

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:12-cv-00080-CEJ
	)	
BURTON DOUGLAS MORRISS, et al.,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	

**RECEIVER’S MOTION FOR SALE OF CERTAIN PERSONAL PROPERTY**

Receiver Claire M. Schenk (“Receiver”) hereby respectfully moves the Court pursuant to 28 U.S.C. §§ 2001 and 2004 to exercise its discretion to allow the public sale by auction of certain personal property of the Receivership estate. The Receiver relies on the *Memorandum of Law in Support of Receiver’s Motion for Sale of Certain Personal Property* to support her request, which memorandum is being contemporaneously filed herewith.

Respectfully submitted,

THOMPSON COBURN LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2012, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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/s/ Brian A. Lamping

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Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	

**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER’S  
MOTION FOR SALE OF CERTAIN PERSONAL PROPERTY**

In keeping with the principal objective of the Receivership, *i.e.*, to marshal and safeguard the assets and take such actions as are necessary for the protection of the investors, the Receiver respectfully requests that the Court enter an Order granting the Receiver’s Motion for Sale of Certain Personal Property.

**I. Background**

On January 17, 2012, the United States Securities and Exchange Commission (the “SEC”) filed its *Complaint for Injunctive and Other Relief* (the “Complaint”) against Burton Douglas Morriss (“Morriss”), Acartha Group, LLC (“Acartha”), Acartha Technology Partners, L.P. (“ATP”); MIC VII, LLC (“MIC”), Gryphon Investments III, LLC (“Gryphon” and together with Acartha, ATP and MIC, the “Receivership Entities”) and Morriss Holdings, LLC (“Morriss Holdings”)<sup>1</sup> in this Court as Case No. 4:12-cv-00080-CEJ (the “SEC Case”). See *Complaint*

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<sup>1</sup> Morriss, Acartha, ATP, MIC, Gryphon and Morriss Holdings are collectively referred to as the “SEC Defendants.”

(Dkt. No. 1). In the Complaint and other papers filed by the SEC on January 17, 2012, the SEC alleges various securities laws violations by the SEC Defendants.

Also, on January 17, 2012, the SEC moved for the immediate appointment of a receiver over the Receivership Entities to (i) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (ii) act as sole and exclusive managing member or partner of the Receivership Entities, (iii) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities' estates, (iv) marshal and safeguard all of the assets of the Receivership Entities, and (v) take whatever actions are necessary for the protection of investors. The Court entered the requested relief by order dated January 17, 2012 (the "Receivership Order"). See Receivership Order (Dkt. No. 16).

As established in the Receivership Order, the Receiver is charged with

tak[ing] immediate possession of all property, assets and estate of every kind of the [Receivership] Entities whatsoever and wheresoever located, including but not limited to all offices maintained by the [Receivership] Entities'[, ] rights of action, books, papers, data processing records, evidence of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership] Entities, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further Order of this Court..."

Receivership Order, p. 2. The Receiver also is "authorized, solely and exclusively, to operate and manage the businesses and financial affairs of [the Receivership Entities] and the Receiver Estates." Receivership Order, p. 8.

Upon her appointment as receiver, the Receiver learned that the Receivership Entities operated out of two offices -- one located in Clayton, Missouri, under a lease held by Morriss Holdings, and the other located in East Brunswick, New Jersey (the "New Jersey Premises"),

under a lease held by Acartha. This Motion concerns the pendency of the lease of the New Jersey Premises and the disposition of the personal property, including but not limited to furniture, fixtures, office supplies and equipment, located at the New Jersey Premises.

#### **A. The New Jersey Lease**

According to the documents that the Receiver has received, on or about May 31, 2006, Acartha, as tenant, entered into an office lease (the "New Jersey Lease") with Tower Center II Investment Group, L.L.C. (the "Landlord"). See Exhibit A, New Jersey Lease. Under the New Jersey Lease, Acartha agreed to lease the premises at Two Tower Center, 20th Floor, East Brunswick, New Jersey (approximately 5,623 square feet), for an initial term of seven years. Pursuant to the New Jersey Lease, at page 1, the initial lease term commenced on July 1, 2006 and expires on June 30, 2013. Acartha's total base rental obligation under the New Jersey Lease is \$1,064,152.80 (base rent only). As far as the Receiver can discern, the monthly rental obligation for the New Jersey Premises under the New Jersey Lease is stated as \$14,057.50 with an increase to \$14,291.79 per month as of July 2012, through the remainder of the initial lease term.<sup>2</sup> See New Jersey Lease, p. 2.

The Receivership estates do not have a use for the New Jersey Premises. The Receiver has not and will not be conducting business out of the New Jersey Premises. Considering these facts, together with the monthly rent and the time remaining on the New Jersey Lease, the Receiver determined that it is in the best interests of the Receivership estates to reject the New Jersey Lease and vacate the New Jersey Premises.<sup>3</sup> Therefore, by letter dated February 14, 2012,

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<sup>2</sup> According to a recent rental statement from the Landlord, Acartha's alleged rental and other obligations under the New Jersey Lease total \$107,075.34 as of February 1, 2012. See Exhibit B, Feb. 1, 2012 Rental Statement.

<sup>3</sup> "Congress has authorized federal receivers to exercise broad powers in administering, retrieving, and disposing of assets belonging to the receivership." *S.E.C. v. Ross*, 504 F.3d 1130, 1145 (9th Cir. 2007). In particular, a receiver

the Receiver notified the Landlord of the rejection of the lease and the Receiver's intent to remove all Receivership property from the New Jersey Premises. See **Exhibit C**, Letter to Landlord dated Feb. 14, 2012. The Receiver is cooperating with the Landlord in its efforts to show the property so that the Landlord may move forward with efforts to obtain a new tenant. See **Exhibit D**, Letter to Landlord's Counsel dated Feb. 20, 2012.

### **B. The New Jersey Premises**

Prior to January 17, 2012, the Receivership Entities operated their businesses, in part, out of the New Jersey Premises and outfitted the New Jersey Premises with, among other things, office furniture, televisions, electronic and networking equipment, office supplies, and fitness equipment. Because (i) the Receivership no longer requires use of the New Jersey Premises and (ii) the Receiver rejected the New Jersey Lease, the Receiver must remove all personal property of the Receivership at the New Jersey Premises as soon as possible.

### **C. Sale of Personal Property**

The Receiver desires to sell the personal property items found at the New Jersey Premises or surrendered by the SEC Defendants (the "Personal Property").<sup>4</sup> The Receivership has no use for the Personal Property at the New Jersey Premises because the Receivership is not operating

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has the inherent power to reject executory contracts and leases as an equity receiver under common law. A receiver does not become liable, by virtue of his appointment, upon the covenants and agreements of the receivership entities. *Sunflower Oil Co. v. Wilson*, 142 U.S. 313, 322 (1892). The "doctrine of abandonment" gives equity receivers the power to reject unprofitable leases and contracts. *In re Unishops, Inc.*, 422 F. Supp. 75, 79 (S.D.N.Y. 1975) (citing *U.S. Trust Co. v. Wabash Western Ry.*, 150 U.S. 287, 299 (1893)). Moreover, a receiver is entitled to hold possession of leased premises for a reasonable time to determine whether to adopt or reject the lease without becoming bound by it. *In re Mallow Hotel Corp.*, 17 F. Supp. 872, 873 (M.D. Penn. 1937) (internal citations omitted).

<sup>4</sup> By letter dated February 17, 2012, the Receiver informed former management of the Receivership Entities of her understanding that all personal property at the New Jersey Premises is Receivership property. Further, the Receiver requested that former management of the Receivership Entities immediately provide her with a detailed listing of all property alleged not to belong to the Receivership. See **Exhibit E**, Letter to Former Management dated Feb. 17, 2012. As of the filing of this Motion, the Receiver has received no claims to any of the property located at the New Jersey Premises.

out of the New Jersey Premises. Under the circumstances, long term retention and storage of the Personal Property is not practical and only will result in a waste of precious Receivership resources and funds.

The Receiver desires to engage the services of a local auction house to conduct the sale of the Personal Property, as described more fully below. The Receiver believes that the course proposed herein is the most expedient and beneficial means of selling the Personal Property and preserving assets for the benefit of investors and creditors.

## **II. Argument**

Pursuant to the Receivership Order, the Court authorized the Receiver to, among other things, marshal and safeguard the assets of the Receivership Entities and take such actions as are necessary for the protection of investors. *See* Receivership Order, p.1; *see also Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver's "object is to maximize the value of the [Receivership assets] for the benefit of their investors and any creditors"). To accomplish this mandate, the Court authorized the Receiver to take immediate possession of all property, assets and estates of every kind of the Receivership Entities whatsoever and wheresoever located. *See* Receivership Order, p.2.

The Receiver now moves to fulfill the duties delegated to her by this Court by liquidating the Personal Property at the New Jersey Premises, which Personal Property is in her exclusive custody, control and possession. This action will preserve and increase the assets of the Receivership, and potentially maximize distributions to investors and creditors.

The public sale of personal property by a receiver is governed by 28 U.S.C. § 2004, which directs that the sale of any "personalty" sold under order or decree of the United States be

in accordance with section 2001 of the same title. The pertinent section of 28 U.S.C. § 2001(a) reads as follows:

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

28 U.S.C. § 2001(a).

The Receiver wishes to sell the Personal Property by retaining the services of Best Buy Auctioneers.Com, Inc. ("Best Buy Auctioneers") according to the terms and conditions set forth in the proposed auction agreement (the "Proposed Auction Agreement"), a copy of which is attached hereto as **Exhibit F**. An inventory of the Personal Property to be sold is attached hereto as **Exhibit G**. Pursuant to the Proposed Auction Agreement, Best Buy Auctioneers will (i) remove the Personal Property from the New Jersey Premises, (ii) transport the Personal Property to Best Buy Auctioneers' New Jersey auction center,<sup>5</sup> (iii) market and advertise the auction of the Personal Property for a \$750.00 fee, (iv) provide all labor necessary to set up and conduct the sale, and (v) conduct the sale. Best Buy Auctioneers will collect a commission of 20 percent of the total sales proceeds.

Given the nature, quality and value of the Personal Property, as well as the local market in which the Personal Property will be sold, the Receiver believes that the terms and conditions

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<sup>5</sup> The Receiver is coordinating with Best Buy Auctioneers to have Best Buy Auctioneers remove the Personal Property from the New Jersey Premises and transport the Personal Property to Best Buy Auctioneers' facility on or before February 29, 2012.



of the Proposed Auction Agreement are the best available to the Receivership.<sup>6</sup> Moreover, the Proposed Auction Agreement will enable the Receiver to remove the Personal Property from the New Jersey Premises quickly and sell the Personal Property with the best hope for a return to the Receivership estates. As such, the Receiver respectfully requests that the Court authorize Best Buy Auctioneers to conduct a public sale of the Personal Property according to the terms and conditions set forth in the Proposed Auction Agreement. The Receiver anticipates that the sale of the Personal Property will be conducted in such a fashion as to maximize revenue, and accordingly, the Receiver asserts that this sale will further the objectives of the Receivership.

Respectfully submitted,

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<sup>6</sup> The Landlord has required that the Receiver conduct an off-site auction of the Personal Property. Best Buy Auctioneers was the only auction house in the area that would quote the Receiver terms and conditions for conducting an off-site auction, which affected the commission percentage quoted by Best Buy Auctioneers (by increasing the commission percentage from 10 to 20 percent). The Receiver, through her agents, contacted multiple auction houses in New Jersey, Philadelphia and New York City to find an auction house willing to sell the Personal Property. Of all the auction houses contacted, only Best Buy Auctioneers gave the Receiver proposed terms and conditions for removing the Personal Property from the New Jersey Premises prior to sale (as opposed to conducting an on-site auction).

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2012, I electronically filed the foregoing with the Clerk of the Court through the Court's CM/ECF system which will send a notice of electronic filing to the following:

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/s/ Brian A. Lamping

**EXHIBIT A**

OFFICE LEASE

BETWEEN

TOWER CENTER II INVESTMENT GROUP, L.L.C. (LANDLORD)

AND

ACARTHA GROUP, LLC, LLC (TENANT)

DATED: May 31, 2006

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OFFICE LEASE

ARTICLE ONE  
BASIC LEASE PROVISIONS

1.01 BASIC LEASE PROVISIONS - In the event of any conflict between these Basic Lease Provisions and any other Lease provision, such other Lease provision shall control.

- (1) BUILDING AND ADDRESS:  
Two Tower Center  
East Brunswick, New Jersey
- (2) LANDLORD AND ADDRESS:  
  
Tower Center II Investment Group, L.L.C.  
c/o Paul Chapman, Managing Director  
CB Richard Ellis Investors  
601 108<sup>th</sup> Avenue, N.E, Suite 1900  
Bellevue, WA 98004
- (3) TENANT AND CURRENT ADDRESS:  
  
Acartha Group, LLC  
Two Tower Center, 20<sup>th</sup> Floor  
East Brunswick, New Jersey 08817
- (4) DATE OF LEASE: May 31, 2006
- (5) INITIAL LEASE TERM: Seven (7) Years
- (6) COMMENCEMENT DATE: July 1, 2006
- (7) EXPIRATION DATE: June 30, 2013



(8) BASE RENT:

	<u>Monthly</u>	<u>Annually</u>	<u>Rate/SF</u>	<u>Total</u>
Month 1-6	0	0	0	0
Months 7-12	\$12,886.04	\$154,632.50	\$27.50	\$ 77,316.34
Months 13-24	\$13,120.33	\$157,444.00	\$28.00	\$157,444.00
Months 25-36	\$13,354.62	\$160,255.50	\$28.50	\$160,255.50
Months 37-48	\$13,588.91	\$163,067.00	\$29.00	\$163,067.00
Months 49-60	\$13,823.20	\$165,878.50	\$29.50	\$165,878.50
Months 61-72	\$14,057.50	\$168,690.00	\$30.00	\$168,690.00
Months 73-84	\$14,291.79	\$171,506.50	\$30.50	\$171,501.50
			<b>TOTAL:</b>	\$1,064,152.80

The Rent for the initial month of the Term shall be by Tenant to Landlord upon the execution of this Lease by Tenant.

- (9) RENTABLE AREA OF THE BUILDING: approximately 418,790 square feet
- (10) RENTABLE AREA OF THE PREMISES: approximately 5,623 square feet
- (11) SECURITY DEPOSIT: \$77,316.24
- (12) LOCATION OF PREMISES: 20<sup>TH</sup> Floor
- (13) TENANT'S SHARE OF INCREASE:
  - (a) Tenants share of Premises rented to rentable area in the Building - .1.343%
- (14) TENANT'S USE OF PREMISES: General office use and the incidental lawful use for purposes related to general office use.
- (15) BASE YEAR: 2006

1.02 ENUMERATION OF EXHIBITS

The exhibits set forth below and attached to this Lease are incorporated in this Lease by this reference:

- EXHIBIT A. Plan of Premises
- EXHIBIT B. Landlords Work
- EXHIBIT C. Rules and Regulations
- EXHIBIT D. Cleaning Specifications
- EXHIBIT E. Confirmation Agreement

### 1.03. DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

- (1) **AFFILIATE:** Any corporation or other business entity which is currently owned or controlled by, owns or controls, or is under common ownership or control with Tenant.
- (2) **ADJUSTMENT YEAR:** The calendar year or any portion thereof after the Base Year for which a Rent Adjustment computation is being made.
- (3) **BUILDING:** The office building located at Two Tower Center, East Brunswick, New Jersey
- (4) **COMMENCEMENT DATE:** The date specified in Section 2.02.
- (5) **COMMON AREAS:** All areas of the Real Property made available by Landlord from time to time for the general common use or benefit of the tenants of the Building, and their employees and invitees, or the public, as such areas currently exist and as they may be changed from time to time.
- (6) **DECORATION:** Tenant Alterations which are minor in nature and which do not require a building permit and which do not involve any of the structural elements of the Building, or any of the Building's systems, including, without limitation, its electrical, mechanical, plumbing, HVAC and/or security and life/safety systems.
- (7) **DEFAULT RATE:** Two percent (2 %) above the prime rate then most recently announced by Citibank, N.A. as its corporate base lending rate, from time to time announced, but in no event higher than the maximum rate permitted by law.
- (8) **ENVIRONMENTAL LAWS:** Any Law governing the use, storage, disposal, or generation of any Hazardous Material, including without limitation, the New Jersey Industrial Site Recovery Act, ISRA, as amended and the Resource Conservation and Recovery Act of 1976, as amended.
- (9) **EXPIRATION DATE:** The date specified in Section 1.01 (7) as the Expiration Date.
- (10) **FORCE MAJEURE:** Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of Landlord, including, but not limited to, energy shortages or governmental preemption in connection with a national emergency, or by reason of government laws or any rule, order or regulation of any department or subdivision thereof or any governmental agency, or by reason of the conditions

of supply and demand which have been or are affected by war or other emergency.

- (11) **HAZARDOUS MATERIAL:** Such substances, materials and wastes which are or become regulated under any Environmental Law; or which are or become classified as hazardous or toxic under any Environmental Law; and explosives and firearms, radioactive material, asbestos, and polychlorinated biphenyls.
- (12) **INDEMNITEES:** Collectively, Landlord, any Mortgagee or ground lessor of the Property, the property manager and the leasing manager for the Property and their respective directors, officers, agents, shareholders, partners and employees.
- (13) **LAND:** The parcel of real estate on which the Building is located.
- (14) **LANDLORD WORK:** As listed on Exhibit "B" attached hereto and by this reference made a part hereof which Landlord's Work shall be completed by Landlord at Landlord's cost and expense prior to the Commencement Date hereof.
- (15) **LAWS:** All laws, ordinances, rules, regulations and other requirements adopted by any governmental body, or agency or department having jurisdiction over the Property, the Premises or Landlord's or Tenant's activities at the Premises and any covenants, conditions or restrictions of record which affect the Property.
- (16) **LEASE:** This instrument and all exhibits and riders attached hereto, as may be amended from time to time in accordance with the provisions contained in this Lease.
- (17) **LEASE YEAR:** The twelve month period beginning on the first day of the first month following the Commencement Date (unless the Commencement Date is the first day of a calendar month in which case beginning on the Commencement Date), and each subsequent twelve month, or shorter, period until the Expiration Date.
- (18) **MONTHLY BASE RENT:** The monthly rent specified in Section 1.01 (8).
- (19) **MORTGAGEE:** Any holder of a mortgage, deed of trust or other security instrument encumbering the Property or Landlord's interest therein or any ground lessor of the Property.
- (20) **NATIONAL HOLIDAYS:** New Years Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and other holidays designated by the Federal Government from time to time.

