FORM 10-Q

Riverbed Technology, Inc. - RVBD

Filed: April 27, 2007 (period: March 31, 2007)

Quarterly report which provides a continuing view of a company's financial position

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2007

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 001-33023

Riverbed Technology, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**03-0448754**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification Number)**

199 Fremont Street
San Francisco, California 94105
(Address of Principal Executive Offices including Zip Code)

(415) 247-8800
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares of the registrant's common stock, par value $0.0001, outstanding as of April 26, 2007 was: 69,125,809

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PART I. FINANCIAL INFORMATION

PART II. OTHER INFORMATION

RIVERBED TECHNOLOGY, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
As of March 31, 2007 and December 31, 2006
(in thousands, except per share data)

	March 31, 2007 (unaudited)	December 31, 2006
ASSETS		
Current assets:		
Cash and cash equivalents	$ 193,035	$ 105,330
Marketable securities	7,944	3,999
Trade receivables, net of allowances of $560 and $472 as of March 31, 2007 and December 31, 2006, respectively	21,830	18,148
Other receivables	1,481	118
Inventory	7,400	7,452
Prepaid expenses and other current assets	5,290	5,438
Total current assets	236,980	140,485
Fixed assets, net	10,453	7,718
Other assets	4,439	2,566
Total assets	$ 251,872	$ 150,769
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 9,701	$ 11,113
Accrued compensation and related benefits	8,837	8,285
Other accrued liabilities	5,450	2,931
Deferred revenue	18,541	16,837
Total current liabilities	42,529	39,166
Deferred revenue non-current	3,528	2,245
Other long-term liabilities	365	378
Total long-term liabilities	3,893	2,623
Stockholders' equity:		
Preferred stock, $0.0001 par value – 30,000 shares authorized, no shares outstanding	—	—
Common stock and additional paid-in-capital; $0.0001 par value — 600,000 shares authorized; 69,126 and 66,180 shares issued and outstanding as of March 31, 2007 and December 31, 2006, respectively	254,659	162,033
Deferred stock-based compensation	(5,120)	(5,704)
Accumulated deficit	(44,076)	(47,333)
Accumulated other comprehensive loss	(13)	(16)
Total stockholders' equity	205,450	108,980
Total liabilities and stockholders' equity	$ 251,872	$ 150,769

See Notes to Condensed Consolidated Financial Statements.

RIVERBED TECHNOLOGY, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share amounts)
(unaudited)

	Three months ended March 31,	
	2007	2006
Revenue:		
Product	$ 33,637	$ 10,836
Support and services	6,837	1,523
Ratable product and related support and services	2,310	1,362
Total revenue	42,784	13,721
Cost of revenue:		
Cost of product	9,661	3,590
Cost of support and services	2,290	692
Cost of ratable product and related support and services	603	497
Total cost of revenue	12,554	4,779
Gross profit	30,230	8,942
Operating expenses:		
Sales and marketing	17,092	8,028
Research and development	7,458	3,465
General and administrative	4,037	1,596
Total operating expenses	28,587	13,089
Operating income (loss)	1,643	(4,147)
Other income (expense), net	1,719	(102)
Income (loss) before provision for income taxes	3,362	(4,249)
Provision for income taxes	103	37
Net income (loss)	$ 3,259	$ (4,286)
Net income (loss) per common share:		
Basic	$ 0.05	$ (0.36)
Diluted	$ 0.05	$ (0.36)
Shares used in computing net income (loss) per common share:		
Basic	65,037	12,010
Diluted	70,350	12,010
Stock-based compensation expense included in above:		
Cost of product	$ 8	$ —
Cost of support and services	372	36
Sales and marketing	2,742	465
Research and development	1,456	219
General and administrative	798	175
Total stock-based compensation expense	$ 5,376	$ 895

See Notes to Condensed Consolidated Financial Statements.

RIVERBED TECHNOLOGY, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Three months ended March 31,	
	2007	2006
Operating Activities:		
Net income (loss)	$ 3,259	$ (4,286)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation	979	332
Stock-based compensation	5,376	896
Revaluation and amortization of warrants	—	177
Provision for trade receivable allowances	88	57
Changes in operating assets and liabilities:		
(Increase) in trade receivables	(3,770)	(1,263)
(Increase) in inventory	(784)	(1,655)
(Increase) in prepaid expenses and other assets	(362)	(883)
Increase (decrease) in accounts payable and other current liabilities	(804)	251
Increase in income taxes payable	50	32
Increase in deferred revenue	2,987	1,507
Net cash provided by (used in) operating activities	7,019	(4,835)
Investing Activities:		
Capital expenditures	(1,518)	(630)
Purchase of available for sale securities, net of maturities	(3,945)	—
Increase in other assets	(1,600)	—
Net cash used in investing activities	(7,063)	(630)
Financing Activities:		
Proceeds from issuance of convertible preferred stock, net of issuance costs	—	19,915
Proceeds from issuance of common stock, net of repurchases	81	91
Proceeds from follow-on public offering of common stock	87,664	—
Payments of debt	—	(313)
Net cash provided by financing activities	87,745	19,693
Effect of exchange rate changes on cash and cash equivalents	4	2
Net increase in cash and cash equivalents	87,705	14,230
Cash and cash equivalents at beginning of period	105,330	10,410
Cash and cash equivalents at end of period	$ 193,035	$ 24,640

See Notes to Condensed Consolidated Financial Statements.

RIVERBED TECHNOLOGY, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

Organization

Riverbed Technology, Inc. was founded on May 23, 2002 and has developed a comprehensive solution to the fundamental problems of wide-area distributed computing. Our Steelhead® appliances enable our customers simply and efficiently to improve the performance of their applications and access to their data over wide area networks, or WANs. We began commercial shipments of our products in May 2004.

Public Offerings

In September 2006, we completed our initial public offering, or IPO, of common stock in which we sold and issued 9,990,321 shares of our common stock, including 1,290,321 shares sold by us pursuant to the underwriters' exercise of their over-allotment option, at an issue price of $9.75 per share. We raised a total of $97.4 million in gross proceeds from the IPO, or approximately $87.5 million in net proceeds after deducting underwriting discounts and commissions of $6.8 million and other offering costs of $3.1 million. Upon the closing of the IPO, all shares of convertible preferred stock outstanding automatically converted into 39,441,439 shares of common stock.

In February 2007, we completed a follow-on public offering of common stock in which we sold and issued 2,854,671 shares of our common shock, including 250,000 shares sold by us pursuant to the underwriters' partial exercise of their over-allotment option, at an issue price of $32.50 per share. As a result of the offering, we raised a total of $92.8 million in gross proceeds, or approximately $87.7 million in net proceeds after deducting underwriting discounts and commissions of $4.2 million and other offering costs of $0.9 million.

Significant Accounting Policies

Basis of Presentation

The condensed consolidated financial statements include our accounts and the accounts of our wholly owned subsidiaries. Intercompany transactions and balances have been eliminated. The accompanying condensed consolidated balance sheet as of March 31, 2007, the condensed consolidated statements of operations for the three months ended March 31, 2007 and March 31, 2006, and the condensed consolidated statements of cash flows for the three months ended March 31, 2007 and March 31, 2006 are unaudited. The accompanying statements should be read in conjunction with the audited consolidated financial statements and related notes contained in our Annual Report on Form 10-K for the year ended December 31, 2006.

The accompanying condensed consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles, or GAAP, pursuant to the rules and regulations of the Securities and Exchange Commission, or SEC. They do not include all of the financial information and footnotes required by GAAP for complete financial statements. We believe the unaudited condensed consolidated financial statements have been prepared on the same basis as the audited financial statements and include all adjustments necessary for the fair presentation of our statement of financial position as of March 31, 2007, and our results of operations and cash flows for the three months ended March 31, 2007 and March 31, 2006. All adjustments are of a normal recurring nature. The results for the three months ended March 31, 2007 are not necessarily indicative of the results to be expected for any subsequent quarter or for the fiscal year ending December 31, 2007.

Other than the adoption of the provisions of Financial Accounting Standards Board Interpretation No. 48, *Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109*, or FIN 48, there have been no significant changes in our accounting policies during the three months ended March 31, 2007 as compared to the significant accounting policies described in our Annual Report on Form 10-K for the year ended December 31, 2006.

Use of Estimates

GAAP requires us to make certain estimates and judgments that can affect the reported amounts of assets and liabilities as of the date of the consolidated financial statements, as well as the reported amounts of revenue and expenses during the periods presented. Significant estimates and assumptions made by management

include the determination of the fair value of stock awards issued, the allowance for doubtful accounts, and inventory valuation. We believe that the estimates and judgments upon which we rely are reasonable based upon information available to us at the time that these estimates and judgments were made. To the extent there are material differences between these estimates and actual results, our consolidated financial statements will be affected.

Revenue Recognition

Our software is integrated on appliance hardware and is essential to the functionality of the product. As a result, we account for revenue in accordance with Statement of Position, or SOP, 97-2, *Software Revenue Recognition*, as amended by SOP 98-9, *Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions,* for all transactions involving the sale of software. We recognize product revenue when all of the following have occurred: (1) we have entered into a legally binding arrangement with a customer; (2) delivery has occurred, which is when product title has transferred to the customer; (3) customer payment is deemed fixed or determinable and free of contingencies and significant uncertainties; and (4) collection is probable.

Product revenue consists of revenue from sales of our appliances. Product sales include a perpetual license to our software. Product revenue is generally recognized upon transfer of title at shipment, assuming all other revenue recognition criteria are met. Shipping charges billed to customers are included in product revenue and the related shipping costs are included in cost of product revenue. Product revenue on sales to resellers is recorded once we have received persuasive evidence of an end-user and all other revenue recognition criteria have been met. Substantially all of our agreements do not provide for rights of return.

Substantially all of our product sales have been sold in combination with support services, which consist of software updates and support. Software updates provide customers with rights to unspecified software product upgrades and to maintenance releases and patches released during the term of the support period. Support includes internet access to technical content, telephone and internet access to technical support personnel and hardware support. Revenue for support services is recognized on a straight-line basis over the service contract term, which is typically one year.

We use the residual method to recognize revenue when a product agreement includes one or more elements to be delivered at a future date and vendor specific objective evidence, or VSOE, of the fair value of all undelivered elements exists. Through March 31, 2007, in virtually all of our contracts, the only element that remained undelivered at the time of delivery of the product was support and updates. Under the residual method, the fair value of the undelivered elements is deferred and the remaining portion of the contract fee is recognized as product revenue. If evidence of the fair value of one or more undelivered elements does not exist, all revenue is generally deferred and recognized when delivery of those elements occurs or when fair value can be established. When the undelivered element for which we do not have a fair value is support, revenue for the entire arrangement is bundled and recognized ratably over the support period. Revenue related to these arrangements is included in ratable product and related support and services revenue in the accompanying condensed consolidated statements of operations. VSOE of fair value for elements of an arrangement is based upon the normal pricing and discounting practices for those services when sold separately and for support and updates is additionally measured by the renewal rate offered to the customer. Prior to the third quarter of 2005, we had not established VSOE for the fair value of support contracts provided to our reseller class of customers. As such, prior to the third quarter of 2005, we recognized all revenue on transactions sold through resellers ratably over the term of the support contract, typically one year. Beginning in the third quarter of 2005, we determined that we had established VSOE of fair value of support for products sold to resellers, and began recognizing product revenue upon delivery, provided the remaining criteria for revenue recognition had been met.

Our fees are typically considered to be fixed or determinable at the inception of an arrangement, generally based on specific products and quantities to be delivered. Substantially all of our contracts do not include rights of return or acceptance provisions. To the extent that our agreements contain such terms, we recognize revenue once the acceptance provisions or right of return lapses. Payment terms to customers generally range from net 30 to 60 days. In the event payment terms are provided that differ from our standard business practices, the fees are deemed to not be fixed or determinable and revenue is recognized when the payments become due, provided the remaining criteria for revenue recognition have been met.

We assess the ability to collect from our customers based on a number of factors, including credit worthiness of the customer and past transaction history of the customer. If the customer is not deemed credit worthy, we defer all revenue from the arrangement until payment is received and all other revenue recognition criteria have been met.

Stock-Based Compensation

Prior to January 1, 2006, we accounted for employee stock options using the intrinsic value method in accordance with Accounting Principles Board, or APB, Opinion No. 25, *Accounting for Stock Issued to Employees*, and Financial Accounting Standards Board Interpretation, or FIN, 44, *Accounting for Certain Transactions Involving Stock Compensation, an Interpretation of APB No. 25,* and had adopted the disclosure only provisions of Statement of Financial Accounting Standards, or SFAS, No. 123, *Accounting for Stock-Based Compensation,* and SFAS No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure,* using the minimum value method.

In accordance with APB 25, stock-based compensation expense, which is a non-cash charge, resulted from stock option grants at exercise prices that, for financial reporting purposes, were deemed to be below the estimated fair value of the underlying common stock on the date of grant. During the years ended December 31, 2005 and 2004, we granted options to employees to purchase a total of 7,821,750 shares of common stock at exercise prices ranging from $0.10 to $1.75 per share. In connection with the preparation of our financial statements, we reassessed the estimated fair value of our common stock in light of the expected completion of our IPO. Based upon the reassessment, we determined that the reassessed fair value of the options to purchase 7,821,750 shares of common stock granted in 2004 and 2005 ranged from $0.10 to $4.07 per share. As a result of the reassessed fair value of options granted, we recorded deferred stock-based compensation relative to these options of $9.3 million and $567,000 in the years ended December 31, 2005 and 2004, respectively, which is being amortized over the service period, which generally corresponds to the vesting period of the applicable options on a straight-line basis. During the three months ended March 31, 2007 and March 31, 2006, we amortized $575,000 and $609,000, respectively, of deferred compensation expense, net of reversals, relative to these options.

Effective January 1, 2006, we adopted the fair value recognition provisions of SFAS No. 123(R), *Share-Based Payment*, using the prospective transition method, which requires us to apply the provisions of SFAS No. 123(R) to new awards granted, and to awards modified, repurchased or cancelled, after the effective date. Under this transition method, stock-based compensation expense recognized beginning January 1, 2006 is based on a combination of the following: (a) the grant-date fair value of stock option and employee stock purchase plan awards granted or modified after January 1, 2006; and (b) the amortization of deferred stock-based compensation related to stock option awards granted prior to January 1, 2006, which was calculated using the intrinsic value method as previously permitted under APB 25.

Under SFAS No. 123(R), we estimated the fair value of stock options granted using the Black-Scholes option-pricing formula and a single option award approach. This model utilizes the estimated fair value of common stock and requires that, at the date of grant, we use the expected term of the option, the expected volatility of the price of our common stock, risk free interest rates and expected dividend yield of our common stock. This fair value is then amortized on a straight-line basis over the requisite service periods of the awards, which is generally the vesting period. Options typically vest with respect to 25% of the shares one year after the options' vesting commencement date and the remainder ratably on a monthly basis over the following three years. On September 20, 2006, we implemented our Employee Stock Purchase Plan, or Purchase Plan. Purchase Plan shares typically vest over 2 years, and include two purchase dates per year.

The fair value of options granted and Purchase Plan shares were estimated at the date of grant using the following assumptions:

	Three months ended March 31, 2007	Three months ended March 31, 2006
Employee and Director Stock Options		
Expected life in years	4.5	6.1
Risk-free interest rate	4.5%-4.7%	4.7%
Volatility	61.6%	80.9%
Weighted average fair value of grants	$ 14.55-18.80	$4.59

The expected term represents the period that stock-based awards are expected to be outstanding, giving consideration to the contractual terms of the stock-based awards, vesting schedules and expectations of future

employee behavior as influenced by changes to the terms of our stock-based awards. For the three months ended March 31, 2007 and March 31, 2006, we have elected to use the simplified method of determining the expected term as permitted by SEC Staff Accounting Bulletin 107. The computation of expected volatility for the three months ended March 31, 2007 and March 31, 2006 is based on the historical volatility of comparable companies from a representative peer group selected based on industry and market capitalization data. As required by SFAS No. 123(R), management estimates expected forfeitures and is recognizing compensation costs only for those equity awards expected to vest.

For the three months ended March 31, 2007 and March 31, 2006, the total compensation cost related to stock-based awards granted under SFAS No. 123(R) to employees and directors but not yet recognized was approximately $12.3 million and $4.6 million, respectively, net of estimated forfeitures of $229,000 and $85,000, respectively. This cost will be amortized on a straight-line basis over the vesting period, which is typically 4 years. Amortization in the three months ended March 31, 2007 and March 31, 2006, was $2.2 million and $150,000, respectively.

As of March 31, 2007 there was $15.3 million left to be amortized under our Purchase Plan, which will be amortized over 18 months. Amortization in the three months ended March 31, 2007 was $2.6 million.

Inventory Valuation

Inventories consist of hardware and related component parts and are stated at the lower of cost (on a first-in, first-out basis) or market. A large portion of our inventory relates to evaluation units located at customer locations as some of our customers test our equipment prior to purchasing. Inventory that is obsolete or in excess of our forecasted demand is written down to its estimated realizable value based on historical usage, expected demand, and evaluation unit conversion rate and age. Inherent in our estimates of market value in determining inventory valuation are estimates related to economic trends, future demand for our products and technological obsolescence of our products. Inventory write-downs are reflected as cost of product and amounted to approximately $265,000 and $203,000 in the three months ended March 31, 2007 and March 31, 2006, respectively.

Software Development Costs

We account for costs incurred for computer software purchased or developed for internal use in accordance with SOP 98-1, *Accounting for the Cost of Computer Software Developed or Obtained for Internal Use*. SOP 98-1 requires companies to capitalize qualifying computer software costs, which are incurred during the application development stage and amortize them over the software's estimated useful life.

We capitalized $212,000 and $1.3 million in internal use software during the three months ended March 31, 2007 and the year ended December 31, 2006, respectively. These additions to software development costs were placed into service during the quarter ended March 31, 2007. Amortization expense related to software development costs totaled approximately $78,000 and $10,000 in the three months ended March 31, 2007 and March 31, 2006, respectively.

Warranty Reserve

Upon shipment of products to our customers, we provide for the estimated cost to repair or replace products that may be returned under warranty. Our warranty period is typically 12 months from the date of shipment to the end-user customer for hardware and 90 days for software. For existing products, the reserve is estimated based on actual historical experience. For new products, the warranty reserve is based on historical experience of similar products until such time as sufficient historical data has been collected for the new product. Warranty reserves amounted to approximately $837,000 and $735,000 at March 31, 2007 and December 31, 2006, respectively.

The following is a summary of the warranty reserve activity for the three months ended March 31, 2007:

(in thousands)	Beginning balance	Additions charged to operations	Warranty costs incurred	Ending balance
Three months ended March 31, 2007	$ 735	$ 344	$ (242)	$ 837

Deferred Inventory Costs

When our products have been delivered, but the product revenue associated with the arrangement has been deferred as a result of not meeting the revenue recognition criteria in SOP 97-2, we also defer the related inventory costs for the delivered items in accordance with Accounting Research Bulletin 43, *Restatement and Revision of Accounting Research Bulletins.* Deferred inventory costs amounted to approximately $3.3 million and $3.5 million at March 31, 2007 and December 31, 2006, respectively, and are included in prepaid expenses and other current assets in the condensed consolidated balance sheets.

Spares

We hold spare parts to service our customers who purchase support. We classify spare parts as other long term assets and amortize the spares over an estimated useful life of three years. At March 31, 2007 and December 31, 2006 we had $922,000 and $876,000, respectively, of spare inventory, net of accumulated amortization, in other long term assets.

Accounting for Income Taxes

We account for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*. Deferred income taxes are recorded for the expected tax consequences of temporary differences between the tax basis of assets and liabilities for financial reporting purposes and amounts recognized for income tax purposes. We have recorded a valuation allowance to reduce our deferred tax assets to the amount of future tax benefit that is more likely than not to be realized.

Concentration of Credit Risk

Financial instruments that are potentially subject to concentrations of credit risk consist primarily of cash, cash equivalents, marketable securities, and trade receivables. Investment policies have been implemented that limit investments to investment grade securities. The risk with respect to trade receivables is mitigated by credit evaluations we perform on our customers and by the diversification of our customer base. Collateral is not required for trade receivables. We derived 15 % of our revenue, approximately $6.4 million, from one customer in the three months ended March 31, 2007. This revenue was domestic and generated in our indirect sales channel. No customers represented more than 10% of our revenue for the three months ended March 31, 2006.

We outsource the production of our hardware to third-party manufacturing facilities. Some of the components in our products are available only from limited sources of supply. Through March 31, 2007, we had no long-term contractual commitment with any manufacture.

Research and Development

All costs to develop our products are expensed as incurred. Software development costs can be capitalized beginning when a product's technological feasibility has been established and ending when a product is available for general release to customers. Generally, our products are released soon after technological feasibility has been established. As a result, costs subsequent to achieving technological feasibility have not been significant and all software development costs have been expensed as incurred.

2. NET INCOME (LOSS) PER COMMON SHARE

Basic net income (loss) per common share is computed by dividing net loss by the weighted average number of vested common shares outstanding during the period. Diluted net loss per common share is computed by giving effect to all potential dilutive common shares, including options, common stock subject to repurchase, warrants and convertible preferred stock.

The following table sets forth the computation of income (loss) per share:

(in thousands, except per share data)	Three months ended March 31, 2007	2006
Net income (loss)	$ 3,259	$ (4,286)
Weighted average common shares outstanding net of weighted-average shares subject to repurchase - basic	65,037	12,010
Weighted average common shares outstanding net of weighted-average shares subject to repurchase - diluted	70,350	12,010
Basic net income (loss) per share	$ 0.05	$ (0.36)
Diluted net income (loss) per share	$ 0.05	$ (0.36)

The following weighted average outstanding options, common stock subject to repurchase and convertible preferred stock were excluded from the computation of diluted net loss per common share for the periods presented because including them would have had an antidilutive effect:

(in thousands)	Three months ended March 31, 2007	2006
Options to purchase common stock and common stock subject to repurchase	398	7,716
Convertible preferred stock (as converted basis)	—	39,442
Convertible stock warrants (as converted basis)	—	133

3. CASH, CASH EQUIVALENTS, MARKETABLE SECURITIES AND RESTRICTED CASH

Cash, Cash Equivalents and Marketable Securities

Cash and cash equivalents consist primarily of highly liquid investments in time deposits held at major banks, commercial paper, United States government agency discount notes, money market mutual funds and other money market securities with remaining maturities at date of purchase of 90 days or less. The carrying value of cash and cash equivalents at March 31, 2007 and December 31, 2006 was approximately $193.0 million and $105.3 million, respectively, and the weighted average interest rates were 5.4% and 5.3%, respectively.

Marketable securities, which are classified as available for sale at March 31, 2007, are carried at fair value, with the unrealized gains and losses, net of tax, reported as a separate component of stockholders' equity. Marketable securities consist of commercial paper and certificates of deposit with original maturities of one year or less. As of March 31, 2007 and December 31, 2006, amortized cost of marketable securities equals fair value.

Restricted Cash

Pursuant to certain lease agreements and as security for our merchant services agreement with our financial institution, we are required to maintain cash reserves, classified as restricted cash. Current restricted cash totaled $121,000 and $121,000 at March 31, 2007 and December 31, 2006, respectively, and long-term restricted cash totaled $3.1 million and $1.5 million at March 31, 2007 and December 31, 2006, respectively. Long term restricted cash is included in other assets in the condensed consolidated balance sheets and consists primarily of $3.0 million held as collateral for letters of credit for the security deposit on the leases of our corporate headquarters and is restricted until the end of the lease terms on August 30, 2010 and July 31, 2014.

4. INVENTORY

Inventories consist primarily of hardware and related component parts and are stated at the lower of cost (on a first-in, first-out basis) or market. Inventory is comprised of the following:

(in thousands)	March 31, 2007	December 31, 2006
Raw materials	$ 414	$ 320
Finished goods	6,986	7,132
Total	$ 7,400	$ 7,452

5. FIXED ASSETS

Fixed assets are stated at the lower of cost or net realizable value. Depreciation is calculated using the straight-line method over the estimated useful lives of the respective assets, which is typically two to three years. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term or estimated useful life of the asset. Repair and maintenance costs are expensed as incurred.

Fixed assets consisted of the following:

(in thousands)	Estimated Useful Lives	March 31, 2007	December 31, 2006
Computer hardware	3 years	$ 2,689	$ 2,315
Computer software	2-5 years	1,622	1,411
Research and development lab equipment	3 years	4,169	3,152
Office equipment, furniture and fixtures	3 years	1,492	965
Leasehold improvements	2-5 years	4,112	2,646
Total fixed assets		14,084	10,489
Accumulated depreciation and amortization		(3,631)	(2,771)
Fixed assets, net		$ 10,453	$ 7,718

6. DEFERRED REVENUE

Deferred revenue consisted of the following:

(in thousands)	March 31, 2007	December 31, 2006
Product	$ 4,061	$ 2,895
Support and services	11,770	9,456
Ratable product and related support and services	2,710	4,486
Deferred revenue, current	18,541	16,837
Support and services, non-current	3,515	2,220
Ratable product and related support and services, non-current	13	25
Deferred revenue, non-current	3,528	2,245
Total deferred revenue	$ 22,069	$ 19,082

Deferred product revenue relates to arrangements where not all revenue recognition criteria have been met. Deferred support revenue represents customer payments made in advance for annual support contracts. Support contracts are typically billed on a per annum basis in advance and revenue is recognized ratably over the support period. Deferred ratable product and related support and services revenue consists of deferred revenue on transactions where VSOE of fair value of support had not been established and the entire arrangement is being recognized ratably over the support period. Deferred revenue related to our OEM arrangements where we have not established VSOE of fair value of support is included in deferred ratable product and related support and services revenue.

7. GUARANTEES

Our agreements with customers, as well as our reseller agreements, generally include certain provisions for indemnifying customers and resellers and their affiliated parties against liabilities if our products infringe a third party's intellectual property rights. To date, we have not incurred any material costs as a result of such indemnifications and have not accrued any liabilities related to such obligations in our condensed consolidated financial statements.

As permitted or required under Delaware law and to the maximum extent allowable under that law, we have certain obligations to indemnify our officers, directors and certain key employees for certain events or occurrences while the officer, director or employee is or was serving at our request in such capacity. These indemnification obligations are valid as long as the director, officer or employee acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The maximum potential

amount of future payments we could be required to make under these indemnification obligations is unlimited; however, we have a director and officer insurance policy that mitigates our exposure and enables us to recover a portion of any future amounts paid.

8. LEASE COMMITMENTS

We lease our facilities under non-cancelable operating lease agreements. Future minimum commitments for these operating leases in place as of March 31, 2007 with a remaining non-cancelable lease term in excess of one year are as follows:

(in thousands)	March 31, 2007
2007 (the nine months ended December 31)	$ 2,234
2008	3,450
2009	3,063
2010	3,145
2011 and thereafter	14,142
Total	$ 26,034

The terms of certain lease agreements provide for rental payments on a graduated basis. We recognize rent expense on the straight-line basis over the lease period and have accrued for rent expense incurred but not paid. Rent expense under operating leases was $803,000 and $387,000 for the three months ended March 31, 2007 and March 31, 2006, respectively.

On September 26, 2006, we entered into an Agreement of Sublease, or Sublease, for new corporate headquarters. The initial term of the Sublease was from February 1, 2007 to August 30, 2010. The initial aggregate minimum lease commitment was $5.1 million. The remaining aggregate minimum lease commitment as of March 31, 2007 is $4.9 million and is included in the table above. The Sublease also calls for additional payments for electricity and a portion of real estate taxes and operating expenses. We have entered into a letter of credit in the amount of $1.4 million to serve as the security deposit for the Sublease which is included in other assets in the condensed consolidated balance sheet.

On March 21, 2007, we entered into a lease agreement to expand our corporate headquarters as well as extend the term of the existing Sublease mentioned above. The term of the lease for the additional space is from March 31, 2007 to July 31, 2014 and the term for the extension of our existing space is September 1, 2010 to July 31, 2014. The aggregate minimum lease commitment for the expansion of our corporate headquarters is $17.2 million and is reflected in the table above. The lease also calls for additional payments for electricity and a portion of real estate taxes and operating expenses. We have entered into an additional letter of credit in the amount of $1.6 million to serve as the security deposit for the lease which is included in other assets in the condensed consolidated balance sheet. In addition, the lease requires an increase of approximately $500,000 to the letter of credit in 2009.

On January 25, 2007, we entered into a lease agreement for office space in New York. The term of the lease is five years commencing on the date the premises are delivered vacant and for exclusive possession by us. The aggregate minimum lease commitment is $1.2 million, which is included in the table above. As of March 31, 2007, the premises had not been delivered to us.

9. COMMON STOCK

In February 2007, we completed a follow-on public offering of common stock in which we sold and issued 2,854,671 shares of our common shock, including 250,000 shares sold by us pursuant to the underwriters' partial exercise of their over-allotment option, at an issue price of $32.50 per share. As a result of the offering, we raised a total of $92.8 million in gross proceeds, or approximately $87.7 million in net proceeds after deducting underwriting discounts and commissions of $4.2 million and other offering costs of $0.9 million.

In September 2006, we completed our IPO of common stock in which we sold and issued 9,990,321 shares of our common stock, including 1,290,321 shares sold by us pursuant to the underwriters' exercise of their over-allotment option, at an issue price of $9.75 per share. As a result of the IPO, we raised a total of $97.4 million in gross proceeds from the IPO, or approximately $87.5 million in net proceeds after deducting underwriting discounts and commissions of $6.8 million and other offering costs of $3.1 million.

In February 2006, we sold 3,738,318 shares of our Series D convertible preferred stock for net proceeds of $19.9 million. Upon the closing of the IPO, all shares of our convertible preferred stock outstanding automatically converted into 39,441,439 shares of common stock.

In July 2002, our board of directors adopted the 2002 Stock Plan (2002 Plan). In September 2006, all shares of common stock available for grant under the 2002 Plan transferred to the 2006 Equity Incentive Plan (2006 Plan).

In September 2006, in connection with our IPO, our board of directors approved the 2006 Plan, the 2006 Employee Stock Purchase Plan, or Purchase Plan, and the 2006 Director Stock Option Plan. The following number of shares was reserved under these plans:

	Shares
2006 Equity Incentive Plan	3,000,000
2006 Employee Stock Purchase Plan	1,500,000
2006 Director Option Plan	500,000

Additionally, all 429,880 available shares under the 2002 Plan were transferred to the 2006 Plan.

The Plans provide for automatic replenishments as follows:

- 2006 Plan—increased on January 1 of each year for five years, beginning in 2007, by a number equal to the lesser of (i) 4,000,000 shares or (ii) 5% of the shares of common stock outstanding at that time or (iii) the number of shares determined by the Board.

- 2006 Purchase Plan—increased on January 1 of each year by a number of shares equal to the lesser of (i) 750,000 shares or (ii) 1% of the shares of common stock outstanding at that time or (iii) the number of shares determined by the Board.

- 2006 Director Option Plan—increased on January 1 of each year by 250,000 shares.

Options issued under our stock option plans are generally for periods not to exceed 10 years and are issued at the fair value of the shares of common stock on the date of grant as determined by the Board of Directors. Following the IPO, the fair value of our common stock is determined by the last sale price of such stock on the Nasdaq Global Market on the date of grant. Options typically vest with respect to 25% of the shares one year after the options' vesting commencement date and the remainder ratably on a monthly basis over the following three years. Options granted under the 2002 Plan prior to May 31, 2006 have a maximum term of ten years. Beginning May 31, 2006, options granted under the 2002 Plan had a maximum term of seven years. Options granted under the 2006 Plan had a maximum term of seven years. Prior to March 28, 2006, employees in the United States had the right to exercise their options granted under the 2002 Plan prior to vesting. For options granted beginning March 28, 2006, optionees may only exercise vested shares. Any unvested stock issued under the 2002 Plan is subject to repurchase by us. Grants made pursuant to the 2006 Plan generally do not provide for the immediate exercise of options.

The 2006 Purchase Plan became effective on September 20, 2006, the effective date of the registration statement relating to our IPO. Under the Purchase Plan, employees may purchase shares of common stock through payroll deductions at a price per share that is 85% of the lesser of the fair market value of our common stock as of the beginning of an applicable offering period or the applicable purchase date, with purchases generally every six months. Employees' payroll deductions may not exceed 15% of their compensation. Employees may purchase up to 2,000 shares per purchase period provided that the value of the shares purchased in any calendar year may not exceed $25,000, as calculated pursuant to the purchase plan.

The following tables summarize information about stock options outstanding:

	Shares Available	Options Outstanding	Weighted Average Exercise Price Per Share
	(in thousands, except per share amounts)		
Balance, December 31, 2006	3,333	7,044	$ 6.18
Additional options authorized	3,559	—	
Granted	(792)	792	$ 30.36
Exercised		(58)	$ 1.39
Repurchased	—	—	
Canceled	51	(51)	$ 3.75
Balance, March 31, 2007	6,151	7,727	$ 8.71

The range of exercise prices for options outstanding at March 31, 2007 was $0.05 to $34.88.

