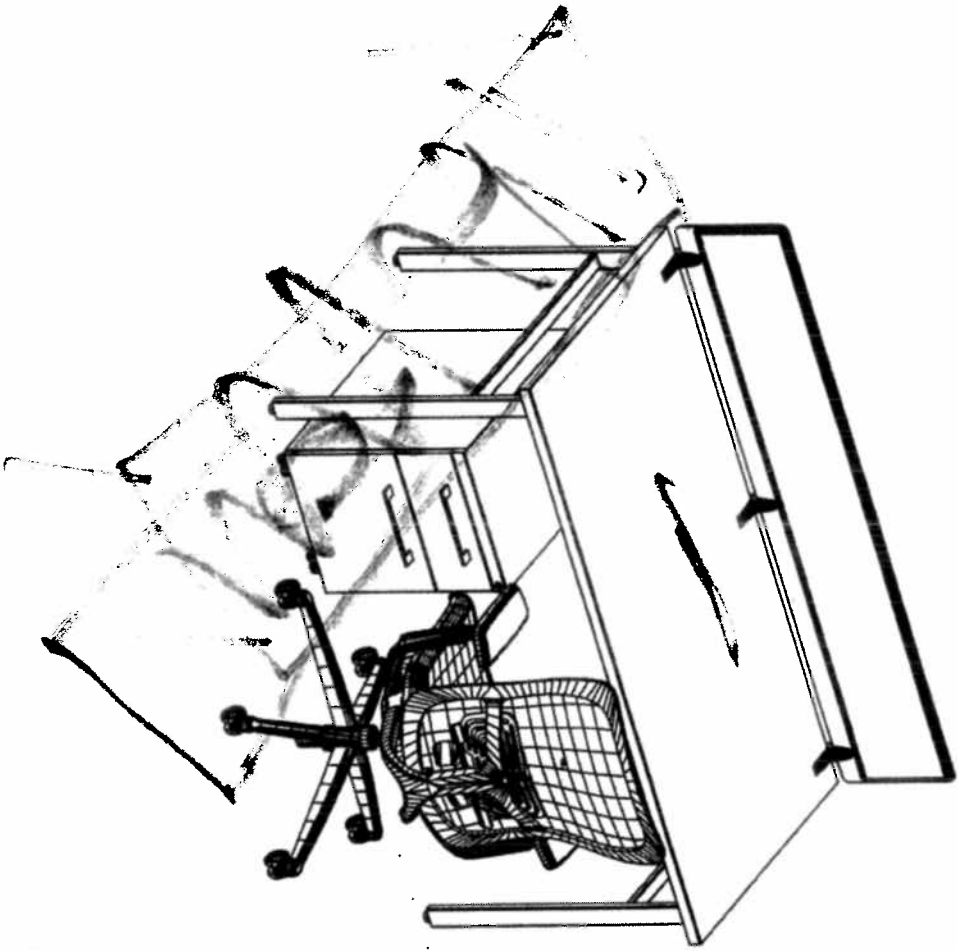
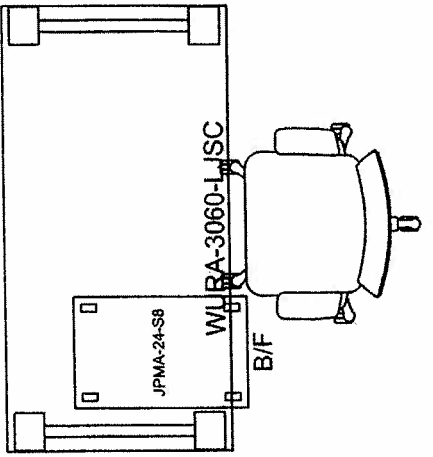
134 West 29th Street  
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New York, NY 10001  
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Revisions:  
01: By - 000/00/00

PROJECT:  
NYC OFFICE SUITE  
TYPICAL WORKSTATION

Sales Rep: SCOTT G.  
Project No:  
Date: 07.06.09  
Drawn by: KUBICS  
Scale: 1/8"=1'-0"  
FLOOR NO.  
3RD  
AREA



**THINKSPACENY**  
Office Interior Solutions  
An Office Inc. Company

134 West 29th Street  
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New York, NY 10001  
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Revisions:  
01: By - 00100000

PROJECT:  
NYC OFFICE SUITE  
  
TYPICAL SINGLE OFFICE

Sales Rep: SCOTT G.  
Project No:  
Date: 07.06.09  
Drawn by: KUBICS  
Scale: 1/8"=1'-0"  
  
FLOOR NO.  
3RD  
AREA