- (20A) NOTICE: A demand for action by the Tenant or Landlord. Notice shall be permitted to be given by writing sent by Federal Express or other overnight courier service, or mailed by first class, registered or certified mail, return receipt requested, postage prepaid and confirmed by e-mail as set forth in Article Three, Article Eleven and Article Twenty Four.
- (21) OPERATING EXPENSES: All costs, expenses, and disbursements of every kind and nature which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement, and repair of the Property. Operating Expenses shall not include, (i) costs of alterations of the premises of tenants of the Building, (ii) costs with regard to the operation of income producing retail concession operations owned by the Landlord and located within the Building, (iii) depreciation charges, (iv) interest and principal payments on loans, (v) ground rental payments, (vi) real estate brokerage and leasing commissions, (vii) advertising and marketing expenses, (viii) costs of Landlord reimbursed by insurance proceeds, (ix) expenses incurred in negotiating leases of other tenants in the Building, (x) Landlord's or Landlord's property manager's corporate general overhead or corporate general administrative expenses, (xi) the cost of repairs and/or restorations necessitated by condemnation or insured casualty (except that the amount of a commercially reasonable deductible shall be included in Operating Expenses), (xii) Any cost for which Landlord is reimbursed by other tenants of the Building; (xiii) the cost of any work or service performed for any tenant of the Building that is not provided to Tenant as part of the base building services; (xiv) advertising and promotional expenditures; (xv) the cost of constructing additions to the Building that results in a larger building, or (xvi) any amount paid by Landlord for items or services to any entity controlled by or under common control with Landlord in excess (by more than a de minimus amount) of the then competitive rate for such items or services. If any Operating Expenses, though paid in one year, relates to more than one calendar year, such expense shall be proportionately allocated among such related calendar years.
- (22) PREMISES: The space located in the Building described in Sections 1.01(10) and 1.01(12) and depicted on Exhibit "A" attached hereto.
- (23) PROPERTY: The Building, the Land, any other improvements located on the Land, including, without limitation, any parking structures and the personal property, fixtures, machinery, equipment, systems and apparatus located in or used in conjunction with any of the foregoing.
- (24) REAL PROPERTY: The Property excluding any personal property.
- (25) RENT: Collectively, Monthly Base Rent, Rent Adjustments and Rent Adjustment Deposits, and all other charges, payments, or other amounts (excluding late charges) required to be paid by Tenant under this Lease.

- (26) RENTABLE AREA OF THE BUILDING: approximately 418,790 square feet, which represents the sum of the rentable area of all office space in Building.
- (27) RENTABLE AREA OF THE PREMISES: The amount of square footage set forth in 1.01(10).
- (28) RENT ADJUSTMENT: Any amounts owed by Tenant for payment of Operating Expenses or Taxes which amounts shall be Tenant's Share of the amount by which Operating Expenses or Taxes for the then Adjustment Year exceed the amount of Operating Expenses or Taxes for the Base Year. The Rent Adjustments shall be determined and paid as provided in Article Four.
- (29) RENT ADJUSTMENT DEPOSIT: An amount reasonably determined and/or re-determined by Landlord from time to time as being equal to one-twelfth (1/12th) of the estimated amount of Rent Adjustment owed by Tenant for an Adjustment Year. However, if any Mortgagee requires that Taxes be escrowed with it or paid at such times as would require a larger Rent Adjustment than provided for in the preceding sentence, then Landlord may require that the Rent Adjustment Deposit be in an amount and paid at times which would enable Landlord to satisfy the requirements of the Mortgagee.
- (30) SECURITY DEPOSIT: The funds specified in Section 1.01 (11), if any, deposited by Tenant with Landlord as security for Tenant's performance of its obligations under this Lease.
- (31) SUBSTANTIALLY COMPLETE: The completion of the Landlords' Work in compliance with the approved Tenant's Plans (as defined in Exhibit B hereto) except for minor insubstantial details of construction, decoration or mechanical adjustments which remain to be done which would not materially interfere with Tenant's permitted use of the Premises.
- (32) TAXES: All federal, state and local governmental taxes, assessments and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control or operation of the Property or any of its components, or any personal property used in connection therewith, which shall also include any rental or other taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed or become a lien during such year, whether or not such taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees, costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year (or to the extent not previously reduced, by refunds attributable to prior Lease Years (excluding the Base Year) during the term hereof. If a special assessment payable in installments is levied against any part of the Property, Taxes

for any year shall include only the installment of such assessment and any interest payable or paid during such year. Taxes shall not include any federal or state inheritance, franchise, general income, transfer, gain, gift or estate taxes except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes if not assessed against taxpayers generally as compared to owners of real estate or landlords of leases in particular.

- (33) TENANT ADDITIONS: Any, and collectively all Tenant Work and Tenant Alterations.
- (34) TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Building systems serving the Premises and completed and/or installed by Tenant at Tenant's cost and expense.
- (35) TENANT WORK: Improvements to the Premises completed by Tenant for Tenant's original occupancy thereof.
- (36) TENANT'S SHARE: The percentage specified in Section 1.01(13) which represents the ratio of the Rentable Area of the Premises to the Rentable Area of the Building.
- (37) TERM: The term of this Lease commencing on the Commencement Date and expiring on the Expiration Date, unless sooner terminated as provided in this Lease.
- (38) TERMINATION DATE: The Expiration Date or such earlier date as this Lease terminates or Tenant's right to possession of the Premises terminates.

ARTICLE TWO  
PREMISES, TERM AND FAILURE TO GIVE  
POSSESSION

2.01 LEASE OF PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term and upon the conditions provided in this Lease. In the event Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, Tenant shall be subject to all of the terms, covenants and conditions of this Lease (except with respect to the payment of Rent) as of the date of such possession.

2.02 TERM

(A) The Commencement Date of this Lease shall be the date upon which Landlord delivers possession of the Premises to Tenant ("Delivery of Possession").

Delivery of Possession shall be the day that this Lease is fully executed and delivered to each party hereto.

(B) Tenant agrees to accept possession of the Premises when tendered by Landlord, in accordance with Part A of this Section 2.02, in its "AS-IS" condition. Tenant understands and agrees that as an accommodation to the Tenant, Landlord shall permit Tenant to have access to and possession of the Premises prior to completion of the Landlord's Work. Landlord agrees to make a good faith and reasonable effort to complete the Landlord's Work as expeditiously as reasonably possible it being agreed and acknowledged by Tenant that the Tenant's possession in the Premises will cause the Landlord's Work to proceed at a slower pace than if the Premises were empty. Tenant hereby expressly waives any claim of delay in the completion of the Landlord's Work and any claim based on interference and/or obstruction of Tenant's business in and/or from the Premises as a result of the said construction of Landlord's Work.

(C) If Landlord is unable to deliver possession of the Premises to Tenant as above set forth as such date may be extended for reasons of Force Majeure (as defined in this Lease), and provided the reason therefore has not been a result of Tenant's acts or omissions, then, and in such event, the Delivery of Possession shall be extended, but in no event to a date later than September 1, 2006 and unless Landlord delivers possession of the Premises on or prior to September 1, 2006 (similarly extended for reasons of Force Majeure), this Lease, at the election of Landlord or Tenant may be canceled by notice given to the other party prior to the Delivery of Possession and shall terminate on such date as contained in the cancellation notice but no later than 10 days from the delivery of such notice, and the parties shall be released herefrom. If this Lease is canceled under this subpart (C), neither party shall have any further liability to the other hereunder and any rent payments made by Tenant in advance, shall promptly be returned to Tenant. If cancellation by Tenant is not made as permitted herein by July 15, 2006, then Tenant's right to cancel shall automatically be null and void, and this Lease shall continue in full force and effect.

(D) Unless sooner terminated, the Term of this Lease shall expire at 11:59 p.m. on the last day of the eighty-fourth full calendar month following the Commencement Date.

(E) Once established the Commencement Date, Expiration Date, Security Deposit, Reduction and Application Dates and other pertinent matters shall be confirmed by Landlord and Tenant by execution of the Confirmation Agreement attached hereto at Exhibit E, and by this reference is hereby made a part hereof, which Confirmation Agreement shall be executed by Landlord and Tenant within 30 days of the occurrence of the Commencement Date.

## 2.03 AREA OF PREMISES

Landlord and Tenant agree that for all purposes of this Lease the Rentable Area of the Premises and the Rentable Area of the Building as set forth in Article One are controlling,

and are not subject to revision after the date of this Lease.

ARTICLE THREE  
RENT

Tenant agrees to pay to Landlord at the office specified in Section 1.01(2), or to such other persons, or at such other places designated by Landlord, without any prior demand therefor and without any deduction, offset or abatement whatsoever, Rent, including, without limitation, Monthly Base Rent and Rent Adjustments in accordance with Article Four, during the Term. Monthly Base Rent shall be paid monthly in advance on the first day of each month of the Term. Monthly Base Rent shall be prorated for partial months within the Term. Unpaid Rent shall bear interest at the Default Rate from the date due until paid, if such Rent is not paid within five (5) days after the date due. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease.

ARTICLE FOUR  
RENT ADJUSTMENTS AND PAYMENTS

4.01 RENT ADJUSTMENTS

Tenant shall pay to Landlord Rent Adjustments during the Term as follows:

- (i) Commencing on January 1, 2007 the Rent Adjustment Deposit representing Tenant's Share of the increase in Operating Expenses and Taxes over the Base Year, which shall be calendar year 2006 attributable to any calendar year (or portion thereof) monthly during the Term at the time when the Monthly Base Rent is due; and
- (ii) Any Rent Adjustments due in excess of the Rent Adjustment Deposits in accordance with Section 4.02.

4.02 STATEMENT OF LANDLORD

As soon as feasible (but in no event later than 210 days) after the expiration of each Adjustment year of this Lease, Landlord will furnish Tenant a statement ("Landlords Statement") showing the following:

- (i) Operating Expenses and Taxes for the Base Year;
- (ii) Operating Expenses, including Landlord's standard detail, and Taxes for the Adjustment Year and the amount of the increase over the Base Year;
- (iii) The amount of Rent Adjustments due Landlord for the Adjustment Year, less credit for Rent Adjustment Deposits paid, if any; and
- (iv) The Rent Adjustment Deposit due monthly in the year next



following the Adjustment Year including the amount or revised amount due for months prior to the rendition of the statement.

Tenant shall pay to Landlord within thirty (30) days after receipt of such statement any amounts for Rent Adjustments then due in accordance with Landlord's Statement. Any amounts due from Landlord to Tenant pursuant to this Section shall be credited to the Rent Adjustment Deposit next coming due, or refunded to Tenant if the Term has already expired provided Tenant is not in default hereunder. No interest or penalties shall accrue on any amounts which Landlord is obligated to credit to Tenant by reason of this Section 4.02. Landlord's failure to deliver Landlord's Statement or in computing the amount of the Rent Adjustments shall not constitute a waiver by Landlord of its right to deliver such items nor constitute a release of Tenant's obligations to pay such amounts. The Rent Adjustment Deposit shall be credited against Rent Adjustments due for the applicable Adjustment Year. During the last complete calendar year or during any partial calendar year in which the Lease terminates, Landlord may include in the Rent Adjustment Deposit its estimate of Rent Adjustments which may not be finally determined until after the termination of this Lease. Tenant's obligation to pay Rent Adjustments (and Landlord's obligation to reimburse Tenant for any excess estimated payments made by Tenant) survives the expiration or termination of the Lease. Notwithstanding the foregoing, in no event shall the sum of Monthly Base Rent and the Rent Adjustments be less than the Monthly Base Rent payable.

#### 4.03 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, consistently applied. The Tenant or its representative (which representative shall be a licensed certified public accountant, unless such person is an employee of Tenant) shall have the right, for a period of one hundred fifty (150) days following the date upon which Landlord's Statement is delivered to Tenant, to examine the Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during normal business hours, upon written notice, delivered at least three (3) business days in advance. If Tenant does not object in writing to Landlord's Statement within one hundred fifty (150) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant. Any amount due to the Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception.

#### 4.04 PARTIAL OCCUPANCY

For purposes of determining Rent Adjustments for any Adjustment Year if the Building is not fully rented during all or a portion of any year (including the Base Year), Landlord shall make appropriate adjustments to the Operating Expenses (that is, that portion thereof that would vary with occupancy levels) for such Adjustment Year (including the Base Year) employing sound accounting and management principles consistently applied, to determine the amount of Operating Expenses that would have

been paid or incurred by Landlord had the Building been 95% occupied, and the amount so determined shall be deemed to have been the amount of Operating Expenses for such Adjustment Year, in the event that the Real Property is not fully assessed for any year (including the Base Year), then Taxes shall be adjusted to an amount which would have been payable in such year (including the Base Year) if the Real Property had been fully assessed (which estimated adjustment shall be revised, if necessary, to reflect the actual full assessment and the Landlord and Tenant shall thereafter reconcile any under or over payment made based on such readjustment). In the event any other tenant in the Building provides itself with a service which Landlord would supply under the Lease without an additional or separate charge to Tenant, then Operating Expenses shall be deemed to include the cost Landlord would have incurred had Landlord provided such service to such other tenant but only to the extent the cost for such service was included in Operating Expenses for the Base Year.

#### ARTICLE FIVE SECURITY DEPOSIT

(a) Tenant, upon the Tenant's the execution of this Lease shall pay to Landlord the Security Deposit if any set forth in Section 1.01(11) of this Lease. The Security Deposit may be applied by Landlord to cure any default of Tenant under this Lease, and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by paying to Landlord within ten (10) days of demand the amount so applied. Landlord shall not pay any interest on the Security Deposit. The Security Deposit shall not be deemed an advance payment of Rent, nor a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action which Landlord may at any time commence against Tenant. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant, regardless of one or more assignments of this Lease. Upon the transfer of the Landlord's interest under this Lease (and the written assumption by the transferee of the Landlord's obligations hereunder with respect to the Security Deposit), Landlord's obligation to Tenant with respect to the Security Deposit shall terminate upon assumption of such obligation by the transferee.

(b) In the event that no Default has occurred by and/or on the part of the Tenant hereunder nor has any event or act occurred which with the passage of time might result in a Default on the part of Tenant at or prior to any one or more of the following dates (the Security Deposit Reduction and Application Dates) then in that event:

- (i) on the last business day of the twenty-fourth (24<sup>th</sup>) month of the Term hereof, the Landlord shall apply \$25,772.00 of the Security Deposit to the payment of the Base Rent for the Premises for the 25<sup>th</sup> and the 26<sup>th</sup> months of the Term hereof; and
- (ii) on the last business day of the thirty-sixth (36<sup>th</sup>) month of the Term hereof, the Landlord shall apply \$26,210.00 of the Security Deposit to the

payment if the Base Rent for the Premises for the 37<sup>th</sup> and 38<sup>th</sup> months of the Term hereof;

any unused portion of the Security Deposit shall remain with the Landlord throughout the Term hereof subject to this Article Five.

- (c) If the Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant after the following:
- (i) the expiration of the term of this Lease;
  - (ii) the removal of Tenant and its property from the Premises;
  - (iii) the surrender of the Premises by Tenant to Landlord in accordance with this Lease; and
  - (iv) the payment by Tenant of any outstanding Rent, including, without limitation, all Rent Adjustments due pursuant to the Lease as computed by Landlord.
- (d) The Tenant shall have the right to annual verification of the amount of security deposit held by the Landlord pursuant to Section 1.01(11) of this Lease. Tenant shall provide a written request to Landlord prepared by the Tenant's auditor, and Landlord shall reply to such request within ten (10) business days of Landlord's receipt of the request.

## ARTICLE SIX SERVICES

### 6.01 LANDLORD'S GENERAL SERVICES

So long as the Lease is in full force and effect and Tenant has paid all Rent then due, Landlord shall furnish the following services:

- (1) heat and air-conditioning in the Premises, Monday through Friday from 8:00 A.M. to 6:00 P.M., Saturday, from 8:00 A.M. to 1:00 P.M., excluding National Holidays, as necessary in Landlord's reasonable judgment for the comfortable occupancy of the Premises under normal business operations, subject to compliance with all applicable mandatory Laws and provided that Tenant's use of heat generating machines or equipment does not exceed the limits established by Landlord and provided that the Tenant's occupancy or "electrical load does not exceed the Building standards thereby affecting the temperature otherwise maintained by the air-cooling system;
- (2) tempered and cold water for use in lavatories in common with other tenants from the regular supply of the Building. Tenant shall pay Landlord at rates fixed by Landlord (not to exceed Landlord's cost), charges for all water

furnished to the Premises for other purposes if, based on a survey conducted by Landlord and/or Landlord's consultant Landlord determines that Tenant's use of water is disproportionate to the water use of other tenants in the Building;

- (3) customary cleaning and janitorial services in the Premises Monday through Friday, excluding National Holidays, in accordance with the specifications attached hereto as Exhibit D;
- (4) washing of the outside windows in the Premises weather permitting at intervals determined by Landlord but not less than once per calendar year; and
- (5) access to the Premises twenty-four (24) hours per day, seven (7) days per week, 365 days per year.

#### 6.02 ELECTRICAL SERVICES

(a) Tenant agrees to pay for electricity consistent with the requirements for heating and air conditioning and agrees to pay as additional rent for all other electrical service usage by it on the Premises and parking lot including, but not limited to, lighting, electric typewriters, adding machines, computers or other office equipment. Bills shall be rendered from time to time in accordance with this provision and the amount shall be due and payable at the same time as the next following monthly increment of rent shall be due from the Tenant by the addition of the amount of said bills to such monthly payment, and default in payment of such bills shall be deemed a default in payment of rent. The cost of said electricity shall be calculated by Landlord and billed to Tenant.

If the Landlord furnishes electricity to the Tenant based on the method of including the use thereof within the rent, then and in that event the Tenant agrees to have the rent reserved herein increased to compensate the Landlord for supplying the current as an additional service as hereinafter provided. The Landlord will furnish electricity to the Tenant through presently installed electric facilities for Tenant's reasonable use of such lighting, electrical appliances and equipment as the Landlord may permit to be installed in the Premises, which consent shall not be unreasonably withheld. The Tenant agrees that an electric consultant, selected by the Landlord, may make a survey of the electric lighting and power load to determine the average monthly electric current consumption in the Premises not more often than once each calendar year. The findings of the consultant as to the proper rent increase based on such average monthly electric consumption shall be conclusive and binding upon the parties and the Tenant shall pay the same as additional rent, monthly on the first day of each and every month in advance for each month from the commencement of the demised term. If the Tenant installs additional or substituted electrical equipment or appliances or otherwise increases its use of current, then the additional rent aforesaid shall be increased by an amount determined by the consultant as above specified. The Landlord shall adjust the

rent in the event the Tenant removes any appliances or equipment from the Premises. If the Landlord's electric rates and/or charges are increased or decreased, then the aforesaid additional rent shall be increased or decreased in the same percentage. Tenant shall make no alterations or additions to the electrical equipment and/or appliances without first obtaining written consent, which consent shall not be unreasonably withheld. The Landlord, its agent or consultant, is given the right, to make surveys from time to time in the Tenant's Premises covering the electrical equipment and fixtures, and use of current. Landlord shall not in any way be liable or responsible to Tenant for any loss or damage or expenses which Tenant may sustain if either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of existing feeders to the buildings or the risers or wiring installation. Any riser or risers to supply Tenant's electrical requirements, upon written request of Tenant, will be installed by Landlord, at the sole cost and expense of Tenant, if, in Landlord's sole judgment, the same are necessary and will not cause permanent damage or injury to the Building or Premises, or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants.

The Landlord reserves the right to terminate the furnishing of electricity on a rent-inclusion basis at any time upon thirty (30) days' written notice to the Tenant, in which event the Tenant may make application directly to the utility company servicing the Building for the Tenant's entire separate supply of electric current and Landlord shall permit its wires and conduits to the extent available and safely capable to be used for such purpose. The Landlord, upon the expiration of the aforesaid thirty (30) days' written notice to the Tenant, may discontinue furnishing the electric current, in which latter event the Tenant's liability for additional rent provided for in this Section shall terminate as of the date of the discontinuance of the supplying of electric current, but this Lease shall otherwise remain in full force and effect. Landlord's right to terminate the furnishing of electricity as above provided is conditioned upon the availability of adequate, safe facilities for furnishing of direct service by the utility company.

(b) The electricity used during the performance of janitorial service or the making of alterations or repairs in the Premises by Landlord shall be paid by Tenant. Tenant also agrees to purchase from Landlord or its agents at competitive prices fixed by Landlord for all tenants in the Building all lamps, bulbs, ballasts and starters used in the Premises. If the Premises are not separately metered Landlord reserves the right to provide electricity to Tenant and in such event Tenant agrees to purchase electricity from Landlord at rates, as reasonably estimated by Landlord, which Tenant would pay for such electricity if the same were separately metered to the Premises by the local electricity utility company and billed to Tenant at such utility company's then current rates. Tenant shall make no alterations or additions to the electric equipment or systems without the prior written consent of the Landlord in each instance.