Range of Exercise Price	Options Outstanding as of March 31, 2007 (in thousands)	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price Per Share	Aggregate Intrinsic Value (in thousands)
$ 0.05 – $ 0.60	1,288	7.94	$ 0.37	
$ 0.61 – $ 5.75	2,208	8.66	$ 3.35	
$ 5.76 – $16.72	2,818	6.59	$ 6.61	
$16.73 – $34.88	1,413	6.75	$ 28.88	
$ 0.05 – $34.88	7,727	7.44	$ 8.71	$ 149,446
Exercisable	3,006	8.46	$ 2.50	$ 75,580
Not exercisable	4,721	7.65	$ 12.67	$ 73,866
Vested and expected to vest (1) (2)	9,573	7.95	$ 6.96	$ 198,398

(1) Includes shares that are exercised but not vested.

(2) The unrecognized compensation expense associated under the fair value method for shares expected to vest (unvested shares net of expected forfeitures) as of March 31, 2007 was approximately $34.8 million and is expected to be recognized over a weighted average period of approximately 2.5 years.

The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying stock option awards and the closing price of our common stock at March 30, 2007. During the three months ended March 31, 2007, the aggregate intrinsic value of stock option awards exercised was $1.7 million, determined at the date of option exercise.

The per share weighted-average fair value and exercise price of options granted in the three months ended March 31, 2007 was $16.35 and $30.36, respectively.

At March 31, 2007 and December 31, 2006, there were 2,014,000 and 2,372,000 shares, respectively, subject to repurchase under all common stock repurchase agreements. The cash received from the sale of these shares is initially recorded as a liability and is subsequently reclassified to common stock as the shares vest. At March 31, 2007 and December 31, 2006, there was $572,000 and $659,000, respectively, recorded in accrued liabilities and other long-term liabilities related to the issuance of these shares.

10. INCOME TAXES

For the three months ended March 31, 2007 we generated operating profits. After applying our available net federal and state operating loss and tax credit carryforwards, our tax provision accrued at March 31, 2007 relates primarily to foreign and state provisions for income tax.

As of December 31, 2006, we recorded a full valuation allowance against our net deferred tax assets due to operating losses incurred since inception. Realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Accordingly, the net deferred tax assets were fully offset by a valuation allowance. If not utilized, the federal and state net operating loss and tax credit carryforwards will expire between 2013 and 2026. Utilization of these net operating losses and credit carryforwards may be subject to an annual limitation due to provisions of the Internal Revenue Code of 1986, as amended, that are applicable if we experience an “ownership change” that may occur, for example, by a change in significant shareholder allocation or equity structure.

As of March 31, 2007, our tax provision includes a deferred tax benefit for the projected reduction in the valuation allowance as a result of forecasted taxable income and corresponding utilization of net operation losses and tax credit carryforwards. In determining future taxable income, we make assumptions to forecast federal, state and international operating income, the reversal of temporary differences, and the implementation of any feasible and prudent tax planning strategies. The assumptions require significant judgment regarding the forecasts of future taxable income, and are consistent with our forecasts used to manage our business. We intend to maintain the remaining valuation allowance until sufficient further positive evidence exists to support a reversal of, or decrease, in the valuation allowance.

We adopted the provisions of FIN 48 on January 1, 2007. The application of this Interpretation requires a two-step process that separates recognition from measurement. Upon implementing FIN 48 and performing the analysis, we will not recognize any increase or decrease to reserves for uncertain tax positions.

We have elected to record interest and penalties recognized in accordance with FIN 48 in the financial statements as income taxes. Any subsequent change in classification of FIN 48 interest and penalties will be treated as a change in accounting principle subject to the requirements of SFAS No. 154, *Accounting Changes and Error Corrections*.

11. SEGMENT INFORMATION

SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, establishes standards for reporting information about operating segments. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. Our chief operating decision maker is our Chief Executive Officer. Our Chief Executive Officer reviews financial information presented on a consolidated basis, accompanied by information about revenue by geographic region for purposes of allocating resources and evaluating financial performance. We have one business activity and there are no segment managers who are held accountable for operations, operating results and plans for levels or components below the consolidated unit level. Accordingly, we are considered to be in a single reporting segment and operating unit structure.

Revenue by geography is based on the billing address of the customer. The following table sets forth revenue and long-lived assets by geographic area.

Revenue

(in thousands)	Three months ended March 31, 2007	2006
Domestic revenue	$ 29,579	$ 9,464
International revenue	13,205	4,257
Total revenue	$ 42,784	$ 13,721

Long-lived Assets

(in thousands)	March 31, 2007	December 31, 2006
Domestic long-lived assets	$ 10,216	$ 7,509
International long-lived assets	237	209
	$ 10,453	$ 7,718

12. LEGAL MATTERS

From time to time, we may be involved in various legal proceedings arising in the ordinary course of business. There are no matters at March 31, 2007 that, in the opinion of management, might have a material adverse effect on our financial position, results of operations or cash flows.

13. NEW ACCOUNTING PRONOUNCEMENTS

In February 2007, the FASB issued Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115* , which allows an entity the irrevocable option to elect fair value for the initial and subsequent measurement for certain financial assets and liabilities under an instrument-by-instrument election. Subsequent measurements for the financial assets and liabilities an entity elects to fair value will be recognized in earnings. SFAS No. 159 also establishes additional disclosure requirements. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007, with early adoption permitted provided that the entity also adopts SFAS No. 157. We are currently evaluating the impact of the adoption of SFAS No. 159 on our consolidated financial statements.

The Company adopted the provisions of FIN 48 on January 1, 2007. The application of this Interpretation requires a two-step process that separates recognition from measurement. The first step is determining whether a tax position has met the recognition threshold; the second step is measuring a tax position that meets the recognition threshold. The recognition threshold is met when the taxpayer (the reporting enterprise) concludes that it is more likely than not that the taxpayer will sustain the benefit taken or expected to be taken in the tax return in a dispute with taxing authorities if the taxpayer takes the dispute to the court of last resort. Upon implementing FIN 48 and performing the analysis, we will not recognize any increase or decrease to reserves for uncertain tax positions.

We have elected to record interest and penalties recognized in accordance with FIN 48 in the condensed consolidated financial statements as income taxes. Any subsequent change in classification of FIN 48 interest and penalties will be treated as a change in accounting principle subject to the requirements of SFAS No. 154, *Accounting Changes and Error Corrections.*

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes included elsewhere in this Form 10-Q. The information in this Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. Such statements are based upon current expectations that involve risks and uncertainties. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. For example, words such as "may," "will," "should," "estimates," "predicts," "potential," "continue," "strategy," "believes," "anticipates," "plans," "expects," "intends" and similar expressions are intended to identify forward-looking statements. Our actual results and the timing of certain events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause or contribute to such a discrepancy include, but are not limited to, those discussed elsewhere in this Form 10-Q in the section titled "Risk Factors" and the risks discussed in our other SEC filings. We undertake no obligation to publicly release any revisions to the forward-looking statements after the date of this Form 10-Q.

Overview

We were founded in May 2002 by experienced industry leaders with a vision to improve the performance of wide-area distributed computing. Having significant experience in caching technology, our executive management team understood that existing approaches failed to address adequately all of the root causes of this poor performance. We determined that these performance problems could be best solved by simultaneously addressing inefficiencies in software applications and wide area networks, or WANs, as well as insufficient or unavailable bandwidth. This innovative approach served as the foundation of the development of our products. We began commercial shipments of our products in May 2004 and now offer ten models of our Steelhead appliances as well as our Central Management Console and Interceptor.

We are headquartered in San Francisco, California. Our personnel are located throughout the United States and in numerous countries worldwide. We expect to continue to add personnel in the United States and internationally to provide additional geographic sales and technical support coverage.

In September 2006, we completed our initial public offering, or IPO, of common stock in which we sold and issued 9,990,321 shares of our common stock, at an issue price of $9.75 per share. We raised a total of $97.4 million in gross proceeds from the IPO, or approximately $87.5 million in net proceeds after deducting underwriting discounts and commissions of $6.8 million and other offering costs of $3.1 million. Upon the closing of the IPO, all shares of convertible preferred stock outstanding automatically converted into 39,441,439 shares of common stock.

In February 2007, we completed a follow-on public offering of common stock in which we sold and issued 2,854,671 shares of our common shock, including 250,000 shares sold by us pursuant to the underwriters' partial exercise of their over-allotment option, at an issue price of $32.50 per share. As a result of the offering, we raised a total of $92.8 million in gross proceeds, or approximately $87.7 million in net proceeds after deducting underwriting discounts and commissions of $4.2 million and other offering costs of $0.9 million.

We believe that our current value proposition, which enables customers to improve the performance of their applications and access to their data across WANs, while also offering the ability to simplify IT infrastructure and realize significant capital and operations cost savings, should allow us to grow our business. Our product revenue growth rate will depend significantly on continued growth in the wide-area data services, or WDS, market and our ability to continue to attract new customers in that market. Our growth in support and services revenue is dependent upon increasing the number of products under support contracts, which is dependent on both growing our installed base of customers and renewing existing support contracts. Our future profitability and rate of growth, if any, will be directly affected by the continued acceptance of our products in the marketplace, as well as the timing and size of orders, product mix, average selling prices and costs of our products and general economic conditions. We achieved profitability in the first quarter of 2007. Our ability to maintain profitability will also be affected by the extent to which we must incur additional expenses to expand our sales, marketing, development, and general and administrative capabilities to grow our business. The largest component of our expenses is personnel costs. Personnel costs consist of salaries, benefits and incentive compensation for our employees, including commissions for sales personnel and stock-based compensation. We expect that each of these expenses will continue to grow in absolute dollars and decrease as a percentage of revenue over time.

Revenue. We derive our revenue from sales of our products and support and services. Our revenue has grown rapidly since we began shipping products in May 2004, increasing from $2.6 million in 2004 to $90.2 million in 2006. Revenue for the three months ended March 31, 2007 was $42.8 million compared to $13.7 million for the

three months ended March 31, 2006. This growth has been driven primarily by an expansion of our customer base, coupled with increased purchases from existing customers. As of December 31, 2004, our products had been sold to 68 customers as compared to more than 2,000 customers as of March 31, 2007.

We sell our products directly through our sales force and indirectly through resellers. We derived 75% of our revenue through indirect channels in the year ended December 31, 2006 and 91% of our revenue through indirect channels in the first quarter of 2007. We expect revenue from resellers to continue to constitute a substantial majority of our future revenue.

Cost of Revenue. Cost of product revenue consists of the costs of the appliance hardware, manufacturing, shipping and logistics costs and expenses for inventory obsolescence and warranty obligations. We utilize third parties to design and manufacture our Steelhead appliance hardware, embed our proprietary software and perform shipping logistics. Cost of support and service revenue is primarily comprised of the personnel costs of providing technical support and professional services. Cost of ratable product and related support and services consists of hardware, support and service costs related to transactions recognized ratably. As we expand internationally and into other sectors, we may incur additional costs to conform our products to comply with local laws or local product specifications. In addition, as we expand internationally, we will continue to hire additional technical support personnel to support our growing international customer base.

Gross Margin. Our gross margin has been and will continue to be affected by a variety of factors, including the mix and average selling prices of our products, support and services, new product introductions and enhancements, the cost of our appliance hardware, and the mix of distribution channels through which our products are sold.

Operating Expenses. Operating expenses consist of sales and marketing, research and development and general and administrative expenses. Personnel-related costs are the most significant component of each of these expense categories. We grew from 70 employees at December 31, 2004 to 378 employees at March 31, 2007. We expect to continue to hire significant numbers of new employees to support our anticipated growth. The timing of these additional hires has and could materially affect our operating expenses, both in absolute dollars and as a percentage of revenue, in any particular period. We anticipate that each of the following categories of operating expenses will increase in dollar amounts. We expect interest income to increase in 2007 compared to 2006 as a result of investing cash balances from the proceeds of our IPO and follow-on public offering.

Sales and marketing expenses represent the largest component of our operating expenses and include personnel costs, sales commissions, marketing programs and facilities costs. Marketing programs are intended to generate revenue from new and existing customers, and are expensed as incurred. We expect sales and marketing expenses to increase as we hire additional personnel and spend more on marketing programs with the intent to grow our revenue. The majority of our international personnel are engaged in sales and support activities. The percentage of sales and marketing expenses incurred internationally grew from 11% in 2004 to 27% in the three months ended March 31, 2007.

Research and development expenses primarily include personnel costs and facilities costs. Quality assurance, infrastructure, depreciation and related costs of product quality efforts are also included. We expense research and development expenses as incurred. We are devoting substantial resources to the continued development of additional functionality for existing products and the development of new products. We intend to continue to invest significantly in our research and development efforts because we believe they are essential to maintaining our competitive position. Investments in research and development personnel costs are expected to increase in total dollars, but to decrease as a percentage of revenue over time. Investments in research and development assets will affect our liquidity by increasing cash used in investing activities.

General and administrative expenses consist primarily of compensation and related costs for personnel and facilities related to our executive, finance, human resource, information technology and legal organizations, and fees for professional services. Professional services include outside legal, audit and information technology consulting costs.

Stock-Based Compensation Expense. Effective January 1, 2006, we began to measure and recognize compensation expense for all stock-based payments at fair value, in accordance with Statement of Financial Accounting Standard No. 123 (revised 2004) *Share-Based Payment*, or SFAS No. 123(R). Prior to the adoption of SFAS No. 123 (R) we accounted for stock options under the intrinsic value method in accordance with Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, or APB 25. In the fourth quarter of 2006, we implemented the 2006 Employee Stock Purchase Plan, or Purchase Plan. Under the Purchase Plan,

employees may purchase shares of common stock at a price per share that is 85% of the lesser of the fair market value of our common stock as of the beginning or the end of a purchase period. The Purchase Plan is compensatory and results in compensation expense to be accounted for under SFAS No. 123(R). We expect to continue to incur significant stock-based compensation expense.

Other Income (expense), net. Other income (expense), net includes interest income on cash balances. Cash has historically been invested primarily in money market funds. Other income, net also includes losses or gains on conversion of non-U.S. dollar transactions into U.S. dollars. In 2006, other income (expense), net included the impact of recording our outstanding preferred stock warrants at fair value. Subsequent to our IPO, we were no longer required to remeasure our warrants to fair value. As of March 31, 2007, all of our warrants were exercised.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with United States generally accepted accounting principles, or GAAP. These accounting principles require us to make certain estimates and judgments that can affect the reported amounts of assets and liabilities as of the date of the consolidated financial statements, as well as the reported amounts of revenue and expenses during the periods presented. We believe that the estimates and judgments upon which we rely are reasonable based upon information available to us at the time that these estimates and judgments are made. To the extent there are material differences between these estimates and actual results, our consolidated financial statements could be adversely affected.

The accounting policies that reflect our more significant estimates and judgments and which we believe are the most critical to aid in fully understanding and evaluating our reported financial results include revenue recognition, stock-based compensation, inventory valuation and allowances for doubtful accounts.

Revenue Recognition

Our software is integrated on appliance hardware and is essential to the functionality of the product. As a result, we account for revenue in accordance with Statement of Position, or SOP, 97-2, *Software Revenue Recognition*, as amended by SOP 98-9, *Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions,* for all transactions involving the sale of software. We recognize product revenue when all of the following have occurred: (1) we have entered into a legally binding arrangement with a customer; (2) delivery has occurred, which is when product title transfers to the customer; (3) customer payment is deemed fixed or determinable and free of contingencies and significant uncertainties; and (4) collection is probable.

Product revenue consists of revenue from sales of our appliances. Product sales include a perpetual license to our software. Product revenue is generally recognized upon transfer of title at shipment, assuming all other revenue recognition criteria are met. Shipping charges billed to customers are included in product revenue and the related shipping costs are included in cost of product revenue. Product revenue on sales to resellers is recorded once we have received persuasive evidence of an end-user and all other revenue recognition criteria have been met. Substantially all of our agreements do not provide for rights of return.

Substantially all of our products have been sold in combination with product support services, which consist of software updates and support. Software updates provide customers with rights to unspecified software product upgrades and to maintenance releases and patches released during the term of the support period. Support includes internet access to technical content, telephone and internet access to technical support personnel and hardware support. Revenue for support services is recognized on a straight-line basis over the service contract term, which is typically one year.

We use the residual method to recognize revenue when a product agreement includes one or more elements to be delivered at a future date and vendor specific objective evidence, or VSOE, of the fair value of all undelivered elements exists. Through March 31, 2007, in virtually all of our contracts, the only element that remained undelivered at the time of delivery of the product was support and updates. Under the residual method, the fair value of the undelivered elements is deferred and the remaining portion of the contract fee is recognized as product revenue. If evidence of the fair value of one or more undelivered elements does not exist, all revenue is generally deferred and recognized when delivery of those elements occurs or when fair value can be established. When the undelivered element is support, revenue for the entire arrangement is bundled and recognized ratably over the support period. Revenue related to these arrangements is included in ratable product and related support and services revenue in the accompanying consolidated statements of operations. VSOE of fair value for elements of an arrangement is based upon the normal pricing and discounting practices for those

services when sold separately, and for product support and updates, is additionally measured by the renewal rate offered to the customer. Prior to the third quarter of 2005, we had not established VSOE for the fair value of support contracts provided to our reseller class of customers. As such, prior to the third quarter of 2005, we recognized all revenue on transactions sold through resellers ratably over the term of the support contract, typically one year. Beginning in the third quarter of 2005, we determined that we had established VSOE of fair value of support for products sold to resellers, and began recognizing product revenue upon title transfer at shipment, provided the remaining criteria for revenue recognition had been met.

Our fees are typically considered to be fixed or determinable at the inception of an arrangement, generally based on specific products and quantities to be delivered. Substantially all of our contracts do not include rights of return or acceptance provisions. To the extent that our agreements contain such terms, we recognize revenue once the acceptance provisions or right of return lapses. Payment terms to customers generally range from net 30 to 60 days. In the event payment terms are provided that differ from our standard business practices, the fees are deemed to not be fixed or determinable and revenue is recognized when the payments become due, provided the remaining criteria for revenue recognition have been met.

We assess the ability to collect from our customers based on a number of factors, including credit worthiness of the customer and past transaction history of the customer. If the customer is not deemed credit worthy, we defer all revenue from the arrangement until payment is received and all other revenue recognition criteria have been met.

Stock-Based Compensation

Prior to January 1, 2006, we accounted for employee stock options using the intrinsic value method in accordance with Accounting Principles Board, or APB, Opinion No. 25, *Accounting for Stock Issued to Employees*, and Financial Accounting Standards Board Interpretation, or FIN, 44, *Accounting for Certain Transactions Involving Stock Compensation, an Interpretation of APB No. 25* and had adopted the disclosure only provisions of Statement of Financial Accounting Standards, or SFAS, No. 123, *Accounting for Stock-Based Compensation,* and SFAS No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure,* using the minimum value method.

In accordance with APB 25, stock-based compensation expense, which is a non-cash charge, resulted from stock option grants at exercise prices that, for financial reporting purposes, were deemed to be below the estimated fair value of the underlying common stock on the date of grant. During the years ended December 31, 2005 and 2004, we granted options to employees to purchase a total of 7,821,750 shares of common stock at exercise prices ranging from $0.10 to $1.75 per share. In connection with the preparation of our financial statements, we reassessed the estimated fair value of our common stock in light of the expected completion of our IPO. Based upon the reassessment, we determined that the reassessed fair value of the options to purchase 7,821,750 shares of common stock granted in 2004 and 2005 ranged from $0.10 to $4.07 per share. As a result of the reassessed fair value of options granted, we recorded deferred stock-based compensation relative to these options of $9.3 million and $567,000 in the years ended December 31, 2005 and 2004, respectively, which is being amortized over the service period, which generally corresponds to the vesting period of the applicable options on a straight-line basis. During the three months ended March 31, 2007 and March 31, 2006, we amortized $575,000 and $609,000, respectively, of deferred compensation expense, net of reversals, relative to these options.

Effective January 1, 2006, we adopted the fair value recognition provisions of SFAS No. 123(R), *Share-Based Payment*, using the prospective transition method, which requires us to apply the provisions of SFAS No. 123(R) to new awards granted, and to awards modified, repurchased or cancelled, after the effective date. Under this transition method, stock-based compensation expense recognized beginning January 1, 2006 is based on a combination of the following: (a) the grant-date fair value of stock option awards and employee stock purchase plan shares granted or modified after January 1, 2006; and (b) the amortization of deferred stock-based compensation related to stock option awards granted prior to January 1, 2006, which was calculated using the intrinsic value method as previously permitted under APB 25.

Under SFAS No. 123(R), we estimated the fair value of stock options granted using a Black-Scholes option-pricing formula and a single option award approach. This model utilizes the estimated fair value of common stock and requires that, at the date of grant, we use the expected term of the option, the expected volatility of the price of our common stock, risk free interest rates and expected dividend yield of our common stock. This fair value is then amortized on a straight-line basis over the requisite service periods of the awards, which is generally the

vesting period. Options typically vest with respect to 25% of the shares one year after the options' vesting commencement date and the remainder ratably on a monthly basis over the following three years. On September 20, 2006, we implemented our Purchase Plan. Shares granted under the Purchase Plan typically vest over two years, and include two purchase dates per year.

The fair value of options granted and Purchase Plan shares were estimated at the date of grant using the following assumptions:

	Three months ended March 31, 2007
Employee and Director Stock Options	
Expected life in years	4.5
Risk-free interest rate	4.5%-4.7%
Volatility	61.59%
Dividend yield	—
Weighted average fair value of grants	$ 14.55-18.80

The expected term represents the period that stock-based awards are expected to be outstanding, giving consideration to the contractual terms of the stock-based awards, vesting schedules and expectations of future employee behavior as influenced by changes to the terms of our stock-based awards. For the three months ended March 31, 2007 and March 31, 2006, we have elected to use the simplified method of determining the expected term as permitted by SEC Staff Accounting Bulletin 107. The computation of expected volatility for the three months ended March 31, 2007 and March 31, 2006 is based on the historical volatility of comparable companies from a representative peer group selected based on industry and market capitalization data. As required by SFAS No. 123(R), management estimates expected forfeitures and is recognizing compensation costs only for those equity awards expected to vest.

For the three months ended March 31, 2007 and March 31, 2006, the total compensation cost related to stock options granted under SFAS No. 123(R) to employees and directors but not yet recognized was approximately $12.3 million and $4.6 million, respectively, net of estimated forfeitures of $229,000 and $85,000, respectively. This cost will be amortized on a straight-line basis over the vesting period, which is typically 4 years. Amortization in the three months ended March 31, 2007 and March 31, 2006 was $2.2 million and $150,000, respectively.

As of March 31, 2007, there was $15.3 million left to be amortized under our Purchase Plan, which will be amortized over 18 months. Amortization in the year ended December 31, 2006 was $2.6 million.

Inventory Valuation

Inventories consist of hardware and related component parts and are stated at the lower of cost (on a first-in, first-out basis) or market. A large portion of our inventory relates to evaluation units located at customer locations as some of our customers test our equipment prior to purchasing. Inventory that is obsolete or in excess of our forecasted consumption is written down to estimated realizable value based on historical usage, expected demand and evaluation unit conversion rate and age. Inherent in our estimates of market value in determining inventory valuation are estimates related to economic trends, future demand for our products and technological obsolescence of our products. If future demand or market conditions are less favorable than our projections, additional inventory write-downs could be required and would be reflected in cost of product in the period the revision is made. Inventory write-downs are reflected as cost of product and amounted to approximately $265,000 and $203,000 for the three months ended March 31, 2007 and March 31, 2006, respectively.

Results of Operations

Revenue

We derive our revenue from sales of our appliances and product support and services. We began shipping our products in May 2004. We rely significantly, both domestically and internationally, on sales through indirect channels.

Product revenue primarily consists of revenue from sales of our Steelhead appliances and is typically recognized upon shipment. Support and services revenue includes unspecified software license updates and product support. Support revenue is recognized ratably over the contractual period, which is typically one year. Service revenue includes installation and training, which to date has been insignificant, and is recognized as the services are performed. Ratable product and related support and services revenue includes revenue from arrangements in which product and support are bundled and no VSOE of fair value for support pricing in the arrangements exists. The total revenue from these arrangements is recognized ratably over the support period, typically one year.

(dollars in thousands)	Three months ended March 31, 2007	2006
Total Revenue		
Total Revenue by Type:		
Product	$ 33,637	$ 10,836
Support and services	6,837	1,523
Ratable product and related support and services	2,310	1,362
% Revenue by Type:		
Product	79%	79%
Support and services	16%	11%
Ratable product and related support and services	5%	10%
Total Revenue by Geography:		
Domestic	29,579	9,464
International	13,205	4,257
% Revenue by Geography:		
Domestic	69%	69%
International	31%	31%
Total Revenue by Sales Channel:		
Direct	4,023	3,420
Indirect	38,761	10,301
% Revenue by Sales Channel:		
Direct	9%	25%
Indirect	91%	75%

Quarter Ended March 31, 2007 Compared to the Quarter Ended March 31, 2006: Product revenue increased in the three months ended March 31, 2007 as compared to the three months ended March 31, 2006 due primarily to an increase in new customers and additional purchases by existing customers. As of March 31, 2007, our products had been sold to over 2,000 customers, compared to approximately 755 as of March 31, 2006. We believe the market for our products has grown due to increasingly distributed organizations, which increases dependence on timely access to data and applications.

Substantially all of our customers purchase support when they purchase our products. The increase in support and services revenue on an absolute basis and as a percentage of total revenues is a result of increased product and first year support sales combined with the renewal of support contracts by existing customers. As our customer base grows, we expect the proportion of revenue generated from support and services to increase over time.

The increase in ratable product and related support and services revenue in the three months ended March 31, 2007 was due to the amortization of revenue from one of our OEM arrangements. Prior to the second quarter of 2006, we had undelivered obligations to this OEM and all revenue relating to this arrangement was deferred. In the three months ended March 31, 2007, we recognized $876,000 of revenue associated with OEM arrangements.

In the three months ended March 31, 2007, we derived 91% of our revenue from indirect channels compared to 75% in the three months ended March 31, 2006. This increase in indirect channel revenue is due to our increased focus on expanding our indirect channel sales. We expect indirect channel revenue to continue to be a significant portion of our revenue.

We generated 31% of our revenue in the three months ended March 31, 2007 and 2006 from international locations. We continue to expand into international locations and introduce our products in new markets and expect international revenue to increase in absolute dollars.

Cost of Revenue and Gross Margin

Cost of product revenue consists of the costs of the appliance hardware, manufacturing, shipping and logistics costs and expenses for inventory obsolescence and warranty obligations. Cost of support and service revenue consists of salary and related costs of technical support personnel. Cost of ratable product and related support and services consists of hardware, support and service costs related to transactions recognized ratably.

(dollars in thousands)	Three months ended March 31, 2007	2006
Revenue:		
Product	$ 33,637	$ 10,836
Support and services	6,837	1,523
Ratable product and related support and services	2,310	1,362
Total revenue	42,784	13,721
Cost of revenue:		
Cost of product	9,661	3,590
Cost of support and services	2,290	692
Cost of ratable product and related support and services	603	497
Total cost of revenue	12,554	4,779
Gross profit	$ 30,230	$ 8,942
Gross margin for product	71%	67%
Gross margin for support and services	67%	55%
Gross margin for ratable product and related support and services	74%	64%
Total gross margin	71%	65%

Quarter Ended March 31, 2007 Compared to the Quarter Ended March 31, 2006: The increase in cost of product revenue was due primarily to increased hardware costs associated with increased shipments of our products to customers. Cost of support and services revenue increased as we added more technical support headcount domestically and abroad to support our growing customer base. Technical support and services headcount was 39 employees as of March 31, 2007 compared to 19 employees as of March 31, 2006. Cost of ratable product and related support and services increased due to more ratable reseller arrangements being amortized in the first quarter of 2007 partially offset by a decrease in the first quarter of 2007 as reseller arrangements entered into in the third quarter of 2005 were no longer recognized ratably and the one year amortization period for these contracts was complete. The increase in cost of ratable product and related support and services was not proportionate to the increase in ratable product and related support and services revenue as there are minimal costs associated with the ratable revenue recognized from our OEM arrangements.

Gross margins increased to 71% in the three months ended March 31, 2007 from 65% in the three months ended March 31, 2006 primarily due to higher margins on product revenue primarily as a result of lower unit product costs.

Sales and Marketing Expenses

Sales and marketing expenses primarily include personnel costs, sales commissions, marketing programs and facilities costs.

(dollars in thousands)	Three months ended March 31, 2007	2006
Sales and marketing expenses	$ 17,092	$ 8,028
Percent of total revenue	40%	59%

Quarter Ended March 31, 2007 Compared to the Quarter Ended March 31, 2006: The increase in sales and marketing expenses was primarily due to an increase in the number of sales and marketing employees, as sales and marketing headcount grew to 175 employees as of March 31, 2007 from 109 employees as of March 31, 2006. The increase in employees resulted in higher salary expense, employee-related benefits and fees for recruitment of new employees. Additionally, commission expense increased in the three months ended March 31, 2007 as compared to the three months ended March 31, 2006 due to the substantial increase in revenue. Salaries, bonuses and commissions accounted for $3.5 million, travel and entertainment expenses accounted for $776,000, and marketing related activities accounted for $809,000 of the $9.1 million increase in sales and marketing expenses. Stock-based compensation, which was $2.7 million in the three months ended March 31, 2007 compared to $465,000 in the three months ended March 31, 2006, accounted for approximately $2.3 million of the increase in sales and marketing expenses.

We plan to continue to make significant investments in sales and marketing with the intent to add new customers and increase penetration within our existing customer base by increasing the number of sales personnel worldwide, expanding our domestic and international sales and marketing activities, building brand awareness and sponsoring additional marketing events. We expect future sales and marketing expenses to continue to increase and continue to be our most significant operating expense. Generally sales personnel are not immediately productive and sales and marketing expenses do not immediately result in revenue. Hiring additional sales personnel reduces short-term operating margins until the sales personnel become productive and generate revenue. Accordingly, the timing of sales personnel hiring and the rate at which they become productive will affect our future performance.

Research and Development Expenses

Research and development expenses primarily consist of personnel costs and facilities costs. We expense research and development expenses as incurred.

(dollars in thousands)	Three months ended March 31, 2007	2006
Research and development expenses	$ 7,458	$ 3,465
Percent of total revenue	17%	25%

Quarter Ended March 31, 2007 Compared to the Quarter Ended March 31, 2006: Research and development expenses increased in the three months ended March 31, 2007 compared to the three months ended March 31, 2006 due to an increase in personnel and facility-related costs as a result of research and development headcount increasing to 119 employees as of March 31, 2007 from 84 employees as of March 31, 2006. Salaries and bonuses accounted for $1.1 million of the $4.0 million increase in research and development expenses. Stock-based compensation, which was $1.5 million in the three months ended March 31, 2007 compared to $219,000 in the three months ended March 31, 2006, accounted for $1.3 million of the increase in research and development expenses. We plan to continue to invest in research and development as we develop new models and make further enhancements to existing models.

General and Administrative Expenses

General and administrative expenses consist primarily of compensation and related costs for personnel and facilities related to our executive, finance, human resources, information technology and legal organizations, and fees for professional services. Professional services include legal, audit and information technology consulting costs.

(dollars in thousands)	Three months ended March 31, 2007	2006
General and administrative expenses	$ 4,037	$ 1,596
Percent of total revenue	9%	12%

Quarter Ended March 31, 2007 Compared to the Quarter Ended March 31, 2006: The increase in general and administrative expenses for the three months ended March 31, 2007 compared to the three months ended March 31, 2006 is due to an increase in personnel costs, primarily as a result of headcount increasing to 42 employees as of March 31, 2007 from 19 employees as of March 31, 2006, and an increase in professional services fees. Salaries and bonuses accounted for $733,000 and professional service fees accounted for approximately $810,000 of the $2.4 million increase in general and administrative expenses. Additionally accounting, audit and Sarbanes-Oxley fees have increased compared to the corresponding prior year period. Stock-based compensation, which was $798,000 in the three months ended March 31, 2007 compared to $175,000 in the three months ended March 31, 2006, accounted for approximately $623,000 of the increase in general and administrative expenses.

Other Income (Expense), Net

Other income (expense), net consists primarily of interest income, interest expense, warrant expense and foreign currency exchange gains (losses).

(dollars in thousands)	Three months ended March 31, 2007	2006
Interest income	$ 1,769	$ 185
Interest expense	—	(75)
Other	(50)	(212)
Total other income (expense), net	$ 1,719	$ (102)

Quarter Ended March 31, 2007 Compared to the Quarter Ended March 31, 2006: Other income (expense), net, increased in the three months ended March 31, 2007 primarily due to interest income on higher cash balances. In September 2006, we received net IPO proceeds of $87.5 million and in February 2007, we received net follow-on public offering proceeds of $87.7 million. We did not have interest expense in the first quarter of 2007, as we paid off the balance of our credit facility on October 2, 2006. Other expense decreased due to recording our preferred stock warrants to fair value in 2006 and no such adjustment was required in 2007. In the three months ended March 31, 2006 we recorded $172,000 of warrant expense. Subsequent to our IPO, we were no longer required to record the warrants to fair value. As of March 31, 2007, all of our warrants were exercised.

Provision for Income Taxes

Prior to the first quarter of 2007, we had incurred operating losses and, accordingly, had not recorded a provision for income taxes for any of the periods presented other than foreign provisions for income tax. For the three months ended March 31, 2007 we generated operating profits. After applying our available net operating loss and tax credit carryforwards, our tax provision accrued at March 31, 2007 relates primarily to foreign and state provisions for income tax.

As of December 31, 2006, we recorded a valuation allowance against our net deferred tax assets due to operating losses incurred since inception. Realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Accordingly, the net deferred tax assets were fully offset by a valuation allowance. If not utilized, the federal and state net operating loss and tax credit carryforwards will expire between 2013 and 2026. Utilization of these net operating losses and credit carryforwards may be subject to an annual limitation due to provisions of the Internal Revenue Code of 1986, as amended, that are applicable if we experience an “ownership change” that may occur, for example, by a change in significant shareholder allocation or equity structure.

As of March 31, 2007, our tax provision includes a deferred tax benefit for the projected reduction in the valuation allowance as a result of forecasted taxable income and corresponding utilization of net operation losses and tax credit carryforwards. In determining future taxable income, we make assumptions to forecast federal, state and international operating income, the reversal of temporary differences, and the implementation of any feasible and prudent tax planning strategies. The assumptions require significant judgment regarding the forecasts of future taxable income, and are consistent with our forecasts used to manage our business. We intend to maintain the remaining valuation allowance until sufficient further positive evidence exists to support a reversal of, or decrease, in the valuation allowance.

If our recent trend of profitability continues, we may determine that there is sufficient positive evidence to support a reversal of, or decrease in, the valuation allowance. If we were to reverse all or some part of our valuation allowance and recognize all or some part of our deferred tax assets, our financial statements in the period of reversal would reflect an increase in assets on our balance sheet and a corresponding tax benefit to our statement of operations in the amount of the reversal.

We expect our effective tax rate in 2007 to be at or below 3%; however it could fluctuate significantly on a quarterly basis and could be affected by disqualifying dispositions of stock from the Purchase Plan and incentive stock options, by changes in the valuation of our deferred tax assets or liabilities, changes in actual results versus our estimates, or by changes in tax laws, regulations, accounting principles, or interpretations thereof. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our provision for income taxes.

Liquidity and Capital Resources

(in thousands)	As of March 31, 2007	As of December 31, 2006
Working capital	$ 194,451	$ 101,319
Cash and cash equivalents	193,035	105,330
Marketable securities	7,944	3,999

	Three months ended March 31,	
(in thousands)	2007	2006
Cash provided by (used in) operating activities	$ 7,019	$ (4,835)
Cash (used in) investing activities	(7,063)	(630)
Cash provided by financing activities	87,745	19,693

Cash and Cash Equivalents

Cash and cash equivalents consist of highly liquid investments in time deposits held at major banks, commercial paper, United States government agency discount notes, money market mutual funds and other money market securities with maturities at the date of purchase of 90 days or less.

Prior to our IPO in September 2006, we funded our operations primarily through private sales of our convertible preferred stock and collections from our customers and, to a lesser extent, borrowings under a credit facility. In February 2006, we completed the sale of our Series D convertible preferred stock with aggregate net proceeds of $19.9 million. In September 2006, we completed our IPO which we raised aggregate net proceeds of $87.5 million. In February 2007, we completed a follow-on public offering in which we raised aggregate net proceeds of $87.7 million.

Pursuant to certain lease agreements and as security for our merchant services agreement with our financial institution, we are required to maintain cash reserves, classified as restricted cash. Current restricted cash totaled $121,000 and $121,000 at March 31, 2007 and December 31, 2006, respectively, and long-term restricted cash totaled $3.1 million and $1.5 million at March 31, 2007 and December 31, 2006, respectively. Long-term restricted cash is included in other assets in the condensed consolidated balance sheets and consists primarily of $3.0 million held as collateral for letters of credit for the security deposit on the leases of our corporate headquarters and is restricted until the end of the lease terms on August 30, 2010 and July 31, 2014.

Since the fourth quarter of 2004, we have expanded our operations internationally. Our sales contracts are typically denominated in United States dollars and as such, the increase in our revenue derived from international customers has not affected our cash flows from operations. As we fund our international operations, our cash and cash equivalents are affected by changes in exchange rates. To date, the foreign currency effect on our cash and cash equivalents has not been immaterial.

Cash Flows from Operating Activities

Our largest source of operating cash flows is cash collections from our customers. Our primary uses of cash from operating activities are for personnel related expenditures, cost of product, rent payments and technology

costs. Our cash flows from operating activities will continue to be affected principally by the extent to which we grow our revenue and spend on hiring personnel in order to grow our business. The timing of hiring sales personnel in particular affects cash flows as there is a lag between the hiring of sales personnel and the generation of revenue and cash flows from sales personnel.

Cash provided by operating activities was $7.0 million in the three months ended March 31, 2007 compared to cash used in operations of $4.8 million in the three months ended March 31, 2006 due to increased profitability. In the first quarter of 2006, we experienced negative cash flows from operations as we continued to expand our business and build our infrastructure domestically and internationally.

Cash Flows from Investing Activities

Cash flows used in investing activities primarily relate to capital expenditures to support our growth and investments in marketable securities.

Cash used in investing activities increased in the three months ended March 31, 2007 compared to the three months ended March 31, 2006 due to purchases of marketable securities with our IPO and follow-on public offering proceeds. Additionally, capital expenditures increased in the first three months of 2007 compared to 2006 primarily resulting from leasehold improvement additions associated with our new corporate headquarters. Restricted cash outlays increased in the first quarter of 2007 due to the cash collateralized $1.6 million letter of credit required for the new corporate headquarters.

Cash Flows from Financing Activities

Prior to September 2006, we financed our operations primarily through private sales of convertible preferred stock totaling $56.3 million and collections from customers and, to a lesser extent, borrowings under our credit facility. In February 2006, we sold 3,738,318 shares of our Series D convertible preferred stock for net proceeds of $19.9 million. In September 2006, we completed our IPO and received net proceeds of $87.5 million. In February 2007, we completed a follow-on public offering of our common stock and received net proceeds of $87.7 million.

On June 7, 2004, we entered into a loan and security agreement with a financial institution for a $2.5 million credit facility, and we borrowed $1.4 million and $1.1 million in 2004 and 2005, respectively. We made principal payments of $938,000 in the first nine months of 2006 and repaid the remaining balance on our loan on October 2, 2006.

We believe that our net proceeds from operations, together with our cash balance at March 31, 2007, will be sufficient to fund our projected operating requirements for at least the next 12 months. Our future capital requirements will depend on many factors, including our rate of revenue growth, the expansion of our sales and marketing activities, the timing and extent of expansion into new territories, the timing of introductions of new products and enhancements to existing products, and the continuing market acceptance of our products. We may enter into arrangements for potential investments in, or acquisitions of, complementary businesses, services or technologies, which also could require us to seek additional equity or debt financing. Additional funds may not be available on terms favorable to us or at all.

Contractual Obligations

The following is a summary of our contractual obligations as of March 31, 2007:

	Total	Remaining nine months of 2007	2008	2009	2010	2011 and beyond
			(in thousands)			
Contractual Obligations						
Operating leases	$26,034	$ 2,234	$3,450	$3,063	$3,145	$14,142
Purchase obligations (1)	135	60	50	23	2	—
Total contractual obligations	$26,169	$ 2,294	$3,500	$3,086	$3,147	$14,142

(1) Represents amounts associated with agreements that are enforceable, legally binding and specify terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of payment. Obligations under contracts that we can cancel without a significant penalty are not included in the table above.

Off-Balance Sheet Arrangements

At March 31, 2007 and December 31, 2006, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes, nor did we have any undisclosed material transactions or commitments involving related persons or entities.

Other

At March 31, 2007 and December 31, 2006, we did not have commercial commitments under lines of credit, standby repurchase obligations or other such debt arrangements.

Recent Accounting Pronouncements

See Note 13 of "Notes to Consolidated Financial Statements" for recent accounting pronouncements that could have an effect on us.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Foreign Currency Risk

Our sales contracts are denominated in United States dollars and therefore our revenue is not subject to foreign currency risk. Our operating expenses and cash flows are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the British pound, Euro and Singapore dollar. To date, we have not entered into any hedging contracts since exchange rate fluctuations have had little impact on our operating results and cash flows.

Interest Rate Sensitivity

We had unrestricted cash and cash equivalents totaling $193.0 million and $105.3 million at March 31, 2007 and December 31, 2006, respectively. These amounts were invested primarily in money market funds. The unrestricted cash and cash equivalents are held for working capital purposes. We do not enter into investments for trading or speculative purposes. We believe that we do not have any material exposure to changes in the fair value as a result of changes in interest rates. Declines in interest rates, however, will reduce future investment income. If overall interest rates had fallen by 10% in 2007, our interest income would have declined approximately $176,000, assuming consistent investment levels.

Item 4. Controls and Procedures

We evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2007, the end of the period covered by this report on Form 10-Q. This evaluation (the controls evaluation) was done under the supervision and with the participation of our management, including our Chief Executive Officer (CEO) and Chief Financial Officer (CFO).

Disclosure controls and procedures means controls and other procedures that are designed to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act, such as this report on Form 10-Q, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed such that information is accumulated and communicated to our management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Based upon the controls evaluation, our CEO and CFO have concluded that as of March 31, 2007, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified by the SEC and to ensure that material information relating to the Company and our consolidated subsidiaries is made known to management, including the CEO and CFO.

In the first quarter of 2007, we implemented a new enterprise resource planning software system. This change did not materially affect our internal control over financial reporting in the first quarter of 2007. Internal control over financial reporting means a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

We are required to comply with Section 404 of the Sarbanes-Oxley Act of 2002 by our fiscal year ending December 31, 2007. The notification of such compliance is due no later than the time we file our annual report for the fiscal year ending December 31, 2007. We believe we will have adequate resources and expertise, both internal and external, in place to meet this requirement. However, there is no guarantee that our efforts will result in a management assurance, or an attestation by the independent auditors, that internal controls over financial reporting were adequate in their design and/or operation.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are subject to various claims, complaints and legal actions in the normal course of business from time to time. We do not believe we are party to any currently pending legal proceedings the outcome of which will have a material adverse effect on our operations or financial position. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, consolidated financial position, results of operations or cash flow.

Item 1A. Risk Factors

Set forth below and elsewhere in this quarterly report on Form 10-Q, and in other documents we file with the SEC, are risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements contained in this quarterly report on Form 10-Q. Because of the following factors, as well as other variables affecting our operating results, past financial performance should not be considered as a reliable indicator of future performance and investors should not use historical trends to anticipate results or trends in future periods.

Risks Related to Our Business and Industry

We compete in new and rapidly evolving markets and have a limited operating history, which make it difficult to predict our future operating results.

We were incorporated in May 2002 and shipped our first Steelhead appliance in May 2004. We have a limited operating history and offer a single line of products in an industry characterized by rapid technological change. It is very difficult to forecast our future operating results. You should consider and evaluate our prospects in light of the risks and uncertainty frequently encountered by early stage companies in rapidly evolving markets characterized by rapid technological change, changing customer needs, evolving industry standards and frequent introductions of new products and services. As we encounter rapidly changing customer requirements and increasing competitive pressures, we likely will be required to reposition our product and service offerings and introduce new products and services. We may not be successful in doing so in a timely and appropriately responsive manner, or at all. Furthermore, because we compete in an early stage market, many of our target customers have not purchased products similar to ours and might not have a specific budget for the purchase of our products and services. All of these factors make it difficult to predict our future operating results.

Our operating results may fluctuate significantly, which makes our future results difficult to predict and could cause our operating results to fall below expectations or our guidance.

Our operating results may fluctuate due to a variety of factors, many of which are outside of our control. As a result, comparing our operating results on a period-to-period basis may not be meaningful. You should not rely on our past results as an indication of our future performance. In addition, a significant portion of our quarterly sales typically occurs during the last month of the quarter, which we believe reflects customer buying patterns of products similar to ours and other products in the technology industry generally. As a result, our quarterly operating results are difficult to predict even in the near term. If our revenue or operating results fall below the expectations of investors or securities analysts or below any guidance we may provide to the market, the price of our common stock would likely decline substantially.

In addition to other risk factors listed in this “Risk Factors” section, factors that may affect our operating results include:

- fluctuations in demand, including due to seasonality, for our products and services;
- fluctuations in sales cycles and prices for our products and services;
- reductions in customers’ budgets for information technology purchases and delays in their purchasing cycles;
- the timing of recognizing revenue in any given quarter as a result of software revenue recognition rules;
- the sale of our products in the timeframes we anticipate, including the number and size of orders in each quarter;

- our ability to develop, introduce and ship in a timely manner new products and product enhancements that meet customer requirements;
- the timing of product releases or upgrades by us or by our competitors;
- any significant changes in the competitive dynamics of our markets, including new entrants or substantial discounting of products;
- our ability to control costs, including our operating expenses and the costs of the components we purchase;
- volatility in our stock price, which may lead to higher stock compensation expenses pursuant to Statement of Financial Accounting Standards No. 123(R);
- general economic conditions in our domestic and international markets; and
- unpredictable fluctuations in our effective tax rate due to disqualifying dispositions of stock from the employee stock purchase plan and incentive stock options, changes in the valuation of our deferred tax assets or liabilities, changes in actual results versus our estimates, or changes in tax laws, regulations, accounting principles, or interpretations thereof.

We have a history of losses and we may not achieve profitability in the future.

We achieved profitability for the first time in the three months ended March 31, 2007. We experienced a net loss of $15.8 million for the year ended December 31, 2006. As of March 31, 2007, our accumulated deficit was $44.1 million. We may incur significant losses in the future for a number of reasons, including those discussed in other risk factors and factors that we cannot foresee. We expect to make significant expenditures related to the development of our business, including expenditures to hire additional personnel relating to sales and marketing and technology development. In addition, as a public company, we incur significant legal, accounting and other expenses that we did not incur as a private company. We would have to generate and sustain significantly increased revenue to maintain profitability. Our revenue growth trends in prior periods are not likely to be sustainable, and we may not achieve sufficient revenue to maintain profitability.

We face intense competition that could reduce our revenue and adversely affect our financial results.

The market for our products is highly competitive and we expect competition to intensify in the future. Other companies may introduce new products in the same markets we serve or intend to enter.

This competition could result in increased pricing pressure, reduced profit margins, increased sales and marketing expenses and failure to increase, or the loss of, market share, any of which would likely seriously harm our business, operating results or financial condition.

Competitive products may in the future have better performance, lower prices and broader acceptance than our products. Many of our current or potential competitors have longer operating histories, greater name recognition, larger customer bases and significantly greater financial, technical, sales, marketing and other resources than we do. Potential customers may prefer to purchase from their existing suppliers rather than a new supplier regardless of product performance or features. Currently, we face competition from a number of established companies, including Cisco Systems (which acquired Actona Technologies), Juniper Networks (which acquired Peribit Networks), F5 Networks (which acquired Swan Labs), Packeteer (which acquired Tacit Networks) and Citrix Systems (which acquired Orbital Data). We also face competition from a large number of smaller private companies and new market entrants.

We expect increased competition from other established and emerging companies if our market continues to develop and expand. For example, third parties currently selling our products could market products and services that compete with our products and services. In addition, some of our competitors have made acquisitions or entered into partnerships or other strategic relationships with one another to offer a more comprehensive solution than they individually had offered. We expect this trend to continue as companies attempt to strengthen or maintain their market positions in an evolving industry and as companies enter into partnerships or are acquired. Many of the companies driving this consolidation trend have significantly greater financial, technical and other resources than we do and are better positioned to acquire and offer complementary products and technologies. The companies resulting from these possible consolidations may create more compelling product offerings and be able to offer greater pricing flexibility, making it more difficult for us to compete effectively, including on the basis of price, sales and marketing programs, technology or product functionality. Continued industry consolidation may adversely impact customers' perceptions of the viability of smaller and even medium-sized technology companies and consequently customers' willingness to purchase from such companies. These pressures could materially adversely affect our business, operating results and financial condition.

We also face competitive pressures from other sources. For example, Microsoft has announced its intention to improve the performance of its software for remote office users. Our products are designed to improve the performance of many applications, including applications that are based on Microsoft protocols. Accordingly, improvements to Microsoft application protocols may reduce the need for our products, adversely affecting our business, operating results and financial condition. Improvement in other application protocols or in the Transmission Control Protocol (TCP), the underlying transport protocol for most WAN traffic, could have a similar effect. In addition, we market our products, in significant part, on the anticipated cost savings to be realized by organizations if they are able to avoid the purchase of costly IT infrastructure at remote sites by purchasing our products. To the extent other companies are able to reduce the costs associated with purchasing and maintaining servers, storage or applications to be operated at remote sites, our business, operating results and financial condition could be adversely affected.

We rely on indirect distribution partners, including value-added resellers, to sell our products, and disruptions to, or our failure to develop and manage, our distribution channels and the processes and procedures that support them effectively could adversely affect our business.

Our future success is highly dependent upon establishing and maintaining successful relationships with a variety of indirect distribution partners. A significant amount of our revenue is derived through indirect channel sales, and we expect indirect channel sales to continue to increase as a percentage of our total revenue. Accordingly, our revenue depends in large part on the effective performance of these channel partners. By relying on indirect channels, we may have little or no contact with the ultimate users of our products, thereby making it more difficult for us to establish brand awareness, ensure sell-through of our products necessary for us to recognize revenue, ensure proper delivery and installation of our products, service ongoing customer requirements and respond to evolving customer needs.

Recruiting and retaining qualified channel partners and training them in our technology and product offerings requires significant time and resources. In order to develop and expand our distribution channel, we must continue to scale and improve our processes and procedures that support our channel, including investment in systems and training, and those processes and procedures may become increasingly complex and difficult to manage. We have no long-term contracts or minimum purchase commitments with any of our value-added resellers or other indirect distributors, and our contracts with these channel partners do not prohibit them from offering products or services that compete with ours. Our competitors may be effective in providing incentives to existing and potential channel partners to favor their products or to prevent or reduce sales of our products. Our channel partners may choose not to offer our products exclusively or at all. Our failure to establish and maintain successful relationships with channel partners would likely materially adversely affect our business, operating results and financial condition.

We rely on third parties to perform shipping and other logistics functions on our behalf. A failure or disruption at a logistics partner would adversely impact our business.

Currently, we use third party logistics partners to perform storage, packaging, shipment and handling for us. We intend to utilize additional logistics service providers in connection with any expansion of our international sales. Although the logistics services required by us may be readily available from a number of providers, it is time consuming and costly to qualify and implement these relationships. Therefore, if one or more of our logistics partners suffers an interruption in its business, or experiences delays, disruptions or quality control problems in its operations, or we have to change or add additional logistics partners, our ability to ship products to our customers would be delayed and our business, operating results and financial condition would be adversely affected.

If functionality similar to that offered by our products is incorporated into existing network infrastructure products, organizations may decide against adding our appliances to their network, which would have an adverse effect on our business.

Other providers of network infrastructure products are offering or announcing functionality aimed at addressing the problems addressed by our products. For example, Cisco Systems has communicated its intent to incorporate WAN optimization functionality into certain of its router products. The inclusion of, or the announcement of intent to include, functionality perceived to be similar to that offered by our products in products that are already generally accepted as necessary components of network architecture may have an adverse effect on our ability to market and sell our products. Furthermore, even if the functionality offered by other network

infrastructure providers is more limited than our products, a significant number of customers may elect to accept such limited functionality in lieu of adding additional appliances from an additional vendor. Many organizations have invested substantial personnel and financial resources to design and operate their networks and have established deep relationships with other providers of network infrastructure products, which may make them reluctant to add new components to their networks, particularly from new vendors. In addition, an organization's existing vendors or new vendors with a broad product offering may be able to offer concessions that we are not able to match because we currently offer only a single line of products and have fewer resources than many of our competitors. If organizations are reluctant to add additional network infrastructure from new vendors or otherwise decide to work with their existing vendors, our business, operating results and financial condition will be adversely affected.

If we are unable to protect our intellectual property rights, our competitive position could be harmed or we could be required to incur significant expenses to enforce our rights.

We depend on our ability to protect our proprietary technology. We rely on trade secret, patent, copyright and trademark laws and confidentiality agreements with employees and third parties, all of which offer only limited protection. Despite our efforts, the steps we have taken to protect our proprietary rights may not be adequate to preclude misappropriation of our proprietary information or infringement of our intellectual property rights, and our ability to police such misappropriation or infringement is uncertain, particularly in countries outside of the United States. Further, with respect to patent rights, we do not know whether any of our pending patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims, and even if patents are issued, they may be contested, circumvented or invalidated over the course of our business. Moreover, the rights granted under any issued patents may not provide us with proprietary protection or competitive advantages, and, as with any technology, competitors may be able to develop similar or superior technologies to our own now or in the future. Protecting against the unauthorized use of our products, trademarks and other proprietary rights is expensive, difficult and, in some cases, impossible. Litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. Such litigation could result in substantial costs and diversion of management resources, either of which could harm our business, operating results and financial condition. Furthermore, many of our current and potential competitors have the ability to dedicate substantially greater resources to enforce their intellectual property rights than we do. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property.

Claims by others that we infringe their proprietary technology could harm our business.

Third parties could claim that our products or technology infringe their proprietary rights. We expect that infringement claims may increase as the number of products and competitors in our market increases and overlaps occur. In addition, to the extent that we gain greater visibility and market exposure as a public company, we face a higher risk of being the subject of intellectual property infringement claims. Any claim of infringement by a third party, even those without merit, could cause us to incur substantial costs defending against the claim, and could distract our management from our business. Furthermore, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from offering our products. In addition, we might be required to seek a license for the use of such intellectual property, which may not be available on commercially reasonable terms or at all. Alternatively, we may be required to develop non-infringing technology, which could require significant effort and expense and may ultimately not be successful. Any of these events could seriously harm our business, operating results and financial condition. Third parties may also assert infringement claims against our customers and channel partners. Any of these claims would require us to initiate or defend potentially protracted and costly litigation on their behalf, regardless of the merits of these claims, because we generally indemnify our customers and channel partners from claims of infringement of proprietary rights of third parties. If any of these claims succeed, we may be forced to pay damages on behalf of our customers or channel partners, which could have a material adverse effect on our business, operating results and financial condition.

Our sales cycles can be long and unpredictable, and our sales efforts require considerable time and expense. As a result, our sales are difficult to predict and may vary substantially from quarter to quarter, which may cause our operating results to fluctuate significantly.

The timing of our revenue is difficult to predict. Our sales efforts involve educating our customers about the use and benefit of our products, including their technical capabilities and potential cost savings to an organization. Customers typically undertake a significant evaluation process that has in the past resulted in a lengthy sales cycle, in some cases over twelve months. We spend substantial time, effort and money in our sales efforts without

any assurance that our efforts will produce any sales. In addition, product purchases are frequently subject to budget constraints, multiple approvals, and unplanned administrative, processing and other delays. If sales expected from a specific customer for a particular quarter are not realized in that quarter or at all, our business, operating results and financial condition could be materially adversely affected.

We are susceptible to shortages or price fluctuations in our supply chain. Any shortages or price fluctuations in components used in our products could delay shipment of our products, which could materially adversely affect our business.

Shortages in components that we use in our products are possible and our ability to predict the availability of such components may be limited. Some of these components are available only from limited sources of supply. For example, our Steelhead appliances depend on network bypass cards to provide a fail-to-wire capability. These bypass cards use high speed relays available only from a limited number of vendors. In addition, our ability to timely deliver products to our customers would be materially adversely impacted if we needed to qualify replacements for the systems, motherboards, chassis and storage adapters used in our Steelhead appliances. We would be similarly affected by shortages in the availability, or the complete unavailability, of the central processing units, bypass cards, disks, fans and power supplies that we use in our appliances. Specifically, the unavailability of any of these components would prevent us from shipping products because each of these components is necessary to the proper functioning of our appliances. In addition, the lead times associated with certain components are lengthy and preclude rapid changes in quantity requirements and delivery schedules.

Any growth in our business or the economy is likely to create greater pressures on us and our suppliers to project overall component demand accurately and to establish optimal component inventory levels. In addition, increased demand by third parties for the components we use in our products may lead to decreased availability and higher prices for those components. We carry very little inventory of our products and product components, and we rely on our suppliers to deliver necessary components to our contract manufacturers in a timely manner based on forecasts we provide. We rely on purchase orders rather than long-term contracts with our suppliers. As a result, even if available, we may not be able to secure sufficient components at reasonable prices or of acceptable quality to build products in a timely manner, which would seriously impact our ability to deliver products to our customers, and our business, operating results and financial condition would be adversely affected.

If we fail to predict accurately our manufacturing requirements, we could incur additional costs or experience manufacturing delays which would harm our business. We are dependent on contract manufacturers with whom we do not have long-term supply contracts, and changes to those relationships, expected or unexpected, may result in delays or disruptions that could harm our business.

We depend on independent contract manufacturers who use standard components to manufacture and assemble our products. We rely on purchase orders with all of our contract manufacturers and do not have long-term supply arrangements with any of them. As a result, our contract manufacturers are not obligated to supply products to us for any specific period, in any specific quantity or at any specific price. Our orders may represent a relatively small percentage of the overall orders received by our contract manufacturers from their customers. As a result, fulfilling our orders may not be considered a priority by one or more of our contract manufacturers in the event the contract manufacturer is constrained in its ability to fulfill all of its customer obligations in a timely manner. We provide demand forecasts to our contract manufacturers. If we overestimate our requirements, the contract manufacturers may assess charges or we may have liabilities for excess inventory, each of which could negatively affect our gross margins. Conversely, because lead times for required materials and components vary significantly and depend on factors such as the specific supplier, contract terms and the demand for each component at a given time, if we underestimate our requirements, the contract manufacturers may have inadequate materials and components required to produce our products, which could interrupt manufacturing of our products and result in delays in shipments and deferral or loss of revenue.

Although the contract manufacturing services required to manufacture and assemble our products may be readily available from a number of established manufacturers, it is time consuming and costly to qualify and implement contract manufacturer relationships. Therefore, if one or more of our contract manufacturers suffers an interruption in its business, or experiences delays, disruptions or quality control problems in its manufacturing operations, or we have to change or add additional contract manufacturers, our ability to ship products to our customers would be delayed and our business, operating results and financial condition would be adversely affected.

If we lose key personnel or are unable to attract and retain personnel on a cost-effective basis, our business would be harmed.

Our success is substantially dependent upon the performance of our senior management and key technical and sales personnel. Our management and employees can terminate their employment at any time, and the loss of the services of one or more of our executive officers or other key employees could harm our business. Our success also is substantially dependent upon our ability to attract additional personnel for all areas of our organization, particularly in our sales, research and development and customer service departments. Competition for qualified personnel is intense, and we may not be successful in attracting and retaining such personnel on a timely basis, on competitive terms, or at all. If we are unable to attract and retain the necessary technical, sales and other personnel on a cost-effective basis, especially in light of our recent and anticipated growth, our business, operating results and financial condition would be adversely affected.

We may not generate positive returns on our research and development investments.

Developing our products is expensive, and the investment in product development may involve a long payback cycle. In the three months ended March 31, 2007, our research and development expenses were $7.5 million, or approximately 17% of our total revenue. Our future plans include significant investments in research and development and related product opportunities. We believe that we must continue to dedicate a significant amount of resources to our research and development efforts to maintain our competitive position. These investments may take several years to generate positive returns, if ever.

Our ability to sell our products is highly dependent on the quality of our support and services offerings, and our failure to offer high quality support and services would have a material adverse effect on our sales and results of operations.

Once our products are deployed within our customers' networks, our customers depend on our support organization to resolve any issues relating to our products. A high level of support is critical for the successful marketing and sale of our products. If we or our channel partners do not effectively assist our customers in deploying our products, succeed in helping our customers quickly resolve post-deployment issues, and provide effective ongoing support, it would adversely affect our ability to sell our products to existing customers and could harm our reputation with potential customers. In addition, as we expand our operations internationally, our support organization will face additional challenges including those associated with delivering support, training and documentation in languages other than English. As a result, our failure to maintain high quality support and services would have a material adverse effect on our business, operating results and financial condition.

If we fail to manage future growth effectively, our business would be harmed.

We have expanded our operations significantly since inception and anticipate that further significant expansion will be required. This future growth, if it occurs, will place significant demands on our management, infrastructure and other resources. To manage any future growth, we will need to hire, integrate and retain highly skilled and motivated employees. We will also need to continue to improve our financial and management controls, reporting systems and procedures. We have recently converted to a new enterprise resource planning software system that has replaced a substantial majority of our prior finance, sales and inventory management systems. We may encounter delays or difficulties in connection with this conversion, including loss of data and decreases in productivity as our personnel become familiar with new systems. If we experience any delays or difficulties, either in connection with this new enterprise resource planning system or other controls, systems and procedures, our ability to properly run our business could be adversely affected. For example, deficiencies in our internal controls over financial reporting could result in loss of revenue, improper revenue recognition, or errors in our financial statements. If we do not effectively manage our growth, our business, operating results and financial condition would be adversely affected.

If we do not successfully anticipate market needs and develop products and product enhancements that meet those needs, or if those products do not gain market acceptance, our business and financial results will be adversely affected.

We may not be able to anticipate future market needs or be able to develop new products or product enhancements to meet such needs. For example, our failure to address additional application-specific protocols, particularly if our competitors are able to provide such functionality, could adversely affect our business. In addition, any new products or product enhancements that we introduce may not achieve any significant degree of market acceptance or be accepted into our sales channel by our channel partners, which would adversely affect our business, operating results and financial condition.

Organizations are increasingly concerned with the security of their data, and to the extent they elect to encrypt data being transmitted from the point of the end-user in a format that we're not able to decrypt, rather than only across the WAN, our products will become less effective.

Our products are designed to remove the redundancy associated with repeated data requests over a WAN, either through a private network or a virtual private network (VPN). The ability of our products to reduce such redundancy depends on our products' ability to recognize the data being requested. Our products currently detect and decrypt some forms of encrypted data. Since most organizations currently encrypt most of their data transmissions only between sites and not on the LAN, the data is not encrypted when it passes through our appliances. For those organizations that elect to encrypt their data transmissions from the end-user to the server in a format that we're not able to decrypt, our products will offer little performance improvement unless we are successful in incorporating additional functionality into our appliances that address those encrypted transmissions. Our failure to provide such additional functionality could adversely affect our business, operating results and financial condition.

Adverse economic conditions or reduced information technology spending may adversely impact our business.

Our business depends on the overall demand for information technology, and in particular for Wide-area Data Services, and on the economic health of our current and prospective customers. The market we serve is emerging and the purchase of our products involves material changes to established purchasing patterns and policies. In addition, the purchase of our products is often discretionary and may involve a significant commitment of capital and other resources. Weak economic conditions, or a reduction in information technology spending even if economic conditions improve, would likely adversely impact our business, operating results and financial condition in a number of ways, including longer sales cycles, lower prices for our products and services and reduced unit sales.

If our products do not interoperate with our customers' networks, installations will be delayed or cancelled, which would harm our business.

Our products must interoperate with our customers' existing networks, which often have different specifications, utilize multiple protocol standards and products from multiple vendors, and contain multiple generations of products that have been added over time. If we find errors in the existing software or defects in the hardware used in our customers' networks or problematic network configurations or settings, as we have in the past, we may have to modify our software or hardware so that our products will interoperate with our customers' networks. This could cause longer installation times for our products and could cause order cancellations, either of which would adversely affect our business, operating results and financial condition.

Our products are highly technical and may contain undetected software or hardware errors, which could cause harm to our reputation and adversely affect our business.

Our products, including software product upgrades and releases, are highly technical and complex and, when deployed, are critical to the operation of many networks. Our products have contained and may contain undetected errors, defects or security vulnerabilities. Some errors in our products may only be discovered after a product has been installed and used by customers. Any errors, defects or security vulnerabilities discovered in our products after commercial release could result in loss of revenue or delay in revenue recognition, loss of customers and increased service and warranty cost, any of which could adversely affect our business, operating results and financial condition. In addition, we could face claims for product liability, tort or breach of warranty, including claims relating to changes to our products made by our channel partners. Our contracts with customers contain provisions relating to warranty disclaimers and liability limitations, which may not be upheld. Defending a lawsuit, regardless of its merit, is costly and may divert management's attention and adversely affect the market's perception of us and our products. In addition, if our business liability insurance coverage proves inadequate or future coverage is unavailable on acceptable terms or at all, our business, operating results and financial condition could be adversely impacted.

We may engage in future acquisitions that could disrupt our business, cause dilution to our stockholders and harm our business, operating results and financial condition.

In the future we may acquire other businesses, products or technologies. We have not made any acquisitions to date. Our ability as an organization to make acquisitions is unproven. We may not be able to find suitable acquisition candidates and we may not be able to complete acquisitions on favorable terms, if at all. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, or may be viewed negatively by customers, financial markets or investors. In addition, any acquisitions that we make could lead to difficulties in integrating personnel and operations from the acquired businesses and in retaining and motivating key personnel from these businesses. Acquisitions may disrupt our ongoing operations, divert management from day-to-day responsibilities, increase our expenses and adversely impact our business, operating results and financial condition. Future acquisitions may reduce our cash available for operations and other uses and could result in an increase in amortization expense related to identifiable assets acquired, potentially dilutive issuances of equity securities or the incurrence of debt, which could harm our business, operating results and financial condition.