(c) Subject to change as set forth above the initial payment Tenant to Landlord for electricity shall be \$1.75 per square foot per annum (i.e. \$9,840.25) for the Base Year payable in a monthly amount of \$820.02 together with the Base Rent payable hereunder and thereafter said amount shall increase as set forth hereafter. The electric costs to be paid during the term and any renewal thereof shall be not less than the \$1.75 per square foot set forth above. However, if the cost of living shall show an increase as of the date three (3) months before the end of any calendar year during the term of this lease or any renewal, over the next preceding year then, and in such event, the electric costs to be paid by the Tenant shall be the \$1.75 per square foot, increased by the percentage of such increase in the cost of living reflected by the following comparative indices. The revised cost of living referred to in this paragraph shall be determined from the Revised Consumer Price Index for All Urban Consumers - U.S. City Average, as published by the Bureau of Labor Statistics of the United States Department of Labor (1982 - 84=100) (herein the "Cost of Living Index") and such Cost of Living Index shall be final and binding upon both the Landlord and Tenant. If, at the time required for the determination of the renewal rent the aforesaid Index is no longer published or issued, the parties shall use such other index as is then generally recognized and accepted for similar determinations of the cost of living increases.

#### 6.03 ADDITIONAL AND AFTER-HOUR SERVICES

At Tenant's request, Landlord shall furnish additional quantities of any of the services or utilities specified in Section 6.01, if Landlord can reasonably do so, on the terms set forth herein. Tenant shall deliver to Landlord a written request for such additional services or utilities prior to 2:00 P.M. on Monday through Friday (except National Holidays) for service on those days, and prior to 2:00 P.M. on the last business day prior to Saturday, Sunday or a National Holiday. For additional services or utilities requested by Tenant and furnished by Landlord, Tenant shall pay to Landlord as a charge therefor Landlord's prevailing published rates for such services and utilities (notwithstanding the provisions of this sentence the charge for additional HVAC service shall be seventy-five (\$75.00) dollars per hour (or any portion thereof) subject, however to adjustment for any increases in utility rates that may occur from time to time. If Tenant shall fail to make any such payment, Landlord may, upon notice to Tenant and in addition to Landlord's other remedies under this Lease, discontinue any or all of the additional services.

#### 6.04 PHONE SERVICES

Except as to the Landlord's Work as related to Tenant's initial occupancy of the Premises all telephone and electric connections which Tenant may desire shall be first approved, by Landlord in writing, before the same are installed, and the location of all wires and the work in connection therewith shall be performed by contractors reasonably approved by Landlord. Landlord reserves the right to restrict and control access to telephone cabinets. Tenant shall be responsible for and shall pay all costs incurred in connection with the installation of Tenant's telephone cables and related wiring in the

Premises (which need not be removed by Tenant at the expiration of the term of this Lease), including, without limitation, any hook-up, access and maintenance fees related to the installation of such wires and cables in the Premises and the commencement of service therein, and the maintenance thereafter of such wire and cables; and there shall be included in Operating Expenses for the Building all installation, hookup or maintenance costs incurred by Landlord in connection with telephone cables and related wiring in the Building which are not allocable to any individual users of such service but are allocable to the Building generally. If Tenant fails to maintain all telephone cables and related wiring in the Premises and such failure affects or interferes with the operation or maintenance of any other telephone cables or related wiring in the Building, Landlord or any vendor hired by Landlord may enter into and upon the Premises, after reasonable prior notice (except in the case of an emergency when no notice will be required) and perform such repairs, restorations or alterations as Landlord deems necessary in order to eliminate any such interference (and Landlord may recover from Tenant all of Landlord's costs in connection therewith). Tenant agrees that neither Landlord nor any of its agents or employees shall be liable to Tenant, or any of Tenant's employees, agents, customers or invitees or anyone claiming through, by or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action because of any interruption, diminution, delay or discontinuance at any time for any reason in the furnishing of any telephone service to the Premises and the Building unless due to the gross negligence or willful misconduct of Landlord, its agents or employees.

#### 6.05 DELAYS IN FURNISHING SERVICES

Tenant agrees that Landlord shall not be liable to Tenant for damages or otherwise, for any failure to furnish, or a delay in furnishing, any service when such failure or delay is occasioned, in whole or in part, by repairs, improvements or mechanical breakdowns, by the act or default of Tenant or by an event of Force Majeure. No such failure or delay shall be deemed to be an eviction or disturbance of Tenant's use and possession of the Premises, or relieve Tenant from paying Rent or from performing any other obligations of Tenant under this Lease. In no event shall Landlord be liable to Tenant for any consequential damages. Landlord shall use reasonable efforts to minimize interference with the conduct of Tenant's business from the Premises.

### ARTICLE SEVEN POSSESSION, USE AND CONDITION OF PREMISES

#### 7.01 POSSESSION AND USE OF PREMISES

(a) Tenant shall occupy and use the Premises only for the uses specified in Section 1.01(14). Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which:

(1) is unlawful or in violation of any Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building or covering its operations; (3) is contrary to or

prohibited by the terms and conditions of this Lease or the rules of the Building set forth in Article Eighteen; or (4) would tend to create or continue a nuisance.

(b) Tenant shall comply with all Environmental Laws concerning the proper storage, handling and disposal of any Hazardous Material with respect to the Property. Tenant shall not generate, store, handle or dispose of any Hazardous Material in, on, or about the Property without the prior written consent of Landlord. In the event that Tenant is notified of any investigation or violation of any Environmental Law arising from Tenant's activities at the Premises, Tenant shall immediately deliver to Landlord a copy of such notice. In such event or in the event Landlord reasonably believes that a violation of Environmental Law exists, Landlord may conduct such tests and studies relating to compliance by Tenant with Environmental Laws or the alleged presence of Hazardous Materials upon the Premises as Landlord deems desirable, all of which shall be completed at Tenant's expense. Landlord's inspection and testing rights are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed any responsibility to Tenant or any other party for compliance with Environmental Laws, as a result of the exercise, or non-exercise of such rights. Tenant shall indemnify, defend, protect and hold harmless the Indemnitees from any and all loss, claim, expense, liability and cost (including attorneys' fees) arising out of or in any way related to the presence of any Hazardous Material introduced to the Premises during the Lease Term by any party other than Landlord. If any Hazardous Material is released, discharged or disposed of on or about the Property and such release, discharge or disposal is not caused by Tenant or other occupants of the Premises, or their employees, agents or contractors, such release, discharge or disposal shall be deemed casualty damage under Article Fourteen to the extent that the Premises are affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under such Article.

(c) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C S12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and the Building depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas, except as provided below, and in connection with the completion of the Landlord's Work, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any Tenant Work or other work to be performed in the Premises under or in connection with this Lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by alterations in the Premises following delivery of possession, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of



Tenant's use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

#### 7.02 LANDLORD ACCESS TO PREMISES

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant's use, layout or design of the Premises is not materially affected or altered. Landlord or Landlord's agents shall have the right to enter upon the Premises in the event of an emergency, or to inspect the Premises, to perform janitorial and other services, to conduct safety and other testing in the Premises and to make such repairs, alterations, improvements or additions to the Premises or the Building as Landlord may deem necessary or desirable upon not less than 24 hours prior notice to Tenant (unless an emergency exists in which event no prior notice shall be required). Janitorial and cleaning services shall be performed after normal business hours. In connection therewith, Landlord shall be allowed to store on the Premises all necessary supplies and materials unless the same will materially interfere with Tenant's conduct of business from the Premises. Any entry or work by Landlord may be during normal business hours upon 24 hours prior notice to Tenant (except in the event of an emergency with respect to which any entry or work may be done at any time) and Landlord shall use reasonable efforts to see that any entry or work shall not materially interfere with Tenant's occupancy of the Premises.

(b) If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord's agents), after attempting to notify Tenant (unless Landlord believes an emergency situation exists), may enter the Premises without rendering Landlord or its agents liable therefor (if during such entry Landlord or Landlord's agent shall accord reasonable care to Tenant's property), and without relieving Tenant of any obligations under this Lease.

(c) Landlord may upon not less than 24 hours prior notice to Tenant (unless an emergency exists in which event no prior notice shall be required) enter the Premises for the purpose of conducting such inspections, tests and studies as Landlord may deem desirable or necessary to confirm Tenant's compliance with all Laws and Environmental Laws or for other purposes necessary in Landlord's reasonable judgment to ensure the sound condition of the Building and the systems serving the Building. Landlord's rights under this Section 7.02 (c) are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed any responsibility to Tenant or any other party for compliance with Laws or Environmental Laws, as a result of the exercise or non-exercise of such rights.

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of the Tenant, or otherwise. Landlord shall, in doing the foregoing, use reasonable efforts to minimize the interference with the Tenant's conduct of business from the Premises.

### 7.03 QUIET ENJOYMENT

Landlord covenants that so long as Tenant is in compliance with the covenants and conditions set forth in this Lease, Tenant shall have the right to quiet enjoyment of the Premises without hindrance or interference from Landlord or those claiming through Landlord and subject to the rights of any Mortgagee or ground Lessor.

### 7.04 COMPLIANCE WITH LAWS

Tenant shall comply with and execute at its own expense during and throughout the term of this Lease, all Laws, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises, its occupancy or use thereof, or its physical condition.

### 7.05 PERMITS

Notwithstanding anything to the contrary contained in this Lease, Tenant shall be responsible, at Tenant's expense, for obtaining any and all licenses, permits, authorizations and approvals which may be required by any Law to be obtained for the proper and lawful conduct of Tenant's business in the Premises.

## ARTICLE EIGHT MAINTENANCE

### 8.01 LANDLORD'S MAINTENANCE

Subject to the provisions of Article Fourteen, Landlord shall maintain and make necessary repairs to the foundations, roofs, exterior walls, and the structural elements of the Building, the electrical, plumbing, heating, ventilation and air-conditioning systems of the Building located outside of the Premises and the public corridors, washrooms and lobby of the Building, except that:

(a) Landlord shall not be responsible for the maintenance or repair of any floor or wall coverings in the Premises or any of such systems, set forth above, which are located within the Premises; and (b) the cost of performing any of said maintenance or repairs whether to the Premises or to the Building caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid by Tenant. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or the use of, any adjacent or nearby building, land, street, or alley.

### 8.02 TENANT'S MAINTENANCE

Subject to the provisions of Article Fourteen and except as otherwise provided in this Lease, Tenant, at its expense, shall keep and maintain the Premises and all systems and items located therein, and all Tenant Additions in good order, condition and repair (reasonable wear and tear and damage caused by fire or other casualty and not the fault of Tenant or its agents, invitees, licensees, employees or representatives excepted) and in accordance

with all Laws and Environmental Laws. Notwithstanding the foregoing Tenant shall not be required to maintain systems which service the entire Building except where such maintenance is required and/or occasioned by the willful act and/or the negligence of the Tenant. Tenant shall not permit waste and shall promptly and adequately repair all damages to the Premises and replace or repair all damaged or broken glass in the interior of the Premises, fixtures or appurtenances unless caused by the negligence of Landlord or its agents or representatives. Any repairs or maintenance shall be completed with materials of similar quality to the original materials, all such work to be completed under the supervision of Landlord. Any such repairs or maintenance shall be performed only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld or delayed, and whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. If Tenant fails to perform any of its obligations set forth in this Section 8.02, Landlord may, in its sole discretion and upon 3 days prior written notice to Tenant (except in the case of emergencies in which event no notice is required), perform the same, and Tenant shall pay to Landlord any costs or expenses incurred by Landlord within 30 days after demand.

## ARTICLE NINE ALTERATIONS AND IMPROVEMENTS

### 9.01 TENANT'S ALTERATIONS

- (a) The following provisions shall apply to the completion of any Tenant Alterations:
- (1) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, make or cause to be made any Tenant Alterations in or to the Premises or any Building systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord ten (10) days prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of nonresponsibility. Subject to all other requirements of this Article Nine, Tenant may undertake Decoration work without Landlord's prior written consent. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time reasonably designate, and only by contractors or mechanics approved by Landlord (except no such approval need be obtained with respect to Decorations), which approval shall not be unreasonably withheld, and whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or

delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord: architectural plans and specifications, opinions from engineers reasonably acceptable to Landlord stating that the Tenant Alterations will not in any way adversely affect the Building's systems, including, without limitation, the mechanical, heating, plumbing, security, ventilating, air-conditioning, electrical, and the fire and life safety systems in the Building, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. Landlord may, in the exercise of reasonable judgment, request that Tenant provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit. Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

- (2) Tenant shall pay the cost of all Tenant Alterations and the cost of decorating the Premises and any work to the Building occasioned thereby. In connection with completion of any Tenant Alterations, other than Decorations, Tenant shall pay Landlord a construction fee and all elevator and hoisting charges at Landlord's then standard reasonable rate. Upon completion of Tenant Alterations, Tenant shall furnish Landlord with contractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used in connection therewith and such other documentation reasonably requested by Landlord or Mortgagee.
- (3) Tenant agrees to complete all Tenant Alterations (i) in accordance with all Laws, Environmental Laws, all requirements of applicable insurance companies and in accordance with Landlord's standard construction rules and regulations, and (u) in a good and workmanlike manner with the use of good grades of materials. Tenant shall notify Landlord immediately if Tenant receives any notice of violation of any Law in connection with completion of any Tenant Alterations and shall immediately take such steps as are necessary to remedy such violation. In no event shall such supervision or right to supervise by Landlord nor shall any approvals given by Landlord under this Lease constitute any warranty by Landlord to Tenant of the adequacy of the design, workmanship or quality of such work or materials for Tenant's intended use, or of compliance with the requirements of Section 9.01 (a) (3) (i) and (ii) above or impose any liability upon Landlord in connection with the performance of such work.

(b) All Tenant Additions whether installed by Landlord or Tenant, shall without compensation or credit to Tenant, become part of the Premises and the property of Landlord at the time of their installation and shall remain in the Premises, unless pursuant to Article Twelve, Tenant may remove them or is required to remove them at Landlord's request.

## 9.02 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any part thereof arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall within thirty (30) days (or ten (10) days, if necessary, to avoid interference in Landlord's consummating a transaction involving the Building) of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, reasonably satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's reasonable expenses and reasonable attorneys' fees.

## ARTICLE TEN ASSIGNMENT AND SUBLETTING

### 10.01 ASSIGNMENT AND SUBLETTING

(a) Without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord ("Tenant's Notice"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least thirty (30) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease less than all of the Rentable Area of the Premises, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.02 within fifteen (15) days after receipt of Tenant's Notice (and all required information). In no event may Tenant sublease any portion of the Premises or assign the Lease to any other tenant of the Building. The Landlord shall approve any assignment of this Lease to any successor to Tenant by merger, consolidation or purchase of all or substantially all of the Tenant's assets (but only provided that at the time of such assignment Tenant's sublessor or purchaser has a net worth at least equal to Tenant's prior to such merger, consolidation or purchase, and is engaged in the regular conduct of business operations), or to any of Tenant's wholly owned subsidiaries, or to any entity of which Tenant is a

wholly owned subsidiary. Tenant shall submit for Landlord's approval (which approval shall not be unreasonably withheld) any advertising which Tenant or its agents intend to use with respect to the space proposed to be sublet or assigned.

(b) In making its determination of whether to consent to any proposed sublease or assignment (which consent, subject to the provisions of this subsection (b) shall not be unreasonably withheld or conditioned), Landlord may take into consideration the business reputation and credit-worthiness of the proposed subtenant or assignee; the nature of the business conducted by such subtenant or assignee and whether such business would be deleterious to the reputation of the Building or Landlord or would violate the provisions of any other leases of tenants of the Building; the estimated pedestrian and vehicular traffic in the Premises and to the Building which would be generated by the proposed subtenant or assignee; whether the proposed assignee or subtenant is a department, representative or agency of any governmental body, foreign or domestic; and any other reasonable factors which Landlord shall deem relevant. In no event shall Landlord be obligated to consider a consent to any proposed (i) sublease of the Premises or assignment of the Lease if a Default then exists under the Lease, or (ii) assignment of the Lease which would assign less than the entire Premises.

In the event Landlord wrongfully withholds its consent to any proposed sublease of the Premises or assignment of the Lease, Tenant's sole and exclusive remedy therefor shall be to seek specific performance of Landlord's obligations to consent to such sublease or assignment.

(c) If Landlord chooses not to recapture the space proposed to be subleased or assigned as provided in Section 10.02, Landlord shall not unreasonably withhold its consent to a subletting or assignment under this Section 10.01. Any approved sublease or assignment shall be expressly subject to the terms and conditions of this Lease. Any such subtenant or assignee shall execute such documents as Landlord may reasonably require to evidence such subtenant or assignee's assumption of such obligations and liabilities. Tenant shall deliver to Landlord a copy of all agreements executed by Tenant and the proposed subtenant and assignee with respect to the Premises. Landlord's approval of a sublease or assignment shall not constitute a waiver of Landlord's right to consent to further assignments or subleases.

(d) For purposes of this Article Ten, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock of Tenant occurring by operation of law or otherwise if Tenant is a corporation whose shares of stock are not traded publicly. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment. The provisions of this subsection (d) shall not be applicable to Tenant if it is a corporation whose stock is publicly traded.

(e) Notwithstanding anything to the contrary contained in this Article Ten, Tenant shall have the right, without the prior written consent of Landlord, but only after 30 days prior written notice to Landlord, to sublease the Premises, or to assign this Lease to an Affiliate (but only provided that at the time of such assignment Tenant's

Affiliate has a net worth of at least equal to Tenant's net worth prior to such sublease or assignment, is engaged in the regular conduct of business operations and delivers to Landlord a written assumption of this Lease and the obligations hereunder).

#### 10.02 RECAPTURE

Except as provided in Section 10.01(e) Landlord shall have the option to exclude from the Premises covered by this Lease ("recapture"), the space proposed to be sublet or subject to the assignment, effective as of the proposed commencement date of such sublease or assignment. If Landlord elects to recapture, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises such date being the Termination Date for such space. Effective as of the date of recapture of any portion of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant's Share shall be adjusted accordingly.

#### 10.03 EXCESS RENT

(a) Tenant shall pay Landlord on the first day of each month during the term of the sublease, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect) due from the subtenant for such month exceeds: that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet, less the following costs and expenses for the subletting of such space: (1) brokerage commissions and attorneys' fees and expenses, (2) advertising for subtenants; (3) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease; and (4) "free rent" periods, costs of any inducements or concessions given to subtenant, moving costs, and other amounts in respect of such subtenant's other leases or occupancy arrangements. All such costs will be amortized over the term of the sublease pursuant to sound accounting principles.

(b) Tenant shall pay Landlord on the effective date of the assignment fifty (50%) percent of the amount of all consideration (direct or indirect) due by the assignee, less the following costs and expenses for the assignment of such space: (1) brokerage commissions and attorney's fees and expenses; (2) advertising for assignees; (3) the actual costs paid in making any improvements or substitutions in the Premises required by any assignment; and (4) "free rent" periods, costs of any inducements or concessions given to assignee, moving costs, and other amounts in respect of such assignee's other leases or occupancy arrangements.

#### 10.04 TENANT LIABILITY

In the event of any sublease or assignment, Tenant shall not be released or discharged from and shall remain jointly and severally primarily liable for any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option. If Tenant requests Landlord's consent to a sublease or assignment, Tenant shall pay all reasonable attorneys' fees and expenses incurred by Landlord with respect to such assignment or sublease.

## 10.05 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder from and after the date of the Assignment in a written instrument satisfactory to Landlord and furnished to Landlord not later than fifteen (15) days prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord's option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord.

## ARTICLE ELEVEN DEFAULT AND REMEDIES

### 11.01 EVENTS OF DEFAULT

The occurrence or existence of any one or more of the following shall constitute a "Default" by Tenant under this Lease:

- (i) Tenant fails to pay any installment or other payment of Rent including without limitation Rent Adjustment Deposits or Rent Adjustments within five (5) days of written notice that the same was not paid when due;
- (ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease or Exhibits "B" and/or "C" and fails to cure such default within thirty (30) days after written notice thereof to Tenant (unless the default involves a hazardous condition, which shall be cured forthwith), provided that if such failure to observe or perform cannot, with the exercise of reasonable effort be cured within such thirty (30) day period, the same shall not constitute a default if Tenant commences to cure during such thirty (30) day period and thereafter diligently prosecutes such cure to completion;
- (iii) the interest of Tenant in this Lease is levied upon under execution or other legal process;
- (iv) a petition is filed by or against Tenant to declare Tenant bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Act or any similar law, or any amendment, replacement or substitution therefor, or to delay payment of, reduce or modify Tenant's debts, which in the case of an involuntary action is not discharged within sixty (60) days;
- (v) Tenant is declared insolvent by law or any assignment of Tenant's property is made for the benefit of creditors;
- (vi) a receiver is appointed for Tenant or Tenant's property, which appointment is not discharged within sixty (60) days;



(vii) Tenant having abandoned the

Premises; (viii) upon the dissolution

of Tenant; or

(ix) upon the third occurrence within any Lease Year that Tenant fails to pay Rent when due or has breached a particular covenant of this Lease (whether or not such failure or breach is thereafter cured within any stated cure or grace period or statutory period), provided notice has been delivered as herein required.

#### 11.02 LANDLORD'S REMEDIES

(a) If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct and cumulative: (i) Landlord may terminate this Lease by giving Tenant notice of Landlord's election to do so, in which event, the term of this Lease shall end and all of Tenant's rights and interests shall expire on the date stated in such notice but Tenant shall nevertheless remain liable for the payment of Rent and all other sums due and payable and/or owing by if hereunder, which obligations shall expressly survive the termination of this Lease; (ii) Landlord may terminate Tenant's right of possession of the Premises without terminating this Lease by giving notice to Tenant that Tenant's right of possession shall end on the date specified in such notice but Tenant shall nevertheless remain liable for the payment of Rent and all other sums due and payable and/or owing by if hereunder, which obligations shall expressly survive the termination of this Lease; or (iii) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of the Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all monies due or to become due for the balance of the Term from Tenant under any of the provisions of this Lease.

(b) (1) In the event that Landlord terminates the Lease or Tenant's right to possession, Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty, Rent for the balance of the Term, plus all Landlord's expenses of reletting, including without limitation, repairs, alterations, improvements, additions, decorations, legal fees and brokerage commissions (collectively, the "Reletting Expenses").

(2) No termination of this Lease by Landlord as provided herein shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination. In the event of any such termination, whether or not the Premises shall have been relet, Tenant shall pay to Landlord each month the base rent and additional rent and other payments required to be paid by Tenant up to the time of such termination, and thereafter Tenant, until the end of what would have been the term of this Lease in the absence of such termination, shall be liable to Landlord for, and shall pay to Landlord each month:

(i) The amount of the base rent, additional rent and other payments which would be payable under this Lease by Tenant if this Lease were still in effect together with any and all costs, of any kind or nature whatsoever, paid or incurred by Landlord as a result of such termination, which costs shall be payable by Tenant forthwith, less

(ii) The net proceeds, if any, of any reletting, after deducting all of Landlord's expenses in connection with such reletting, including all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, alternation costs, repairs and other expenses of preparation for such reletting.

Tenant shall pay such current damages (herein called "deficiency") to Landlord monthly on the days on which the base rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same shall arise. However, if Landlord in its sole discretion so elects, at any time after any such termination, Tenant shall pay to Landlord, within thirty (30) days of Landlord's demand thereof, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the difference between the base rent, additional rent and other payments hereunder for the unexpired portion of the term of this Lease and the then fair and reasonable rental value of the Premises for the same period discontinued to the net present value at a reasonable rate to be determined by Landlord. If the whole or any part of the Premises be relet by Landlord for the unexpired term of this Lease or any portion thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed the fair and reasonable rental value for the whole or part of the Premises so relet during the term of the reletting. Nothing herein contained shall limit or prejudice the right of Landlord to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time, whether or not such amount be greater, equal to, or less than the amount of the differences referred to above.

(c) In the event Landlord proceeds pursuant to subparagraph (a) (i) or (ii) above, Landlord may, but shall not be obligated to relet the Premises, or any part thereof for the account of Tenant, for such rent and term and upon such terms and conditions as are reasonably acceptable to Landlord. For purposes of such reletting, Landlord is authorized to decorate, repair, alter and improve the Premises to the extent reasonably necessary or desirable. If the Premises are relet and the consideration realized therefrom after payment of all Landlord's Reletting Expenses, is insufficient to satisfy the payment when due of Rent reserved under this Lease for any monthly period, then Tenant shall pay Landlord upon demand any such deficiency monthly. If Landlord relets for a period of time longer than the current Lease Term, then any special concessions given to the new Tenant shall be allocated throughout the entire reletting Term not to unduly reduce the amount of consideration received by Landlord during the remaining period of Tenant's Term. If such consideration is greater than the amount necessary to pay the full amount of the Rent, the full amount of such excess shall be retained by Landlord and shall in no event be payable to Tenant. Tenant agrees that Landlord may file suit to recover any sums due to Landlord hereunder from time to time and that such suit or recovery of any amount

due Landlord hereunder shall not be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord.

(d) In the event a Default occurs, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's property, fixtures, furnishings, signs and other evidences of tenancy, and take and hold such property; provided, however, that such entry and possession shall not terminate this Lease or release Tenant, in whole or in part, from Tenant's obligation to pay the Rent reserved hereunder for the full Term or from any other obligation of Tenant under this Lease. Any and all property which may be removed from the Premises by Landlord pursuant to the authority of law, to which Tenant is or may be entitled, may be handled, removed or stored by Landlord at the risk, cost and expense of Tenant, and Landlord shall in no event, be responsible for the value, preservation or safekeeping thereof. Tenant shall pay Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in the Landlord's possession or under the Landlord's control. Any such property of Tenant not retaken from storage by Tenant within thirty (30) days after the Termination Date, shall be conclusively presumed to have been conveyed by Tenant to Landlord under this Lease as a bill of sale without further payment or credit by Landlord to Tenant.

#### 11.03 ATTORNEY'S FEES

Tenant shall pay upon demand, all reasonable costs and expenses, including reasonable attorneys' fees, incurred by Landlord in enforcing the Tenant's performance of its obligations under this Lease, or resulting from Tenant's Default, or incurred by Landlord in any litigation, negotiation or transaction in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned.

#### 11.04 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "Electing Party") must provide for:

The Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of

assumption and it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(c) If the Electing Party has assumed this Lease or elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(i) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease; and

(ii) Landlord has obtained consents or waivers from any third parties which may be required under a lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(d) Landlord's acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

## ARTICLE TWELVE SURRENDER OF PREMISES

### 12.01 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, and good and tenantable condition, ordinary wear and tear, obsolescence, condemnation, and damage from the elements, fire and other casualty excepted. Tenant shall deliver to Landlord all keys to the Premises. Tenant shall be entitled to remove from the Premises all movable personal property of Tenant, Tenant's trade fixtures and such Tenant Additions which at the time of their installation Landlord and Tenant agreed may be removed by Tenant. Tenant shall also remove such other Tenant Additions as required by Landlord, (including but not limited to all telephone wiring and cabling), including, but not limited to, any Tenant Additions containing Hazardous Materials. Tenant immediately shall repair all damage resulting from removal of any of Tenant's property, furnishings or Tenant Additions, shall close all floor, ceiling and roof openings and repair all damage caused by such removal. If any of the Tenant Additions which were installed by Tenant involved the lowering of ceilings, raising of floors or the installation of specialized wall or

floor coverings or lights, then Tenant shall also be obligated to return such surfaces to their condition prior to the commencement of this Lease. Tenant shall also be required to close any staircases or other openings between floors which were opened at the request of Tenant. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above, Landlord may, at Tenant's expense, and upon not less than ten (10) days written notice to Tenant, remove any of such property therefrom without any liability to Landlord and undertake, at Tenant's expense such restoration work as Landlord deems necessary or advisable.

## 12.02 LANDLORD'S RIGHTS

All property which may be removed from the Premises by Landlord shall be conclusively presumed to have been abandoned by Tenant and Landlord may deal with such property as provided in Section 11.02(d). Tenant shall also reimburse Landlord for all reasonable costs and expenses incurred by Landlord in removing any of Tenant Alterations, and in restoring the Premises to the condition required by this Lease at the Termination Date.

## ARTICLE THIRTEEN HOLDING OVER

Tenant shall pay Landlord 200% of the monthly Rent (except that for the first 30 days of the holdover Tenant shall pay 150% payable for the month immediately preceding the holding over (including increases for Rent Adjustments which Landlord may reasonably estimate). In addition to the foregoing, if Tenant retains possession of the Premises or any part thereof, after the Termination Date then Tenant shall also defend, indemnify and hold Landlord harmless from and against all damages, loss, cost and expense sustained by Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance, absent a written agreement by and between Landlord and Tenant.

## ARTICLE FOURTEEN DAMAGE BY FIRE OR OTHER CASUALTY

### 14.01 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenable, Landlord shall, with reasonable promptness, after the occurrence of such damage, estimate the length of time that will be required to Substantially Complete the repair and restoration and shall by notice advise Tenant of such estimate ("Landlord's Notice"). If Landlord estimates that the amount of time required to Substantially Complete such repair and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant (but with respect to Tenant only if all or a substantial portion of the Premises, or the Common Areas used to access the Premises, is rendered untenable and the time period of in excess of one hundred eighty (180) days relates to the repair of

the Premises), shall have the right to terminate this Lease as of the date of such damage upon giving written notice to the other at any time within twenty (20) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination.

(b) Unless this Lease is terminated as provided in the preceding subparagraph, Landlord shall proceed with reasonable promptness, to repair and restore the Premises to its condition as existed prior to such casualty, subject to reasonable delays for insurance adjustments and Force Majeure delays, and also subject to zoning laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration.

(c) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damages to the Premises, except for those proceeds of Tenant's insurance of its own personal property and equipment which would be removable by Tenant at the Termination Date. All such insurance proceeds shall be payable to the Landlord whether or not the Premises are to be repaired and restored.

(d) Notwithstanding anything to the contrary herein set forth:

Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Additions, or to expend for any repair or restoration of the Premises or Building amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration of the Premises or Building amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the act or neglect of Tenant, its agent or employees.

(e) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article Nine hereof.

#### 14.02 INSUBSTANTIAL UNTENANTABILITY

If the Premises or the Building is damaged by a casualty but neither is rendered substantially untenable, then Landlord shall proceed to repair and restore the Building or the Premises other than Tenant Additions, with reasonable promptness, unless such damage is to the Premises and occurs during the last six (6) months of the Term, in which event either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within twenty (20) days after the date of such casualty.

#### 14.03 RENT ABATEMENT

Except for the negligence or willful act of Tenant or its agents, employees, contractors, or

invitees if all or any part of the Premises are rendered untenable by fire or other casualty and this Lease is not terminated, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform, provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenable during such period. Tenant's occupancy of the Premises for the sole purpose of repairing the same as herein required shall not obligate Tenant to pay rent for such untenable portion of the Premises during such repair period.

## ARTICLE FIFTEEN EMINENT DOMAIN

### 15.01 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation), this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Notwithstanding anything to the contrary herein set forth, in the event the taking is temporary (for less than the remaining term of this Lease), Landlord may elect either (i) to terminate this Lease or (ii) permit Tenant to receive the entire award in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

### 15.02 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, the Lease shall be amended to reduce, the Monthly Base Rent and Tenant's Proportionate Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Additions) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days prior written notice to Tenant and rent shall be adjusted as of such date of termination.

### 15.03 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns

to Landlord Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, for moving expenses and Tenant Alterations paid for by Tenant without any credit or allowance from Landlord so long as there is no diminution of Landlord's award as a result.

## ARTICLE SIXTEEN INSURANCE

### 16.01 TENANT'S INSURANCE

Tenant, at Tenant's expense, agrees to maintain in force, with a company or companies acceptable to Landlord, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease. Such insurance shall be for such limits that are reasonably required by Landlord from time to time but not less than a combined single limit of Three Million and No/100 Dollars (\$3,000,000.00) including excess coverage; (b) Workers' Compensation and Employers' Liability Insurance for an amount of not less than One Million and No/100 Dollars (\$1,000,000.00), both in accordance with the laws of The State of New Jersey; (c) "All Risks" property insurance in an amount adequate to cover the full replacement cost of all equipment, installations, fixtures and contents of the Premises in the event of loss and any such policy shall contain a provision requiring the insurance carriers to waive their rights of subrogation against Landlord; (d) In the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than Three Million and No/100 Dollars (\$3,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non owned or hired motor vehicles; and (e) such other insurance or coverages as Landlord reasonably requires or a Mortgagee requires.

### 16.02 FORM OF POLICIES

Each policy referred to in 16.01 shall satisfy the following requirements. Each policy shall (i) name Landlord and the Indemnitees as additional insured, (ii) be issued by one or more responsible insurance companies licensed to do business in the State of New Jersey reasonably satisfactory to Landlord and satisfactory to Mortgagee, (iii) where applicable, provide for deductible amounts satisfactory to Landlord and not permit co-insurance, (iv) shall provide that such insurance may not be canceled or amended without thirty (30) days' prior written notice to the Landlord and Mortgagee, and (v) shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance summarizing the terms and conditions of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten



(10) business days prior to the Commencement Date and not less than ten (10) business days prior to the expiration date of each policy.

#### 16.03 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of New Jersey on the Building in amounts not less than the greater of eighty (80%) percent of the then full replacement cost (without depreciation) of the Building (above foundations) or an amount sufficient to prevent Landlord from becoming a co-insurer under the terms of the applicable policies, against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time. Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct and Tenant shall have no right to any proceeds obtained or received by Landlord with respect to any such insurance.

#### 16.04 WAIVER OF SUBROGATION

(a) Landlord agrees that, if obtainable at no, or minimal, additional cost, it will include in its "All Risks" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, if obtainable at no, or minimal, additional cost, in its "All Risks" insurance policy or policies on its furniture, furnishings, fixtures and other property removable by Tenant under the provisions of its lease of space in the Building appropriate clauses pursuant to which the insurance company or companies (1) waive the right of subrogation against Landlord and/or any tenant of space in the Building with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. If Tenant is unable to obtain in such policy or policies either of the clause described in the preceding sentence, Tenant shall, if legally possible and without necessitating a change in insurance carriers, have Landlord named in such policy or policies as an additional insured. If Landlord shall be named as an additional insured in accordance with the foregoing, Landlord agrees to endorse promptly to the order of Tenant, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy or representing any other payment growing out of or connected with said policies, and Landlord does hereby irrevocably waive any and all rights in and to such proceeds and payments.

(c) Provided that Landlord's right of full recovery under its policy or policies

aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Building and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees and against every other tenant in the Building who shall have executed a similar waiver as set forth in this Section 16.04 (c) for loss or damage to Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent that same is covered by Tenant's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy which would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insured shall, to the extent obtainable, contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insured.

#### 16.05 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.

### ARTICLE SEVENTEEN WAIVER OF CLAIMS AND INDEMNITY

#### 17.01 WAIVER OF CLAIMS

To the extent permitted by law, Tenant releases the Indemnitees from, and waives all claims for, damage to person or property sustained by the Tenant or any occupant of the Building or Premises resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Property or the Premises or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Property, or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Building or of any other person, including Landlord's agents and servants, except where resulting from the willful and wrongful act of any of the Indemnitees or their negligence. Tenant hereby waives any consequential damages, compensation or claims for inconvenience or loss of business, rents, or profits as a result of such injury or

damage regardless of whether caused by Landlord's willful negligent acts. If any such damage, whether to the Premises or to any part of the Property or any part thereof, or whether to Landlord or to other tenants in the Building, results from any act or neglect of Tenant, its employees, servants, agents, contractors, invitees and customers, Tenant shall be liable therefor and Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, as payment of additional Rent hereunder, reimburse Landlord within thirty (30) days of demand for the total cost of such repairs, in excess of amounts, if any, paid to Landlord under insurance covering such damages. Tenant shall not be liable for any damage caused by its acts or neglect if Landlord or a tenant has recovered the full amount of the damage from proceeds of insurance policies and the insurance company has waived its right of subrogation against Tenant.

#### 17.02 INDEMNITY BY TENANT

To the extent permitted by law, Tenant agrees to indemnify, protect, defend and hold the Indemnitees harmless against any and all actions, claims, demands, costs and expenses, including reasonable attorney's fees and expenses for the defense thereof, from the undertaking of any Tenant Additions or repairs to the Premises, arising from the conduct of Tenant's business on and/or Tenants occupancy of the Premises, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any willful or negligent act of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord.

### ARTICLE EIGHTEEN RULES AND REGULATIONS

#### 18.01 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the rules and regulations listed on Exhibit C attached hereto and with all reasonable modifications and additions thereto which Landlord may make from time to time. In the case of any conflicts between the provisions of this Lease and any rule and/or regulation the provisions of this Lease shall control.

#### 18.02 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce the rules and regulations as set forth on Exhibit C or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall use reasonable efforts to enforce the rules and regulations of the Building in a uniform and non-discriminatory manner. Tenant shall pay to Landlord all damages caused by Tenant's

failure to comply with the provisions of this Article Eighteen and shall also pay to Landlord as additional Rent an amount equal to any increase in insurance premiums caused by such failure to comply.

ARTICLE NINETEEN  
LANDLORD'S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (1) To change the Building's name or street address upon thirty (30) days' prior written notice to Tenant; (2) To install, affix and maintain all signs on the exterior and/or interior of the Building; (3) To designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that maybe visible from the exterior of the Premises;(4) Upon reasonable notice to Tenant, to display the Premises to prospective tenants at reasonable hours during the last twelve (9) nine months of the Term, and at all times reasonable during the Term to prospective lenders, partners, joint venturers, purchasers or other interested parties; (5)To grant to any party the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose permitted hereunder; (6) To change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, washrooms or public portions of the Building, and to close entrances, doors, corridors, elevators or other facilities, provided that such action shall not materially and adversely interfere with Tenant's access to the Premises, the Building; (7) To have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (8) To close the Building after normal business hours, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such regulations as Landlord prescribes for security purposes.

ARTICLE TWENTY  
ESTOPPEL CERTIFICATE

20.01 IN GENERAL

Within twenty (20) days after request therefor by Landlord, Mortgagee or any prospective mortgagee or owner, Tenant agrees as directed in such request to execute an Estoppel Certificate in recordable form, binding upon Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises if that is the case; (iv) that Landlord is not in default under this Lease, or, if Tenant believes Landlord is in default, the nature thereof in detail; (v) that Tenant has no off-sets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any off-sets or defenses, a full and complete explanation thereof) and that all sums, if any, required to be paid by Landlord to Tenant on account of Tenant's

Work or Landlord's Allowance have been paid in full; (vi) that the Premises have been completed in accordance with the terms and provisions hereof or the Workletter, that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto (or if that not be the case, stating such claims); (vii) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the provisions thereof; (viii) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord; (ix) the Commencement Date and Expiration Date of the Lease; and (x) to any other information, reasonably requested.

## 20.02 ENFORCEMENT

In the event that Tenant fails to deliver an Estoppel Certificate within twenty (20) days of Landlord's notice, Tenant shall be deemed to have irrevocably appointed Landlord as Tenant's attorney-in-fact to execute and deliver such Estoppel Certificate, which execution by Landlord shall be conclusively binding upon Tenant.