Our international sales and operations subject us to additional risks that may adversely affect our operating results.

In 2005, we derived approximately 18% of our revenue from customers outside the United States. This number increased to approximately 27% in 2006 and 31% in the three months ended March 31, 2007. We have sales and technical support personnel in numerous countries worldwide. We expect to continue to add personnel in additional countries. Our international operations subject us to a variety of risks, including:

- the difficulty of managing and staffing international offices and the increased travel, infrastructure and legal compliance costs associated with multiple international locations;
- difficulties in enforcing contracts and collecting accounts receivable, and longer payment cycles, especially in emerging markets;
- tariffs and trade barriers and other regulatory or contractual limitations on our ability to sell or develop our products in certain foreign markets;
- increased exposure to foreign currency exchange rate risk; and
- reduced protection for intellectual property rights in some countries.

International customers may also require that we localize our products. The product development costs for localizing the user interface of our products, both graphical and textual, could be a material expense to us if the software requires extensive modifications. To date, such changes have not been extensive and the costs have not been material.

As we continue to expand our business globally, our success will depend, in large part, on our ability to anticipate and effectively manage these and other risks associated with our international operations. Our failure to manage any of these risks successfully could harm our international operations and reduce our international sales, adversely affecting our business, operating results and financial condition.

Our use of open source and third-party software could impose limitations on our ability to commercialize our products.

We incorporate open source software into our products. Although we monitor our use of open source closely, the terms of many open source licenses have not been interpreted by United States courts, and there is a risk that such licenses could be construed in a manner that could impose unanticipated conditions or restrictions on our ability to commercialize our products. In such event, we could be required to seek licenses from third parties in order to continue offering our products, to re-engineer our products or to discontinue the sale of our products in the event re-engineering cannot be accomplished on a timely basis, any of which could adversely affect our business, operating results and financial condition.

We also incorporate certain third-party technologies, including software programs, into our products and may need to utilize additional third-party technologies in the future. However, licenses to relevant third-party technology may not continue to be available to us on commercially reasonable terms, or at all. Therefore, we could face delays in product releases until equivalent technology can be identified, licensed or developed, and integrated into our current products. These delays, if they occur, could materially adversely affect our business, operating results and financial condition. We currently use third-party software programs in our Steelhead appliances and our Central Management Console appliances. For example, in our Steelhead appliances, we use

third-party software to configure a storage adapter for specific redundant disk setups as well as to initialize and diagnose hardware on certain models, and in our Central Management Console appliances we use third-party software to help manage statistics and reporting. Each of these software programs is currently available from only one vendor. As a result, any disruption in our access to these software programs could result in significant delays in our product releases and could require substantial effort to locate or develop a replacement program. If we decide in the future to incorporate into our appliances any other software program licensed from a third party, and the use of such software program is necessary for the proper operation of our appliances, then our loss of any such license would similarly adversely affect our ability to release our products in a timely fashion.

We are subject to governmental export and import controls that could subject us to liability or impair our ability to compete in international markets.

Our products are subject to U.S. export controls and may be exported outside the U.S. only with the required level of export license or through an export license exception, because we incorporate encryption technology into our products. In addition, various countries regulate the import of certain encryption technology and have enacted laws that could limit our ability to distribute our products or could limit our customers' ability to implement our products in those countries. Changes in our products or changes in export and import regulations may create delays in the introduction of our products in international markets, prevent our customers with international operations from deploying our products throughout their global systems or, in some cases, prevent the export or import of our products to certain countries altogether. Any change in export or import regulations or related legislation, shift in approach to the enforcement or scope of existing regulations, or change in the countries, persons or technologies targeted by such regulations, could result in decreased use of our products by, or in our decreased ability to export or sell our products to, existing or potential customers with international operations. For example, we will need to comply with Waste Electrical and Electronic Equipment Directive laws, which are being adopted by certain European Economic Area countries on a country-by-country basis. Failure to comply with these and similar laws on a timely basis, or at all, could have a material adverse effect on our business, operating results and financial condition. Any decreased use of our products or limitation on our ability to export or sell our products would likely adversely affect our business, operating results and financial condition.

We incur significant costs as a result of operating as a public company, and our management devotes substantial time to new compliance initiatives.

We incur significant legal, accounting and other expenses as a public company, including costs resulting from regulations regarding corporate governance practices. For example, the listing requirements of the Nasdaq Stock Market's Global Market require that we satisfy certain corporate governance requirements relating to independent directors, audit committees, distribution of annual and interim reports, stockholder meetings, stockholder approvals, solicitation of proxies, conflicts of interest, stockholder voting rights and codes of conduct. Our management and other personnel devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations have increased our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, these rules and regulations could make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

In addition, the Sarbanes-Oxley Act requires, among other things, that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, for the year ending December 31, 2007, we must perform system and process evaluation and testing of our internal control over financial reporting to allow management and our independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Our testing, or the subsequent testing by our independent registered public accounting firm, may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses. Our compliance with Section 404 will require that we incur substantial expense and expend significant management time on compliance-related issues. Moreover, if we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock would likely decline and we could be subject to sanctions or investigations by the Nasdaq Stock Market's Global Market, the SEC or other regulatory authorities, which would require additional financial and management resources.

If we need additional capital in the future, it may not be available to us on favorable terms, or at all.

We have historically relied on outside financing and cash flow from operations to fund our operations, capital expenditures and expansion. We may require additional capital from equity or debt financing in the future to fund

our operations or respond to competitive pressures or strategic opportunities. We may not be able to secure timely additional financing on favorable terms, or at all. The terms of any additional financing may place limits on our financial and operating flexibility. If we raise additional funds through further issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, if and when we require it, our ability to grow or support our business and to respond to business challenges could be significantly limited.

Our business is subject to the risks of earthquakes, fire, floods and other natural catastrophic events, and to interruption by manmade problems such as computer viruses or terrorism.

Our corporate headquarters are located in the San Francisco Bay Area, a region known for seismic activity. A significant natural disaster, such as an earthquake, fire or a flood, could have a material adverse impact on our business, operating results and financial condition. In addition, our servers are vulnerable to computer viruses, break-ins and similar disruptions from unauthorized tampering with our computer systems. In addition, acts of terrorism or war could cause disruptions in our or our customers' business or the economy as a whole. To the extent that such disruptions result in delays or cancellations of customer orders, or the deployment of our products, our business, operating results and financial condition would be adversely affected.

Risks Related to Ownership of Our Common Stock

The trading price of our common stock has been volatile and is likely to be volatile in the future.

The trading prices of the securities of technology companies have been highly volatile. Further, our common stock has a limited trading history. Since our initial public offering in September 2006 through April 24, 2007, our stock price has fluctuated from a low of $13.60 to a high of $36.25. Factors that could affect the trading price of our common stock could include:

- variations in our operating results;
- announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors;
- the gain or loss of significant customers;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any securities analysts who follow our common stock;
- significant sales, or announcement of significant sales, of our common stock by us or our stockholders;
- market conditions in our industry, the industries of our customers and the economy as a whole;
- adoption or modification of regulations, policies, procedures or programs applicable to our business; and
- the expiration of lock-up agreements.

If the market for technology stocks or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. Each of these factors, among others, could have a material adverse effect on an investment in our common stock. Some companies that have had volatile market prices for their securities have had securities class actions filed against them. If a suit were filed against us, regardless of its merits or outcome, it could result in substantial costs and divert management's attention and resources. This could have a material adverse effect on our business, operating results and financial condition.

A significant portion of our outstanding common stock will soon be released from restrictions on resales and may be sold in the market in the near future. Future sales of shares by existing stockholders could cause our stock price to decline.

If our existing stockholders, particularly our directors and executive officers, sell substantial amounts of our common stock in the public market, or are perceived by the public market as intending to sell, the trading price of

our common stock could decline significantly. In February 2007, we completed a follow-on public offering resulting in the sale of 2,854,671 shares of our common stock by us (including 250,000 shares sold by us pursuant to the underwriters' exercise of their over-allotment option) and another 2,645,329 shares of our common stock by existing stockholders. As of March 31, 2007, 69,125,809 shares of our common stock were outstanding. Of the outstanding shares, 15,590,321 shares were sold in our IPO and follow-on public offering and are freely tradable without restriction in the public market. Of the outstanding shares, 24,591,119 shares are subject to contractual lock-up agreements entered into by the selling stockholders with the underwriters of the follow-on public offering and may not be sold in the public market until May 2, 2007. The remaining shares, formerly subject to contractual lock up agreements entered into by our stockholders with the underwriters in connection with the IPO, became freely tradeable to the public on March 20, 2007, except for shares of common stock held by directors, executive officers and other affiliates which will be subject to volume limitations under Rule 144 of the Securities Act and, in certain cases, various vesting arrangements. A substantial portion of these shares are held by our directors, executive officers, employees and others who are subject to our insider trading policy and who may initially sell such shares in the public market commencing on April 27, 2007, the third full trading day following our release of earnings for the quarter ended March 31, 2007.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will continue to depend in part on the research and reports that securities or industry analysts publish about us or our business, including securities analysts employed by our underwriters who are currently prohibited under rules of the NASD from publishing research about us or our business for a limited period of time. If we do not continue to maintain adequate research coverage or if one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

Insiders have substantial control over us and will be able to influence corporate matters.

As of March 31, 2007, our directors and executive officers and their affiliates beneficially owned, in the aggregate, approximately 52.4% of our outstanding common stock. As a result, these stockholders will be able to exercise significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, such as a merger or other sale of our company or its assets. This concentration of ownership could limit your ability to influence corporate matters and may have the effect of delaying or preventing a third party from acquiring control over us.

Anti-takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our company and may affect the trading price of our common stock.

We are a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change in control would be beneficial to our existing stockholders. In addition, our restated certificate of incorporation and amended and restated bylaws may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable.

Item 2. Unre gistered Sales of Equity Securities and Use of Proceeds.

(a) Sales of Unregistered Securities

None.

(b) Use of Proceeds from Public Offering of Common Stock

In September 2006, we completed our IPO pursuant to a registration statement on Form S-1 (Registration No. 333-133437) which the U.S. Securities and Exchange Commission declared effective on September 20, 2006. Under the registration statement, we registered the offering and sale of an aggregate of 9,990,321 shares of our common stock, and another 100,000 shares of our common stock sold by a certain selling stockholder. The offering did not terminate until after the sale of all of the shares registered on the registration statement. All of the shares of common stock issued pursuant to the registration statement, including the shares sold by the selling stockholder, were sold at a price to the public of $9.75 per share. The managing underwriters were Goldman, Sachs & Co., Citigroup Global Markets Inc., Deutsche Bank Securities Inc., and Thomas Weisel Partners LLC.

As a result of the IPO, we raised a total of $87.5 million in net proceeds after deducting underwriting discounts and commissions of $6.8 million and offering expenses of $3.1 million. On October 2, 2006 we used $1.5 million of our proceeds to settle our credit facility.

In February 2007, we completed our follow on public offering pursuant to a registration statement on Form S-1 (Registration No. 333-140544) which the U.S. Securities and Exchange Commission declared effective on February 22, 2007. Under this registration statement, we registered the offering and sale of 2,854,671 shares of our common stock (including 250,000 shares sold by us pursuant to the underwriters' exercise of their over-allotment option) and another 2,645,329 shares of our common stock sold by certain selling stockholders. The offering did not terminate until after the sale of all of the shares registered on the registration statement. All of the shares of common stock issued pursuant to the registration statement, including the shares sold by the selling stockholders, were sold at a price to the public of $32.50 per share. The managing underwriters were Goldman, Sachs & Co., Deutsche Bank Securities Inc., Citigroup Global Markets Inc., and Thomas Weisel Partners LLC.

As a result of the follow on public offering, we raised a total of $92.7 million in net proceeds after deducting underwriting discounts and commissions of $4.2 million and other offering costs of $0.9 million. No payments for such expenses were made directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities, or (iii) any of our affiliates. We did not receive any proceeds from the sale of shares in the follow on public offering by the selling stockholders.

We anticipate that we will use the remaining net proceeds from the IPO and the follow-on public offering for general corporate purposes, which may include expansion of our domestic and international sales and marketing organizations, investments in our infrastructure to support our anticipated growth, further development and expansion of our service offerings and possible acquisitions of complementary businesses, technologies or other assets. We have no current agreements or commitments with respect to any material acquisitions. Pending such uses, we plan to invest the net proceeds in short-term, interest-bearing, investment grade securities. There has been no material change in the planned use of proceeds from the IPO and the follow-on public offering as described in the final prospectuses filed with respect to such public offerings with the Securities and Exchange Commission pursuant to Rule 424(b).

(c) Purchases of Equity Securities by the Issuer and Affiliated Purchasers

	Total Number of Shares Purchased (1)	Average Price per Share	Total Number of Shares Purchased as Part of Publicly Announced Program	Approximate Dollar Value of Shares that May be Purchased under the Program
January 1 – January 31, 2007	15,522	$ 0.18	—	—
February 1 – February 28, 2007	—	—	—	—
March 1 – March 31, 2007	—	—	—	—
Total	15,522	$ 0.18	—	—

(1) Represents unvested shares of common stock repurchased by us upon the termination of employment or service pursuant to the provisions of our 2002 Stock Plan.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Submission of Matters to a Vote of Security Holders.

None.

Item 5. Other Infor mation.

None.

Item 6. IN DEX TO EXHIBITS

Exhibit No.	Description
3.2	Restated Certificate of Incorporation. (1)
3.4	Amended and Restated Bylaws. (1)
4.2	Form of Common Stock Certificate. (1)
10.1	Agreement of Sublease dated as of September 26, 2006 between PricewaterhouseCoopers LLP and Riverbed Technology, Inc. (2)
10.39	Offer Letter with David M. Peranich dated July 7, 2006. (1)
10.40	199 Fremont Building Office Lease Form dated as of March 21, 2007 between GLL Fremont Street Partners, Inc. and Riverbed Technology, Inc.
10.41	Lease Agreement dated as of January 25, 2007 between One Penn Plaza LLC and Riverbed Technology, Inc.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

The certification attached as Exhibit 32 that accompanies this Quarterly Report on Form 10-Q is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Riverbed Technology, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

(1) Incorporated by reference to exhibit of same number filed with the Registrant's Registration Statement on Form S-1 (No. 333-133437) on April 20, 2006, as amended.
(2) Incorporated by reference to exhibit filed with registrant's Form 8-K on October 2, 2006.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: April 27, 2007

RIVERBED TECHNOLOGY, INC.

By: /s/ Jerry M. Kennelly
Jerry M. Kennelly
President and Chief Executive Officer

Dated: April 27, 2007

RIVERBED TECHNOLOGY, INC.

By: /s/ Randy S. Gottfried
Randy S. Gottfried
Chief Financial Officer

EXHIBIT INDEX

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Exhibit 10.40

199 FREMONT BUILDING

OFFICE LEASE FORM

Premises: 199 Fremont Street, San Francisco, CA, 94105, Floors 5-8

Landlord: GLL FREMONT STREET PARTNERS, a California partnership

Tenant: RIVERBED TECHNOLOGY, INC., a Delaware corporation

TABLE OF CONTENTS

List of Attachments:

FREMONT PROPERTIES

OFFICE LEASE FORM

THIS LEASE, between the parties named below as Landlord and Tenant, is dated March 21, 2007, for reference purposes only.

1. SALIENT LEASE TERMS AND DEFINITIONS

1.1 Rent Payment Address: c/o Fremont Properties
50 Fremont Street, Suite 3500
San Francisco, CA 94105

1.2 Parties and Notice Address: Landlord:

GLL FREMONT STREET PARTNERS, INC.
1981 North Broadway, Suite 330
Walnut Creek, CA 94596
Attn: Asset Manager,
199 Fremont Street Building

Tenant:

RIVERBED TECHNOLOGY, INC.,
a Delaware corporation

Tenant's Notice Address shall be:

199 Fremont Street
San Francisco, CA 94105

1.3 Premises: 1.3.1 Name and Location of Facility where the Building is located:

199 Fremont Street, including its underground parking garage and the adjoining sidewalks and plaza, (specifically including the third floor, of the "Marine Electric Building" as defined in Subsection 2.2.1 below, which third floor is Common Area but specifically excluding the first and second floors of such building).

1.3.2 Street Address of Building: 199 Fremont Street, San Francisco, CA 94105

(a) Phase I Premises: the leaseable areas located on the eighth (8th) floor of the Building.

(b) Phase II Premises: the leaseable areas located on the 5th, 6th and 7th floors of the Building.

The Phase I Premises and Phase II Premises are sometimes referred to herein as the "Premises".

1.3.3 Approximate number of rentable square feet ("RSF"), calculated in accordance with the BOMA standard method of measurement (ANSI Z65.1-1996), of:

(a) The 8th Floor: 20,809 RSF.

(b) The 5th Floor: 21,266 RSF.

(c) The 6th Floor: 21,266 RSF.

(d) The 7th Floor: 21,266 RSF.

(e) The Premises: 84,607 RSF.

(f) The Building: 394,664 RSF.

1.4 Term:

1.4.1 Phase I Premises: a period of eighty-four (84) months, commencing on the "Phase I Premises Effective Date" of August 1, 2007.

1.4.2 Phase II Premises: a period of forty-seven (47) months, commencing on the "Phase II Premises Effective Date" of September 1, 2010.

1.4.3 Expiration Date: July 31, 2014.

1.5 Rent:

1.5.1 Minimum Annual Rent:

(a) Phase I Premises:

8/1/07 - 7/30/08: $36.00 per RSF.
8/1/08 - 7/30/09: $37.00 per RSF.
8/1/09 - 7/30/10: $38.00 per RSF.
8/1/10 - 7/30/11: $39.00 per RSF.
8/1/11 - 7/30/12: $40.00 per RSF.
8/1/12 - 7/30/13: $41.00 per RSF.
8/1/13 - 7/30/14: $42.00 per RSF.

(b) Phase II Premises:

9/1/10 - 12/31/10: $43.50 per RSF.
1/1/11 - 12/31/12: $45.50 per RSF.
1/1/13 - 7/30/14: $47.50 per RSF.

plus Tenant's "Electrical Component" which shall mean and refer to (i) Tenant's use of electricity within the Premises and (ii) Tenant's Percentage Share of the cost of all other electricity utilized in the Facility outside of space demised to third party tenants of the Facility (specifically including the Common Area variable portion of the electricity which shall be grossed up to 95% occupancy).

1.5.2 Storage Rent: In addition, Tenant will pay $24.00 per usable square foot of Storage Space per year in equal monthly installments, pursuant to Section 7 below, as "Storage Rent".

1.6 Letter of Credit: Tenant shall provide Landlord with an irrevocable letter of credit in the amount of $2,120,000.00 for the Lease Term, $1,600,000 to be delivered upon execution of the lease and the balance of $520,000.00 to be delivered no later than November 30, 2009, as set forth in Subsection 5.5 below.

1.7 Permitted Uses: The Premises shall be used for the uses permitted in Subsection 3.1.

1.8 Tenant's Percentage Share: Twenty-One and forty-four one-hundredths percent (21.44%).

1.8.1 Phase I Premises: 5.27%

1.8.2 Phase II Premises: 16.17%

1.9	Base Years:	The Base Expense Year for Operating Expenses shall be calendar year 2007 for the Phase I Premises and 2010 for the Phase II Premises, and the Base Tax Year shall be calendar year 2007 for the Phase I Premises and 2010 for the Phase II Premises.
1.10	Landlord's Broker:	Cornish & Carey Commercial, Inc.
	Tenant's Broker:	NAI BT Commercial
1.11	Tenant's Parking Privileges:	Tenant shall have the right to rent one (1) stall per five thousand (5,000) RSF leased within the Building's parking facility. Tenant may enter into a direct contract with the Building's parking facility operator for additional spaces, if available.
1.12	Contents:	This Lease consists of: Sections 1 through 55, plus the Exhibits listed on the Table of Contents page attached to this Lease.
1.13	Options to Extend:	Tenant shall have the right to extend the Term of this Lease for two (2) additional periods of five (5) years each upon twelve (12) months' prior written notice and pursuant to the provisions of Section 52 of this Lease.

2. LEASE OF PREMISES.

2.1 Demising Clause.

2.1.1 Landlord hereby leases to Tenant, and Tenant hires from Landlord, effective on the respective "Effective Dates" for the Phase I Premises and Phase II Premises as stated in Subsection 1.4 above, the Premises, together with the nonexclusive right to the use and enjoyment of the "Base Building Systems" (i.e., the mechanical, electrical, plumbing, life-safety and sprinkler systems of the Building) and the "Common Area" for the entire Term. "Common Area" shall mean and refer to the exercise room, parking facilities, walkways, elevators, stairwells, multi-tenant floor corridors, multi-tenant floor bathrooms, multi-tenant floor corridor fountains, multi-tenant floor corridor elevator lobbies, lobbies, plazas, landscaped areas, driveways serving the Building and located at the Facility and other common facilities designated by Landlord from time to time for the common use of all tenants of the Building, and the day care facility and exercise room described in Section 54 below. Notwithstanding that the day care facility is a part of the Common Area, Landlord may charge Tenant reasonable and uniform fees for the use of the day care facility. Said letting and hiring are upon and subject to the terms, covenants, and conditions set forth in this Lease, including the "Salient Lease Terms" in Section 1 and the attached exhibits. This Lease is made upon the condition of such performance.

2.1.2 Landlord reserves to Landlord the areas beneath and above the Premises and the use thereof together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, and structural elements leading through the Premises and serving other parts of the Facility, so long as Landlord's use of such areas is in compliance with the provisions of Section 22 below.

2.1.3 Landlord reserves the right to effect such other tenancies in the Building as Landlord may elect in its sole business judgment; provided, however, that any retail leases for the first floor of the Building must not be inconsistent with the types of uses permitted by landlords of Comparable Buildings.

2.1.4 Tenant may use any fire stairwells for circulation within the Premises to the extent that Tenant pays for any costs associated with such use in excess of costs Landlord would have incurred but for such use and Tenant complies with all Laws (as such term is defined in Subsection 3.3 below).

2.2 Description. As used herein, the following capitalized terms shall have the indicated meanings:

2.2.1 The "Facility" shall mean that certain real property (including the high-rise office building and the land on which such building and plaza area are situated (specifically including, if the day care center described in Section 54 is located on the third floor of that certain building located at 356 Howard Street and commonly known as the "Marine Electric Building," as Common Area, the third floor of the Marine Electric Building, and an undivided one-third (1/3) interest in the land under the Marine Electric Building [but specifically excluding the first and second floors of the Marine Electric Building and an undivided two-thirds (2/3) interest in the land under the Marine Electric Building]; or, if the day care center is located elsewhere, the area used for the day care center and an equitable proportion of the land on which the day care center is located), the Building and Common Areas) owned by Landlord and described in Exhibit A-1 attached hereto, said real property being described in Subsection 1.3.1 above.

2.2.2 The "Premises" shall mean that certain space located in the Building and described in Section 1.3.2 above and delineated on Exhibit A-2 attached hereto, which space will consist of the amount of rentable square footage specified in said Section 1.3.3.

2.2.3 The "Building" shall mean that certain building which is a part of the Facility and located at the address described in Subsection 1.3.2 above.

2.2.4 The "Term" shall mean, with respect to the Phase I Premises and the Phase II Premises, the period commencing upon the respective Effective Dates (as defined in Subsection 1.4 above) and ending on the Expiration Date (as defined in Subsection 1.4 above), subject to the provisions of this Lease concerning extensions. As used in this Lease, the term "Commencement Date" shall mean and refer, as applicable, to the respective Effective Dates of the Phase I Premises and Phase II Premises.

2.3 Delivery of Premises. The Premises shall be delivered to Tenant in "AS IS" condition, pursuant to the provisions of this Subsection 2.3.

2.3.1 The Phase I Premises shall be delivered to Tenant upon the full execution and delivery of this Lease. As contemplated by the provisions of Subsection 2.1 of Exhibit B, during such early access by Tenant to the Premises, Tenant shall be subject to the all of the terms and conditions of this Lease, except for payment of Minimum Monthly Rent and Operating Expenses, provided that Tenant shall be obligated to pay all electricity costs during such early entry period.

2.3.2 The Phase II Premises shall be delivered to Tenant on the Phase II Premises Effective Date. The parties acknowledge that Tenant is in possession of the Phase II Premises as of the date of execution and delivery of this Lease pursuant to a sublease agreement by and between Tenant and PricewaterhouseCoopers dated September 26, 2006 (the "Sublease").

3. USES.

3.1 Permitted Uses. Except as otherwise expressly provided herein, the Premises shall be used only for general office uses. Tenant shall not use the Premises for any other use or purpose besides those permitted under this Subsection 3.1, except upon Landlord's prior written consent, which shall not be unreasonably withheld; provided, however, that it shall be reasonable for Landlord to withhold its consent to the extent such use is unrelated to the Permitted Uses, is inconsistent with the character of Class A high-rise office building in the San Francisco Financial District which are perceived in the marketplace to be similar to the Facility, taking into account the size, age, quality, tenant-mix, and location within the sub-areas of the Financial District of the Facility and other high-rise office buildings, as such market perception may change over time, depending upon future development in downtown San Francisco ("Comparable Buildings") or materially interferes with the use of the Building by other tenants or occupants thereof. Notwithstanding the foregoing, Tenant shall be permitted to use portions of the Premises for a kitchen or kitchenette, food vending machines, a printing center, conference centers and presentation centers.

3.2 Restriction on Use. Without limitation to the generality of the foregoing use restriction, Tenant specifically covenants and agrees that it shall not (a) do, bring, or keep, or permit to be done, brought, or kept, anything in or about the Premises that will in any way (i) adversely interfere with the access or other rights of any other tenants or occupants of the Facility or injure or annoy them, (ii) cause a weight load or stress on the floor or any other portion of the Premises in excess of the weight load or stress that the floor or other portion of the Premises is designed to bear without Landlord's reasonable approval, (iii) cause or threaten a cancellation of any fire or other insurance upon the Building or its contents (as evidenced by one or more letters from Landlord's insurance company), or (b) use the Premises, or allow them to be used, for any residential or disreputable purpose; (c) sublease any portion of the Premises, or otherwise transfer occupancy, to a governmental agency or related entity unless Landlord has entered into a direct lease with a similar agency or entity that is effective as of the date of Tenant's proposed transfer of the Premises, or (d) commit or suffer to be committed any waste in or upon the Premises or the Facility.

3.3 Compliance with Laws.

3.3.1 Landlord's Responsibilities. Throughout the Term, Landlord shall maintain and operate the Facility in compliance with Laws and be responsible (subject to the provisions of Section 24 below and subject to reimbursement in accordance with Subsection 6.3.1 below) for any additional work required to cause the Facility (including the Common Areas, Base Building Systems and the restrooms) to so comply.

3.3.2 Tenant's Responsibilities. Tenant shall be responsible for any work of construction within the Premises required to cause the Premises to comply during the Lease Term with all applicable and future laws, statutes, rules, regulations, ordinances, codes, licenses, permits, certificates of occupancy, orders, decrees, directives, judgments, approvals, plans, authorizations, and similar items of any local, state, or federal governmental or quasi-governmental authority (collectively, "Laws," or individually, a "Law") that impose any duty upon Landlord or Tenant with respect to the condition, use, occupancy, or alteration of the Premises, including, but not limited to, any required changes to the structural elements of the Premises such as interior stairwells and floor shoring, elevator lobbies, corridors, and drinking fountains. Without limiting the generality of the forgoing definition, the parties expressly acknowledge that the term "Laws" shall include all Environmental Requirements (as defined below) and all Laws relating to the rights of individuals with disabilities. Notwithstanding the foregoing, Tenant shall not be required to make any changes to the Base Building Systems or structural elements of the Facility, except to the extent the same are caused or triggered by (a) Tenant's unique and specific use

of the Premises for other than general office purposes, or (b) Tenant's extraordinary and unique employees or extraordinary and unique employment practices (which specifically require such Base Building changes). Any such compliance with Laws that is not Tenant's responsibility pursuant to the foregoing shall be performed by Landlord (as part of Operating Expenses to the extent allowable in Section 6 hereof), but only to the extent then required under applicable Laws to permit Tenant to use the Premises for general office purposes in a normal and customary manner or prevent cancellation of insurance of Tenant. The parties hereto shall immediately furnish to the other party any notices such party receives from any insurance company or governmental agency or inspection bureau where action is required of the other party regarding any unsafe or unlawful conditions within the Premises.

4. INTENTIONALLY DELETED.

5. RENT.

5.1 Minimum Monthly Rent. Tenant shall pay to Landlord, as "Minimum Monthly Rent" for the Premises, the amount specified in Subsection 1.1.5 above. Payments of Minimum Monthly Rent shall be made in advance, on or before the first day of each calendar month during the entire Term.

5.2 Definition of Rent; Prorations. Any and all payments of Minimum Monthly Rent, directly metered costs of Tenant's electricity (only if such amounts are owed to Landlord and not to a utility company), Tenant's Percentage Share of all other electricity utilized in the Facility outside of space demised to third-party tenants (specifically including the Common Area variable portion of the electricity which shall be grossed up to 95% occupancy), and any and all taxes, assessments, fees, charges, costs, expenses, insurance obligations, late charges, Operating Expenses, and all other payments or reimbursements that are attributable to, payable by or the responsibility of Tenant under this Lease (including, without limitation, charges for any "above-building-standard services" requested by Tenant or Tenant's authorized representatives from time to time) shall constitute "Rent" for all purposes of this Lease and any applicable unlawful detainer statute. Any Rent payable to Landlord by Tenant for any fractional month shall be prorated based upon the actual number of days in such calendar month.

5.3 Place and Manner of Payment. All Rent shall be paid by Tenant to Landlord in lawful money of the United States of America at Landlord's address set forth in Subsection 1.1.1 above, or to such other person or at such other place as Landlord may from time to time reasonably designate in writing. All payments of Minimum Monthly Rent shall be payable without prior notice or demand and all payments of Rent shall be paid except as otherwise expressly provided herein, without deduction, setoff or counterclaim for any reason whatsoever. Payments made by check must be drawn either on a financial institution in the state where the Facility is located or on a financial institution that is a member of the federal reserve system.

5.4 Late Charges. Tenant acknowledges that the late payment of Rent will cause Landlord to incur damages, the exact amount of which would be impractical and extremely difficult to ascertain. Such damages may include, without limitation, processing, accounting, and other administrative costs, loss of use of the overdue funds, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Landlord and Tenant agree that if Landlord does not receive a payment of Rent within ten (10) days after such payment becomes due, Tenant shall pay to Landlord a late charge in an amount equal to three percent (3%) of such overdue Rent. Notwithstanding the foregoing, such late charge shall not be assessed if all of the following conditions shall apply: (a) the late payment is made within ten (10) days after Landlord's written notice of delinquent payment and (b) Landlord shall not, during the 365-day period immediately preceding the due

date of such late payment, have delivered to Tenant written notice of more than one (1) then delinquent payment of Minimum Monthly Rent or more than two (2) other delinquent payments of Rent (other than Minimum Monthly Rent). In addition to the provisions set forth in Section 23 of this Lease and in Section 50 of this Lease, except that Tenant shall have no obligation to pay to Landlord interest on interest, if Landlord does not receive a payment of Rent within thirty (30) days after such payment becomes due, Tenant shall pay to Landlord additional late charges computed at the interest rate of ten percent (10%) per annum or, if lower, the maximum interest rate allowed by law (the "Interest Rate"). Landlord agrees that any payments due from Landlord to Tenant that are not received by Tenant within thirty (30) days after such payment becomes due shall bear interest at the Interest Rate until paid. Such interest shall begin to accrue as of such 30th day after such Rent payment became due. The parties agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge by Landlord shall not cure or waive Tenant's default nor prevent Landlord from exercising, before or after such acceptance, any of the rights and remedies for a default provided by this Lease or at law. Tenant shall be liable for late charges regardless of whether Tenant's failure to pay the Rent when due constitutes an Event of Default under this Lease.

5.5 Letter of Credit. In consideration of Landlord's execution and delivery of this Lease, Tenant shall provide Landlord, concurrent with the execution and delivery of this Lease, with an unconditional letter of credit for One Million Six Hundred Thousand Dollars ($1,600,000), supplemented by the delivery not later than November 30, 2009 of a supplemental unconditional letter of credit for Five Hundred Twenty Thousand Dollars ($520,000) (together, the "Letter of Credit") on a commercially reasonable, but fully unconditional form thereof, as reasonably approved by Landlord, from a major California bank or other financial institution approved by Landlord, securing Tenant's performance under the terms of this Lease, which Letter of Credit shall be automatically renewable and shall have "evergreen" provisions stating that (i) Tenant shall immediately replenish any drawn portion of the Letter of Credit, (ii) Tenant will renew the Letter of Credit by a date which is thirty (30) business days prior to its expiration, and (iii) if the Letter of Credit is not renewed by such date, Landlord may draw upon the full amount of such Letter of Credit. To the extent that Tenant shall not timely replenish any drawn portion of the Letter of Credit or timely renew the Letter of Credit, Tenant shall be in default under this Lease, and Landlord shall provide Tenant with written notice of Tenant's failure to do same. Tenant shall have a period of fifteen (15) business days after receipt of Landlord's notice to cure such default. To the extent that Tenant fails to cure such default within such fifteen (15) business day period, Landlord shall have the right to terminate this Lease without further opportunity for Tenant to cure effective immediately by providing Tenant with written notice of Landlord's election to do same. In addition to any other rights or remedies available at law or equity, Landlord shall have the right to draw on the Letter of Credit for the amount of any Tenant Holdover Obligation that Tenant has not paid. The Letter of Credit shall expire on that date which is sixty (60) days following the Expiration Date of this Lease, subject to earlier expiration if Landlord has terminated this Lease with more than nine (9) months remaining on the term of the Lease.

5.6 Time of Payment. Tenant agrees to pay all Rent required under this Lease within the applicable time limits set forth in this Lease. If no such time period is elsewhere specified herein for payment of a particular amount, then such amount shall be due and payable thirty (30) days after Landlord's delivery of an invoice or demand therefor.

5.7 Partial Payments. Payments by Tenant shall be applied against the then outstanding rental charges that first became due. No payment by either party or receipt by either party 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 payment of Rent shall be deemed an accord and satisfaction. Either party may accept such check or payment without prejudice to that party's right to recover the balance of such installment or payment of Rent, or pursue any other remedies available to that party.

5.8 Electricity to the Premises. All electricity directly serving the Premises shall be metered and Tenant shall pay, as monthly rental, the actual cost (without mark up by Landlord) of all such directly metered electricity to Landlord as a reimbursement, provided that at Landlord's election, Tenant shall pay the electrical utility provider directly, except that Tenant shall remain obligated to pay Landlord as reimbursement Tenant's Percentage Share of the cost of all other electricity utilized in the Facility outside of space demised to third party tenants of the Facility (specifically including the Common Area variable portion of the electricity which shall be grossed up to 95% occupancy). Such payments to Landlord shall be made within thirty (30) days of Landlord's delivery of an invoice to Tenant therefor. Tenant acknowledges that its server room will use an amount of electricity equal to or greater than 4.0 watts per usable square foot, which usage Tenant shall meter separate and apart from all other usage in the Building.

6. PAYMENT OF TAXES, ASSESSMENTS, AND OPERATING EXPENSES.

6.1 Tenant's Percentage Share. In addition to paying the Minimum Monthly Rent, Tenant shall pay to Landlord the percentage set forth in Subsection 1.1.8 ("Tenant's Percentage Share") of the amounts set forth below in Subsections 6.2 and 6.3. Tenant's Percentage Share shall be calculated by dividing the net rentable square feet of the Premises by the net rentable square feet contained in the Building. Once the rentable square footage of the Premises and the Building are verified as provided in Subsection 2.2.2 above, Tenant's Percentage Share shall not be subject to correction or recalculation, except as provided in connection with the expansion or contraction of the Premises (pursuant to the terms of this Lease) or except in the event the net rentable square feet contained in the Building, or the so-called "load factor" used in calculating such rentable area, is changed due to events of damage, destruction, demolition, alterations, new construction, or redesignation of an area of the Facility as Common Area.

6.2 Taxes and Assessments.

6.2.1 Payment. Tenant shall pay to Landlord an amount equal to Tenant's Percentage Share of any increase in Taxes above the amount of Taxes accrued for the Base Tax Year set forth in Subsection 1.1.9, either by way of increase in the rate or in the assessed valuation of the Facility (or any portion thereof) or by imposition of any such charges by ordinance or statute of any authority having jurisdiction. As used in this Section 6, the term "Taxes" shall mean all real property taxes, excises, penalties (unless due to Landlord's negligence or willful misconduct), fees (including, without limitation, all license, permit and inspection fees), and other charges (but excluding Assessments, as defined in Subsection 6.2.2 below) assessed, levied, charged, confirmed, or imposed by and payable to any local government, any local political subdivision, local public corporation, district, or other local political or local public entity or local public authority (collectively, the "Local Taxes"): (a) on the Facility (or any portion thereof), (b) on Landlord with respect to the Facility (or any portion thereof) as specifically by Building address or legal description provided that such Local Taxes are designated for the use of such local taxing authority, (c) on the act of leasing or entering into leases of space in the Facility (provided that such Local Taxes are not merged into non-Local Taxes) and treating rentals from such leases as if they were the only rentals received by Landlord, (d) on or measured by the Rent payable under leases of space in the Building, or (e) on personal property of Landlord used in the operation of the Facility (or any portion thereof). Such Taxes may be general or specific, ordinary or extraordinary, or of any kind or nature whatsoever, whether or not now customary or within the contemplation of the parties to this Lease. All references to Taxes herein shall be deemed to refer to taxes accrued during a particular year, including supplemental tax bills, regardless of when they are actually assessed and without regard to when such taxes are payable. Notwithstanding the foregoing, federal, state, and local documentary transfer taxes,

gift, franchise, inheritance, gross receipts, transfer, succession, and estate taxes, and income taxes shall not be included as Taxes or Assessments, nor shall the computation of increases in Taxes or Assessments for which Tenant shall pay Tenant's Percentage Share include any amounts paid by Tenant under Subsections 6.2.3 and 6.2.4 or any amounts separately billed to a particular tenant of the Facility with respect to similar matters (other than as Tenant's Percentage Share of increases in Taxes or Assessments). The amount of Taxes attributable to the Base Tax Year shall be reduced by the amount of any Tax refund arising out of an appeal and permanent reduction of the Building's assessed valuation for the Base Tax Year.

6.2.2 Percentage Share. Tenant shall also pay to Landlord an amount equal to Tenant's Percentage Share of any increase in Assessments above the amount of Assessments levied or assessed against the Facility for the Base Tax Year. As used in this Section 6, the term "Assessments" shall mean all assessments, transit charges, housing charges, and levies assessed, charged, levied, confirmed, or imposed by any local government, any political subdivision, public corporation, district, or other local political or public entity or public authority thereof on or with respect to any of the items described in clauses (a) through (e) of Subsection 6.2.1 or with respect to the use, occupancy, management, maintenance, alteration, repair, or operation of the Facility (or any portion thereof) or any services or utilities furnished or consumed in connection with the use, occupancy, management, alteration, repair or operation of the Facility (or any portion thereof). Neither "Taxes" nor "Assessments" shall include any costs, taxes, fees, assessments, or impositions levied, charged, assessed, or imposed by public authorities in connection with any development or redevelopment of the Facility or expansion of the Building (other than those Assessments that are generally applicable to similarly situated property owners absent any such development or redevelopment or expansion), except to the extent such Assessments either arise from actions undertaken by Landlord in its reasonable efforts to comply with the requirements of this Lease or are legally mandated, as opposed to discretionary actions. Except to the extent otherwise expressly provided below, the amount of Assessments attributable to the Base Tax Year shall be reduced by the amount of any Assessment refund arising out of an appeal of an assessment levied or assessed against the Facility for the Base Tax Year.

6.2.3 Full Responsibility. In addition to paying Tenant's Percentage Share of increases in the Taxes and Assessments described in Subsections 6.2.1 and 6.2.2, Tenant shall pay one hundred percent (100%) of the following, as reasonably determined by Landlord: any increase in Taxes or Assessments resulting from any general office type improvements or installations above Class A-standard made to the Premises by or at the instance of Tenant, other than the retrofit work described in Exhibit B. The total amounts due under this Subsection 6.2.3 shall be paid to Landlord on or before the date full payment of such Taxes or Assessments shall become due, or if payable in installments, the date payment of the first installment of such Taxes or Assessments shall become due. In the event such Taxes or Assessments are paid by Landlord, Tenant forthwith upon demand therefor shall reimburse Landlord for all amounts of such Taxes or Assessments chargeable against Tenant pursuant to this Subsection 6.2.3. Notwithstanding anything to the contrary set forth herein, in the event that Tenant disputes the total amounts due under this Subsection 6.2.3, Tenant shall have the right to resolve such disputes by arbitration pursuant to the terms and conditions set forth in Exhibit F attached hereto.

6.2.4 Personal Property. Tenant shall pay, before delinquency, any and all levied or assessed taxes that become payable during or with respect to the Term upon Tenant's equipment, furnishings, fixtures, and other personal property of Tenant located in the Premises (collectively, "Tenant's Personal Property"). In the event said taxes are paid by Landlord, Tenant forthwith upon demand therefor shall reimburse Landlord for all such taxes paid by Landlord.

6.2.5 Apportionment. Any Taxes or Assessments that may be paid over more than a one-year period shall be apportioned evenly over the maximum period of time permitted by Law and only

the portion thereof accruing during a given year shall be included in Taxes or Assessments for that year. Landlord shall use its reasonable discretion in determining whether to contest the amount of any Taxes or Assessments and, upon request of Tenant, Landlord shall explain to Tenant the basis for Landlord's decision as to whether or not to contest the amount of any Taxes or Assessments. In the event that Landlord contests the amount of any Taxes or Assessments and receives a refund or credit as a result thereof, then Landlord shall pay Tenant Tenant's Percentage Share of such refund to the extent that the refund relates to Taxes or Assessments that have been paid by Tenant. Landlord's obligation to pay to Tenant Tenant's Percentage Share of such refund shall survive the expiration or sooner termination of this Lease. Upon Tenant's request, Landlord shall provide a copy of all applicable tax bills. Landlord shall make continuous good faith efforts to minimize Real Estate Taxes.

6.3 Operating Expense Increases.

6.3.1 Definition. Tenant shall pay to Landlord an amount equal to Tenant's Percentage Share of any increase in Operating Expenses above the Operating Expenses for the Base Expense Year. As used in this Section 6, the term "Operating Expenses" shall mean costs and expenses accrued by Landlord in connection with the operation, management, or maintenance of the Facility (which costs shall be accounted for under generally accepted accounting principles consistently applied and shall be amortized when and as required thereunder), excluding, however, the items described in Subsection 6.3.2 below, which items shall not be included in Operating Expenses for purposes of this Lease. By way of illustration but not limitation, Operating Expenses shall include (subject to the specific exclusions described in Subsection 6.3.2 below) all actual and commercially reasonable (a) costs for heating, cooling, ventilation, fuel, and utilities serving the Common Areas; (b) costs and expenses for maintenance, ordinary and extraordinary repairs, testing, and operation of building systems and components including, without limitation, costs and expenses for maintenance and repair of the roof membrane; (c) costs and expenses for security, landscaping, refuse disposal, janitorial services, labor, supplies, materials, equipment, and tools, including any sales, use, or excise taxes thereon; (d) market management fees (up to but not exceeding 3% of the gross revenues/receipts of the Facility including Minimum Monthly Rent (but not including after-hours service or utilities)) and other costs of managing the Facility, whether managed by Landlord or an independent contractor; (e) the wages, salaries, bonuses, employee benefits and payroll burden, pro-rated to account for the time actually spent with respect to the Facility, of all Landlord's (or its agents') on-site or off-site employees below the level of senior property manager engaged in the day-to-day operation, maintenance, management, or security of the Facility, including employers' payroll, social security, workers' compensation, unemployment, and similar taxes with respect to such employees; (f) subject to the provisions of Subsection 6.3.1(a) below, all insurance premiums paid or incurred by Landlord with respect to the Facility and all amounts paid in connection with claims or losses that are less than the amount of such deductibles or self-insured retentions as Landlord may have deemed reasonable for its insurance policies, but only to the extent that such deductible or self-insured retention does not exceed (i) the then-current commercially reasonable level of dollars per occurrence, if during the initial 10-year Term, or (ii) the customary range of deductibles or self-insured retentions (as the case may be) for Comparable Buildings, if after said initial 10-year term; (g) all reasonable costs and expenses of contesting by appropriate proceeding the amount or validity of any Taxes or Assessments; (h) the annual amortized costs (plus interest on the unamortized balance at a rate equal to such commercially reasonable interest rate as Landlord may be paying to a non-affiliated third party on funds borrowed to finance such costs, or if such financing is not obtained, at a rate equal to the prime rate (the "Reference Rate") reported from time to time in the Money Rates section of the Wall Street Journal, or if such rate shall no longer be regularly published, such replacement rate as Landlord may reasonably designate) of any capital improvements, capital repairs or capital assets constructed, made, purchased, or installed after the Base Year (i) in order to comply with any Law (as defined in Subsection 3.2) which is enacted after the Base Year or (ii) in order to conserve energy or reduce other Operating Expenses or increase the efficiency of any of the Base Building Systems so as to achieve a

reduction or a lower increase in Operating Expenses, with any such capital costs referred to in clause (h)(i) above to be amortized over the useful life of such capital improvements or capital assets, as reasonably determined by Landlord, and with any such capital costs referred to in clause (h)(ii) above to be passed through to Tenant at the rate which is the lesser of: (A) an amount equal to cost of such improvements, amortized at the Reference Rate over the useful life of such capital improvements; or (B) the rate of the actual annual savings (the determination of which may, in appropriate circumstances, require Landlord's reasonable engineering calculations to account for annual fluctuations in conditions such as building occupancy rates and weather conditions) in Operating Expenses achieved as a consequence of such capital expenditure; (i) the fair market rental value of the building office and other space in the building occupied by Landlord or its manager in connection with the operation or management of the Facility which shall not exceed 3,000 rentable square feet; (j) the cost of complying with Subsection 47.3 below; (k) the non-capital cost of complying with the rules and regulations applicable to the Facility as mandated by governmental authorities with jurisdiction over the Facility, including employment brokerage services pursuant to San Francisco Planning Code Section 164; (l) all other costs and expenses that under generally accepted accounting principles and practices of Comparable Buildings would be included in operating expenses; and (m) costs of maintenance of any exercise rooms, food service facility, day care center or other similar specialty service facility, subject to a credit against such costs of maintenance for any revenue generated by or rent collected from such facility. Landlord's obligations to provide services are set forth elsewhere in this Lease. The above itemization of operating expenses is for illustrative purposes only and shall not be deemed to increase or modify Landlord's obligations to provide services under this Lease.

(a) Earthquake Insurance. From time to time, Landlord may carry and maintain a policy of earthquake insurance insuring the Building against property damage caused by certain seismic hazards. The parties acknowledge that the market for earthquake insurance policies is very volatile, and may include large fluctuations in the availability and cost of such insurance. As more fully provided below, it is the intent of the parties that, when determining what insurance premium costs should be included in the calculation of Operating Expenses for the Base Expense Year and any later year (hereinafter, a "Comparison Year"), appropriate adjustments should be made so that (a) Tenant will only be charged Tenant's Percentage Share of increases allocable to what comparable insurance policies would have cost in the two years then in question and (b) Tenant will not be charged for cost increases allocable to insurance coverage exceeding what is then ordinary or customary. Accordingly, to the extent that Landlord at any time carries greater earthquake insurance coverage than is provided under any "Conventional Earthquake Policy" (as defined below), Landlord shall only include in Base Expense Year Operating Expenses and Comparison Year Operating Expenses the respective amounts reflecting what a then reasonable Conventional Earthquake Policy would have cost for the years in question. Also, to the extent that the coverage under the respective earthquake policies (or the deemed coverage, where the actual policy was greater than a then reasonable Conventional Earthquake Policy) are different from each other, Landlord shall recalculate the cost of the premiums for the Base Expense Year to reflect what an earthquake policy with coverage comparable to the Comparison Year's coverage (not to exceed the reasonable Conventional Earthquake Policy) would have cost during the Base Expense Year. Notwithstanding any provision hereof to the contrary, if the earthquake coverage actually maintained during the Base Expense Year exceeds (i) a then reasonable Conventional Earthquake Policy then available or (ii) the earthquake coverage actually maintained during the Comparison Year, then the amount attributed to the cost of such policy attributable to the Base Expense Year shall not be greater than the amount attributed to the cost of such Comparison Year's earthquake insurance when calculating Tenant's Percentage Share of increases in Operating Expenses for such Comparison Year.

(b) Conventional Policy. As used herein, the term "Conventional Earthquake Policy" shall mean, for any given year, a policy of earthquake insurance that was then either customary or usual for owners of Comparable Buildings. Landlord shall have the right, in its sole and absolute discretion, to carry no earthquake insurance at all.

(c) Determination. Whenever Subsection 6.3.1(a) above requires the determination of the cost of an earthquake policy different from that actually carried by Landlord for the year in question, a reputable independent 'insurance broker with a minimum of five years of experience in the earthquake insurance market in the San Francisco Financial District, mutually selected by Landlord and Tenant shall reasonably determine what the premium would have been for such a policy in the year in question.

(d) Disputes. Any disputes between the parties concerning the calculation of costs under, or the application of, Subsections 6.3.1(a) through 6.3.1(c) above shall be resolved in accordance with the arbitration procedures set forth in Exhibit F attached hereto.

6.3.2 Exclusions. The following costs and expenses shall be excluded from the definition of "Operating Expenses" for purposes of this Lease:

(a) Any costs for which Landlord is reimbursed by insurance.

(b) Brokers/Leasing commissions, attorneys' fees, accountant's fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants or associated with the enforcement of any leases or the defense of Landlord's title to or interest in the Facility.

(c) Costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting, or redecorating space for new tenants or existing tenants in connection with extensions of the terms of their respective tenancies.

(d) Landlord's costs of any services sold or provided to tenants or other occupants for which Landlord is entitled to be reimbursed by such tenants or other occupants as an additional charge or rental over and above the basic rental and escalations payable under the lease with such tenant or other occupant, unless Landlord is likewise entitled to reimbursement for like services provided to Tenant or its subtenants and elects not to require reimbursement from Tenant or its subtenants.

(e) Depreciation and amortization on the Facility and equipment, except as otherwise provided in Subsection 6.3.1(h) above.

(f) Costs (including the amortization thereof) of any repairs, improvements, alterations, or equipment that would be properly classified as a capital expenditure according to generally accepted accounting principles, except as otherwise expressly included in the definition of "Operating Expenses" under Subsection 6.3.1 above or which are reimbursable under any service contract, lease warranty or guaranty.

(g) Expenses in connection with services or other benefits of a type that is made available to Tenant with an additional charge, but that is generally made available to another tenant or occupant without additional charge.

(h) Costs incurred due to violation by Landlord of the terms and conditions of any lease or any Law or regulation, except to the extent that such costs reflect costs that would have been incurred by Landlord absent such violation.

(i) Overhead and profit increment paid to Landlord or its subsidiaries or affiliates for management or other services on or to the Facility or for supplies or other materials to the extent that the costs of such materials, services, or supplies exceed the costs normally payable for like services, supplies or materials provided by unaffiliated parties on a competitive basis (taking into account the market factors in effect on the date any relevant contracts were negotiated) in Comparable Buildings.

(j) Interest on debt or amortization payments (except as expressly included as Operating Expenses under Subsection 6.3.1 above) on any mortgages or deeds of trust.

(k) Landlord's general corporate overhead and general administrative expenses including Landlord's general corporate legal and accounting expenses.

(l) Rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except equipment that is used in providing janitorial services and that is not affixed to the Building and except for equipment covered by Subsection 6.3.1(h) above.

(m) The cost of any work required in order to rectify design and/or construction defects and to bring the Building into compliance with building and safety code requirements applicable to the Building at the time of the commencement of the Term.

(n) Marketing, advertising and promotional expenditures.

(o) Capital costs for purchasing paintings, sculpture, and other objects of art (provided, however, that commercially reasonable costs of installing, protecting, and maintaining such items may be included in "Operating Expenses").

(p) Any compensation paid to clerks, attendants, or to other persons involved with the operation of the parking facility or in commercial concessions operated by Landlord or any other costs associated therewith.

(q) Taxes and Assessments, as defined in Subsections 6.2.1 and 6.2.2 above.

(r) The cost of abating, removing, remediating, or cleaning up any asbestos or other Hazardous Substances or otherwise complying with Environmental Requirements, except that Operating Expenses may include the costs thereof expended as part of the ordinary and customary operation and maintenance of the Facility ("Ordinary Compliance Costs").

(s) Advertising and promotional expenditures, and costs (other than maintenance costs) related to signs in or about the Facility identifying the owner of the Facility or any tenant thereof.

(t) Costs for the repair of damage to any improvements in the Facility resulting from the gross negligence or willful misconduct of Landlord or any Landlord Parties (as such term is defined in Subsection 15.1.1 below).

(u) Costs of insurance premiums in excess of those being charged by the owners of Comparable Buildings for comparable insurance.

(v) The cost of any one-time utility connection or "tap-in" fees relating to the premises of a particular tenant or occupant of the Building or the Facility.

(w) Costs of electricity (such costs are specifically treated in Subsections 5.2 and 5.8 above).

(x) Charitable and political contributions.

(y) Accountants' and attorneys' fees and expenses incurred in connection with lease enforcement, lease disputes, or lease negotiations with prospective, former or current Building tenants or occupants, or in connection with the defense of Landlord's title to or interest in the Facility or the sale of the Facility and any attorneys' fees and expenses if incurred in connection with litigation over any other matter whatsoever.

(z) Costs associated with the operation of the business of the partnership or entity that constitutes Landlord, as the same are distinguished from the costs of operation of the Facility, including partnership or other entity accounting and legal matters, costs of defending any lawsuits with any mortgagee, costs of any disputes between Landlord and its employees (if any), disputes between Landlord and Facility management, or outside fees paid in connection with disputes with tenants.

(aa) The wages and benefits of any employee who does not devote substantially all of his or her employed time to the operation and management of the Facility unless such wages and benefits are prorated to reflect time spent on operating and managing the facility vis-à-vis time spent on matters unrelated to operating and managing the Facility.

(bb) Interest, fines or penalties assessed as a result of Landlord's failure to make payments in a timely manner unless such failure is economically advantageous to the tenants of the Building under the circumstances.

(cc) Costs of selling, syndicating, financing, mortgaging (including syndication thereof) or hypothecating any of Landlord's interest in the Facility.

(dd) Rental under any ground lease or other underlying lease of the Building or Facility and other monetary obligations in connection therewith.

(ee) Entertainment expenses of Landlord; including costs of parties to which Tenant is not invited, other than Holiday parties.

(ff) Cost of leasing, purchasing or installing tenant improvements, furniture, fixtures, and equipment and operating costs of any eating facility, exercise rooms, day care center, or other specialty service, if any.

(gg) Any other expense that, under generally accepted accounting principles and practices, as customarily applied in the operation and management of Comparable Buildings, would be excluded from operating and maintenance expenses, except as otherwise expressly provided in Subsection 6.3.1 above.

(hh) Any bad debt loss, Rent loss or reserves for bad debts or Rent loss.

(ii) Costs of rooftop antennas for specific tenants.

6.3.3 Gross-Up. If at any time, including the Base Year, less than ninety-five percent (95%) of the rentable area of the Building is occupied by office tenants and/or if the Base Year is less than twelve (12) full calendar months, the Operating Expenses shall be reasonably adjusted by Landlord

to approximate such operating and maintenance costs which vary with the occupancy level of the Building as would have been incurred if the Building had been at least ninety-five percent (95%) occupied by office tenants for twelve (12) full calendar months.

6.3.4 General Principles. Operating Expenses shall be computed in accordance with the following general principles:

(a) Landlord agrees to operate and maintain the Facility during the Base Year and all subsequent years using reasonably consistent policies and practices, taking into consideration changes in policies and practices that are generally adopted from time to time in Comparable Buildings in the San Francisco Financial District.

(b) Unless otherwise specifically provided herein, Operating Expenses shall be reasonably determined in accordance with generally accepted accounting principles.

(c) All of the Building's ground floor retail tenants (if any) whose retail business in their premises is other than a conventional office-type of use (e.g., a delicatessen, a day care center, or customer service for an investment, insurance, or financial business) shall be separately charged for electricity, water, and janitorial services used directly by and in their respective premises and all such costs shall be excluded from Operating Expenses as defined in Subsection 6.3.1 above.

(d) Landlord shall collect only 100% of actual costs without mark-up and Landlord shall not administer the Operating Expenses, Taxes or Assessments as a "profit center."

6.4 Allocations of Certain Costs. If any Taxes, Assessments, or Operating Expenses paid in one year relate to more than one calendar year or to buildings, land or facilities other than the Facility, Landlord shall allocate such Taxes, Assessments, or Operating Expenses among the appropriate calendar years or buildings, land or facilities both in accordance with generally accepted accounting principles and in a fair and equitable manner. If the Term ends other than on December 31, Tenant's obligations to pay Tenant's Percentage Share of estimated and actual amounts of increases in Taxes, Assessments, and Operating Expenses for such final calendar year shall be prorated to reflect the portion of such year included in the Term. Such proration shall be made by multiplying the total estimated or actual (as the case may be) Taxes, Assessments, and Operating Expenses for such calendar year by a fraction, the numerator of which shall be the number of days of the Term during such calendar year, and the denominator of which shall be 365. Landlord may, but shall not be required to, calculate prorations with regard to when during a calendar year particular items of Operating Expenses accrued.

6.5 Estimated Payments. Landlord shall notify Tenant of its reasonable good faith estimate of the monthly amount of Tenant's Percentage Share of increases in Taxes, Assessments, or Operating Expenses and Tenant shall pay Landlord such estimated monthly payment at the same time as, and together with, Tenant's Minimum Monthly Rent but in no event sooner than the first day of the calendar year 2008. Landlord may from time to time, but in no event more than one (1) time per calendar year, by notice to Tenant, change such estimated monthly amounts based upon Landlord's actual or projected Taxes, Assessments, or Operating Expenses.

6.6 Statement of Expenses. Landlord shall, after December 31 of each year, using its good faith commercially reasonable efforts to do so by April 30, but no later than December 31 following such April 30 date, furnish to Tenant a "Final Statement," it being agreed that if the Final Statement is not delivered to Tenant until after April 30 of the applicable year and the Final Statement shows that Tenant overpaid its allocable share of actual Taxes, Assessments and Operating Expenses, Tenant shall be entitled to interest on such overpayment at the Interest Rate from and after April 30 until the date

Landlord delivers such Final Statement. The Final Statement shall contain a computation of the charge or credit to Tenant for any difference between (a) Tenant's proportionate share of the actual Taxes, Assessments, and Operating Expenses and (b) the estimated portion(s) thereof paid by Tenant for the preceding calendar year, and the amount of any underpayment shall be paid by Tenant within thirty (30) days after delivery of said notice. The Final Statement shall contain a line item detail setting forth by categories the actual Operating Expenses incurred by Landlord for the previous year. In the event of overpayment by Tenant, Landlord shall credit such overpayment in full against Tenant's payment of Rent next coming due hereunder; provided, however, that to the extent that the overpayment exceeds Tenant's payment of Rent next coming due hereunder, Landlord shall refund such excess within thirty (30) days of the date Landlord provides Tenant with notice of same. Upon expiration or sooner termination of this Lease, if Tenant was not in material default hereunder immediately prior thereto, Landlord shall refund to Tenant any overpayment within thirty (30) days after Landlord's computation of the same. In the event Landlord shall not have delivered the Final Statement until after said December 31 date, Landlord shall have waived its right to collect from Tenant any underpayment for the applicable year; provided that such waiver shall not apply to third-party invoices (such as an adjusted tax statement) which has not been received by Landlord by November 1 of the year of delivery of the Final Statement, in which event Landlord shall have sixty (60) days from receipt of such third-party invoice to deliver to Tenant an adjusted Final Statement with appropriate credit or payment obligation in favor of or by Tenant.

6.7 Non-Waiver of Rights. Without limitation to the provisions of Section 31 (Non-Waiver), no failure or determination of Landlord in any previous year to include or exclude certain items in its computation of Taxes, Assessments, or Operating Expenses or to invoice Tenant for the full amount of Tenant allocable share of Taxes, Assessments, or Operating Expenses shall be construed as depriving Landlord of the right to include such items as Taxes, Assessments, or Operating Expenses or to invoice Tenant for the full amount of Tenant's Percentage Share for the current year in strict accordance with the provisions of this Section 6, so long as a parallel adjustment is made to the Base Year Operating Expenses to the extent such adjustment should properly have been included in the Base Year (no Base Year adjustment will be made with respect as to an expense item which was not applicable to the Base Year); such adjustments shall only be made to the Base Year and the three (3) calendar years immediately preceding the year of the first such inclusion. Any such adjustment shall be made only as to the line item which required such adjustment.

6.8 Right to Accounting Audit.

6.8.1 Statement.

(a) Upon Tenant's request made no later than one hundred twenty (120) days after receipt of the Final Statement (or, if applicable, Landlord's adjusted Final Statement), Landlord shall promptly (and in any event within ten (10) business days after Tenant's request) deliver to Tenant such information regarding the Final Statement (or, if applicable, Landlord's adjusted Final Statement) as may be reasonably required by Tenant to ascertain Landlord's compliance with this Section 6; provided, however, that with respect to an adjusted Final Statement, Tenant may dispute only such items adjusted by such adjusted Final Statement. If Landlord issues Tenant an adjusted Final Statement after Tenant notifies Landlord that Tenant has elected to perform an accounting audit based on the previously delivered Final Statement, Landlord will reimburse Tenant for the additional auditor fees required to conform the statements.

(b) Landlord and Tenant shall endeavor in good faith promptly to resolve any dispute regarding the Final Statement (or, if applicable, the adjusted Final Statement); provided, however, that except for revisions to take into account any subsequent reassessment affecting the calculation of Taxes included in such statement, Landlord's Final Statement (or, if applicable, the adjusted

Final Statement) (with such revisions, if any, as the parties shall have agreed upon) shall become final and binding upon Landlord and Tenant unless, within one hundred twenty (120) days after Tenant's receipt of the Final Statement (or, if applicable, the adjusted Final Statement) or Tenant's receipt of any such timely requested information, whichever occurs later, Tenant shall by written notice delivered to Landlord elect to perform an accounting audit of Landlord's books and records relating to the year in question and the Base Year, for purposes of verifying Landlord's calculation of Taxes, Assessments, and Operating Expenses. Such accounting audit may only be done by (i) Tenant, (ii) a reputable and nationally recognized first-class professional auditing firm, which may be compensated by Tenant on a contingency basis or (iii) by the accounting audit professionals within a general real estate firm. Books and records within the scope of the audit shall be made available for Tenant's or its agent's or the auditor's inspection within ten (10) business days after the auditor's request therefor. If Tenant shall have availed itself of its right to audit Landlord's books and records and then disputes the accuracy of the information set forth in Landlord's books and records with respect to the Final Statement (or, if applicable, the adjusted Final Statement), Tenant shall nevertheless continue to pay the amounts as required by the provisions of this Section 6 until such dispute is resolved.

(c) Within thirty (30) days after Tenant's completion of the audit, Tenant shall make the results of the audit available to Landlord. If, after Tenant's audit, Tenant continues to dispute the Final Statement (or, if applicable, the adjusted Final Statement), Tenant and Landlord shall attempt to resolve the dispute within thirty (30) days after Landlord's receipt of Tenant's audit results (the "Reconciliation Period"). If Landlord and Tenant are able to resolve the dispute during the Reconciliation Period and as part of such resolution the parties determine that the Tenant overpaid its Percentage Share of actual Taxes, Assessments or Operating Expenses, Landlord shall reimburse Tenant for the amount of such overpayment within thirty (30) days after the date Landlord and Tenant resolved such dispute. If, as part of the resolution of the dispute, the parties determine that Tenant underpaid its Percentage Share of actual Taxes, Assessments or Operating Expenses, Tenant shall pay Landlord the amount of such underpayment within thirty (30) days after the date Landlord and Tenant resolved such dispute. If Landlord and Tenant are unable to resolve such dispute, then no later than six (6) months after the Reconciliation Period, Tenant must (or its right to contest such charges shall be deemed waived) institute arbitration proceedings against Landlord, in accordance with the arbitration procedures set forth in Exhibit F attached hereto, to collect and recover any overpayment made by Tenant of its Percentage Share of actual Taxes, Assessments and Operating Expenses. Tenant shall be precluded from contesting Taxes, Assessments, or Operating Expenses, or Landlord's computations of the amounts payable by Landlord or Tenant pursuant to this Section 6, unless an arbitration complaint is filed and served within such six (6) month period. Should the arbitrator find errors in excess of three percent (3%) of the Final Statement (or, if applicable, the adjusted Final Statement), then Landlord shall be responsible for all reasonable fees and actual, documented and reasonable out-of-pocket costs incurred by Tenant with respect to Tenant's audit and the arbitration proceeding. Should the arbitrator find no overcharges or overcharges not exceeding three percent (3%) of the statement, then Tenant shall be responsible for the cost of the audit and all of the reasonable fees and actual, documented and reasonable out-of-pocket costs incurred by Landlord with respect to the arbitration proceeding. Notwithstanding anything to the contrary set forth herein, to the extent that the arbitrator finds overcharges, then Tenant shall have the right to audit, pursuant to the terms and conditions of this Subsection 6.8, the Final Statement (or, if applicable, the adjusted Final Statement) issued by Landlord during the Term for the prior three (3) (but not more than three (3)) calendar years and the Base Year.