## ARTICLE TWENTY-ONE RELOCATION

At any time after the date of this Lease, Landlord may substitute for the Premises, other premises in the Building (the "New Premises"), in which event the New Premises shall be deemed to be the Premises for all purposes under this Lease, provided that (i) the New Premises shall be substantially similar to the Premises; (ii) if Tenant is then occupying the Premises, Landlord shall pay the actual and reasonable expenses of physically moving Tenant (and installing or reinstalling, as the case may be), its property and equipment to the New Premises; (iii) Landlord shall give Tenant not less than sixty (60) days' prior written notice of such substitution; (iv) Landlord, at its expense, shall improve the New Premises with improvements substantially similar to those in the Premises at the time of such substitution, if the Premises are then improved.

## ARTICLE TWENTY-TWO REAL ESTATE BROKERS

Tenant and Landlord represent that, except for CB RICHARD ELLIS, INC. ("Broker") neither party has dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises to Tenant. Tenant and Landlord hereby agree to indemnify, protect, defend and hold each other, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation. Landlord shall be responsible to the Broker, if any, specified in this Article, but only in accordance with and to the extent as provided in a separate agreement entered into between Landlord and Broker.

ARTICLE TWENTY-THREE  
MORTGAGEE PROTECTION

23.01 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, renewals and modifications to any such lease, and (ii) the lien of any first mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, unless such ground lease or ground lessor, or mortgage or Mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage. If any such mortgage or trust deed is foreclosed, or if any such lease is terminated, upon request of the Mortgagee or ground lessor, as the case may be, Tenant will attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, defense or damages arising out of a default of any obligations of any preceding Landlord; (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor; or (iv) liable for any security deposits not actually received in cash by such purchaser or ground lessor. This subordination shall be self-operative and no further certificate or instrument of subordination need be required by any such Mortgagee or ground lessor. In confirmation of such subordination, however, Tenant shall execute promptly any reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attornment provided for herein. Currently the Building is not subject to any mortgage however Landlord agrees that should Landlord place any mortgage on the Building during the Term of this Lease, Landlord shall make a good faith effort to secure a Non-Disturbance Agreement from the entity holding a mortgage lien on the Building and Land which Non-Disturbance agreement shall be in form required by the applicable lender. Failure to secure such instrument shall not be a default hereunder nor result in the creation of any rights in Tenant.

23.02 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail, a copy of any notice of default served upon the Landlord by Tenant, provided that prior to such notice Tenant has received notice (by way of service on Tenant of a copy of an assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within 30 days, then such additional time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings or other

proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of default. This Lease may not be modified or amended so as to reduce the rent or shorten the term, or so as to adversely affect in any other respect to any material extent the rights of the Landlord, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the ground lessor or the Mortgagee.

ARTICLE TWENTY-FOUR  
NOTICES

(a) All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing sent by Federal Express or other overnight courier service, or mailed by first class, registered or certified mail, return receipt requested, postage prepaid.

(b) All notices, demands or requests to be sent pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed below:

(1) Notices to Landlord shall be addressed:

Tower Center II Investment Group, L.L.C.  
c/o Paul Chapman, Managing Director  
CB Richard Ellis Investors  
601 108<sup>th</sup> Avenue NE, Suite 1900  
Bellevue, WA 98004

with a copy to the following:

Scarinci & Hollenbeck, LLC  
1100 Valley Brook Avenue  
P.O. Box 790  
Lyndhurst, New Jersey 07071-0790  
Attention: Victor E. Kinon, Esq.

(2) Notices to Tenant shall be addressed:

Christopher Aliprandi, CF  
Acartha Group, LLC  
Two Tower Center, 20<sup>th</sup> Floor  
East Brunswick, New Jersey 08817

If delivered electronically, address to: [calitarndi@acarthagroup.com](mailto:calitarndi@acarthagroup.com)

with a copy to the following:

Dixon R. Brown, Partner and COO  
Acartha Group, LLC  
18500 Edison Avenue  
Chesterfield, MO 63005

If delivered electronically, address to: [dbrown@acarthagroup.com](mailto:dbrown@acarthagroup.com)

Barbara D. Frantz, Esq.  
Nichols, Thomson, Peek & Phelan  
210 Orchard Street  
Westfield, NJ 07090

If delivered electronically, address to: [bdfbrantz@ntplaw.com](mailto:bdfbrantz@ntplaw.com)

(c) If notices, demands or requests are sent by registered or certified mail, said notices, demands or requests shall be effective upon being deposited in the United States mail. However, the time period in which a response to any such notice, demand or request must be given shall commence to run from the date of receipt on the return receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice, demand or request sent.

Notices may also be served by personal service upon any officer, director or partner of Tenant or in the case of delivery by Federal Express or other overnight courier service, notices shall be effective upon acceptance of delivery by an employee, officer, director or partner of Landlord or Tenant.

(d) By giving to the other party at least thirty (30) days written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

#### ARTICLE TWENTY-FIVE SIGNAGE

Tenant's name, at Tenant's cost and expense, shall be included for identification purposes on any Landlord controlled signage in the lobby of the Building and subject to Landlord's prior approval Tenant may install signage immediately outside Tenant's Premises.

#### ARTICLE TWENTY-SIX MISCELLANEOUS



#### 26.01 LATE CHARGES

All payments required hereunder (other than the Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits, which shall be due as hereinbefore provided) to Landlord shall be paid within ten (10) days after Landlord's written demand therefor. All such amounts (including, without limitation Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits) not paid within five (5) days after the date due shall bear interest from the date due until the date paid at the Default Rate, as defined in subparagraph 1.03(7) in effect on the date such payment was due.

#### 26.02 WAIVER OF JURY TRIAL

As a material inducement to Landlord to enter into this Lease, Tenant hereby waives its right to a trial by jury of any issues relating to or arising out of its obligations under this Lease or its occupancy of the Premises. Tenant acknowledges that it has read and understood the foregoing provision.

#### 26.03 DEFAULT UNDER OTHER LEASE

It shall be a Default under this Lease if Tenant or any other affiliated company under any other lease with Landlord for the premises in the Building defaults under such lease and as a result thereof such lease is terminated or terminable.

#### 26.04 OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of the Lease to Tenant does not constitute a reservation of or option for the Premises, except that it shall constitute an irrevocable offer on the part of Tenant in effect for fifteen (15) days to lease the Premises on the terms and conditions herein contained.

#### 26.05 TENANT AUTHORITY

Tenant represents and warrants to Landlord that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Landlord may request that Tenant provide Landlord evidence of Tenant's authority.

#### 26.06 ENTIRE AGREEMENT

This Lease, and the Exhibits attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

#### 26.07 MODIFICATION OF LEASE FOR BENEFIT OF MORTGAGEE

If Mortgagee of Landlord requires a modification of this Lease which in Tenant's determination shall not result in any increased cost or expense to Tenant or in any other adverse change in the rights and obligations of Tenant hereunder, then Tenant agrees that upon prior written notice to Tenant, the Lease may be so modified.

#### 26.08 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Lease shall only be enforced against Landlord's equity interest in the Property and in no event against any other assets of the Landlord, or Landlord's officers or directors.

#### 26.09 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term.

#### 26.10 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, provided that all of Landlord's obligations hereunder thereafter accruing are specifically assumed by the buyer or transferee.

#### 26.11 BINDING EFFECT

This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

#### 26.12 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

#### 26.13 APPLICABLE LAW

This Lease shall be construed in accordance with the laws of the State of New Jersey. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease,

or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

#### 26.14 ABANDONMENT

In the event Tenant abandons the Premises but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (i) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises.

#### 26.15 LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES

If Tenant fails timely to perform any of its duties under this Lease or Exhibit "C" Landlord shall have the right (but not the obligation), to perform such duty on behalf and at the expense of Tenant upon prior written notice to Tenant, and all reasonable sums expended or reasonable expenses incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable on demand by Landlord.

#### 26.16 RIDERS

All Exhibits attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

#### 26.17 ENVIRONMENTAL MATTERS

(a) (i) Landlord represents and warrants that Landlord has no hazardous substances (other than ordinary cleaning and office supplies) in the Premises and that Landlord has not received a notice of violation of environmental law with regard to the Premises. Landlord shall indemnify and hold Tenant harmless from and against any direct damages to Tenant which result from any breach of the foregoing representations.

(ii) Tenant represents and warrants that it is not an "Industrial Establishment" as that term is defined in the Industrial Site Recovery Act, N.J.S.A. 13:1k-6 et seq., as same may be amended from time to time (the "Act"). Tenant shall not do or suffer anything that will cause it to become an Industrial Establishment under the Act during the Term. Landlord may from time to time require Tenant at Tenant's sole expense to provide proof satisfactory to Landlord that Tenant is not an Industrial Establishment. In the event that Tenant now is or hereafter become an Industrial Establishment (which event shall cause Tenant to be in Default of this Lease) Tenant shall comply with all conditions as set forth below.

(iii) Tenant agrees that it shall, at its sole cost and expense, fulfill,

observe, and comply with all of the terms and provisions of the Act and all rules, regulations, ordinances, opinions, orders and directives issued or promulgated pursuant to or in connection with said Act by the Department of Environmental Protection ("DEP"). (The Act and all said rules, regulations, ordinances, opinions, orders and directives are hereinafter collectively referred to as "ISRA"). Without limiting the foregoing, upon Landlord's request therefor, and in all events no later than sixty (60) days prior to "closing, terminating or transferring operations" (as said terms are defined in ISRA) which would be subject to an obligation to comply with ISRA if an industrial establishment is present at the Premises, Tenant, at its sole cost and expense, shall provide the Landlord with a true copy of:

(A) an opinion letter from DEP (or such other agency or body which shall then have jurisdiction over ISRA matters) in form satisfactory to Landlord's counsel, stating that ISRA does not apply to Tenant, Tenant's use and occupancy of the Premises and to the closing, terminating or transferring of operations at the Premises; or

(B) a Negative Declaration (as said term is defined in ISRA) duly approved by DEP (or such other agency or body then having jurisdiction over ISRA matters); or

(C) a Remedial Action Workplan (as said term is defined in ISRA) duly approved by DEP (or such other agency or body which shall then have jurisdiction over ISRA matters).

(iii) Nothing contained in this Section shall be construed as limiting Tenant's obligation to otherwise comply with ISRA.

(iv) In the event Tenant complies with subparagraph (a) (ii) of this Section 26.17 by obtaining an approved Remedial Action Workplan, Tenant agrees that it shall, at its sole cost and expense:

(A) post any financial guarantee or other assurance required to secure implementation and completion of such Remedial Action Workplan; and

(B) promptly implement and diligently prosecute to completion said Remedial Action Workplan in accordance with the schedule contained therein or as may otherwise be ordered or directed by DEP or such other agency or body which shall then have jurisdiction over such Remedial Action Workplan. Tenant expressly understands, acknowledges and agrees that Tenant's compliance with the provisions of this subparagraph (iv) may require Tenant to expend or do acts after the expiration or termination of the Term and Tenant shall not be excused therefrom. Any remediation conducted at the Premises by Tenant under ISRA or otherwise shall be to the most stringent standard applicable to ISRA and shall not involve alternative standards, institutional or engineering controls.

(v) Within ten (10) days after a written request by the Landlord or any Mortgagee, Tenant shall deliver to Landlord and the Mortgagee, if any, a duly executed

and acknowledged affidavit of Tenant's chief executive officer, certifying:

(A) the proper four digit Standard Industrial Classification Number relating to Tenant's then current use of the Premises (Standard Industrial Classification Number to be obtained by reference to the then current Standard Industrial Classification manual prepared and published by the Executive Office of the President, Office of Management and Budget or the successor to such publication); and

(B) (i) that Tenant's then current use of the Premises does not involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of Hazardous Material on the site, above ground or below ground, or (ii) that Tenant's then current use does involve the presence of Hazardous Material, in which event, said affidavit shall describe in complete detail Tenant's operations which involves the presence of Hazardous Material. Such description shall, inter alia, identify each Hazardous Material, and describe the manner in which Tenant generated, handled, manufactured, refined, transported, treated, stored, and/or disposed of same. Tenant shall supply Landlord and the Mortgagee, if any, with such additional information relating to the presence of Hazardous Material as Landlord or its Mortgagee requests (nothing contained in this subsection (B) shall be deemed or construed to permit Tenant to use Hazardous Material).

(vi) Without limiting the foregoing, Tenant agrees:

(A) at its sole cost and expense, to promptly discharge and remove any lien or encumbrance against the Premises, or any other property owned or controlled, in whole or in part, by Landlord imposed due to Tenant's failure to comply with ISRA, and

(B) to defend (with counsel approved by Landlord), indemnify and hold Landlord harmless from and against any and all liability, penalty, loss, expenses, damages, costs, claims, causes of action, judgments and/or the like, of whatever nature, including but not limited to attorney's fees and other costs of litigation or preparation therefor, to the extent such costs arise from or in connection with Tenant's failure or inability, for any reason whatsoever, to observe or comply with ISRA and/or provisions of this subparagraph 26.17(a).

(C) Tenant agrees that each and every provision of this paragraph 26.17(a) shall survive the expiration or early termination of the Term. The parties hereto expressly acknowledge and agree that the Landlord would not enter into this Lease but for the provisions of this subparagraph 26.17(a) and the aforesaid survival thereof.

(b) (i) Tenant agrees that it shall, at its sole cost and expense, observe, comply and fulfill all of the terms and provisions of the Spill Compensation and Control Act, N.J.S.A. 58:10- 23.11 et seq., as the same may be amended from time to time (the "Act") and all rules, regulations, ordinances, opinions, orders and directives issued or promulgated pursuant to or in connection with said Act by DEP, any subdivision or bureau thereof or governmental or quasi-governmental agency or body having jurisdiction thereof (said Act and all said rules, regulations, ordinances, opinions, orders and directive are

hereinafter in this subparagraph 26.17 (b) collectively referred to as "Spill Act").

(ii) Without limiting the foregoing, the Tenant agrees:

(A) that it shall not do, omit to do or suffer the commission or omission of any act which is prohibited by or may result in any liability under the Spill Act including without limitation the discharge of petroleum products or other hazardous substances (as said terms are defined in the Spill Act); and

(B) whenever the Spill Act requires the "owner or operator" to do any act, Tenant shall do such act and fulfill all such obligations as its sole cost and expense, it being the intention of the parties hereto that Landlord shall be free of all expenses and obligations arising from or in connection with compliance with the Spill Act.

(iii) without limiting the foregoing, Tenant agrees:

(A) at its sole cost and expense, to promptly discharge and to remove any lien or any encumbrance against the Premises, or any other property owned or controlled, in whole or in part, by Landlord, imposed by Tenant's failure to comply with the Spill Act; and

(B) to defend (with counsel approved by Landlord), indemnify and hold Landlord harmless from and against any and all liability, penalty, loss, expenses, damages, costs, claims, causes of action, judgments and/or the like, of whatever nature, including but not limited to attorneys' fees and other expenses of litigation or preparation therefor, to the extent such costs arise from or in connection with Tenant's failure or inability, for any reason whatsoever, to observe or comply with the Spill Act and/or the provisions of this subparagraph 26.17(b).

(iv) Tenant agrees that each and every provision of this subparagraph 26.17(b) shall survive the expiration or earlier termination of the Term. The parties hereto expressly agree and acknowledge that the Landlord would not enter into this Lease but for the provisions of this subparagraph 26.17(b) and the aforesaid survival thereof.

(c) (i) Tenant agrees that it shall, at its sole cost and expense, promptly comply with all Environmental Laws applicable to its business and properties, wheresoever located, or the Premises. Without limiting the foregoing, Tenant agrees:

(A) that it shall not allow to occur any action or omission which is prohibited by or may result in any liability under any Environmental Law;

(B) whenever any Environmental Law requires any action of either or both of the owner or operator of the Premises, Tenant shall fulfill all such obligations at its sole cost and expense, it being the intention of the parties hereto that the Landlord shall be free of all expenses or obligations arising from or in connection with compliance with any Environmental Law and Tenant shall bear all such expenses and obligations as if it is the sole owner and operator of the Premises.

(ii) Without limiting the foregoing, Tenant agrees:

(A) at its sole cost and expense to promptly discharge and remove any lien or encumbrance against the Premises or any property owned or controlled in whole or in part by the Landlord, imposed by reason of Tenant's failure to comply with any Environmental Law or any provision of this subparagraph 26.17(c).

(B) to defend (with counsel approved by Landlord), indemnify and hold Landlord harmless from and against any and all liabilities, penalties, losses, expenses, damages, costs, claims, causes of actions, judgments and/or the like, of whatever nature, including but not limited to attorneys' fees and other expenses of litigation or preparation thereof arising from or in connection with Tenant's failure to comply with any Environmental Law or any provision of this subparagraph 26.17(c).

(iii) Within ten (10) days after a written request by the Landlord or any mortgagee of the Landlord, Tenant shall deliver to Landlord and Landlord's mortgagee, if any, a fully executed acknowledged affidavit of Tenant's chief executive officer, certifying that the Tenant is not in violation of any Environmental Law. Tenant shall supply Landlord and the Mortgagee, if any, with all information relating to any alleged or actual violation of any Environmental Law as the Landlord or Mortgagee reasonably requests within ten (10) days of a written request for such information.

(iv) Tenant agrees that each and every provision of this subparagraph 26.17(c) shall survive the expiration or earlier termination of the Term. The parties hereto expressly agree and acknowledge that the Landlord would not enter into this Lease but for the provisions of this subparagraph 26.17(c) and the survival thereof.

(d) Without limitation of any of the provisions of this Section 26.17, Tenant shall not store, generate, manufacture, produce, treat, dispose of, release or discharge on, under or about the Premises any Hazardous Material.

## 26.18 FINANCIAL STATEMENTS

Upon request from time to time, but not more than once each calendar year (unless Landlord is financing or transferring its interest in the Property in which case Tenant shall be required to furnish additional statements) Tenant shall furnish current financial statements to Landlord with respect to Tenant and any Guarantor hereunder.

## ARTICLE TWENTY-SEVEN PARKING

Without additional charges of any kind therefor, Tenant, its employees, agents, and invitees shall be entitled to use of twenty-two (22) undesignated and unreserved parking spaces in the parking area adjoining the Building, subject to reasonable rules and regulations, during the term of the Lease.