6.8.2 Ruling. If Tenant institutes arbitration procedures as provided in Subsection 6.8.1 above, then the arbitrator shall determine whether or not Tenant was overcharged or undercharged for Tenant's Percentage Share of increases in Taxes, Assessments, or Operating Expenses and shall also determine the appropriate level of Taxes, Assessments and Operating Expenses for the Base Year. At the conclusion of the arbitration, the arbitrator shall issue a ruling as to what the Taxes,

Assessments, and Operating Expenses for the year in question and Taxes, Assessments and Operating Expenses for the Base Year and what Tenant's Percentage Share of increases therein should have been had Landlord strictly complied with the provisions of this Lease. If Landlord overcharged Tenant for increases in Taxes, Assessments, or Operating Expenses, the amount of the overcharge shall be returned to Tenant within thirty (30) days following the conclusion of the arbitration. If the arbitrator determines that Tenant was undercharged for increases in Taxes, Assessments, or Operating Expenses, Tenant shall pay the amount of such undercharge to Landlord within thirty (30) days following the issuance of the arbitration ruling.

7. STORAGE SPACE.

Storage Space shall be made available to Tenant on a first-come, first-serve, pro –rata share basis in an enclosed, dry and secure area designated by Landlord within the Building. If there are various areas available for use as Storage Space within a larger designated area approved by Landlord for use as Storage Space, Tenant shall be entitled to choose the location of its Storage Space prior to other tenants of the Facility. Tenant shall pay the rent for such Storage Space at the rate of $24.00 per square foot per month. Tenant shall take possession of the Storage Space in its "AS IS" condition. In addition, Tenant shall not transfer all or any portion of such Storage Space unless such transfer is made in connection with a transfer of the Premises.

8. HAZARDOUS SUBSTANCES.

8.1 Definitions. As used herein, "Hazardous Substance" shall mean any substance, material, or waste that is or becomes regulated by any federal, state, or local governmental authority because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness, or reactivity. As used herein, "Environmental Requirements" shall mean all Laws and prudent industry practices relating to industrial hygiene, protection of human health, warnings, hazard communication, employee rights-to-know, environmental protection, or any Hazardous Substance.

8.2 Consent Required for Hazardous Substances. Tenant shall not cause or authorize any Hazardous Substance to be brought upon, generated, produced, kept or used in or about the Facility by Tenant or any "Tenant Parties" (as that term is defined in Subsection 11.1 below) or invitees of Tenant ("Tenant Invitees") unless (a) such Hazardous Substance is necessary for the business (and such business is a Permitted Use) of Tenant or its permitted subtenant or assignee, and (b) Tenant first obtains the consent of Landlord if such Hazardous Substance is other than (i) an "Article" (as defined in 29 C.F.R. §1910.1200) that is free of asbestos (whether friable or nonfriable) and polychlorinated biphenyls (PCBs) or (ii) a consumer product that is used on the Premises in quantities that would not require any notification or reporting under any Environmental Requirement, or any warnings to any persons located anywhere outside the Premises, if the entire quantities were released into the environment. Any request by Tenant for such consent shall be in writing and shall demonstrate to the reasonable satisfaction of Landlord that such Hazardous Substance will be stored, used, and disposed of in a manner that complies with all Environmental Regulations applicable to such Hazardous Substance. Such consent shall not be unreasonably withheld, but Landlord shall in no case be obligated to consent to the presence of any Hazardous Substance that will increase the likelihood or magnitude of Landlord's liability, or to any treatment, storage, or disposal upon the Premises or the Facility of any Hazardous Substance whose treatment, storage, or disposal requires a permit or variance under applicable Environmental Requirements. In no event shall Landlord ever be obligated to execute any application for any such permit or variance.

8.3 Notices. Tenant shall promptly deliver to Landlord copies of any reports made to any environmental agency arising out of or relating to any Hazardous Substances in, on, or from the Premises

and copies of all hazardous waste manifests reflecting the legal and proper disposal of all hazardous wastes removed by Tenant from the Facility. If at any time Tenant shall become aware that any Hazardous Substances, other than those already known by Landlord or permitted under this Lease, have come to be located in or about the Premises, or that any known Hazardous Substances within the control of Tenant have been, are being, or are threatened to be released into the environment, Tenant shall, immediately upon discovering same, give notice of that condition to Landlord. In addition, each party shall immediately provide the other party with a copy of any notices regarding Hazardous Substances in the Premises that party receives from a governmental entity.

8.4 Compliance with Environmental Requirements. Without limitation to the generality of Subsection 3.2 (Restriction on Use), Tenant shall, at its own expense, use commercially reasonable efforts to comply with all Environmental Requirements, prudent industry practices, and Landlord's Rules and Regulations regarding use, handling, disturbance, management, or disposal of Hazardous Substances pertaining to the Premises and Facility, except as otherwise provided in Subsection 8.5 below. Except as discharged into the sanitary sewer in strict accordance and conformity with all applicable Environmental Requirements, Tenant shall cause any and all Hazardous Substances removed from the Premises (or from any other portion of the Facility, if their removal is at the instance or direction of Tenant) to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes. Upon expiration or earlier termination of the Term, Tenant shall cause to be removed from the Premises and the Facility all Hazardous Substances that Tenant or any Tenant Parties or Tenant Invitees caused or authorized to be located there; provided, however, that Tenant shall not be responsible for removing Hazardous Substances Landlord caused to be located in the Premises, and Landlord shall be responsible for any governmentally required removal of same. If the presence of Hazardous Substances brought onto the Facility by any of such persons results in contamination of any portion of the Facility, Tenant shall be solely responsible, at its sole expense, for taking any and all necessary steps to return the affected portion of the Facility to its condition prior to such contamination, as reasonably determined by Landlord; provided, however, that Tenant shall not take any remedial action (except in emergencies) in response to the presence of, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to, any Hazardous Substance in any way connected with the Facility, without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene, or otherwise appropriately assert and protect Landlord's interest with respect thereto; and further provided, that Landlord shall have the right (but not the obligation) to perform any such remediation on Tenant's behalf, in which event Tenant shall reimburse Landlord for all of Landlord's reasonable costs and expenses incurred in connection therewith.

8.5 Landlord's Obligation. Subject to Landlord's right to reimbursement of certain costs or expenses under other provisions of this Lease, as such reimbursement right is restricted under Subsection 6.3.2(r) above, Landlord agrees to use commercially reasonable efforts consistent with the efforts of landlords of Comparable Buildings to fully comply with all applicable Environmental Requirements and prudent industry practice or rules and regulations regarding the use, management, handling, or disposal of Hazardous Substances (a) that were existing on the Premises as of the Commencement Date or (b) that were or are otherwise brought upon or kept or used in or about the Facility by Landlord, its affiliates and their respective agents, employees, or contractors. Landlord represents and warrants to Tenant that, as of the Commencement Date, the Facility shall be in compliance with all Environmental Requirements in existence as of the Commencement Date. Landlord further represents and warrants that it shall only bring Hazardous Substances into or on the Facility to the extent reasonably necessary to operate the Facility. Landlord will treat Tenant from a financial-impact standpoint as if all tenants in the Building had a provision substantially similar to Subsection 8.4 above in their leases and as if Landlord reasonably enforced such requirements under their leases. To the extent that Landlord does not include provisions substantially similar to Subsection 8.4 in the other leases in the Building and/or Landlord does not reasonably enforce such provisions and Tenant is negatively affected thereby, Landlord will protect Tenant from such effect.

9. NO LIGHT, AIR OR VIEW EASEMENT.

No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Building, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

10. ALTERATIONS.

10.1 Tenant's Right to Make Alterations.

10.1.1 Tenant shall not make or suffer to be made any alterations, additions, improvements, or utility installations (collectively, "Alterations") to the Premises or any part thereof without the prior consent of Landlord, which shall not be unreasonably withheld or delayed. Upon Tenant's request, Landlord shall state in writing, at the time it grants such consent, whether or not Landlord will require the removal of all or any part of the proposed Alterations at the end of the Term pursuant to Subsection 10.3.1 below. Tenant specifically acknowledges that it shall not be unreasonable for Landlord to withhold approval of any proposed contractor or subcontractor of Tenant on the grounds that Landlord reasonably believes that the performance of work in the Building by such contractor or subcontractor could result in labor disputes with Landlord's own contractors or Building employees of Landlord or Landlord's contractors. Landlord may, at any time during the Term, require Tenant to remove any or all Alterations made without Landlord's consent (if Landlord's consent is required by this Section 10) or otherwise made in material violation of any of the provisions of this Section 10. In no event shall Landlord be required to consent to any Alterations that would, in Landlord's reasonable good faith opinion, adversely affect the utility or value of the Premises or the Building for future tenants, that would alter the exterior appearance of the Building, that would be of a structural nature, that could adversely affect the plumbing, mechanical, or electrical systems servicing the Facility, that would be excessively expensive to remove (unless Tenant expressly agrees, upon Landlord's request, to remove the same upon the expiration or sooner termination of this Lease), or that would otherwise be prohibited under this Lease. All permitted Alterations shall be made in conformity with the requirements of Subsection 10.2 below. Once any such Alterations have been completed, whether prior to or during the Term, they shall thereafter be included in the designation of the retrofit work. Notwithstanding anything to the contrary in this Section 10.1.1, Tenant shall not be obligated to remove any Alterations to the Phase II Premises constructed pursuant to the Sublease except those Alterations relating to the server room (except for server room walls, which may remain) including, without limitation, any supplemental HVAC and related electrical and or supplemental fire/life safety systems, unless and to the extent that such Alterations were further modified as an "alteration to the Alteration" following the expiration of the term of the Sublease but prior to the termination of this Lease. Additionally, Tenant shall be obligated to remove all telephonic and data cabling at the end of the Term of the Lease for both the Phase 1 and Phase II Premises.

10.1.2 The foregoing notwithstanding, Tenant shall have the right, without Landlord's consent, to make any Alteration where all of the following conditions are met: (i) the Alteration is decorative in nature (such as paint, carpet or other wall or floor finishes, movable partitions or other such work), (ii) Tenant complies with Landlord's operating procedures, as provided from time to time from Landlord to Tenant in writing, for notice of the commencement of any such Alteration (which may, for example, be as limited as telephonic notice to Building security for minor decorative alterations or two (2)

business days' notice for installation of carpet where scheduling of the freight elevator or loading docks might be required), (iii) such Alteration does not negatively affect the Building's electrical, mechanical, life safety, plumbing, security, or HVAC systems or other Base Building Systems or any other portion of the Base Building or any part of the Building other than the Premises, (iv) the work will be performed in a workman-like manner and in accordance with all Laws, and (v) the total cost of all such work performed without Landlord's consent (excluding the cost of cosmetic alterations, which shall include the cost of paint and carpet) shall not exceed $25,000 in any 12-month period during the Term. At the time Tenant notifies Landlord of any such work, Tenant shall give Landlord a copy of Tenant's plans for the work, if any have been prepared. If the Alterations are of such a nature that formal plans will not be prepared or are otherwise not required for the work, Tenant shall provide Landlord with a reasonably specific description of the work.

10.2 Installation of Alterations. Any Alterations installed by Tenant during the Term shall be done in strict compliance with all of the following requirements:

10.2.1 Approval. No such work requiring Landlord's consent shall proceed without Landlord's prior written approval, which shall not be unreasonably withheld or delayed, of (a) Tenant's contractor(s); (b) certificates of insurance from a company or companies licensed in California with a policy holders' rating of A- and financial rating of not less than X as designated by Best's Insurance Reports, furnished to Landlord by Tenant's contractor, evidencing combined single limit bodily injury and property damage insurance covering comprehensive or commercial general liability and automobile liability in an amount reasonably determined by Landlord given the nature and scope of such alterations (and which in no event shall be less than Five Hundred Thousand Dollars ($500,000) per occurrence and general aggregate) and endorsed to show Landlord, Landlord's property manager, and each constituent general partner of Landlord (if Landlord is a partnership) as additional insureds, and for workers' compensation as required by law, endorsed to show a waiver of subrogation by the insurer to any claims Tenant's contractor may have against Landlord (provided, however, nothing in this Subsection 10.2.1 shall release Tenant of its other insurance obligations hereunder); and (c) detailed plans and specifications for such work. Any material changes in, deviations from, modifications of, or amendments to the approved plans and specifications shall also require Landlord's prior written approval. Any approval to be given by Landlord under this Subsection 10.2.1 shall not be unreasonably withheld and either be given or denied within ten (10) days of Tenant's written request therefore; provided, however, that, to the extent Landlord shall not grant its approval, Landlord shall specify in writing its reasons therefor.

10.2.2 Coordination. Tenant shall cause its contractor(s) to coordinate with Landlord's building management all construction and installation activities covered by this Subsection 10.2. All such work shall be done in accordance with Landlord's standard rules and regulations for construction in the Building (the "Construction Rules") (attached hereto as Exhibit H) in a skillful and first class workmanlike manner, consistent with the best practices and standards of the construction industry, and shall be pursued diligently and continuously until completed, always in material conformity with the approved plans and specifications. All materials, equipment, and articles incorporated into the Alterations shall be new, and of recent manufacture, and of the most suitable grade for the purpose intended.

10.2.3 Permit. No Alterations shall be commenced without Tenant first having obtained a valid building permit and/or all other permits or licenses required to be obtained prior to commencement of such Alterations, copies of which shall be furnished to Landlord before the work is commenced. Upon completion, those permits which are not required prior to commencement of such Alterations shall be obtained, and a copy of such permits shall be provided to Landlord. Any work not acceptable to any governmental authority or agency having or exercising jurisdiction over such work shall be promptly replaced and corrected at Tenant's expense. No work for which Landlord's consent is required shall commence until and unless Landlord has approved plans and specifications and the schedule for the performance of such Alterations.

10.2.4 Reimbursement. Tenant shall reimburse Landlord for any reasonable actual out-of-pocket third-party expense incurred by Landlord in reviewing and approving the plans and specifications (and any modifications thereto) for such work or the work itself within thirty (30) days after Tenant's receipt of Landlord's invoice therefor, not to exceed five percent (5%) of the cost of the work in connection with the Alterations; provided that such expense shall be based on the complexity of the plans, the level of engineering to be reviewed, and the cost of such Alteration. Landlord agrees to require only such review of such plans as is required under customary industry practice.

10.2.5 Oversight. Landlord may, to the extent appropriate, supply Tenant with the Building regulations and procedures for working in areas where there is a risk of coming into contact with materials or Base Building Systems that, if not properly handled, could cause health or safety risks or that could damage the Base Building Systems and/or the Building. Tenant shall cause its contractors, at Tenant's sole cost and expense, strictly to comply with all such Building regulations and procedures reasonably established and uniformly applied by Landlord and with all applicable Laws. Landlord shall have the right at all times to monitor the work for compliance with the Building regulations and any applicable Laws. If Landlord determines that any applicable Law or any Building regulations and/or procedures are not being strictly to complied with, Landlord may immediately require the cessation of all work being performed in or around the Premises until such time as Landlord is reasonably satisfied that the applicable Laws and Building regulations and procedures will be observed. Neither Landlord's review and approval of the plans, specifications, and working drawings nor Landlord's monitoring of any work in or around the Premises shall create any responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with applicable Laws or with the Building regulations and procedures nor shall any such review, approval, or monitoring by Landlord be deemed to constitute a waiver by Landlord of its right to require strict compliance with such Laws, regulations, or procedures, nor shall such monitoring relieve Tenant from any liabilities relating to such work.

10.2.6 Plans. Upon completion of any Alterations for which Landlord's written consent shall have been required under the provisions of this Section 10 of the Lease, Tenant shall provide Landlord with field-grade "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

10.2.7 Standard Materials. Attached hereto as Exhibit I is a list of Building standard materials. Tenant shall have the right to purchase such materials from Landlord at Landlord's cost without mark-up.

10.3 Retrofit Work - Treatment at End of Lease.

10.3.1 Landlord's Property. All retrofit work (and all Alterations, upon their completion) made by or for Tenant, whether temporary or permanent in character, and whether made by Landlord or Tenant, shall be Landlord's property, and shall be surrendered to Landlord in good order, condition, and repair (ordinary wear and tear excepted and damage caused by fire or other casualty excepted), broom clean, upon the expiration or earlier termination of the Term, and Tenant shall not be entitled to any compensation therefor. Unless Landlord shall have previously stated in writing (in connection with its approval of any Alternations) that it will require the removal of any Alteration or Tenant Improvement at the end of the Term (in which case Tenant, at Tenant's expense, shall remove the same prior to the expiration of the Term and repair all damage caused by such removal), Landlord shall not have the right to require that Tenant remove from the Premises such retrofit work and Alterations (or such portion thereof as Landlord has not required to be removed). Any damage or deterioration of the

Premises or any retrofit work that could have been prevented by good maintenance practices shall not be deemed to be ordinary wear and tear. The foregoing notwithstanding, in no event shall Landlord, pursuant to the foregoing provisions of this Subsection 10.3.1, require removal of any retrofit work or Alterations that the tenant next taking possession of the Premises desires to remain in the Premises or that constitute "Standard Office Improvements." As used herein, the term "Standard Office Improvements" shall include any tenant improvements that can be removed and disposed of at a cost not materially greater than the cost of removing and disposing of ordinary and customary tenant improvements for general office use. In no event, however, shall "Standard Office Improvements" be deemed to include any interior stairwells, shower installations, raised computer flooring, data centers, telephone switch rooms (other than those included as part of Base Building), ceramic tile floor coverings, heat pumps, special life safety installations, cafeterias, or vaults.

10.3.2 Personal Property. All of Tenant's Personal Property located in the Premises and all trash and debris, shall be completely removed by Tenant prior to the expiration of the Term pursuant to the Construction Rules; provided, however, that Tenant shall repair all damage caused by such removal prior to the expiration of the Term, and provided further, Landlord shall store at Tenant's sole cost and expense any of Tenant's Personal Property not so removed during the thirty (30) day period following the expiration of the Term. To the extent that Landlord provides Tenant with five business days' notice of Landlord's intention to do same, after the expiration of the thirty-day storage period, Landlord may retain or in any manner dispose of said Personal Property not so removed, without liability to Tenant.

10.3.3 Damages. Tenant shall reimburse Landlord upon written demand for any and all reasonable costs and losses (but not lost rents and other consequential damages) incurred by Landlord as a result any failure by Tenant to surrender the Premises in the condition required hereunder.

10.4 Other Improvements in the Building. If as a result of any Alterations or as a result of Tenant's unique and specific use of the Premises (other than as general office or accounting and consulting firm), Landlord shall be required by any applicable Law to make other improvements (including, without limitation, upgrading of installations of life safety systems or compliance with standards for handicapped persons) in or upon the Premises or any other portion of the Building or Facility, then Landlord shall have the right to charge Tenant for the cost of such other improvements; provided, however, that Landlord shall endeavor to notify Tenant of such other improvements at the time Landlord approves of such Alterations.

11. REPAIR OBLIGATIONS.

11.1 Tenant's Obligations. Excepting those maintenance, repair and restoration obligations that have been expressly delegated to Landlord under other provisions of this Lease, Tenant, at its sole cost and expense, shall keep the Premises and every part thereof in good, clean, pest-free, and sanitary condition and repair at all times during the Term. All damage, injury or breakage to any part or portion of the Premises or the Facility caused by the willful or negligent act or omission of Tenant which such negligent act or omission is not insured or required to be insured by either party under this Lease, any of its Affiliates, constituent partners, subtenants or licensees, or agents, or any of their respective officers, directors, trustees, employees, and licensees (collectively, the "Tenant Parties"), and any contractor, invitee, visitor, or customer of any Tenant Party (a "Tenant Invitee") shall be promptly repaired at Tenant's sole cost and expense, to the reasonable satisfaction of Landlord; provided, however, that Tenant shall be entitled to receive reimbursement for such expense to the extent that the cost of any such repair is covered by insurance obtained by Landlord as part of Operating Expenses. If Tenant fails to perform any repair obligation when required under this Lease, then Landlord shall have the right to perform such repair work and such repair work required as a result of Tenant's damage to the Base Building or a Base Building item at Tenant's expense, provided that, except in cases of an emergency, Landlord shall have

given Tenant at least ten (10) business days' prior written notice of Tenant's failure to perform such repair and (a) Tenant shall have failed to complete such repairs prior to the expiration of such notice period or (b) if such repairs could not be completed within such notice period, Tenant shall have failed to commence such repairs or to diligently prosecute the same to completion after having commenced the repairs within such period. Tenant shall upon written demand reimburse Landlord for all uninsured costs incurred by Landlord as a result of any breach of Tenant's maintenance and repair obligations under this Section. Tenant shall be solely responsible for the design and function of all of the retrofit work, whether or not installed by Landlord at Tenant's request. Except to the extent otherwise expressly provided in Subsection 23.6.1 below or elsewhere in this Lease, Tenant waives all rights to make repairs to the Premises or to the Facility at the expense of Landlord, or to deduct the cost of such repairs from any payment owed to Landlord under this Lease.

11.2 Landlord's Obligations.

(a) Except to the extent otherwise expressly provided elsewhere in this Lease, and excluding any responsibilities expressly delegated to Tenant elsewhere in this Lease, Landlord shall keep the Facility and Building, including the Common Areas and the Base Building Systems (including the above-ceiling distribution thereof, the cost of which above-ceiling distribution repairs shall be included as part of Operating Expenses, the mechanical rooms and the stairwells (exclusive of Tenant's security system)) in good condition and repair, in accordance with standards generally comparable to those observed in Comparable Buildings (but in no event shall such standards fall below those standards set forth in Exhibit D attached hereto), and in compliance all with applicable Laws, and so as not to deprive Tenant of its use and enjoyment, or materially adversely impair Tenant in its herein-allowed use and enjoyment, of the Premises or the Common Areas. Landlord shall not, however, be obligated to maintain, repair, or replace any of the following within the Premises: interior windows, window coverings, doors, door hardware.

(b) Subject to Landlord's right to reimbursement of certain costs or expenses under other provisions of this Lease, Landlord shall perform all needed repairs to and replacements of the exterior windows in the Premises; provided, however, that Tenant shall reimburse Landlord for the full cost of repairs or replacements needed because of damage caused by the gross negligence or willful misconduct of Tenant or any Tenant Party (only to the extent that the proceeds (if any) of insurance payable under the applicable policy shall be insufficient). Also, Landlord shall not be obligated to perform repairs for which Tenant has expressly assumed responsibility under other provisions of this Lease. Tenant hereby acknowledges that the foregoing description of certain obligations and rights of Landlord is not intended to limit or restrict Landlord's rights under other provisions of this Lease to reimbursement for costs and expenses incurred in connection with such matters. Notwithstanding anything to the contrary contained in this Subsection 11.2, in the event Landlord, for any reason, fails to commence and diligently pursue completion of any repairs required to be made by Landlord under this Section 11 within a period of thirty (30) days after Tenant delivers written notice to Landlord of the need for such repairs, (a) Rent shall be equitably abated commencing upon the date of Tenant's delivery of Tenant's notice to Landlord regarding Landlord's failure to commence and/or diligently pursue such repairs in such thirty (30) day period, and (b) Tenant shall have the right to make such repairs which are non-structural, which do not affect the exterior of the Building and which do not adversely affect the Base Building's Systems; provided, however, that in the event any such failure by Landlord to perform required repairs constitutes an Adverse Condition (as defined in Subsection 17.4 below), Tenant's abatement rights shall be governed by Subsection 17.4.

(c) In the event Tenant exercises its right to repair as set forth in the immediately preceding sentence, Tenant shall provide to Landlord (or to any "Qualified First Mortgagee," which shall mean and refer to any first mortgagee of the Building, the identity and address of which has

been provided to Tenant in writing prior thereto) with a reasonably particularized invoice for such repair. To the extent Landlord agrees with such invoice or does not provide Tenant with written notice of its dispute with such invoice, Landlord shall pay such invoice within thirty (30) days of receipt of same. To the extent Landlord fails to make such payment and fails to provide a written objection defending such failure within such thirty (30) day period, Tenant shall have the right to offset the amount of such invoice plus interest at the Interest Rate against Rent; provided, however, that it is hereby deemed in this Lease that, with respect to any right of offset in favor of Tenant, notices which must be delivered to Landlord must also be delivered to any Qualified First Mortgagee, which Qualified First Mortgagee shall have the right to act on behalf of Landlord if Landlord fails to respond as required of Landlord in this Subsection 11.2. If, within thirty (30) days of Landlord's receipt of such invoice Landlord provides Tenant with written notice of its dispute of such invoice, the matter shall be referred to arbitration in accordance with the Exhibit F attached to this Lease. Any award in favor of Tenant not paid to Tenant within thirty (30) days of Landlord's receipt thereof shall entitle Tenant to offset the award against the next due payment of Rent.

12. LIENS.

Tenant shall keep the Premises, the Building, and the rest of the Facility free from liens arising out of any work or materials actually or allegedly performed or furnished, or obligations incurred, by or for Tenant (other than the work to be performed by Landlord pursuant to Exhibit B). Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims for mechanics', materialmen's or other liens in connection with any Alterations, repairs, or any work performed, materials furnished, or obligations incurred by or for Tenant other than the work performed by Landlord pursuant to Exhibit B. In the event any such lien is filed, and Tenant has not provided Landlord with a lien release bond or other adequate security therefor, as provided below, Landlord may, upon thirty (30) days' written notice to Tenant, without waiving Landlord's rights based on such breach by Tenant and without releasing Tenant from any obligations hereunder, pay and satisfy the same and in such event the sums so paid by Landlord shall be due and payable by Tenant immediately without notice or demand, with interest from the date paid by Landlord through the date Tenant pays Landlord, at an interest rate equal to the Reference Rate (as defined in Subsection 6.3.1 above) plus three percent (3%). Tenant shall nevertheless have the right to contest or object to the amount or validity of any lien against the Premises or the Building arising out of work performed by or on behalf of Tenant by appropriate legal proceedings so long as (a) Tenant notifies Landlord of Tenant's intent to contest such lien within thirty (30) days after Tenant has notice of the imposition thereof, (b) Tenant, within such thirty (30) day period, furnishes Landlord with and arranges for recordation of a lien release bond complying with the requirements of Cal. Civil Code Section 3143 (or any successor statute) so as to release the lien from the Premises and the balance of the Facility upon recordation of such bond, or with other security reasonably satisfactory to Landlord to satisfy such claim or lien, (c) upon any final determination of such contest which is not appealable or is not being appealed by Tenant, Tenant pays the amount of such claim or lien then due (provided that Tenant shall at its sole cost post any bond required to pursue an appeal), and (d) Tenant's indemnity set forth above in this Section 12 shall apply to all claims arising in connection with such contest or objection.

13. SIGNS; NAMES OF BUILDING AND FACILITY.

Except for the signage provided for in Section 51 of this Lease, Tenant shall not place any other logo, sign, advertisement, announcement, warning, or notice upon or in front of the Premises or any Common Areas without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute (but good faith) discretion. Tenant shall not use any insignia or logotype of the Building or Facility for any purpose outside of those purposes allowed to Tenant in said Section 51. Tenant shall not use any picture of the Building or Facility in its advertising or stationery or in any other manner. Landlord expressly reserves the right, in Landlord's sole and absolute discretion, at any time to

change the name, insignia, logotype, or street address of the Building or the Facility without in any manner being liable to Tenant; provided, however, that Landlord shall reimburse Tenant for its reasonable cost of replacing its then current supply of stationery, business cards, and envelopes.

14. ASSIGNMENT AND SUBLETTING.

14.1 "Transfer" Defined. Subject to Subsection 14.10 below, as used herein, the term "Transfer" shall mean any assignment of this Lease (including, without limitation, assignment by operation of law—e.g., death of an individual tenant or merger, dissolution, consolidation, or other reorganization of a corporate tenant), subletting of all or any part of the Premises, or transfer of possession, or right of possession or contingent right of possession of all or any portion of the Premises, including without limitation, concession, mortgage, encumbrance, devise, hypothecation, agency, or franchise agreement, or to suffer any other person (the Tenant Parties excepted) to occupy or use the said Premises or any portion thereof. If Tenant is a corporation that is not a public corporation, or is an unincorporated association or partnership, or if Tenant consists of more than one party, the transfer, assignment (including, without limitation, assignment by operation of law), or hypothecation of any stock of or interest in Tenant in the aggregate in excess of fifty percent (50%) shall also be deemed to be a "Transfer." If Tenant is a partnership or consists of more than one party, then any of the foregoing events with respect to any such party comprising Tenant, or with respect to any constituent general partner of Tenant or any such party, shall also be deemed to be a "Transfer."

14.2 No Transfer Without Consent. Tenant shall not, either voluntarily or by operation of law or otherwise, suffer a Transfer without the prior written consent of Landlord, which consent shall not be unreasonably withheld, except as otherwise expressly provided below. Landlord's consent to one Transfer shall not be deemed to be a consent to any subsequent Transfer; nor shall Landlord's consent constitute an acknowledgment that no default then exists of the obligations to be performed by Tenant under this Lease; nor shall such consent be deemed a waiver of any then existing default, except as may be otherwise stated in writing by Landlord at the time; nor shall Landlord's acceptance of Rent from any person be deemed a waiver by Landlord of any provision of this Section 14. If Landlord's approval or consent for any agreement or instrument is required hereunder, then no amendment or modification shall be made thereto without Landlord's prior consent. Any Transfer that is not in compliance with the provisions of this Section 14 shall be voidable at Landlord's election.

14.3 Procedure for Assignment and Subletting/Landlord's Recapture Rights. Tenant shall advise Landlord by written notice of (a) Tenant's intent to make a Transfer, (b) the name of the proposed transferee, and evidence reasonably satisfactory to Landlord that such proposed transferee will use the Premises in compliance with the use provisions of this Lease and is comparable in reputation and stature to the other tenants then leasing comparable space in the Facility or in Comparable Buildings (such evidence shall include, without limitation, (i) a description of the proposed transferee's business background and experience, and (ii) such other information as Landlord may reasonably request concerning such transferee, but Landlord shall not request information concerning the financial condition of such transferee), and (c) the terms of the proposed assignment or subletting (including the financial terms and the intended use of the Premises), together with a copy of the proposed Transfer documents. Landlord need not commence its review of any proposed Transfer, or respond to any request by Tenant with respect to such, unless and until Landlord has received all of the foregoing documentation from Tenant. Landlord shall, within fifteen (15) days, in the event that Tenant is seeking Landlord's consent for a sublease of a portion of the Premises which is not subject to Landlord's right of recapture (as further described below) or twenty-five (25) days, in the event that Tenant is seeking Landlord's consent for a sublease of a portion of the Premises which is subject to Landlord's right of recapture (as further described below), after receipt of such notice and documentation, and any additional information reasonably requested by Landlord, elect one of the following:

(i) Consent to such proposed Transfer;

(ii) Refuse such consent, which refusal shall be on reasonable grounds, subject to the provisions of Subsection 14.4 below and shall be provided to Tenant in writing and such writing shall state the grounds for such refusal; or

(iii) Elect to terminate this Lease in the event of an assignment other than to a Permitted Affiliate (as such term is defined in Subsection 14.10 below), or in the case of a sublease, terminate this Lease as to the portion of the Premises proposed to be sublet for the proposed term of the sublease (such election may be exercised for any reason whatsoever, including, without limitation, the intent of Landlord to enter into a direct lease with the proposed assignee or subtenant); provided, however, that Landlord shall only have such termination option if the proposed Transfer is for the remainder of the unexpired Term and is for at least one full floor of the Premises. Also, in the event that Tenant proposes to transfer a portion of the Premises contiguous to space leased by Tenant to a "business partner" (i.e., a person or entity with whom Tenant has an ongoing contractual relationship evidenced by a written contract, a copy of which shall be provided to Landlord) or Permitted Affiliate (as defined in Subsection 14.10 below), Landlord shall not have such termination option with respect to such portion of the Premises. If Landlord exercises such termination option, then (a) this Lease shall terminate as to all or such portion, as the case may be, of the Premises effective as of the date on which the proposed Transfer was intended to have become effective, (b) Tenant shall vacate such portion of the Premises prior to such date, and (c) Landlord and Tenant shall have no further liability to each other under this Lease from and after such date with respect to such space, except as otherwise provided in this Section and in Section 41 (Survival of Certain Rights and Obligations). If this Lease is terminated as to less than all of the Premises pursuant to the preceding sentence, the Rent, including, without limitation, Tenant's Percentage Share, under this Lease shall be equitably adjusted by Landlord on the basis that the rentable area of the portion of the Premises remaining bears to the rentable area of the entire Premises. No failure of Landlord to exercise its termination option hereunder shall be deemed a waiver of the right to terminate this Lease subsequently (with respect to a subsequent Transfer) in accordance with the terms hereof, as it is intended that this option to terminate shall continue to exist during the entire Term.

14.4 Conditions to Approval.

14.4.1 Reasonable Standards. It is understood and agreed that, without limiting Landlord's right of consent as provided herein, Landlord's withholding consent shall be deemed reasonable if the proposed assignment or sublease fails to meet any one or more of the following criteria: (a) neither the proposed Transfer nor the proposed use of the Premises by the proposed transferee shall conflict with or result in a breach of Subsections 3.2 (Restriction on Use), or 8.2 (Consent Required for Hazardous Substances), or any other provision of this Lease, nor shall it violate any exclusivity arrangement that Landlord may then have with any other tenant of the Facility which Landlord entered into prior to the date the Tenant requested Landlord's consent for such proposed transfer; (b) the proposed transferee's proposed use of space in the Premises shall not be for an office or facility of any governmental agency or authority (unless reasonably approved by Landlord), or an embassy or consulate or similar office; (c) the proposed transferee's use of space in the Premises is for a school or classroom use, an entertainment, sports or recreation facility, retail sales to the public, medical offices, or a personnel or employment agency, telephone "boiler rooms," or a business where the general public routinely makes payments, receives cash or checks or processes applications for permits or registrations; (d) the proposed transferee shall be of a reputation and stature consistent with the character of the Comparable Building as reflected by the then existing tenants of the Comparable Building which respect to comparable space; (e) neither the proposed transferee nor its use of the Premises shall be subject to

compliance with additional requirements beyond such requirements as are then already applicable to the party desiring to assign or sublease of the Law (including related regulations) commonly known as the "Americans with Disabilities Act" or any similar federal, state, or local Law now or hereafter in effect, unless the proposed transferee or Tenant shall have expressly agreed to bear all costs related to compliance with such additional requirements; (f) the proposed transferee shall not be a party for which Landlord's consent is required under Subsection 14.7 below; and (g) if the proposed transferee would be subleasing less than all of the Premises included in any particular floor, there shall not be (following consummation of the proposed sublease) more than five (5) "Occupants" on such floor. For purposes of the preceding sentence, an "Occupant" of a floor shall include Tenant (if Tenant is occupying any portion of the floor through personnel of Tenant or any Affiliate), any of Tenant's subtenants or sub-subtenants (other than Affiliates) occupying any space on said floor, and in the case of any floor of which Tenant leases only a portion, any other tenant (and any of its subtenants or sub-subtenants) of space on such floor.

14.4.2 Fees. In the event that Landlord shall consent to a proposed Transfer, or shall reasonably disapprove a proposed Transfer (other than in connection with an exercise of Landlord's recapture rights under Subsection 14.3), pursuant to the provisions of this Section 14, Tenant shall pay, within thirty (30) days of Landlord's demand therefor, Landlord's reasonable, actual processing costs and attorneys' fees (which shall be either the reasonable, actual costs of Landlord's in-house counsel or the reasonable, actual costs of Landlord's outside counsel, but not both) incurred in connection with such matter.

14.5 Landlord's Right to Bonus Rentals.

14.5.1 Payment. In the event of a Transfer of this Lease, then Tenant shall pay to Landlord, pursuant to Subsection 14.5.2 below, fifty percent (50%) of the "Rent Differential" received by Tenant in connection with or in respect to such Transfer. For purposes of this Subsection, the following definitions shall apply:

(a) the term "Rent Differential" shall mean the excess of (i) any and all "Proceeds" payable to Tenant over (ii) Tenant's "Allowed Costs";

(b) the term "Proceeds" shall mean any and all fees, rents, charges, payments, or other sums or consideration attributable to the use of the Premises, including payments in excess of market value as reasonably determined by Tenant for Tenant's trade fixtures, equipment and furnishings payable or deliverable to Tenant in connection with the Transfer; and

(c) the term "Allowed Costs" shall mean (i) reasonable attorneys' fees and reasonable broker's commissions and reasonable advertising and marketing costs and fees paid by Tenant to attorneys or brokers in connection with such assignment or subletting, plus (ii) any other reasonable out-of-pocket concessions, including the reasonable costs of constructing any tenant improvements (including any demising walls and further including lost rental during the period of such construction (up to a period of 60 days) if no Rent is being collected by Tenant for such period of time), planning allowances, moving allowances and lease takeover payments. Tenant is required to furnish to such assignee or subtenant, plus (iii) in the case of an assignment, all of the Rent, or in the case of a subletting, the proportionate amount of the Rent allocable to the portion of the Term and portion of the Premises (if less than all) covered by such subletting, as reasonably determined by Landlord and Tenant.

14.5.2 Recovery. In the event the Proceeds are paid in installments (e.g., monthly subrent), then the Allowed Costs shall be deducted as they are incurred, and Landlord's share of the Rent Differential shall be payable at the same time such installment payments are made after Tenant recovers one hundred percent (100%) of the Allowed Costs.

14.5.3 Good Faith. Tenant covenants that any allocation of payments or other consideration payable or deliverable to Tenant in connection with any subletting of the Premises or assignment of this Lease shall be made in good faith and not with a purpose to avoid Tenant's obligation to pay 50% of the Rent Differential to Landlord.

14.5.4 Arbitration. Should the parties fail to reach agreement concerning the amount of any Rent Differential payable to Landlord pursuant to this Subsection 14.5, either party may elect to submit the dispute to arbitration in accordance with the provisions of Exhibit F attached hereto.

14.6 Joint and Several Obligations. Each permitted subtenant or assignee shall assume all obligations of Tenant under this Lease with respect to the Premises, or such portion thereof as may be covered by the sublease or assignment entered into by such party, and, if the Original Tenant is not conducting business in any portion of the Building, such permitted subtenant or assignee shall, if Landlord so elects, make direct payment to Landlord of the Rent in the amount set forth in the sublease or assignment, unless otherwise agreed in writing by the parties thereto, and the performance of all of the terms, covenants, conditions, and agreements herein contained on Tenant's part to be performed with respect to the Premises or such subleased space, as the case may be. No Transfer shall be valid and no transferee shall take possession of the Premises or any part thereof unless, within ten (10) days after the execution of the documentary evidence thereof, Tenant shall deliver to Landlord a duly executed duplicate original of the Transfer instrument in a form reasonably satisfactory to Landlord that (a) provides that the transferee assumes Tenant's obligations for the payment of Rent to the extent set forth in the sublease or assignment (or the allocable portion thereof, in the case of a sublease of a portion of the Premises) and for the full and faithful observance and performance of the covenants, terms and conditions contained herein, applicable to the Premises in the event of an assignment or applicable to the subleased space in the event of a sublease, (b) provides that the transferee will, at Landlord's election, attorn directly to Landlord if Landlord will recognize the sublease or assignment, as the case may be, and not disturb the subtenant's or assignee's, as the case may be, right to possession of the Premises and provide all services required by this Lease in the event Tenant's Lease is terminated for any reason on the terms set forth in the instrument of transfer, and (c) contains such other non-financial assurances as is then customarily required by Landlord's first mortgage lenders, the form for which will be provided to Tenant on request. The failure or refusal of a transferee to execute such an instrument of assumption shall not release or discharge the transferee from its obligations set forth above.

14.7 Non-Competition. Notwithstanding anything in this Section 14 to the contrary, in no event shall Tenant, without Landlord's prior consent, which consent, except as provided below, may be withheld in Landlord's sole and absolute discretion, transfer all or a portion of the Premises or this Lease to any then tenant or occupant of space in the Building, with whom Landlord (or Landlord's broker or representative) is engaged in active lease negotiations or discussions or with whom Landlord (or Landlord's broker or representative) has exchanged written correspondence regarding lease negotiations or discussions; provided, however, if Landlord does not then have in the Building space available that would generally meet the size and location requirements of such existing tenant and Landlord also does not expect to have such space available by the proposed commencement date under Tenant's desired sublease or assignment of Lease, then Landlord shall not unreasonably withhold, condition or delay such consent.

14.8 No Merger. The voluntary or other surrender of this Lease by Tenant or mutual cancellation of this Lease shall not work a merger. At the option of Landlord, any such surrender or cancellation of this Lease shall either terminate any and all then existing subleases or subtenancies or operate as an assignment to Landlord of Tenant's interest in any and all such subleases or subtenancies.

14.9 Landlord's Right to Assign. Landlord shall have the right to sell, encumber, convey, transfer, and/or assign any of its rights and obligations under this Lease (in connection with a transfer of all or any portion of Landlord's interest in the Facility), provided, however, that no sale, conveyance, transfer, or assignment (other than an arms-length foreclosure or deed in lieu of foreclosure) shall relieve Landlord of its obligations hereunder unless and until the transferee shall have assumed and agreed (in writing) to perform all of Landlord's obligations under the Lease. Notwithstanding the foregoing, any offset rights granted to Tenant in this Lease shall not be defeated by such transfer unless Tenant agrees to the contrary in a written instrument executed and delivered under the terms of a Subordination, Non-Disturbance and Attornment Agreement required by the provisions of Section 21 of this Lease. Landlord shall not be relieved of any obligations that shall have accrued with respect to the period prior to the effective date of such transfer, but to the extent so provided in Subsection 23.6.2 below, Tenant shall look solely to the then interest of Landlord in the Facility (e.g., a mortgage interest, in the case of a seller financed sale of the Facility) and the proceeds of such transfer (if any) for the satisfaction of any remedy of Tenant for failure to perform such obligations.

14.10 Non-Transfers. Notwithstanding the foregoing provisions of this Section 14 to the contrary, the following transfers (each a "Permitted Transfer") shall not constitute an assignment or sublease requiring the consent or approval of Landlord under this Lease, and will not extend any Rent Differential right or termination right or option to Landlord:

(a) to an affiliate of Tenant; that is, any entity which controls, is controlled by, or is under common control with, Tenant;

(b) to an entity resulting from a reorganization of or merger or consolidation with Tenant or a successor resulting from a legislative act;

(c) to an entity which acquires all or substantially all of the assets of Tenant's business for good business purpose and not principally for the purpose of transferring this Lease in contravention of the restrictions contained herein; or

(d) of any stock or other ownership or partnership interest in Tenant, or any affiliate of Tenant, whose stock or other ownership or partnership or membership interest is publicly traded on any national, regional or other stock exchange or "over-the-counter" market;

provided, that Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with all of the documentation described in Subsection 14.3 above. Any such transferee or affiliate described in this Subsection 14.10 shall be referred to in this Lease as a "Permitted Affiliate." "Control," for the purposes hereof, shall mean the power to direct the management policies of an entity.

15. INDEMNIFICATION; INSURANCE; ALLOCATION OF RISK.

15.1 Indemnification.

15.1.1 Tenant's Indemnity. Except as to any Claims (as defined below) from which Landlord releases Tenant from liability or indemnifies Tenant pursuant to express provisions of this Lease, Tenant shall at its expense defend (by counsel reasonably approved by Landlord), protect, indemnify, and hold harmless Landlord and Landlord's subsidiaries, affiliates, constituent partners, and agents, their respective directors, officers, stockholders, trustees, employees, successors, and assigns

(collectively, the "Landlord Parties") from and against any and all Claims for injury (including death and physical, psychological, and emotional injuries) to any person or damage to any property whatsoever, to the extent arising from or caused by (whether in whole or in part, directly or indirectly) any of the following occurrences or circumstances:

(a) any occurrence in, on, or about any part of the Facility, including the Premises, to the extent such injury or damage shall be caused by the negligent act or omission of Tenant or any Tenant Parties or any of their respective contractors or subcontractors; or

(b) any breach of the obligations of Tenant under Subsection 8.4 above.

As used herein, the term "Claims" shall mean claims, liabilities, penalties, fines, judgments, forfeitures, losses, expenses (including, without limitation, reasonable attorneys' fees, consultant fees, expert fees, and court costs), and costs, including, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation of site conditions, and any and all costs of any required or necessary repair, cleanup, detoxification, decontamination, or other remedial work concerning the Facility.

15.1.2 Landlord's Indemnity. Except as to any Claims from which Tenant releases Landlord from liability or indemnifies Landlord pursuant to express provisions of this Lease, Landlord shall at its expense defend (by counsel reasonably approved by Tenant), protect, indemnify, and hold harmless Tenant and the Tenant Parties from and against any and all Claims for injury (including death and physical, psychological, and emotional injuries) to any person or damage to any property whatsoever, to the extent arising from or caused by (whether in whole or in part, directly or indirectly) any of the following occurrences or circumstances:

(a) any occurrence in, on, or about any part of the Facility, to the extent such injury or damage shall be caused by the negligent act or omission of Landlord or any Landlord Parties or their respective contractors or subcontractors; or

(b) any Hazardous Substances that Landlord or any Landlord Parties or Landlord's contractors or subcontractors shall have caused, permitted or authorized to be used, analyzed, stored, transported, disposed, deposited, generated, discharged, or released in, on, under, to, from, or about the Facility or any nearby property.

15.1.3 Insurers Not Released. The indemnification obligations of Landlord and Tenant hereunder are not intended to and shall not relieve any insurance carrier of its obligations to Landlord or to Tenant (if any).

15.2 Tenant's Insurance. Tenant shall have the following insurance obligations:

15.2.1 Liability Insurance. Tenant shall, at Tenant's expense, obtain and keep in force at all times during the Term, a policy of commercial general liability insurance (including automobile liability) for occurrences in or about the Premises or otherwise resulting from Tenant's operations at the Facility. The minimum limits of liability shall be a combined single limit of not less than Five Million Dollars ($5,000,000.00) per occurrence and a deductible not greater than Ten Thousand Dollars ($10,000.00). The policy shall protect Landlord and the Landlord Parties as additional insureds. The policy shall also provide for severability of interest; shall provide that an act or omission of one of the insured or additional insureds that would void or otherwise reduce coverage shall not void or reduce coverages as to other insured or additional insureds; shall insure performance by Tenant of the indemnity provisions, to the extent commercially available in commercial general liability insurance policies or for a

reasonable additional cost, with riders thereto, of this Lease; and shall afford coverage after the Term (by separate policy or extension if necessary) for all claims based on acts, omissions, injury or damage that occurred or arose during the Term. The policy shall be primary coverage for Tenant and Landlord for any liability arising out of Tenant's and the Tenant Parties' and Tenant Invitees' use, occupancy or maintenance of the Premises and all areas appurtenant thereto. The limits of said insurance shall not, however, limit any liability of Tenant under Subsection 15.1.

15.2.2 Personal Property Insurance. Tenant shall maintain in full force and effect on all of its fixtures, personal property, and equipment in the Premises a policy or policies of fire and casualty insurance in "all risk" form (including water damage) to the extent of at least ninety percent (90%) of their replacement cost (without deduction for depreciation). No such policy shall have a deductible (other than as to earthquake coverage, which may have a deductible of up to Five Hundred Thousand Dollars ($500,000.00)) in a greater amount than Thirty Thousand Dollars ($30,000.00). Tenant shall also insure in the same manner the physical value of all its leasehold improvements, if any, in the Premises. The "full replacement value" of the improvements to be insured under this Subsection 15.2.2 shall be determined by the company issuing the insurance policy at the time the policy is initially obtained and from time to time throughout the Term. During the Term, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the fixtures, equipment, and leasehold improvements so insured. Landlord shall have no interest in said insurance, and will sign all documents necessary or proper in connection with the settlement of any claim or loss by Tenant. All such insurance shall contain waivers of subrogation in favor of Landlord.

15.2.3 Worker's Compensation Insurance. Tenant shall carry and maintain Workers Compensation as required by applicable Laws and Employer's Liability insurance with a limit of not less than $1,000,000.

15.2.4 Business Interruption. Subject to Tenant's rights to self-insure under Subsection 15.5 below, Tenant shall maintain loss of income and business interruption insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or to the Building as a result of such perils, but in no event in an amount less than the Rent payable hereunder for six (6) months. All such insurance shall contain waivers of subrogation in favor of Landlord; provided, however, that Tenant shall have the right to self insure the insurance otherwise required under this Subsection 15.2.4; provided further, however, that such self-insurance shall be deemed to be for the full extent of the otherwise required coverage and with full waiver of subrogation in favor of Landlord.

15.2.5 Other Coverage. During such times as Tenant is performing approved Alterations in the Premises, Tenant shall carry such builder's risk insurance as Landlord may require pursuant to Subsection 10.2.5 above.

Not more frequently than every three (3) years, if, in the reasonable opinion of Landlord's lender or of the independent insurance consultant retained by Landlord, the amount of public liability insurance coverage at that time is not adequate, or additional coverages not specified above should be obtained, Tenant, at its cost, shall increase such insurance coverage, and/or obtain such additional coverages, as required by either Landlord's lender or Landlord's insurance consultant, consistent with the then prevailing custom for new leases of similar space in Comparable Buildings but only to the extent required of tenants similar to Tenant for comparable space.

15.2.6 Insurance Criteria. All the insurance required to be carried by Tenant (except Tenant's self-insurance under Subsection 15.5 below) hereunder shall:

(a) Be issued by insurance companies that are qualified and admitted to do business in the State of California and that carry a designation in "Best's Insurance Reports," as issued from time to time throughout the Term, as follows: Policy holders' rating of A-; financial rating of not less than X.

(b) Be issued in a form reasonably acceptable to Landlord.

(c) Contain an endorsement requiring thirty (30) days' written notice from the insurance company to both parties and to Landlord's lender before cancellation or expiration of any policy.

(d) Waive subrogation, as required by Subsections 15.2.2, 15.2.4, and 15.2.5, with respect to property loss or damage by fire or other casualty.

(e) To the extent that Landlord shall have any repair or replacement obligations with respect to the insured property, name Landlord and the Landlord Parties as additional insureds (except the Worker's Compensation Insurance) and, at Landlord's request, shall carry a lender's loss payee endorsement in favor of Landlord's lender.

15.2.7 Evidence of Coverage. A certificate of insurance for the insurance required to be carried by Tenant hereunder shall be delivered to Landlord prior to Tenant's commencing remodeling work in or taking occupancy of the Premises, and Tenant shall keep each such policy in full force and effect throughout the Term. Renewal policies or certificates thereof shall be delivered to Landlord at least thirty (30) days in advance of the expiration dates of the expiring policies.

15.2.8 Tenant Insurance Default. In the event that Tenant fails to deliver to Landlord any liability policy under Subsection 15.2.1 above, certificate, or renewal notice hereunder required within the prescribed time period and if such failure continues after ten (10) days written notice thereof from Landlord to Tenant, or if any such policy is canceled or the coverage with respect to the Premises reduced during the Term without Landlord's consent, Landlord may at its option, but shall not be obligated to, obtain such insurance on behalf of Tenant and bill Tenant, as additional rent, for the cost thereof. The provisions of this Section 15 are for the benefit of Landlord and its lenders only and are not nor shall they be construed to be for the benefit of any employee of Tenant, any other tenant or occupant of the Building or the Facility, or any other person whatsoever.

15.3 Landlord's Insurance. Landlord shall maintain policies of insurance covering loss of or damage to the Building in the full amount of its replacement cost. Such policies shall provide protection (subject to reasonable deductibles) against all perils included within the classification of fire, extended coverage (with at least a twelve-month rent-loss rider attached and with rental abatement insurance coverage for loss of services contemplated in Subsection 17.4 below, (which insurance Landlord presently carries and (at a minimum) with respect to the Premises will continue to carry so long as the same remains available) vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage, and any other perils that Landlord in good faith deems appropriate. Landlord shall not obtain insurance for Tenant's trade fixtures or equipment. Landlord shall also maintain a policy of commercial general liability insurance with a combined single limit of not less than Ten Million Dollars ($10,000,000) per occurrence for bodily injury and property damage, plus coverage against such other risks as Landlord deems advisable from time to time, insuring Landlord against liability arising out of the ownership, use, occupancy or maintenance of the Facility and the performance by Landlord of the indemnity provisions, to the extent commercially available in commercial general liability insurance policies or, for a reasonable additional cost, with riders thereto, of this Lease; provided, however, that Landlord may at its option elect to substitute for said policy, insurance that is part of a blanket insurance

policy maintained by Landlord, provided that such substituted insurance policy has a combined single limit of not less than Twenty-Five Million Dollars ($25,000,000) allocated to the Building and conforms in all other respects with the foregoing requirements. In addition, if Landlord determines that a majority of landlords of Comparable Buildings do so, Landlord shall increase such insurance coverage and/or obtain such additional coverages to the level carried by such other landlords. All the insurance required to be carried by Landlord hereunder shall: (a) Be issued by insurance companies that are qualified and admitted to do business in the State of California and that carry a designation in "Best's Insurance Reports," as issued from time to time throughout the Term, as follows: Policy holders' rating of A-; financial rating of not less than X, and (b) Waive subrogation with respect to property loss or damage, including Rent loss and builder's risk coverage, by fire or other casualty as specifically set forth in Subsection 15.5 below.

The amount of such liability coverage may be increased from time to time as required by Landlord (but Landlord shall not increase such liability coverage to an amount greater than that required by owners of Comparable Buildings) or Landlord's lender. Notwithstanding anything above to the contrary, Landlord may self-insure the obligations set forth herein so long as (i) Landlord maintains a net worth at least equal to 2.5 times the greater of initial replacement value of the Facility and the replacement value of the Facility from time to time according to its most recent audited financial statement (in accordance with generally accepted accounting principles consistently applied), and (ii) Landlord governs and manages its self-insurance program in a manner consistent with programs managed by reasonable businesses. Upon request, Landlord shall supply Tenant with evidence reasonably satisfactory to Tenant's of Landlord's net worth and the satisfaction of the conditions set forth above. If Landlord elects to self-insure, Landlord shall be responsible for any losses or liabilities which would have been assumed by the insurance companies which would have issued the insurance required of Landlord under this Lease. Landlord will notify Tenant in advance of any period for which it intends to self-insure and shall provide to confirm the satisfaction of the conditions set forth above. For so long as Landlord self-insures, Landlord, for all applicable periods, shall and does hereby indemnify and hold harmless Tenant and Tenant's Parties from and against all costs, damages or expenses (including attorney fees at the trial and appellate levels) incurred or paid by Tenant or Tenant's Parties as a result of any claim customarily covered by the insurance policy provided for in Subsection 15.3 even if such costs, damages or expenses are the result of the fault or negligence of Landlord.

15.4 Exculpation.

15.4.1 Waiver. Landlord and Tenant release each other and Landlord Parties and Tenant Parties, respectively, from any Claims of whatever nature for damage, loss, or injury to the Premises, the Building, and/or the Facility, or to the other's property in, on, or about the Premises and the Facility, to the extent of any insurance proceeds that are received or receivable (or that would have been receivable but for such releasing party's breach or default of its obligations to carry insurance under this Lease), even if such damage, loss, or injury shall have been caused by the fault or negligence (but not willful misconduct) of the other party or anyone for whom such party may be responsible. Landlord and Tenant shall each cause their respective insurance policies to provide that the insurance company waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any damage covered by any policy. To the extent of any insurance proceeds actually received, or that would have payable but for a breach of this Lease, neither Landlord nor Tenant shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease. Further, except to the extent otherwise expressly provided below in this Subsection, Tenant hereby waives all Claims against Landlord and the Landlord Parties for any loss, theft, or damage to Tenant's business or Personal Property or injury (including death and physical, psychological, and emotional injuries) to persons, in, upon or about the Premises and/or the Facility from any cause whatsoever, including, without limitation, the active or passive negligence of Landlord or the Landlord

Parties. Without limiting the generality of the foregoing, Tenant specifically acknowledges that such waived Claims includes injuries, losses, and damage resulting from the following causes: Fire; smoke; explosion; falling plaster, ceiling tiles, fixtures, or signs; broken glass; steam; gas; fumes; vapors; odors; dust; dirt; grease; acid; oil; any other Hazardous Substance; debris; noise; air or noise pollution; vibration; theft; breakage; vermin; electricity; computer or electronic equipment or systems malfunction or stoppage; water; rain; flooding; freezing; windstorm; snow; sleet; hail; frost; ice; excessive heat or cold; sewage; sewer backup; toilet overflow; leaks or discharges from or into the Premises or any other part of the Facility, or from any pipes, sprinklers, appliances, equipment (including, without limitation, heating, ventilating, and air-conditioning equipment); electrical or other wiring; plumbing fixtures; roofs; windows; skylights; doors; trapdoors; the surface or subsurface of any floor or ceiling of any part of the Facility; dampness or climatic conditions; maintenance, repair, or construction activities; renovation work; and any interruption, cessation, or failure of any public or other utility service.

16. SECURITY SERVICES.

16.1 Landlord's Obligation to Furnish Security Services. Landlord shall supply to the Building unarmed lobby attendant services at all times (i.e. 365 days a year, 24 hours a day) and that are generally comparable to the lobby attendant services provided in Comparable Buildings; provided, however, that neither Landlord nor any other Landlord Parties shall be liable to Tenant, Tenant's employees, invitees or any other person or entity for (and Tenant waives all claims against them arising by reason of) direct or consequential damages except to the extent such direct damages (but not in any event consequential damages) are caused by Landlord's or Landlord Parties' willful misconduct or gross negligence, but specifically including, without limitation, damage or injury to person or property or loss of life, resulting from the presence, admission to or exclusion from the Building or Facility of any person, and Tenant acknowledges that Landlord's provision of security guards or other security services for the Building or Facility shall not be construed as Landlord's or any Landlord Party's acceptance of any responsibility or liability for the security of persons or property in, on or about the Premises, the Building or the Facility. Landlord may, but shall not be obligated to, furnish additional security services for the Premises, the Building and/or the Facility as Landlord deems appropriate in its sole and absolute discretion. In the event Landlord furnishes or contracts to furnish any such additional services, Tenant shall nevertheless remain solely responsible for the protection of itself, the Tenant Parties and all property of Tenant and the Tenant Parties located in, on, or about the Premises or the Building or the Facility, and the provisions of Section 15 shall nevertheless continue in full force and effect. Notwithstanding the foregoing, Tenant shall have the right to supplement the security provided by Landlord under this Subsection 16.1 below to the extent that Tenant's additional security does not interfere with the security provided by Landlord hereunder. Landlord shall have the right to take all such reasonable and lawful measures as Landlord may deem advisable for the security of the Building or the Facility and their occupants, including, without limitation, the lawful search of any person entering or leaving the Building, the evacuation of the Building (or any part thereof) for cause, suspected cause, or for drill purposes, the temporary denial of access to the Building (or any part thereof), and the closing of the Building after normal business hours and on Sundays and holidays, subject, however, to Tenant's right to admittance, when the Building is so closed, under such reasonable regulations as Landlord may prescribe from time to time.

16.2 Card-Key Access. Landlord has installed a card-key security system to control access to: (i) each floor of the Premises from the passenger elevators; (ii) the Exercise Room; and (iii) the entry to the Building on Fremont Street (after normal business hours). The access described in the preceding sentence hereof shall be controlled by card-key (one card-key for all access points) issued to Tenant by Landlord and shall operate on a 24-hour-per-day, 365-day-per-year basis. Landlord shall pay for the cost of the initial card-keys, not to exceed one card-key for each 250 rentable square feet of space included in the Initial Premises. Tenant shall pay for all card-keys in excess of the initial card-keys required pursuant to the preceding sentence hereof and for any replacement of lost or stolen card-keys.

17. BUILDING SERVICES.

17.1 Standard Building Services. Landlord shall furnish the Premises with the standard building services and utilities as set forth in the attached Exhibit D.

17.2 Additional Services. Except with respect to electricity which is separately payable by Tenant under this Lease in whatever quantities consumed by Tenant, Tenant shall not, without the consent of Landlord (which consent shall not be unreasonably withheld), (a) use any equipment, apparatus, or device in the Premises that will in any way increase the amount of cooling capacity or water usually furnished or supplied for use to the Premises for general office purposes (i.e., the amounts provided at the standard levels specified in the attached Exhibit D as being available without additional charge), or (b) connect to water pipes or any apparatus or device for the purpose of using water. Tenant agrees to pay within thirty (30) days of demand all reasonable charges (reasonable meaning, in such context, the charges which would be invoiced to Tenant by third-party specialists providing such services, which charges shall in no event be more than those charges imposed by Landlord on third-party tenants in the Building, which such charges shall be prorated based on size, type, intensity and degree of such service) imposed by Landlord from time to time for all building services (it being agreed that there shall be no markup for typical and customary extra cleaning services or heating and air conditioning after Business Hours (as such terms is defined in Subsection 1(b) of Exhibit D attached hereto) requested by Tenant for the Premises) and all actual charges, without markup, for services and utilities requested by and supplied to or used by Tenant in excess of or in addition to those standard building services and utilities described in Exhibit D. Such excess and additional building services and utilities are hereinafter referred to as "Additional Services." If Tenant uses utilities in excess of such standards, Landlord may, upon prior notice to Tenant, cause a switch and/or metering system to be installed at Tenant's expense (which expense shall be Landlord's actual cost of installing such switch and Tenant shall pay within thirty (30) days after receipt of an invoice from Landlord covering the cost to install such switch or metering system) to measure the amount of building services, utilities, and/or Additional Services consumed by Tenant or used in the Premises. Notwithstanding anything to the contrary in this Section 17.2 or Exhibit D, Landlord has advised Tenant that the Building's HVAC system is reasonably capable, under normal operating circumstances, of accommodating Tenant's reasonable cooling requirements; provided, however, after Business Hours (as defined in Exhibit D), Tenant shall be limited to four (4) tons per floor, or a combined total of sixteen tons per the Premises.

17.3 Conservation. Tenant shall cooperate in a commercially reasonable manner with Landlord to effect conservation of all utilities in the Building and shall use its commercially reasonable efforts to minimize its use of water, heat, electricity, and air conditioning to the extent that such efforts do not unreasonably interfere with the conduct of Tenant's business.

17.4 Landlord's Right to Cease Providing Services. Landlord reserves the right, in its reasonable discretion, to reduce, interrupt, or cease service of the heating, air conditioning, ventilation, elevator, plumbing, electrical systems, telephone systems, and/or utility services of the Premises, the Building, or the Facility, for any of the following reasons or causes:

(a) any accident, emergency, Law (including, without limitation, Laws requiring conservation or rationing of electricity, fuel, or water), or Force Majeure (as defined in Section 18); or

(b) the making of any repairs or governmentally mandated additions, alterations, or improvements to the Premises, the Building, or the Facility, until such repairs or governmentally mandated additions, alterations, or improvements shall have been completed; or

(c) the voluntary making of additions, alterations or improvements to the Building or the Facility other than those described in Subsection 17.4(b) above.

No such interruption, reduction, or cessation of any such building services or utilities shall constitute an eviction or disturbance of Tenant's use or possession of the Premises or Common Areas, or a breach of Landlord's obligations hereunder, or render Landlord liable for any damages (including, without limitation, any damages, compensation, or claims arising from any interruption or cessation of Tenant's business), or entitle Tenant to be relieved from any of its obligations under the Lease, or result in any abatement of Rent, except to the extent otherwise provided below. However, Landlord shall use commercially reasonable diligence to restore such service or to reduce the length of such interruption, and to minimize any disturbance to Tenant, where it is within Landlord's commercially reasonable control to do so. Notwithstanding the foregoing, if any interruption in, or failure or inability to provide any of the services described in this Section 17 or Exhibit D (an "Adverse Condition") results from activities under clause (c) above or, as to clauses (a) or (b) above, continues for the "Applicable Interruption Period" (as defined below) after Tenant's written notice thereof to Landlord, and Tenant is unable to conduct its business in a reasonable manner in a "significant portion" of the Premises as a direct result thereof and Tenant therefore actually does not occupy or use such "significant portion" of the Premises (or substantially reduces its use and occupancy of such "significant portion" to a mere "skeleton crew" basis as necessary to perform critical functions for Tenant's business), as the case may be, then Tenant shall be entitled to an abatement of Rent for the portion of the Premises rendered untenantable. Such abatement shall commence as of the first day after the expiration of such Applicable Interruption Period and terminate upon the cessation of such Adverse Condition. As used in this Subsection 17.4 and in Subsection 22.2 below, the term "significant portion" shall be deemed to mean an area consisting of at least 1,000 rentable square feet or any strategic office (such as the computer room or phone connect room (regardless of its size)). As used herein, the term "Applicable Interruption Period" shall mean (i) one (1) business day as to activities under clause (c) above, (ii) three (3) consecutive business days or such shorter period as applicable under the coverage which is or would be covered by rental abatement insurance required to be covered by Landlord (subject to the provisions of Subsection 15.3 above), (iii) five (5) consecutive business days in the case of an Adverse Condition within Landlord's reasonable control which is not covered by (ii) above, (iv) twenty (20) consecutive days in the case of an Adverse Condition that is not within Landlord's reasonable control, but that exists within or arises from an event or circumstances occurring within the Building or the Facility which is not covered by (ii) above, and (v) sixty (60) consecutive days in the case of an Adverse Condition that is not within Landlord's reasonable control and does not exist within or arise from any event or circumstance occurring within the Building or the Facility, but that arises from circumstances occurring outside of and in the immediate vicinity of the Building for which is not covered by (ii) above. If the conditions described under this Subsection 17.4(a) and (b) result in Tenant being dispossessed for a period of time which, if such dispossession has arisen under the provisions of Section 24 below would have given rise to a right to terminate in favor of Tenant, Tenant shall have such right to terminate under this Subsection 17.4. If the conditions described under Subsection 17.4(c) above (unless covered by the provisions of Section 24 below or resulting from voluntary acts of Tenant) result in Tenant being dispossessed for a period of 60 days, Tenant shall have a right to terminate this Lease.