ARTICLE TWENTY-EIGHT  
RENEWAL OPTION

28.01 RENEWAL OPTION;

28.01 (a) By written notice delivered to Landlord on or before the date which is nine (9) months prior to the expiration of the term of this Lease (the "Exercise Date"), expressly provided that Tenant is not in default in any respect under the terms of this Lease beyond any applicable notice and grace period on (i) the Exercise Date and (ii) the last day of the term of this Lease (the "Expiration Date") which default if any may be waived at Landlord's sole option and/or discretion, Tenant shall have the option to extend the term of this Lease for five (5) years commencing on the first day following the Expiration Date and ending on the date which is five (5) years thereafter (hereinafter called the "Renewal Term") upon the same terms and conditions hereof except that the Monthly Base Rent to be paid by Tenant for the Renewal Term shall be equal to 95% of the then annual fair market rental value for the Premises, as determined as hereinafter set forth, and to be effective on the first day of the Renewal Term. In this regard, no earlier than one hundred fifty (150) days and no later than one hundred five (105) days prior to the Expiration Date, which forty-five (45) day period is hereinafter referred to as the "Exchange Period", Landlord shall submit to Tenant a statement of Landlord's determination of the annual fair market rental value for the Premises for the Renewal Term, which statement shall show the basis upon which such determination was made. In no event shall the Base Rent ever be reduced below the amount paid during the original Term of Lease. Landlord's determination of the annual fair market rental value shall give due consideration to the rents charged by Landlord for all leases of comparably sized space (excluding exercise of renewal rights where the tenant had a right of renewal under the terms of its lease) entered into by Landlord for the twelve (12) month period preceding the first day of the Exchange Period, except that if there were no such leases or such leases were so peculiar to a particular situation that no true comparables would be derived, Landlord may expand the basis of its determination to include the rents being charged by other owners of comparable first class office buildings located in the New Brunswick, New Jersey area. Within ten (10) business days after receipt of Landlord's determination, Tenant may either (i) accept Landlord's determination of the annual fair market rental value or (ii) provide Landlord with its own determination of the annual fair market rental value, including the basis upon which such determination was made. If Tenant elects option (ii), then Landlord and Tenant shall, for a period of thirty (30) days after Landlord's receipt of Tenant's determination, negotiate in good faith to determine the annual fair market rental value and if Landlord and Tenant are unsuccessful in reaching agreement within such thirty (30) days, either Landlord or Tenant may cause the issue to be arbitrated as hereinafter in this Article 28 set forth. If neither party choose to cause the issue to be arbitrated as hereinafter in this Article 28 set forth, this option to renew shall automatically be null and void and of no force or effect twenty (20) days following the thirty (30) day period following Landlord's receipt of Tenant's determination of the annual fair market rental value. Except for the Monthly Base Rent, the Renewal Term shall be upon all of the terms, covenants, and conditions contained in this Lease.



(b) In the event either Landlord or Tenant elect to arbitrate the issue of annual fair market rental value, such issue shall be determined by arbitration as hereinafter provided. Landlord and Tenant shall each appoint a fit and impartial person as an arbitrator who shall have at least ten (10) years' experience in the commercial real estate industry in the New Brunswick, New Jersey area (a "Qualified Arbitrator"). Such appointment shall be indicated in writing by each party to the other within ten (10) days following the thirty (30) day period following Landlord's receipt of Tenant's determination of the annual fair market rental value, as aforesaid. If the arbitrators are unable to determine the annual fair market rental value as set forth below within twenty (20) days of their appointment, the arbitrators so appointed shall immediately appoint a third Qualified Arbitrator. In case either party shall fail to appoint a Qualified Arbitrator within a period of ten (10) business days after written notice from the other party to make such appointment, the American Arbitration Association, or its successor (the "AAA") shall appoint such Qualified Arbitrator(s). The two (2) arbitrators so appointed shall appoint the third (3rd) arbitrator, as aforesaid, otherwise the AAA shall similarly make such appointment. The arbitrators shall proceed with all reasonable dispatch to determine the annual fair market rental value and under all circumstances shall be bound by the terms of this Lease and shall not add to, subtract from, or otherwise modify such provisions. The arbitrators sole discretion in determining the question submitted shall be limited to selecting one of the annual fair market rental values submitted by Landlord or Tenant. The decision of the arbitrators shall, in any event, be rendered within thirty (30) days after the appointment of the first and second arbitrators and such decision shall be in writing and in duplicate with one counterpart delivered to each Landlord and Tenant. The arbitration shall be conducted in accordance with the rules of the AAA and applicable New Jersey law, and a decision of a majority of the arbitrators shall be binding, final conclusive upon Landlord and Tenant. The fees of the arbitrators and the expenses incident to the proceedings shall be shared equally between Landlord and Tenant.

(c) In the event the determination of the Monthly Base Rent is not finalized until after the first day of the Renewal Term, Tenant shall continue paying the Monthly Base Rent payable for the last year of the term of this Lease, and additional Rent as provided in this Lease. At such time as the Monthly Base Rent is determined, the Monthly Base Rent shall be retroactively adjusted to the first day of the Renewal Term, and (assuming the Monthly Base Rent for the Renewal Term is greater than or less than the Monthly Base Rent for the Lease Term) either (i) Tenant shall, within ten (10) business days of Landlord's written demand, pay to Landlord the increased Monthly Base Rent for the period between the first day of the Renewal Term and the last day of the month in which Landlord's demand for such payment was made, and commencing on the first day of the month following the month in which such demand for the lump sum payment was made by Landlord, Tenant shall start making monthly installments of Monthly Base Rent in the amount as finally determined; or (ii) commencing on the first day of the month following the month in which the Monthly Base Rent is determined, Tenant shall start making monthly installments of Monthly Base Rent in the amount as finally determined, subject to a Rent credit equal to the amount of the difference between the amount of Monthly Base Rent actually paid by Tenant for the period between the first day of the Renewal Term and the last day of the month in which

the Monthly Base Rent is determined and the amount of Monthly Base Rent that should have been paid by Tenant during the same period of time.

ARTICLE TWENTY-NINE  
TENANT'S RIGHT OF FIRST OFFER

Upon condition that Tenant is not in default in any of the payment of any rent or other charge payable by Tenant under this Lease and not in default in the performance of any covenant or obligation to be performed by Tenant under this Lease and further subject to the conditions and limits hereinafter set forth, Landlord agrees that Landlord will not enter into any new lease of that certain unit of space is located on the twentieth (20<sup>th</sup>) floor of the Building and is currently occupied by News America Marketing FSI, Inc. and which may become vacant during the initial term of this Lease or any extension or renewals with any tenant unless Landlord shall first offer, in writing, said space to Tenant on such terms and conditions as are then acceptable to the Landlord. Landlord agrees that Tenant shall thereupon have the one-time right to lease said space in accordance with the terms contained in Landlord's written notice. Said right must be exercised by Tenant within ten (10) business days after Tenant's receipt of written notice of said offer by Tenant's giving written notice to Landlord of the exercise of said right. If Tenant shall fail to exercise its right hereunder, then Tenant shall execute in recordable form a release of its right to first offer herein granted as applicable to the space so offered to Tenant. This right of first offer (i) is not assignable and shall be deemed personal only to Acartha Group, LLC, (ii) will not apply to any space to be leased by Landlord to a tenant at that time leasing other space in the Building; (iii) is limited to the exercise of rights for such space only once, and once offered and declined all rights to lease the particular offered space shall cease and terminate, however the right to lease other space not yet offered shall continue to exist.

The following additional items shall apply to said Right of First Offer:

(i) Tenant's right to add space to the Premises under this Article 29 shall be exercised by the notice to Landlord containing Tenant's election for the entire amount of offered space;

(ii) The added space shall become a part of the Premises and except for such terms contained in the notice from Landlord the terms and conditions of this Lease, including, but not limited to, the Lease Term and options shall be applicable thereto.

(iii) Once the size of the added space has been determined, according to the BOMA method of calculation Exhibit "A" shall be appropriately revised and/or added to reflect the Premises including the added space, initialed by Landlord and Tenant and attached to this Lease in lieu of the original Exhibit "A".

(iv) Said right of first offer shall be subject to any other rights, similar or dissimilar, granted by Landlord heretofore.

ARTICLE THIRTY  
OFAC COMPLIANCE

(A) Tenant represents and warrants that (a) Tenant and its respective principals, officers, and directors and shareholders is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the “List”), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (c) no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (d) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (e) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “**Embargoed Person**” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law. For purposes of this Section, the term "person" shall not include any person to the extent that such person's interest in the Tenant is through a U.S. Publicly-Traded Entity. As used in this Agreement, U.S. Publicly-Traded Entity means a person, other than an individual, whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

(B) Tenant covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (b) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any “Prohibited Person” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under the Lease and (d) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant’s compliance with the terms hereof.

(C) Tenant hereby acknowledges and agrees that Tenant’s inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any

Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease.

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Section 1.01(4) hereof.

WITNESS:



TENANT:

ACARTHA GROUP, LLC, LLC



By: \_\_\_\_\_  
Name: Dixon R. Brown  
Title: Partner & Secretary

LANDLORD:

TOWER CENTER II INVESTMENT GROUP,

WITNESS:  
L.L.C.

\_\_\_\_\_



By: \_\_\_\_\_  
Name: Paul Chapman  
Title: Executive Vice President

**EXHIBIT A**

**PLAN OF PREMISES**



**EXHIBIT B**

**WORKLETTER AGREEMENT**

**THIS WORKLETTER AGREEMENT** ("Workletter") is executed simultaneously with that certain Lease between ACARTHA GROUP, LLC, LLC, as Tenant, and TOWER CENTER II INVESTMENT GROUP, LLC, as Landlord, relating to demised premises ("Premises") at the building located at Two Tower Center, East Brunswick, New Jersey, which Premises are more fully identified in the Lease. Capitalized terms used herein, unless otherwise defined in this Workletter, shall have the respective meanings assigned to them in the Lease.

For and in consideration of the agreement to lease the Premises and the mutual covenants contained herein and in the Lease, Landlord and Tenant hereby agree as follows:

1. **Work.** Landlord shall cause to be performed the work (the "Work") in the Premises provided for in the Plans (as defined in Paragraph 2 hereof) submitted to and approved by Landlord. Landlord shall proceed diligently to cause the Work to be substantially completed after the Commencement Date of the Term of the Lease, subject to "Tenant Delay" and Force Majeure Delay" (as such terms are described in Paragraph 4 hereof).

2. **Plans and Cost Estimate.**

- (a) Tenant, shall cause to be prepared the following (the "Preliminary Plans") the cost of which shall be included in the Landlord's Allowance.
- (i) complete floor plans of the Premises for Tenant's use of the Premises showing all rooms, corridors, offices, built in counters, locations of special equipment, and all other items the location or layout of which are necessary for preparation of detailed architectural drawings and specifications for Landlord's Work (as hereinafter defined); and
  - (ii) all information and specifications necessary to reflect requirements for installation of the HVAC system and duct work, and the electrical, plumbing, and other mechanical systems within the Premises in connection with Landlord's Work.
- (b) The Preliminary Plans shall be subject to Landlord's approval and the approval of all local governmental authorities requiring approval, if any. Landlord shall give its approval or disapproval (giving general reason in case of disapproval) of the Preliminary Plans within five (5) business days after their delivery to Landlord. Landlord agrees not to unreasonably withhold its approval of said Preliminary Plans; provided, however, that Landlord shall not be deemed to have acted unreasonably if it withholds its consent because, in Landlord's opinion, (i) the Work is likely to affect

adversely Building systems, the structure of the Building or the safety of the Building and its occupants; (ii) the Work would decrease Landlord's ability to furnish services to Tenant or other tenants; (iii) the Work would increase the cost of operating the Building; (iv) the Work would violate any governmental laws, rules or ordinances; (v) the Work contains or uses hazardous or toxic materials; (vi) the Work would adversely affect the appearance of the Building; (vii) the Work would adversely affect another tenant's premises; or (viii) the Work is prohibited by any mortgage on the Building. The foregoing reasons, however, shall not be exclusive of the reasons for which Landlord may withhold consent, whether or not such other reasons are similar to or dissimilar from the foregoing. If Landlord notifies Tenant that changes are required to the Preliminary Plans submitted by Tenant, Tenant shall, within five (5) business days thereafter, submit to Landlord for its approval the Preliminary Plans as amended in accordance with the changes so required. The Preliminary Plans shall also be revised and the Work shall be changed, to incorporate any work required in the Premises by any local government field inspector. Landlord's approval of the Preliminary Plans shall in no way be deemed to be acceptance or approval of any element therein contained which is in violation of any applicable laws, ordinances, regulations or other governmental requirements.

- (c) Based on the Approved Preliminary Plans Landlord shall prepare within five (5) business days the working drawings and plans adequate to allow construction of the Landlord's Work and suitable for submission to authorities for all approvals necessary (the "Plans").
- (d) Following Landlord's completion of the Plans, Landlord shall obtain and submit to Tenant the Plans and an estimate ("Cost Estimate") of the Cost of the Work (as defined in Paragraph 3 below). Within five (5) business days after receipt of the Plans and the Cost Estimate, Tenant shall either (i) approve such Plans and Cost Estimate or (ii) resubmit to Landlord revised Plans, modified so as to reduce costs, which revised Plans shall be subject to Landlord's approval and for its subsequent preparation of a new Cost Estimate. Landlord shall have no obligation to commence or perform the Work until Plans and Cost Estimate have been approved by Tenant.
- (e) Landlord shall revise the Cost Estimate from time to time to reflect any estimated costs increases and decreases for the Work, including such adjustments as may be required with respect to any revisions to Plans requested by Tenant and approved by Landlord, or required by any local governmental agencies. As to revised costs resulting from revisions to the Plans requested by Tenant, Tenant shall approve in writing such revised costs shown in the Cost Estimate within five (5) business days after Landlord submits the revised Cost Estimate to Tenant. If such approval is not received by Landlord within such five (5) business day period, Tenant



shall be deemed to have failed to approve such Cost Estimate and to have abandoned its request for revisions to the Plans. If any revisions to the Plans are required by a local governmental agency, Tenant shall be deemed to have approved any adjustments to the Cost Estimate resulting therefrom unless Tenant submits in writing its objection in which case Tenant shall be obligated to (i) make a revision to the plan so as to eliminate the change necessary or (ii) consult with such governmental agency and after such consultation, submit to Landlord its approval and/or revision. If Landlord approves the revisions to the Plans requested by Tenant and Tenant approves the revised Cost Estimate, the Work to be performed by Landlord shall include the revisions to the Work and Plans requested by Tenant shall be included in the Cost of the Work paid by Tenant. The Work to be performed by Landlord shall also include revisions to the Work required by any local governmental agency or local government field inspector, and the cost of any such revisions or changes to the Plans of Work shall also be added to and included in the Cost of the Work.

- (f) Landlord, at its sole option, may substitute for items, or materials designated in the Plans other items or materials of comparable kind and quality. Landlord, at its sole option, may also change mechanical plans and specifications where necessary for the installation of air conditioning systems and duct work, heating, electrical and plumbing and other mechanical plans for the Work; provided that any such changes shall not materially and adversely affect Tenant's use and occupancy of the Premises for its intended purpose and the cost for such changes shall not impact Tenant. Landlord shall under no circumstances make any substitutions of Tenant's finishes as specified on the attached schedule. In the event such finishes are not readily available, Landlord shall inform Tenant and Tenant may make an adjustment to such finishes.

3. **Cost of the Work and Landlord's Maximum Contribution.**

- (a) For purposes hereof, the "Cost of Work" shall mean and include the following costs attributable by Landlord to the Work: (i) the cost of all materials and labor; (ii) general conditions (including rubbish removal, hoisting, permits, temporary facilities; safety and protection, cleaning, tools, blueprints and reproduction, telephone, temporary power, field supervision and the like); (iii) premium cost of workers' compensation, public liability, casualty and other insurance charged by contractors; (iv) contractors' charges for overhead and fees; (v) architectural and engineering fees incurred by Landlord, if any; and (vi) a fee payable to Landlord equal to two percent (2%) of the sum of the foregoing costs for Landlord's profit, overhead and construction management services.
- (b) Provided that Tenant is not in default hereunder or under the Lease, Landlord shall contribute a maximum amount ("Landlord's Maximum

Contribution") of \$25.00 per rentable square foot of the Premises (i.e. \$140,575.00), as Landlord's share of the Cost of the Work. Tenant shall pay any amount over the amount of Landlord's Maximum Contribution ("Excess Costs"). Any Excess Costs at Tenant's option, made in writing by Tenant, at the time the expense shall be incurred, shall be paid by Tenant to Landlord within thirty (30) days after receipt of any invoice for such Excess Costs. Tenant may use not more than 33% of the Landlord's Maximum Contribution for soft costs including furniture, fixtures, equipment, vending, and professional fees and cabling, and wiring. Any amount not used by Tenant shall belong to Landlord.

4. **Delays in Work.** Landlord shall proceed diligently to complete the Landlord's Work subject to Tenant's compliance herewith; provided, however, if Landlord shall be delayed in completing said Work for any reason set forth in the following subparagraphs (a) through (i) ("Tenant Delay"), completion shall be extended accordingly:

- (a) Tenant's failure to furnish the Preliminary Plans or the information required for the preparation of the same as herein set forth;
- (b) Tenant's failure to respond to, or Tenant's unreasonable withholding of its approval of the Cost Estimate within the initial time period prescribed in this Workletter after submittal by Landlord, or Tenant's failure to respond to, or Tenant's unreasonable withholding of its approval of any subsequent revisions to the Cost Estimate within the time periods prescribed herein for such approval;
- (c) Tenant's request for or use of unique materials, finishes or installations or construction procedures which are substantially different from that which is standard or customary for the Building or from that shown in any space plan which Tenant has heretofore furnished Landlord, or resulting in the Work required by the Plans (as same may be revised from time to time) taking longer to complete under standard construction procedures (e.g., without use of overtime or additional shifts and without necessitating other measures to expedite long lead time items) than originally projected by Landlord at the execution of this Lease (i.e., when Landlord developed its schedule for construction of Work without the benefit of the Plans);
- (d) Tenant's failure to pay for any portion of the Work as and when payable by Tenant hereunder;
- (e) Tenant's changes in the Work or the Plans (notwithstanding Landlord's approval of any such changes) except as requested by governmental authorities;
- (f) Landlord's determination that base building modifications are necessary in order to accommodate the Work;

- (g) The unreasonable entry or interference by Tenant or Tenant's Contractors (as defined in Paragraph 6 below) in or about the Premises or Building.

5. **Completion - Punch List.**

- (a) When Landlord's architect considers the Work to be complete or about to be completed, Landlord shall notify Tenant as to the date or anticipated date of substantial completion and of a reasonable time and date for inspection of the Work. If such time and date for inspection are not reasonably acceptable to Tenant, Landlord and Tenant shall mutually agree upon another time and date, provided that Tenant shall not unreasonably delay such inspection. Tenant agrees to inspect the Premises at such time and on such date and to execute promptly after such inspection Landlord's form of inspection report which shall be prepared by Landlord's architect and shall list items designated by said architect as not yet completed and any additional items which Landlord and Tenant, in good faith, agree are not yet completed (said list is hereinafter referred to as a "Punch List"). If Tenant does not appear for inspection on the date agreed upon, Tenant shall be deemed to have accepted the Landlord's Work as completed and Landlord or its representative may execute such Punch List on behalf of both Landlord and Tenant. Tenant agrees that, at the request of Landlord from time to time after the initial inspection, Tenant shall initial such Punch List or execute revised Punch Lists to reflect completion or partial completion of prior Punch List items.
- (b) Promptly after completion of the Work, Landlord shall enter the Premises to complete Punch List items, and such entry by Landlord or its agents, employees or contractors for such purpose shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under the Lease, or impose any other liability upon Landlord or its agents, employees or contractors. Landlord shall take all reasonable steps to minimize interference with Tenant's business while completing the Punch List items.
- (c) Notwithstanding any provisions to the contrary contained in this Workletter, if the Landlord's Work or any part thereof are used for any purpose(s), it is agreed that such portion of the Landlord's Work shall then be deemed accepted by Tenant "as is".
- (d) The phrases "completion" or "complete" shall mean that the Work has been completed except for such incomplete items as would not materially interfere with the use of the Premises for its intended uses, as described in the Lease (but excluding items not included in the Work which are required for use of the Premises for such purposes). The Work shall be deemed to complete on the date on which the Work would have been complete but for Tenant Delay or Force Majeure Delay or on such earlier

date as the Work shall be deemed to be complete pursuant to Paragraph 5(c) above.

6. **Access by Tenant.**

- (a) Landlord, at Landlord's sole discretion, may permit Tenant and Tenant's agents, suppliers, contractors, subcontractors and workmen (collectively, "Tenant's Contractors"), who have been approved by Landlord as hereinafter provided, to enter the Premises after the Commencement Date of the term of the Lease to enable Tenant to install carpeting or do such other things as may be required by Tenant to make the Premises ready for Tenant's occupancy.
- (b) Tenant shall notify Landlord of the identity of Tenant's Contractors not less than five (5) days prior to the initial entry into the Premises by any such Tenant's Contractors, and Landlord shall have the right to approve or disapprove any of Tenant's Contractors.
- (c) Tenant agrees that if permission is granted Tenant for early entry under this Paragraph, then (i) Tenant and Tenant's Contractors and their activities in the Premises and Building will not interfere with or delay the completion of the Work to be done by Landlord and will not interfere with other construction by Landlord, its contractors and subcontractors and their agents and employees or occupants of the Building and their contractors in or about the Premises or Building, and (ii) Landlord, its contractors and subcontractors and their agents and employees shall have priority over Tenant and Tenant's Contractors in performing work within the Premises or Building, including, without limitation, the use of hoists and elevators.
- (d) Landlord shall have the right to withdraw its early occupancy permission given under this Paragraph 6 upon written or oral notice to Tenant if Landlord determines that any interference or delay has been or may be caused. Tenant agrees that any such entry into the Premises shall be at Tenant's own risk and Landlord shall not be liable in any way for any injury, loss, or damage which may occur to any of the Tenant's property or installations made in the Premises.
- (e) Tenant shall promptly pay to each of Tenant's Contractors when due the cost of all Work done by such Tenant's Contractor and, if required by Landlord, shall deliver to Landlord evidence of payment to each such party, together with contractors' affidavits, partial and full and final waivers of all liens for labor, service or materials and such other documents as Landlord may reasonably request and provide to Tenant for execution.

- (f) Any work performed by Tenant or Tenant's Contractors shall be done in a first-class workmanlike manner using only first-class grades of materials and shall comply with all of Landlord's rules and requirements and all applicable laws, ordinances, rules and regulations of governmental departments or agencies.
- (g) Any work done by Tenant or Tenant's Contractors will be scheduled and coordinated through Landlord and shall be performed under the supervision and control of Landlord to the extent Landlord determines to be necessary.
- (h) From the date hereof until the Work under this workletter is completed, Tenant agrees to protect, defend, indemnify and save harmless Landlord and its officers, directors, partners, employees and agents from all liabilities, costs, damages, fees and expenses arising out of or connected with the activities of Tenant or Tenant's Contractors in or about the Premises or Building, including, without limitation, the cost of any repairs to the Premises or Building, including, without limitation, the cost of any repairs to the Premises or Building necessitated by activities of Tenant or Tenant's Contractors. In addition, prior to the initial entry into the Building or the Premises by Tenant or any of Tenant's Contractors, Tenant shall furnish Landlord, at Tenant's sole cost, with policies of insurance required by the Lease and with any additional insurance covering Landlord and its officers, directors, partners, employees and agents as insured parties, with such coverages and in such amounts as Landlord may then require, in order to insure Landlord and its officers, directors, partners, employees or agents against loss or liability for injury or death or damage to property arising out of or connected with any activities of Tenant or Tenant's Contractors. Tenant acknowledges that the foregoing indemnity shall be in addition to the insurance requirements set forth herein and shall not be in discharge of or in substitution for same.
- (i) Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to be attached to or be placed upon Landlord's title or interest in the Premises, Building or underlying land, and any and all liens and encumbrances created by Tenant shall attach to Tenant's interest only. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed upon the Premises, Building or land with respect to work or service claimed to have been performed for, or materials claimed to have been furnished to, Tenant or the Premises by Tenant's Contractors, and in case of any such lien attaching, Tenant covenants and agrees to cause it to be immediately released and removed of record. In the event that such lien is not immediately released and removed within fifteen (15) days after such lien, or notice thereof, is filed, Landlord, at its sole option, may take all action necessary to release and remove such lien (without any duty to investigate

the validity thereof) and Tenant shall promptly upon notice reimburse Landlord for all sums, costs and expenses (including attorneys' fees) incurred by Landlord in connection with such lien.

7. **Waiver of Claims.** Tenant hereby waives all claims by the Tenant except (i) those arising from Landlord's failure to complete in due course the incomplete items, if any, described on the Punch List, (ii) any latent defects that Tenant has notified Landlord of within 90 days after substantial completion of the work; and (iii) those claims arising from Landlord's failure to build the Work under this Workletter according to the Plans and in a good and workmanlike manner. **ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY NEGATED AND WAIVED.**

8. **Changes in the Work.**

- (a) Landlord or any Contractor may make minor changes in the Work arising during the construction process not requiring an adjustment to the Cost of the Work and not inconsistent with the intent hereof. In addition, after prior notice to Tenant (which notice need not be in writing), the Work shall be changed (and the Plans will be revised by Tenant) to reflect changes required by any local government inspectors and the Cost of Work shall be increased by the cost of such changes or decreased by any savings resulting from such changes. Landlord shall notify Tenant of such increase or decrease by delivering to Tenant a Change Order (as defined in Paragraph 8(b)), which shall be effective upon issuance by Landlord.
- (b) Tenant, at its own expense, may make changes in the Work by submitting to Landlord the required revised Plans for approval or disapproval in accordance with the approval/disapproval standards described in Paragraph 2 hereof. In the event Tenant submits revised Plans which are approved by Landlord, Landlord will thereafter submit a proposal (the "Proposal") to Tenant for approval showing (i) the adjusted Cost Estimate resulting from the proposed changes and (ii) the delay in completion of the Work anticipated as a result of the proposed changes (it being understood that Tenant's request for a change may constitute "Tenant Delay" pursuant to Paragraph 4 and the date of substantial completion shall not be delayed or extended by reason thereof). The adjusted Cost of the Work shall reflect all anticipated changes relating to said Tenant changes. The Proposal shall include a form of Change Order which shall set forth the anticipated time to perform such changes(s) and the anticipated adjustment to the Cost of the Work ("Change Order"). Tenant may approve the Proposal by executing and delivering the Change order to Landlord within the time period specified in the Proposal (or within forty-eight (48) hours, if no period is required). If Tenant fails to approve the Proposal within the specified time period, Tenant shall be deemed to

have abandoned its request for changes in the Work and Landlord may proceed with the Work without regard to such requested changes. If at any time Tenant has requested changes, or Landlord has delivered a Proposal to Tenant and Tenant has not yet approved the Proposal, Landlord may at its election cease any portions of the Work affected by such changes, and delays caused by such cessation of Work shall constitute "Tenant Delay" as defined in Paragraph 4 hereof.

9. **Miscellaneous.**

- (a) The Work shall be done by Landlord, or its designees, contractors or subcontractors, in accordance with the terms, conditions, and provisions herein contained.
- (b) Except as herein expressly set forth or in the Lease, Landlord has no agreement with Tenant and has no obligation to do any other work with respect to the Premises. Any other work in the Premises which Tenant may be permitted by Landlord to after the Commencement Date of the term of the Lease shall be done at Tenant's sole cost and expense and in accordance with the terms and conditions of the Lease, and the terms and provisions of Paragraph 6 of this Workletter. Any additional work or alterations to the Premises desired by Tenant shall be subject to the provisions of the Lease.
- (c) If The Plans of the Work require the construction and installation of more fire hose cabinets or telephone/electrical closets than the number regularly provided by Landlord in the core of the Building in which the Premises are located, Tenant agrees to pay all costs and expenses arising from the construction and installation of such additional fire hose cabinets or telephone/electrical closets as part of the Cost of the Work hereunder.
- (d) Landlord is entitled to all available investment tax credits, if any, for Work paid for and property acquired by Landlord pursuant to the Lease and this Workletter. Nothing in the Lease or this Workletter shall be construed as an agreement by Landlord to pass any investment tax credits through to Tenant.
- (e) Time is of the Essence in this Workletter.
- (f) Any person signing this Workletter on behalf of Landlord and/or Tenant warrants and represents he has the authority to do so.
- (g) This Workletter shall not be deemed applicable to any additional space added to the original Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original

Premises or any additions thereto in the event of a renewal or extension of the original term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement thereto.

- (h) Tenant's failure to pay any amounts owed by Tenant hereunder when due or Tenant's failure to perform its obligations hereunder shall also constitute a default under the Lease, and Landlord shall have all the rights and remedies granted to Landlord under the Lease for nonpayment of any amounts owed thereunder or failure by Tenant to perform its obligations thereunder. Notices under this Workletter shall be given in the same manner as under the Lease.
- (i) The liability of Landlord hereunder or under any amendment hereto or any instrument or document executed in connection herewith (including, without limitation, the Lease) shall be limited to and enforceable solely against Landlord's interest in the Building.

WITNESS:

TENANT:  
ACARTHA GROUP, LLC, LLC

By:   
 Name: Dexu R. Zhou  
 Title: Partner & Secretary

WITNESS:

LANDLORD:  
TOWER CENTER II INVESTMENT GROUP,  
L.L.C.

By:   
 Name: Paul Chapman  
 Title: Executive Vice President



EXHIBIT C

RULES AND REGULATIONS

1. No sign, lettering, picture, notice or advertisement shall be placed on any outside window or in a position to be visible from outside the Premises and if visible from the outside or public corridors within the Building shall be installed in such manner and be of such character and style as Landlord shall approve in writing.
2. Tenant shall not use the name of the Building for an purpose other than Tenant's business address; Tenant shall not use the name of the Building for Tenant's business address after Tenant vacates the Premises; nor shall Tenant use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence.
3. No article which is explosive or inherently dangerous is allowed in the Building.
4. Tenant shall not represent itself as being associated with any company or corporation by which the Building may be known or names.
5. Sidewalks, entrances, passages, courts, corridors, halls elevators and stairways in and about the Premises shall not be obstructed.
6. No animals (except for dogs in the company of a blind person), pets, bicycles or other vehicles shall be brought or permitted to be in the Building or the Premises.
7. Room-to-room canvasses to solicit business from other tenants of the Building are not permitted; Tenant shall not advertise the business, professions or activities of Tenant conducted in the building in any manner which violates any code of ethics by an recognized association or organization pertaining to such business, professions or activities.
8. Tenant shall not waste electricity, water or air-conditioning and shall cooperate fully with Landlord to assure the most effective and efficient operation of the Building's heating and air-conditioning systems.
9. No locks or similar devises shall be attached to any door except by Landlord and Landlord shall have the right to retain a key to all such locks. Tenant may not install any locks without Landlord's prior approval.
10. Tenant assumes full responsibility of protecting the Premises from theft, robbery and pilferage; the Indemnities shall not be liable for damage thereto or

theft or misappropriation thereof. Except during Tenant's normal business hours, Tenant shall keep all doors to the Premises locked and other means of entry to the Premises closed and secured. All corridor doors shall remain closed at all times. If Tenant desires telegraphic, telephones, burglar alarms or other electronic mechanical devices, the Landlord will, upon request direct where and how connections and all wiring for such services shall be installed and no boring, cutting or installing of wires or cables is permitted without Landlord's approval.

11. Except with the prior approval of Landlord, all cleaning, repairing, janitorial, decorating, painting or other services of work in and about the Premises shall be done only by authorized Building personnel.
12. The weight, size and location of safes, furniture, equipment, machines and other large or bulky articles shall be subject to Landlord's approval and shall be brought to the Building and into and out of the Premises at such times and such manner as the Landlord shall direct and at Tenant's sole risk and cost. Prior to Tenant's removal of any of such articles from the Building, Tenant shall obtain written authorization of the Office of the Building and shall present such authorization to a designated employee of Landlord.
13. Tenant shall not overload the safe capacity of the electricity wiring of the Building and the Premises or exceed the capacity of the feeders to the Building or risers.
14. To the extent permitted by law, Tenant shall not cause or permit picketing or other activity by Tenant which would interfere with the business of Landlord or any other tenant or occupant of the Building, or distribution of written materials involving its employees in or about the Building, except in those locations and subject to time and other limitations as to which Landlord may give prior written consent.
15. Tenant shall not cook, otherwise prepare or sell any food or beverages in or from the Premises for housing accommodations or lodging or sleeping purposes except that Tenant may install and maintain vending machines, coffee/beverage stations and food warming equipment and eating facilities for the benefit of its employees or guests, provide the same are maintained in compliance with applicable laws and regulations and do not disturb other tenants in the Building with odor, refuse or pests.
16. Tenant shall not permit the use of any apparatus for sound production or transmission in such manner that the sound so transmitted or produced shall be audible or vibrations therefrom shall be detectable beyond the Premises; nor permit objectionable odors or vapors to emanate from the Premises.
17. No floor covering shall be affixed to any floor in the Premises by means of glue or other adhesive without Landlord's prior written consent.

18. Tenant shall at all time maintain the window blinds in the lowered position, though Tenant may keep the louvers open.
19. Tenant shall only use the freight elevator for mail carts, dollies and other similar devices for delivering material between floors that Tenant may occupy.
20. No smoking, eating, drinking, loitering or laying is permitted in the Common Area except in designated areas.
21. Landlord may require that all persons who enter or leave the Building identify themselves to security guards by registration or otherwise. Landlord, however shall have no responsibility or liability for any theft, robbery or other crime in the Building. Tenant shall assume full responsibility for protecting the Premises, including keeping all doors to the Premises locked after the close of business.
22. Tenant shall comply with all safety, fire, protection and evacuation procedures and regulations established by Landlord or any governmental agency and shall cooperate and participate in all reasonable security and safety programs affecting the Building.

**EXHIBIT D**  
**CLEANING SPECIFICATIONS**

All services and material specified in this Exhibit shall be furnished at the sole cost and expense of Landlord.

1. Office Area:
  - a. Nightly (Monday through Friday – Holidays excepted)
    1. Empty wastepaper baskets, ashtrays, and refuse receptacles.
    2. Dust wipe hard surface flooring.
    3. Vacuum carpeted areas and rugs.
    4. Hand dust and wipe clean with treated cloths all horizontal surfaces including furniture, desk equipment, telephones, windowsills and induction until tops within normal reach.
    5. Clean and sanitize all drinking fountains.
  - b. Weekly
    1. Remove finger marks from stairways, elevators and utility closet doors and light switches.
  - c. Monthly
    1. Wash and wax resilient tile floors.
  - d. Quarterly
    1. Do high dusting not reached in daily cleaning, to include:
      - a) pictures, frames, charts, graphs, and similar wall hangings, and
      - b) all vertical surfaces, such as walls, partitions, doors and bucks not reached in nightly cleaning.
  - e. Annually
    1. Wash all light fixtures.
    2. Dry clean drapes or wash venetian blinds, whichever is supplied by Landlord on exterior windows.

II. Lavatories

a. Nightly

1. Sweep and wash floors with approved germicidal detergent solution.
2. Wash and polish all mirrors, powder shelves, dispensers, receptacles, bright work, flushometers, piping and toilet, set hinges.
3. Wash both side of toilet seats, wash basins, bowls, and urinals with approved germicidal detergent solution.
4. Remove finger marks and smudges from toilet partitions, ventilation grills, and tile walls.
5. Empty and clean towel and sanitary disposal receptacles, remove waste to disposal areas.
6. Replenish paper towel, toilet tissue, soap and sanitary napkin dispensers.

b. Monthly

1. Wash partitions and tile walls.
2. Wash all waste receptacles with approved germicidal solution.

III. Window Washing

a. Semi-Annually

1. Wash all exterior window glass, inside and outside surfaces.

b. Three Times Yearly

1. Wash all interior Window glass.

**EXHIBIT E**

**CONFIRMATION FOR LEASE TERM AGREEMENT**

THIS CONFIRMATION AGREEMENT, made as of this \_\_\_\_\_ day of May, 2006, between TOWER CENTER II INVESTMENTS GROUP, L.L.C. (hereinafter called "Landlord") and ACARTHA GROUP, LLC, LLC (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, by a certain lease (hereinafter called the "Lease"), dated \_\_\_\_\_ day of \_\_\_\_\_ 2006, Landlord leased to Tenant a portion of the real property described in Exhibit "A" annexed to the said Lease and located at Two Tower Center, East Brunswick 08816; and

WHEREAS, Tenant is now in possession of the premises demised under the Lease; and

WHEREAS, under the Lease, Landlord and Tenant agreed to execute, acknowledge and deliver to each other an agreement setting forth the Commencement Date (as defined in the Lease), the Expiration Date of the initial term of the Lease and the Cancellation Period (as defined in the Lease);

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. The Commencement Date of the Lease is May \_\_, 2006.
2. The Expiration Date of the initial Term of Lease is May 31, 2013,
3. The Security Deposit Reduction and Allocation dates are as follows:
  
4. This Agreement shall bind and insure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.
5. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement, in writing, executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed the day and year first above written.

WITNESS:

TENANT:  
ACARTHA GROUP, LLC, LLC

\_\_\_\_\_

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

Name:

Title:

WITNESS:

LANDLORD:  
TOWER CENTER II INVESTMENT GROUP,  
L.L.C.

\_\_\_\_\_

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

Name:

Title:

Two Tower Center  
 Two Tower Center Blvd  
 East Brunswick, NJ 08816

CB\_REALM  
 725793  
 MIN

**2/1/2012**      **ACCOUNT NUMBER**      **SUITE #**

Acartha Group, LLC      STATEMENT #: 182661      001925      2004  
 Dixon Brown  
 Two Tower Center  
 20th Floor  
 East Brunswick, NJ 08816

Beginning Balance      86,112.30

Date	Code	Description	Check Number	Activity
1/1/2012	CAM	COMMON AREA BILLINGS		604.00
1/1/2012	ELE	ELECTRIC		820.02
1/1/2012	RNT	RENT		14,057.50
2/1/2012	CAM	COMMON AREA BILLINGS		604.00
2/1/2012	ELE	ELECTRIC		820.02
2/1/2012	RNT	RENT		14,057.50
12/8/2011		Prepaid 1191	0001191	-5,000.00
1/6/2012		Prepaid	0001193	-5,000.00

Payments received or charges posted after the 15th may not be reflected on this statement.

Some components of the amount shown may be landlord's estimate of amounts due. The amounts shown may not include all sums that may be due under the lease. Landlord's failure to include amounts due shall not constitute a waiver to collect such amounts nor shall it release you from your obligation to pay them.

**2/1/2012**      **ACCOUNT NUMBER**      **SUITE #**

Please send this portion of the statement with your remittance.

STATEMENT #: 182661      001925      2004  
 Acartha Group, LLC

**MAKE CHECKS PAYABLE TO:** Tower Center II INV GRP, LLC

**BALANCE DUE**  
 107,075.34

Two Tower Center  
 Building ID EAG001  
 PO Box 6076  
 Hicksville, NY 11802-6076

118026076\*\*\*EAG001\*\*\*001925001826614P\*\*\*\*\*0010707534



# THOMPSON COBURN LLP

One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000  
www.thompsoncoburn.com

## *Facsimile*

FOR IMMEDIATE DELIVERY

To: Pat Farofalo

Firm Name: CBRE

Phone:

Fax: 732-509-8938

From: Claire M. Schenk  
(314) 552-6462  
FAX (314) 552-7462

Date: 2/14/2012

Message:

Total Number of Pages, including this page: 13

If you do not receive all of the pages, please call (314) 552-6462 as soon as possible.

### Confidentiality Note

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# THOMPSON COBURN LLP

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February 14, 2012

Claire M. Schenk  
314-552-6462  
[acartha.receivership@thompsoncoburn.com](mailto:acartha.receivership@thompsoncoburn.com)

Via Federal Express

Tower Center II Investment Group, L.L.C.  
c/o Paul Chapman, Managing Director  
CB Richard Ellis Investors  
601 108th Avenue NE, Suite 1900  
Bellevue, WA 98004

Via Electronic Mail, Facsimile and Regular Mail

Mr. Pat Garofalo  
CBRE  
2 Tower Center Blvd., 20th Floor  
East Brunswick, New Jersey 08816  
Fax: 732-509-8938  
Email: [pasquale.garofalo@cbre.com](mailto:pasquale.garofalo@cbre.com)

Re: *Securities and Exchange Commission v. Burton Douglas Morriss, et al.*  
No. 4:12-cv-00080-CEJ

Dear Sirs:

The purpose of this letter is to advise you that I was appointed as the receiver ("Receiver") of Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (the "Receivership Entities") on January 17, 2012. A copy of the Order Appointing Receiver is enclosed for your review. Additional information, including the First Interim Status Report of the Receiver, is available to you through the Acartha Group weblink at [www.thompsoncoburn.com](http://www.thompsoncoburn.com).

The role of the Receiver is to, among other things, administer and manage the affairs, funds, assets, choses in action and other property of the Receivership Entities, marshal and safeguard the Receivership Entities' assets, and take all necessary actions for the protection of investors. The Receiver is empowered by the Court with all the powers and authorities previously possessed by the managing member(s) and/or the managing partner(s) of the Receivership Entities (see Order Appointing Receiver, p.8). Furthermore, the Receiver is authorized, solely and exclusively, to manage the businesses and financial affairs of the Receivership Entities (see Order Appointing Receiver, p.8). The Receiver will file periodic reports with the Receivership Court, including a report reflecting the existence and value of the assets of the Receivership Entities and the extent of the liabilities of the Receivership Entities.

My preliminary review of the books and records of the Receivership Entities revealed that Acartha Group, LLC entered into a lease with Tower Center II Investment Group, L.L.C. (the "Landlord") on or about May 31, 2006 (the "Lease") with respect to the property known as Two Tower

February 14, 2012  
Page 2

Center, 20th Floor, East Brunswick, New Jersey 08817 (the "Leased Premises"). Pursuant to the authority the Court has vested in me under the January 17, 2012 Order, please be advised that the lease is set aside and terminated. Any deposit and other property of the Receivership Entities obtained by you relative to the Lease should be immediately surrendered to the Receiver and a complete accounting of such property provided.

To the extent you determine that you have a claim which you would like to pursue in the Receivership Court, please see the enclosed Notice to Creditors. At the appropriate point in time, this notice will be sent to known creditors of the Receivership and as otherwise directed by the Receivership Court. Also, please periodically check the Acartha Group weblink at [www.thompsoncoburn.com](http://www.thompsoncoburn.com), as information on the submission of claims will be posted at that weblink as such information becomes available.

Subject to the direction and approval of the Court, my plan is to inventory and collect all Receivership property at the Leased Premises and prepare such property for removal and auction. I intend to have one or more agents on-site at the Leased Premises to remove all paper documents and electronic data and to ready the remaining Receivership property for auction, sale and removal. Because we plan to seek Court approval of this activity, I cannot provide you with an exact date as to when all Receivership property will be removed from the Leased Premises, but I assure you that we are working diligently to remove all such property as quickly as possible.

Please let us know as soon as possible what moveable or removal property, if any, you claim as property of the Landlord, so that I may make appropriate arrangements regarding the property. Feel free to call me at (314) 552-6264 with any questions you may have regarding this matter. Thank you in advance for your cooperation and assistance.

Very truly yours,

Thompson Coburn LLP

By

Claire M. Schenk

Enclosures

cc: Via Federal Express  
Scarini & Hollenbeck, LLC  
1100 Valley Brook Avenue  
P.O. Box 790  
Lyndhurst, New Jersey 07071-0790  
Attention: Victor E. Kinon, Esq.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,	)
	)
Plaintiff,	)
v.	)
	)
BURTON DOUGLAS MORRISS,	)
ACARTHA GROUP, LLC,	)
MIC VII, LLC,	)
ACARTHA TECHNOLOGY PARTNERS, LP, and	)
GRYPHON INVESTMENTS III, LLC,	)
	)
Defendants, and	)
	)
MORRISS HOLDINGS, LLC,	)
	)
Relief Defendant.	)

ORDER APPOINTING RECEIVER

WHEREAS, Plaintiff Securities and Exchange Commission has filed an emergency motion for the appointment of a Receiver over Defendants Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP ("ATP"); and Gryphon Investments III, LLC (collectively, the "Investment Entities"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of the Investment Entities; operate as the sole and exclusive managing member or partner of the Investment Entities; maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the estates of Acartha Group, MIC VII, ATP, and Gryphon Investments; marshal and safeguard all of the assets of the Investment Entities and take whatever actions are necessary for the protection of investors;

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WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by Acartha Group, MIC VII, ATP, and Gryphon Investments;

WHEREAS, the Commission has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of Acartha Group, MIC VII, ATP, and Gryphon Investments, including any properties, assets and other items held in the name of Acartha Group, MIC VII, ATP, and Gryphon Investments, and the Commission has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that Claire M. Skenb is hereby appointed the Receiver over Acartha Group, MIC VII, ATP, and Gryphon Investments and each of their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Investment Entities whatsoever and wheresoever located, including but not limited to all offices maintained by the Investment Entities' rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Investment Entities, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;

2. Investigate the manner in which the affairs of the Investment Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the

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Investment Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Acartha Group, MIC VII, ATP, and Gryphon Investments, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in Acartha Group, MIC VII, ATP, and Gryphon Investments; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Missouri Statute § 428.005, et. seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of the Investment Entities and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Investment Entities;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Investment Entities and exercising the power granted by this Order, subject to approval by this Court;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which Acartha Group, MIC VII, ATP, or Gryphon Investments or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where Acartha Group, MIC VII, ATP, or Gryphon Investments is a nominal party, as in certain foreclosure actions where the action does not effect a claim against or adversely affect the assets of Acartha Group, MIC VII, ATP, or Gryphon Investments, the Receiver may file appropriate pleadings at the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by Acartha Group, MIC VII, ATP, and Gryphon Investments;

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of Acartha Group, MIC VII, ATP, and Gryphon Investments and, upon, order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of Acartha Group, MIC VII, ATP, and Gryphon Investments (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of Acartha Group, MIC VII, ATP, and Gryphon Investments.

**IT IS FURTHER ORDERED AND ADJUDGED** that, in connection with the appointment of the Receiver provided for above:

10. Acartha Group, MIC VII, ATP, and Gryphon Investments, and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Investment Entities shall deliver forthwith upon demand such property, money, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Investment Entities;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, Acartha Group, MIC VII, ATP, or Gryphon Investments or the Defendants shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless authorized by the Receiver, Acartha Group, MIC VII, ATP, and Gryphon Investments, and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Investment Entities;

13. Acartha Group, MIC VII, ATP, and Gryphon Investments, their principals, and their respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, appearing for deposition testimony upon two days notice (by facsimile), and producing documents upon two days notice, while the Commission's request for an asset freeze is pending. Acartha Group, MIC VII, ATP, and Gryphon Investments and their principals and respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner,



directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by Acartha Group, MIC VII, ATP, and Gryphon Investments; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court; subject to the conditions of Paragraph 26;

15. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of Acartha Group, MIC VII, ATP, and Gryphon Investments;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to Acartha Group, MIC VII, ATP, and Gryphon Investments;

17. Title to all property, real or personal, all contracts, rights of action and all books and records of the Investment Entities and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to Acartha Group, MIC VII, ATP, and Gryphon Investments shall provide a reference of calls from any number presently assigned to the Investment Entities to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to Acartha Group, MIC VII, ATP, and Gryphon Investments shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding Acartha Group, MIC VII, ATP, and Gryphon Investments and to handle future deliveries of the mail of Acartha Group, MIC VII, ATP, and Gryphon Investments as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by Acartha Group, MIC VII, ATP, and Gryphon Investments, or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. Service of this Order shall be sufficient if made upon Acartha Group, MIC VII, ATP, and Gryphon Investments and their principals by facsimile or overnight courier;

24. In the event the Receiver discovers that funds of persons who have invested in Acartha Group, MIC VII, ATP, and Gryphon Investments or have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver

possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds;

25. This Court shall retain jurisdiction of this matter for all purposes.

26. The Receiver shall file applications with this Court for fees and costs for himself and any counsel or other professionals he retains on a quarterly basis. The applications shall include itemized and detailed bills for all fees sought, and receipts or other appropriate documentation for all expenses and costs sought. Simultaneously with filing the fee applications, the Receiver shall file a quarterly report with the Court detailing actions taken and results achieved in the previous quarter. At least 10 days before filing any fee application with the Court, the Receiver shall submit a draft of the application for review to the Securities and Exchange Commission.

**IT IS FURTHER ORDERED AND ADJUDGED** that the Court has jurisdiction to determine the effect of any bankruptcy proceeding may have on this matter.

**IT IS FURTHER ORDERED AND ADJUDGED** that the automatic stay provisions of 11 U.S.C. § 362(a) do not apply to this matter and the equitable relief requested by the Commission.

**IT IS FURTHER ORDERED AND ADJUDGED** that the Receiver is authorized, solely and exclusively, to operate and manage the businesses and financial affairs of Defendant Acartha Group, MIC VII, ATP, and Gryphon Investments and the Receiver Estates.

**IT IS FURTHER ORDERED AND ADJUDGED** that the Receiver shall succeed to all rights and powers of managing member and/or managing partner of Acartha Group, MIC VII, ATP, and Gryphon Investments and shall have the sole and exclusive right and authority to take all actions necessary in such capacity, including, but not limited to, filing bankruptcy petitions on

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behalf of Acartha Group, MIC VII, ATP, and Gryphon Investments and to act as debtor-in-possession, subject to further order of the Bankruptcy Court.

**DONE AND ORDERED** this 17<sup>th</sup> day of January, 2012, in St. Louis, Missouri.

  
UNITED STATES DISTRICT JUDGE

Copies to:

Adam L. Schwartz, Esq.  
Robert K. Levenson, Esq.

THOMPSON COBURN LLP

One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000  
www.thompsoncoburn.com

Claire M. Schenk  
314-552-6152  
acartha.receivership@  
thompsoncoburn.com

Re: *Securities and Exchange Commission v. Burton Douglas Morriss, et al.*  
No. 4:12-cv-00080-CEJ

**To All Potential Creditors of Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP and Gryphon Investments III, LLC (collectively, the "Receivership Entities"):**

This letter will serve to provide you with formal notice of the above-referenced Receivership proceeding. A copy of the Order Appointing Receiver entered January 17, 2012 by the U.S. District Court for the Eastern District of Missouri in Civil Action No. 4:12-cv-00080-CEJ is enclosed for your review and should be kept in your files. The role of the Receiver is to, among other things, administer and manage the affairs, funds, assets, choses in action and other property of the Receivership Entities, marshal and safeguard the Receivership Entities' assets, and take all necessary actions for the protection of investors.

The Receiver is empowered by the Court with all the powers and authorities previously possessed by the managing member(s) and/or the managing partner(s) of the Receivership Entities. The Receiver will file a report with the Receivership Court reflecting the existence and value of the assets of the Receivership Entities and the extent of the liabilities of the Receivership Entities. Information on the submission of claims will be provided to you at a later time.

Please feel free to contact me if you have any questions or concerns regarding these issues. Thank you in advance for your assistance with this important matter.

Sincerely,

Claire M. Schenk as Receiver for  
Acartha Group, LLC, MIC VII, LLC,  
Acartha Technology Partners, LP and  
Gryphon Investments III, LLC

# THOMPSON COBURN LLP

One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000  
www.thompsoncoburn.com

February 20, 2012

Claire M. Schenk  
314-552-6152  
acartha.receivership@  
thompsoncoburn.com

**VIA EMAIL AND REGULAR MAIL**

Victor E. Kinon, Esq.  
Scarini & Hollenbeck, LLC  
1100 Valley Brook Avenue  
P.O. Box 790  
Lyndhurst, New Jersey 07071-0790

Re: *Securities and Exchange Commission v. Burton Douglas Morriss, et al.*  
No. 4:12-cv-00080-CEJ

Dear Victor:

Thank you for taking the time to speak with me last week to discuss the details pertaining to the lease. You described several concerns following your receipt of my letter of February 14, 2012. First, as I mentioned to you in my email of last Friday, we are willing to make the property available so that you may show it to prospective tenants. As you know, we did change the locks but the security guard for the building has a key and will allow you access. Will you please keep me informed as you show the property so that we know any prospective tenants shown the space are visitors there for a legitimate and approved purpose?

Two, you requested background information and legal authority pertaining to this Receivership matter. Under the Order, which is enclosed for your reference, I have the authority, and the obligation, to take immediate possession of all property, assets and estates of every kind of the Investment Entities whatsoever and wheresoever located...” (§ 1), to “administer such assets as is required to comply with the directions” in the Receivership Order (§ 1), and to “marshal and safeguard all of the assets of the Investment Entities” and “take whatever actions are necessary for the protection of investors.” As a general matter, federal receivers are allowed to exercise broad powers in administering, retrieving, and disposing of assets belonging to the receivership.” S.E.C. v. Ross, 504 F.3d 1130, 1145 (9th Cir. 2007). Thus, I possess the inherent power to reject executory contracts and leases as an equity receiver under common law. A receiver does not become liable, by virtue of his appointment, upon the covenants and agreements of the receivership entities. Sunflower Oil Co. v. Wilson, 142 U.S. 313, 322 (1892). The “doctrine of abandonment” gives equity receivers the power to reject unprofitable leases and contracts. In re Unishops, Inc., 422 F. Supp. 75, 79 (S.D.N.Y.

Victor E. Kinon, Esq.  
February 20, 2012  
Page 2

1975) (citing U.S. Trust Co. v. Wabash Western Ry., 150 U.S. 287, 299 (1893)).  
Moreover, a receiver is entitled to hold possession of leased premises for a reasonable time to determine whether to adopt or reject the lease without becoming bound by it. In re Mallow Hotel Corp., 17 F. Supp. 872, 873 (M.D. Penn. 1937) (internal citations omitted).

Three, we are moving forward as quickly as possible to completely vacate the property. Documents, records and computer equipment have been removed. In response to your concerns regarding an auction at the premises, we are pursuing an offsite auction and moving forward with arrangements as appropriate.

Please feel free to call me if you have other questions or concerns regarding this matter.

Very truly yours,

Thompson Coburn LLP



By  
Claire M. Schenk

Enclosure

**EXHIBIT E**

**THOMPSON COBURN LLP**

One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000  
www.thompsoncoburn.com

February 17, 2012

Claire M. Schenk  
314-552-6462  
acartha.receivership@  
thompsoncoburn.com

Mr. Wynne Morriss  
71 Overlook Road  
Hastings on Hudson River, New York 10706

Mr. Robert Zito  
Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, NY 10005-2072

Catherine Hanaway  
The Ashcroft Group, LLC  
222 South Central Avenue, Suite 110  
St. Louis, MO 63105

JoAnn Trog  
Menees, Whitney, Burnet & Trog  
121 West Adams Avenue  
Saint Louis, Missouri 63122

Re: *Securities and Exchange Commission v. Burton Douglas Morriss, et al.*  
No. 4:12-cv-00080-CEJ

Dear Counsel:

As you are aware, Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (the "Receivership Entities"), currently lack sufficient funds to continue the May 31, 2006 (the "Lease") with Tower Center II Investment Group, L.L.C. (the "Landlord"). The Lease pertains to the property known as Two Tower Center, 20th Floor, East Brunswick, New Jersey 08817 (the "Leased Premises"). We are currently in the process of making arrangements to vacate the Leased Premises and to return possession to the Landlord. Subject to the direction and approval of the Court, we will collect all Receivership property at the Leased Premises for removal, auction and sale. We will retain custody and control of documents and other records.

My current understanding is that the Leased Premises contains only Receivership property. If you are aware of information to the contrary, please immediately provide me with: a detailed description of the item; and the name and contact information of the owner of the property. We are also attempting to discontinue all services no longer needed at the office, *e.g.*, phone and computer services and to provide claims information at the appropriate point in time. Any information you are able to provide regarding the name and contact information for relevant service providers, vendors and any other entities or individuals having an ongoing relationship with the Leased Premises is requested.



February 17, 2012  
Page 2

Thank you in advance for your cooperation and assistance.

Very truly yours,

Thompson Coburn LLP

A handwritten signature in black ink, appearing to read "C.M. Schenk". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

By

Claire M. Schenk

February 22, 2012

ATTN: Claire M. Schenk Receiver  
Acartha Group, LLC et al. Claire M. Schenk Receiver  
Thompson Coburn LLP  
1909 K Street N.W. Suite 600  
Washington, D.C. 20006-1167

To Whom It May Concern;

As per our discussion I am pleased to provide the following agreement for your review as it relates to The Acartha Group LLC.

Bestbuyauctioneers.com will provide the following services:

- Removal, packing/wrapping, and inventory of office contents located at the 20<sup>th</sup> Floor, Two Tower Center, East Brunswick NJ 08816.
- Transportation of contents to our auction center located at 503 King Georges Road, Woodbridge, New Jersey.

Bestbuyauctioneers.com will also provide auction services as listed below:

- All marketing and advertising costs in reference to above sale including but not limited to Newspaper, Internet, E-mail, and Text on demand services at a cost of \$750.00.
- All labor necessary to set up and conduct sale including clerical, security and general labor.
- Conduct sale, record all sales, process invoices and collect outstanding balances.

**FEE FOR AUCTION SERVICES 20% of Total Sales Proceeds**

Please indicate your acceptance of these terms by signing and returning this agreement via fax at your earliest convenience.

Joseph Benigno

ACCEPTED BY:

\_\_\_\_\_  
Date

## EXHIBIT G

## Personal Property Inventory

<b>Item Description</b>	<b>Item Amount</b>
2-drawer plastic file cabinet	1
4-drawer file cabinet, black	4
Black (leather) couch	1
Black (leather) side chair	2
Black and Decker coffee maker	1
Charcoal (leather) love seat	1
Charcoal (leather) side chair	2
Cisco Router	1
Computer screen	2
Computer screen (Lenovo ThinkVision)	1
Computer speaker set (Sony Srs-Z750)	1
Conference table (2 parts w/ panel on pillar)	1
Credenza (light wood)	2
Dell desktop printer (DELL 1710n)	1
Dell fax/printer/scanner machine	1
DELL Keyboard	1
Dell printer (DELL 1710)	1
DELL Projector (Model No.: 2400 MP)	1
Dell speaker set	1
Desk lamp	1
Desktop printer (XEROX Phaser 6180)	1
DLink Wireless Broadband 2.4GHz Router	1
Estate dishwasher	1
Fellows shredder	1
Free weights	mult.
Gateway computer screen	1
GE microwave	1
Glass-topped coffee table	1
Glass-topped round side table	2
Guest chair	13
Herman Miller chair (newer versions)	11
Herman Miller office chair	7
Hitachi flat screen TV	1
HP Photo Printer	1
HP printer	2
In Box Pioneer PDP-S41 Speaker System (Not open)	1
In Box Pioneer PDR Table Top Stand (Not open)	1
Jura coffee maker	1
Keyboard	2
Keyboard (Logitech)	3
Light fixtures	2
Logitech Mouse	2

<b>Item Description</b>	<b>Item Amount</b>
Low coffee table	1
Metal framed shelving units	2
Misc. gym equipment	mult.
Misc. kitchen equipment (plates, stemware, etc.)	mult.
Misc. office accessories	mult.
Misc. office supplies	mult.
NetGear Ethernet switch	1
Office chair, black, swivel	3
Pioneer flat screen TV	1
Potted floor plant (silk)	3
Potted plant (silk)	1
Sameas router	1
Samsung LCD TV/Monitor (Syncmaster 940 mw)	1
Sectional desk (light wood)	7
Sharp flat screen TV	1
Shredder (Staples)	1
Side chair, grey/black	1
Small sectional I-shaped desk	1
Solar Charger	1
Storage cabinet	1
Summit refrigerator	1
Tall bar chair	4
Tall oval table	1
Telephone (Polycom)	9
Vectra Universal weight machine	1
White wall board	1
Xerox desktop scanner (Documate 632)	2