18. FORCE MAJEURE.

Except as otherwise expressly provided elsewhere in this Lease with respect to Tenant's right to abatement of Rent under certain circumstances, neither Landlord nor Tenant shall be chargeable with,

liable for, or responsible to the other party for anything or in any amount for any failure to perform or delay caused by any of the following events (collectively, "Force Majeure"): fire; earthquake; explosion; flood; hurricane; the elements; acts of God or the public enemy; actions, restrictions, limitations or interference of governmental or quasi-governmental authorities or agents; war; invasion; insurrection; rebellion; riots; strikes or lockouts; inability to obtain necessary materials, goods, equipment, services, utilities or labor; accident; breakage; or any other cause whether similar or dissimilar to the foregoing which is beyond the reasonable control of such failure (but not unavailability of funds); and any such failure or delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Lease by such party.

19. RULES AND REGULATIONS.

19.1 Compliance. Tenant, its agents, employees, and servants and those claiming under Tenant will at all times observe, perform, and abide by all of the general rules and regulations promulgated by Landlord as set forth in Exhibit C and the Rules and Regulations for Construction by Tenant set forth in Exhibit H, and, to the extent that Tenant is provided with written notice of same, as reasonably modified, supplemented, or amended by Landlord from time to time (together, the "Rules and Regulations"). Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Facility of any of said Rules and Regulations, and provided that Landlord shall do the same for Tenant, Landlord shall have the right to make reasonable exceptions for specific tenants or occupants with respect to the application of certain rules and regulations; provided, however, that nothing contained in this sentence shall excuse Landlord from performing its obligations required by this Lease. Subject to the foregoing, Landlord agrees to use commercially reasonable efforts, consistent with Landlord's rights under applicable leases, to apply the Rules and Regulations in a fair, responsible, nondiscriminatory and equitable manner. If there is a conflict between the Rules and Regulations and any provision of this Lease, the provisions of this Lease shall prevail.

19.2 Enforcement. Upon Landlord's receipt of Tenant's written notice that another tenant or occupant of the Facility is engaging in conduct prohibited by this Section, to the detriment of Tenant, Landlord agrees to use commercially reasonable efforts, consistent with Landlord's rights under the lease of such other tenant or occupant, to cause such party to desist from such prohibited conduct. Notwithstanding the foregoing, Landlord shall not be required to file a lawsuit against another tenant nor shall Landlord be liable to Tenant for any such conduct on the part of other tenants or occupants of the Building, except to the extent such conduct results in default in Landlord's obligations under this Lease.

20. HOLDING OVER.

20.1 Surrender of Possession. Tenant shall surrender possession of the Premises immediately upon the expiration of the Term or termination of this Lease. If Tenant surrenders possession of the Premises to Landlord in a condition other than that required under this Lease, Tenant shall be responsible for all costs incurred by Landlord arising from such failure. If Tenant retains possession of all or a portion of the Premises after the expiration or earlier termination of the Term, with Landlord's express written consent, Tenant's occupancy shall be deemed to be that of a month-to-month tenancy, terminable upon thirty (30) days' written notice. If Tenant retains possession of the Premises or any part thereof after the expiration or earlier termination of the Term, without Landlord's express written consent, Tenant's occupancy shall be deemed to be that of a tenancy-at-will, terminable upon five (5) days' written notice, and in no event shall such occupancy be deemed from month-to-month or from year-to-year; further such occupancy shall be subject to all of the provisions of this Lease pertaining to the obligations of Tenant and the rights of Landlord during the Term shall apply, except as expressly modified by this Section 20. In the event that Tenant commits an Event of Default or remains in possession of the Premises or any part thereof after the expiration of any month-to-month tenancy or tenancy-at-will created hereby, then Tenant's occupancy shall be deemed to a tenancy-at-sufferance and not a tenancy-at-will.

20.2 Holding Over Without Consent. If Tenant, without Landlord's consent, retains possession of the Premises after the expiration or earlier termination of Term or past the expiration of any tenancy-at-will under Subsection 20.1 above, then Tenant shall pay to Landlord monthly rental equal to the "Applicable Percentage" (as defined below) of the Minimum Monthly Rent applicable immediately prior to the expiration or earlier termination of the Term with respect to such portion of the Premises that Tenant has not surrendered. The "Applicable Percentage" shall be determined as follow: 150% for the first month of such holdover and 175% for the second month and any additional months of such holdover. In addition, Tenant shall indemnify Landlord from and against all losses, costs, claims, liabilities, and expenses (including, without limitation, reasonable attorneys' fees and disbursements but specifically excluding consequential damages) sustained by Landlord by reason of such retention (including, without limitation, claims for damages by any other person to whom Landlord may have agreed to lease all or any part of the Premises effective on or after the date Tenant was obligated to surrender possession of the Premises). No acceptance by Landlord of Rent during any such holding over without Landlord's approval shall reinstate, continue, or extend the Term or shall affect any notice of termination given to Tenant prior to the payment of such money, it being agreed that after the service of such notice or the commencement of any suit by Landlord to obtain possession of the Premises, Landlord may receive and collect when due any and all payments owed by Tenant under this Lease, and otherwise exercise its rights and remedies. The making of any such payments by Tenant shall not waive such notice, or in any manner affect any pending suit or judgment obtained.

21. SUBORDINATION.

21.1 Landlord hereby represents that as of the date of execution and delivery of this Lease, the Facility is unencumbered by any Incumbrances (as defined below) except for that certain unrecorded "Ground Lease" (as such term is defined in Section 55 below). If Landlord's lender shall require the ground lessor under the Ground Lease to deliver to it a non-disturbance agreement (which such agreement is further detailed below) and if such ground lessor agrees to deliver such a non-disturbance agreement, Landlord shall require the delivery of a non-disturbance agreement by ground lessor in favor of Tenant within sixty (60) days of the date that such ground lessor agrees to deliver the non-disturbance agreement to Landlord's lender. This Lease shall be subject and subordinate to any mortgage, deed of trust, ground lease or master lease (collectively, "Encumbrance") hereafter placed upon the Facility and to all renewals, modifications, replacements and extensions thereof; provided that, as a condition to such subordination, a separate written agreement in a commercially reasonable form as such holder of or lessor under such Encumbrance ("Encumbrancer") shall require, shall be entered into between Tenant and such Encumbrancer to specify that, notwithstanding any default in the Encumbrance and any foreclosure or termination thereof, or the enforcement by the Encumbrancer of any rights or remedies, including sale thereunder, or otherwise, Tenant shall not be joined or made party to such foreclosure, termination, or other proceedings, and this Lease shall be recognized and shall remain in full force and effect, and Tenant shall not be disturbed and shall be permitted to remain in quiet and peaceful possession of the Premises throughout the Term in accordance with and subject to all the provisions of this Lease as long as no Event of Default by Tenant is outstanding.

21.2 In the event that any ground lease or master lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord if such successor shall recognize and assume the Lease and shall agree not to disturb Tenant's right to possession of the Premises. Upon request by Landlord, Tenant shall execute and deliver such instruments in a commercially reasonable form as may be reasonably necessary or convenient to

evidence such subordination, nondisturbance, and/or attornment; provided, however, that if the content of such instruments affect an amendment to this Lease, such instruments shall be governed by the restrictions set forth with respect to Lease amendments set forth in Section 28 below. Notwithstanding the foregoing, in no event shall Tenant be obligated to execute any instrument that would constitute an amendment of this Lease, except to the extent otherwise provided in Section 28 below. Also notwithstanding any provision hereof to the contrary, if any Encumbrancer shall elect to have this Lease prior to the lien of its Encumbrance and shall give notice thereof to Tenant, this Lease shall be deemed prior to the Encumbrance irrespective of whether the Lease is dated prior or subsequent to the date of the Encumbrance or the recording date thereof.

22. ENTRY BY LANDLORD.

22.1 Reservation. Landlord reserves and shall have the right to enter the Premises at any and all reasonable times after twenty-four (24) hours notice of same (except in cases of emergency (in which case no notice shall be required)) and in the presence of a representative of Tenant to the extent a representative is available (except in cases of emergency in which case no representative need be present)) (a) to inspect the same, (b) to verify Tenant's compliance with its obligations under this Lease, (c) to post notices of non-responsibility (if permitted by the Laws of the State where the Facility is located), (d) to post any notices Landlord is required by law to post on the Premises or deemed reasonably necessary by Landlord for Landlord to protect its interest in the Premises and/or the Facility or for health and safety purposes, (e) to deliver notices to Tenant or any subtenant or occupant of any portion of the Premises, (f) to supply any service to be provided by Landlord to Tenant hereunder, and (g) to submit the Premises to prospective lender, purchasers, investors, or, during the last six (6) months of the Term only, tenants. Tenant shall maintain any such notices required by law posted by Landlord in or on the Premises.

22.2 Designation. Tenant may designate certain areas of the Premises as "Secured Areas" should Tenant require such areas for the purpose of securing certain valuable property or confidential information. Landlord may not enter such Secured Areas except in the case of emergency (in which case no notice shall be required) or in the event of a Landlord inspection, in which case Landlord shall provide Tenant with ten (10) days' prior written notice of the specific date and time of such Landlord inspection and Landlord shall make such inspection in the presence of a representative of Tenant (except in cases of emergency, in which case no representative need be present).

22.3 Representative. Landlord also reserves and shall have the right to enter the Premises, after twenty-four (24) hours notice of same (except in cases of emergency, in which case no notice shall be required) and in the presence of a representative of Tenant to the extent a representative is available (except in cases of emergency, in which case no representative need be present), to perform Landlord's obligations under Subsection 11.2 above and to perform those repairs to the Premises for which Tenant is responsible, but which Tenant failed to perform pursuant to Subsection 11.1 above, and Landlord may for such purposes erect scaffolding and other appropriate structures where reasonably required by the character of the work to be performed.

22.4 Abatement. In the event that any such entry by Landlord into the Premises, or such work performed by Landlord at the Facility, prevents Tenant from gaining access to or prevents Tenant's use of all or any "significant portion" of the Premises, Tenant's Rent shall be abated in the manner set forth in Subsection 17.4.

22.5 Limitation. If, as a result of any entry by Landlord which is described in Subsection 22.4 above, the amount of rentable square feet constituting the Premises shall be permanently reduced, both parties shall execute an amendment to the Lease memorializing the amount of such reduction in the

Minimum Monthly Rent and additional Rent. Except as provided in Subsection 17.4 above, in no event, however, shall Tenant be entitled to any abatement of Rent on account of any noise, vibration, or other disturbance to Tenant's business at the Premises that may arise out of any such entry by Landlord into the Premises or out of Landlord's performance of any such work at the Facility, and under no circumstances shall any such noise, vibration, disturbance, work, or entry by Landlord be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction of Tenant from the Premises or any portion thereof.

22.6 Mitigation. Landlord shall use commercially reasonable efforts (which shall not include any obligation to employ labor at overtime rates other than with respect to activities which cause noise or vibration at disruptive levels or impede access to the Premises, such as core drilling, which shall only be performed on an "after Business Hours" basis except in emergencies) to avoid or minimize disruption of Tenant's business during any such entry or work by Landlord.

22.7 Emergency. Landlord shall have the right to use any and all means that Landlord may deem appropriate to open any doors in an emergency in order to obtain entry to the Premises; provided, however, that Landlord shall repair any damage resulting therefrom (and costs thereof shall constitute an Operating Expense to the extent permitted by Section 6 above).

23. DEFAULTS AND REMEDIES.

23.1 Events of Default.

23.1.1 Definition. In addition to those events designated as Events of Default in other provisions of this Lease, each of the following shall constitute an "Event of Default" by Tenant and a breach of this Lease:

(a) Tenant's failure to make any payment owed by Tenant under this Lease, as and when due, where such failure is not cured within ten (10) days following Tenant's receipt of Landlord's written notice thereof, provided, however, that in the event Tenant shall fail to make timely payment of Rent payments which are due monthly three (3) or more times in any twelve (12) month period and Landlord shall have delivered to Tenant a written notice of such delinquencies, then during the twelve (12) consecutive months immediately after such failure the ten (10) day cure period shall be reduced to a three (3) day cure period; or

(b) Tenant's failure to observe, keep, or perform any of the terms, covenants, agreements, or conditions under this Lease that Tenant is obligated to observe or perform, other than that described in clause (a) above, for a period of thirty (30) days after delivery of notice to Tenant of said failure; provided however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default under this Lease if Tenant shall commence the cure of such default so specified within said thirty (30) day period and shall diligently prosecute the same to completion; provided further, however, that if Tenant is prevented from observing, keeping or performing any of the terms, covenants, agreements or conditions under this Lease because of a Force Majeure event, then Tenant shall not be in default during the period of such Force Majeure event; or

(c) The occurrence of any of the events described in Subsection 37.5 (Events of Bankruptcy) below with respect to any guarantor of any obligations of Tenant under this Lease, where Tenant fails to furnish a substitute guarantor, or alternative security, satisfactory to Landlord within sixty (60) (or sooner if reasonably possible) days after Landlord's delivery of Landlord's written demand therefor.

23.1.2 Notice of Default. The notices of default provided for in Subsection 23.1.1(a) and (b) shall in each case be in lieu of, and not in addition to, any notice required under applicable unlawful detainer Laws;

23.2 Remedies. Upon the occurrence of any Event of Default, Landlord may exercise any one or more of the termination rights and other remedies described in this Section 23, in addition to all other rights and remedies now or hereafter provided at law or in equity.

23.3 Right to Cure. All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense. If Tenant shall fail to perform any act on its part to be performed under this Lease, and such failure shall continue beyond any applicable notice and cure period (except that no notice or cure shall be required in cases of emergency), Landlord may, but shall not be obligated to do so, without waiving or releasing Tenant from any obligations of Tenant, perform any such act on Tenant's part to be performed as provided in this Lease. All reasonable costs incurred by Landlord with respect to any such performance by Landlord (including reasonable attorneys' fees) shall be paid by Tenant to Landlord within thirty (30) days of Landlord's demand therefor.

23.4 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future law to redeem the Premises or to continue the Lease after being dispossessed or ejected from the Premises.

23.5 Remedies Cumulative. All remedies of Landlord under this Lease are cumulative. Efforts by Landlord to mitigate the damages caused by Tenant's default shall not constitute a waiver of Landlord's right to recover damages, nor shall Landlord have any obligation to mitigate damages, except to the extent provided by applicable Laws.

23.6 Default by Landlord.

23.6.1 Notice. In no event shall Landlord be deemed to be in default if Landlord fails to perform any covenant, term, or condition of this Lease upon Landlord's part to be performed (including Landlord's obligations set forth in Section 40 below, it being agreed that after the expiration of the cure period provided therein Landlord shall have no further cure period), unless and until thirty (30) days have expired after delivery, to Landlord and to the holder of any mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant, of a written notice specifying in detail Landlord's failure to perform and demanding the correction of such deficiency; provided, however, that if such deficiency cannot be cured or corrected within such 30-day period Landlord shall not be in default if Landlord or anyone on behalf of Landlord commences such cure or correction within such 30-day period and thereafter diligently and continuously prosecutes the same to completion. If Landlord is deemed to be in default under the provisions of this Subsection, Tenant shall be entitled to bring an action for declaratory judgment or specific performance, or for damages (subject to the provisions of this Lease limiting Landlord's liability) shown by Tenant to have been directly caused by such default; provided, however, that subject to Subsection 23.6.5 below, an action for declaratory judgment or specific performance will be Tenant's sole right and remedy in any dispute as to whether Landlord has breached any express or implied obligation under this Lease to not unreasonably withhold Landlord's consent or approval.

23.6.2 Consequential Damages. Tenant agrees that, in the event it becomes entitled to receive damages from Landlord, Tenant shall not, in any event, be allowed to recover from Landlord consequential damages or damages in excess of the out-of-pocket expenditures incurred by Tenant as a result of a default by Landlord. Further, Tenant shall look solely to the then interest of Landlord in the Facility, or of any successor in interest to Landlord, as owner of the Facility, and/or the proceeds of

insurance relating thereto, and (in the case of any liability that Subsections 14.90 and 26 provide shall survive a sale, conveyance, or transfer of the Facility) the proceeds (if any) of a sale, conveyance or transfer of the Facility, for the satisfaction of any remedy of Tenant for failure to perform any Landlord's obligations under this Lease, express or implied, or under any Law.

23.6.3 Non-Liability. Neither Landlord nor any disclosed or undisclosed principal of Landlord (or officer, director, stockholder, partner or agent of Landlord or of any such principal), nor any successor of any of them, shall have any personal liability for any such failure under this Lease or otherwise. The provisions of this Subsection shall apply only to Landlord and the parties above-described. They shall not be for the benefit of any insurance company or other third party. Except as set forth in Subsections 11.2, 17.4, and 22.2 above and in Sections 24, 25 below or in the Work Letter or elsewhere in the Lease, Tenant hereby expressly waives its rights under any and all Laws, to terminate this Lease (whether prior to or after the commencement of the Term) or to withhold any payment owed by Tenant under this Lease, on account of any damage, condemnation, destruction, or state of disrepair of the Premises, or any part thereof, it being the parties' intent that the provisions of this Lease shall govern the parties' rights and obligations with respect to such matters. In the event of any conflict between any provision of this Subsection and any other provision(s) of this Lease, the provisions of this Subsection shall control.

23.6.4 Counter-Claim. In the event Landlord commences any proceedings against Tenant for possession of the Premises or for non-payment of Rent or any other sum due and payable to Landlord hereunder, Tenant shall not interpose any counter-claim or other claim against Landlord of whatever nature or description in any such proceedings; and in the event that Tenant interposes any such counter-claim or other claim against Landlord in such proceedings, Landlord and Tenant hereby stipulate and agree that, in addition to any other lawful remedy of Landlord, upon motion of Landlord, such counter-claim or other claim asserted by Tenant shall be severed out of the proceedings instituted by Landlord and such proceedings instituted by Landlord may proceed to final judgment separately and apart from and without consolidation with or reference to the status of such counter-claim or other claim asserted by Tenant. The foregoing provisions of this Subsection 23.6.4 shall not apply in the case of any "claim" that under applicable codes of civil procedure would be deemed forfeited if not asserted in the same proceeding. Landlord hereby stipulates and agrees that the provisions of this Subsection 23.6.4 shall not apply or be enforceable so long as the Original Tenant or an affiliate thereof is still the Tenant hereunder or the Tenant hereunder became the Tenant as a result of a Permitted Transfer.

23.6.5 Arbitration. Notwithstanding any provision hereof to the contrary, Tenant shall have the following additional remedy in the event that Landlord, pursuant to Subsection 14.3 of this Lease, refuses to consent to a proposed Transfer and Tenant believes that such refusal constitutes a breach of Landlord's obligations under this Lease: Within five (5) business days after notice of such refusal is received or deemed received by Tenant, Tenant may by written demand delivered to Landlord elect to submit to binding arbitration the issue of whether Landlord refused such consent in accordance with the provisions of this Lease. Such written demand by Tenant shall include Tenant's designation of its candidate to serve as the arbitrator, which candidate shall satisfy the following requirements:

(a) Qualifications. Each candidate for arbitrator shall be a California-licensed attorney with recognized expertise and at least ten (10) years' experience in leasing matters pertaining to first-class high rise office building operations in the San Francisco Financial district. Each candidate for arbitrator, and the law firm (if any) with which he/she is affiliated, shall be independent of each party and shall not previously have represented either Landlord or Tenant as legal counsel.

(b) Response. Within five (5) business days after the service of demand for arbitration, Landlord shall give to Tenant notice (the "Response") of the name and address of the person

designated by Landlord to act as arbitrator on Landlord's behalf, which arbitrator must also meet the qualifications set forth above. If Landlord fails to notify Tenant of the appointment of Landlord's arbitrator, within or by the time above specified, then the arbitrator appointed by Tenant shall be the arbitrator to determine the issue. The arbitration shall be conducted in San Francisco, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (as used in this Subsection 23.6.5(b), the "Rules"). If two (2) arbitrators are chosen pursuant to the above provisions, the arbitrators so chosen shall meet within five (5) business days after the second arbitrator is appointed, and if within five (5) business days after such first meeting the two arbitrators shall be unable to agree promptly upon a determination of the matter in issue, they shall appoint a third arbitrator, who shall be competent and impartial person with the required qualifications specified above. Said third arbitrator or, if Landlord shall have failed to notify Tenant of the appointment of Landlord's arbitrator, Tenant's arbitrator, as the case may be, shall decide the issue within ten (10) business days after his/her appointment. Within such ten (10) business day period the arbitrator shall hold a hearing in accordance with the aforesaid Rules. At such hearing each party may submit evidence, be heard and cross-examine witnesses, with each party having at least five (5) business days advance notice of the hearing. The hearing shall be conducted so that Landlord and Tenant shall each have reasonably adequate time to present oral evidence or argument, but either party may present whatever written evidence it deems appropriate prior to the hearing (with copies of any such written evidence being sent to the other party prior to the hearing). The arbitrator shall have the right to consult experts and competent authorities with factual information or evidence pertaining to the determination of the matter at issue, but any such consultation shall be made in the present of both parties with full right on their part to cross-examine. The only decision to be rendered by the arbitrator(s) is whether or not Landlord's refusal of consent constituted a breach of the Lease. The arbitrator(s) shall render his/her/their decision in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease. Any decision derived from the foregoing arbitration process shall be binding and conclusive upon the parties. If the arbitrator(s) decide(s) that Landlord's refusal of consent was unreasonable, then such refusal shall automatically be deemed null and void and Landlord's consent to the proposed Transfer that be deemed granted, so that Tenant may proceed to consummate the Transfer. The losing party shall pay the fees and costs of the arbitrators and of the expert witnesses (if any) of the prevailing party as well as those of its expert witnesses and the actual and reasonable attorneys' fees of the prevailing party's legal counsel.

23.7 Unlawful Detainer Notice. Tenant hereby specifically agrees that any notice of default provided for in Subsection 23.1 of the Lease shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure.

23.8 Additional Remedies of Landlord. Upon the occurrence and continuation of any Event of Default described in Subsection 23.1 of this Lease, Landlord may exercise any one or more of the following remedies, in addition to all other rights and remedies provided elsewhere in this Lease or now or hereafter provided at law or in equity:

23.8.1 Right to Terminate. Landlord shall have the right, in addition to all other rights available to Landlord under this Lease or now or later permitted by law or equity, to terminate this Lease by providing Tenant with a notice of termination. Upon termination, Landlord may recover any damages proximately caused by Tenant's failure to perform under the Lease, including, without limitation, any reasonable amount (collectively, the "Costs of Reletting") expended or to be expended by Landlord in an effort to mitigate damages (including, without limitation, advertising costs, brokerage fees, attorneys' fees, and costs for maintaining the Premises and putting them into good order, condition, and repair, and performing such remodeling, renovations, or alterations as may be desirable to prepare the Premises for reletting to an identified tenant with whom Landlord has reached a lease agreement), as well as any other damages to which Landlord is entitled to recover under any Law now or hereafter in effect. Those Costs

of Reletting that are of a type that would ordinarily have been incurred by Landlord in reletting the Premises after the expiration of the Term without any default on the part of Tenant (e.g., brokers' commissions and tenant improvement allowances) shall be amortized on a straight-line basis over the entire term (exclusive of renewal options) of the reletting of the Premises or any portion thereof to which they relate, which term shall be deemed to commence when the obligation to pay monthly rents commences. For Costs of Reletting that are to be so amortized, only the portion (if less than all) of such costs that relates to any portion of the balance of the Term (as the same would have remained in effect but for Tenant's Event of Default) shall be included in the computation of damages and such amortized Costs of Reletting relating to periods after such end of the Term shall not be included in the computation of damages. Other Costs of Reletting that are of a type that would not ordinarily have been incurred by Landlord in reletting the Premises after the expiration of the Term without any default on the part of Tenant (including, without limitation, and costs of removing personal property or Alterations that Tenant was required to remove at Tenant's expense) shall not be so amortized, and instead 100% of such costs shall be included in the computation of damages. Landlord's damages include the worth, at the time of any award, of the amount by which the unpaid Rent for the balance of the Term after the time of the award exceeds the amount of the rental loss that Tenant proves could be reasonably avoided. The worth at the time of award shall be determined by discounting to present value such amount at one percent (1%) more than the discount rate of the Federal Reserve Bank in San Francisco in effect at the time of the award. Damages to which Landlord is entitled shall bear interest, commencing on the date such damages are incurred, at an annual interest rate, not to exceed the maximum rate allowed by law, equal to the sum of (a) the Reference Rate (as defined in Subsection 6.3.1 of the Lease) in effect from time to time plus (b) two percent (2%) per annum. Notwithstanding any provision of this Lease to the contrary, in no event shall Landlord be entitled to collect more than once for any discrete element of damages.

23.8.2 Right to Recover Rent as It Becomes Due. Landlord may exercise the remedy described in California Civil Code Section 1951.4 (landlord may continue lease in effect after tenant's breach and abandonment, and recover Rent as it becomes due, if tenant has right to sublet or assign, subject only to reasonable limitations). Tenant hereby specifically acknowledges and agrees that the limitations on its right to sublet or assign, as set forth in Section 14 of the Lease, are reasonable.

23.8.3 Right to Remove Personal Property. Upon any reentry by Landlord into the Premises under this Section, Landlord shall have the right to cause any movable furniture, equipment, trade fixtures, or other personal property left on the Premises to be removed and stored in a public warehouse or elsewhere at Tenant's sole cost and expense, and/or after thirty (30) days notice to Tenant, to dispose of or sell such property and apply the proceeds therefrom pursuant to applicable Law. In the event Landlord stores such property at premises owned or leased by Landlord, Landlord may charge Tenant for such storage at such reasonable rates as Landlord shall from time to time determine. The foregoing notwithstanding, nothing set forth in this paragraph or elsewhere in this Lease shall impose on Landlord any obligation for the care or preservation of such property so left upon the Premises, except to the extent otherwise expressly provided by applicable Laws.

23.9 Waiver of Certain California Code Sections. The parties understand and agree that the provisions of this Lease shall govern the parties rights and obligations with respect to the matters addressed in the statutory provisions described below. Accordingly, and without limitation to the generality of the provisions of the Lease concerning the waiver of certain statutory provisions, Tenant hereby specifically waives its rights under the following provisions of California law:

23.9.1 Civil Code Sections 1932 and 1933(4), concerning the termination of a lease (whether prior to or after the commencement of the lease term) on account of the condition of the premises, but without waiver of the right expressly granted to Tenant in Subsection 23.6.1 of the Lease or any other express provision of the Lease;

23.9.2 Civil Code Sections 1941 and 1942, concerning the making of repairs at a landlord's expense, but without waiver of Tenant's right expressly granted in Subsection 23.6.1 of the Lease or any other express provision of the Lease; and

23.9.3 Code of Civil Procedure Section 1265.130, concerning the right to petition the Superior Court to terminate a lease in the event of a partial taking of the premises by condemnation, but without waiver of the right expressly granted to Tenant in Subsection 23.6.1 of the Lease or any other express provision of the Lease.

These waivers shall also apply to any similar future Laws enacted in addition to or in substitution of the Laws specified above.

24. DAMAGE OR DESTRUCTION.

24.1 Exclusive Remedy. The remedies provided for in this Section 24 shall be Tenant's and Landlord's sole and exclusive remedy in the event a Casualty causes damage to or destruction of all or any portion of the Premises, Building, or Facility, and Tenant and Landlord, as a material inducement to the other party's entering into this Lease, irrevocably waives and releases the provisions of any Law that would automatically terminate this Lease or otherwise be contrary to the provisions of this Section in the event of any such damage or destruction, it being the intent of both parties that the provisions of this written Lease shall instead govern the rights and obligations of the respective parties with respect to such matters.

24.2 Loss Covered by Insurance. If at anytime prior to the expiration or termination of this Lease, (i) all or any portion of the Premises, or any portion of the Common Areas whose use is necessary for Tenant's business, shall be wholly or partially damaged or destroyed by fire or other casualty or peril (collectively, a "Casualty"), and (ii) such damage or destruction shall render the Premises totally or partially inaccessible or unusable by Tenant in the ordinary conduct of Tenant's business, then the following provisions shall apply.

24.2.1 Repairs That Can Be Completed Within One Year.

(a) Within sixty (60) days after the earlier of (i) the date Landlord obtains actual knowledge that the Premises or any portion of the Common Areas are damaged and require repair, or (ii) the date of Tenant's notice to Landlord of such damage or destruction (the "Damage Notice Date"), Landlord shall give Tenant notice of Landlord's contractor's good faith determination, as evidenced by a certificate of such contractor in favor of Landlord and Tenant, of whether the damage or destruction can be repaired under applicable Laws, without the payment of overtime or other premiums, within one year after the date such determination of Landlord's contractor is made and the date when such repair shall be substantially completed. In cases where such damage or destruction is patent and substantial and known to Landlord within 24 hours after its occurrence, Tenant's notice to Landlord shall not be required and the date of such damage or destruction shall be deemed the "Damage Notice Date."

(b) If all such repairs to the Premises and/or such portions of the Common Areas can, in Landlord's contractor's good faith judgment, be substantially completed in such manner within such one year period (the "One Year Period"), Landlord shall promptly, diligently and continuously undertake such repairs and this Lease shall remain in full force and effect. Notwithstanding the immediately preceding sentence, in the event Landlord commences repair of such damage, and the repairs are not substantially completed within a period of time equal to 120% of the period of time between the date of such damage and the date estimated for completion of the repairs set forth in the contractor's certificate ("Completion Date") (as the end of such 120% time period may be extended by the

number of days that the substantial completion of the repair work is delayed due to any Tenant-caused delays) (the "First 120% Period"), then Tenant shall have the right to terminate this Lease within five (5) business days after the expiration of the First 120% Period, by notice to Landlord (the "First Damage Termination Notice"), which such termination shall be effective as of thirty (30) days after Tenant's delivery to Landlord of the First Damage Termination Notice (the "First Damage Termination Notice Period"). Landlord's contractor shall have the right to deliver to Tenant a notice at any time prior to the expiration of the First 120% Period estimating a revised Completion Date, upon receipt of which Tenant shall have thirty (30) days to elect whether or not to terminate this Lease or to approve the revised Completion Date.

24.2.2 Repairs That Cannot Be Completed Within One Year.

(a) In the event that Landlord's contractor determines in good faith, as evidenced by a certificate to Landlord and Tenant, that such repairs to the Premises or to such portions of the Common Areas cannot be substantially completed under applicable Laws, without the payment of overtime or other premiums, within one year after the date of such determination, then Landlord shall notify Tenant by the Damage Notice Date of such determination and Landlord shall notify Tenant of the Completion Date. In such notice Landlord shall either agree to undertake such repairs or elect to terminate this Lease. If Landlord so agrees to undertake repairs, but states that the required repairs will not be completed within one year after delivery of such notice, then Tenant shall have an option, exercisable by written notice thereof delivered to Landlord not later than the fifteenth (15th) business day after Landlord's delivery of Landlord's notice that the repairs will not be completed within such one year period, to terminate this Lease.

(b) If neither Landlord nor Tenant exercise such a right of termination following Landlord's determination that repairs will take more than one year, then Landlord shall promptly, diligently and continuously undertake to repair such damage or destruction. Notwithstanding the immediately preceding sentence, in the event Landlord commences repair of such damage, and the repairs are not substantially completed within a period of time equal to 120% of the period of time between the date of such damage and the Completion Date, as such Completion Date may be extended by the number of days that the substantial completion of the repair work is delayed due to any Tenant-caused delays (the "Second 120% Period"), then Tenant shall have the right to terminate this Lease within five (5) business days after the expiration of the Second 120% Period, by notice to Landlord (the "Second Damage Termination Notice"), which such termination shall be effective as of thirty (30) days after Tenant's delivery to Landlord of the Second Damage Termination Notice (the "Second Damage Termination Notice Period"). Landlord's contractor shall have the right to deliver to Tenant a notice at any time prior to the Completion Date estimating a revised Completion Date, upon receipt of which Tenant shall have thirty (30) days to elect whether or not to terminate this Lease or to approve the revised Completion Date.

24.3 Loss Not Covered By Insurance. If, at anytime prior to the expiration or termination of this Lease, (a) all or any portion of the Premises, or any portion of the Common Areas the use of which is required for Tenant's business or any other portion of the Facility the use of which is required for Tenant's business or Tenant's access to the Premises, is wholly or partially damaged or destroyed by a Casualty, and (b) less than ninety percent (90%) (if any) of the total costs of performing the necessary repairs and replacements will be fully covered and paid for by the greater of (i) the amount that would have been received had that party maintained the insurance required by this Lease (which proceeds will be deemed to be self-insured by the party failing to carry the required insurance to the extent the required insurance was not so obtained unless no proceeds are available because of the financial failure of the insurer), or (ii) the available proceeds of insurance actually maintained by Landlord or Tenant, and (c) such damage or destruction renders the Premises totally or partially inaccessible or unusable by Tenant in the ordinary conduct of Tenant's business, then:

24.3.1 Landlord Action. Landlord shall deliver to Tenant, within sixty (60) days after the Damage Notice Date, a written notice whereby Landlord shall either (a) elect to terminate this Lease or (b) agree to undertake such repairs promptly, diligently and continuously, in which latter event such notice shall include a statement of Landlord's contractor's good faith estimate, as evidenced by a certificate to Landlord and Tenant, of the number of days required in order to achieve substantial completion, under applicable Laws, of such repair and restoration work ("Landlord's Estimate of the Completion Date"). If Landlord does not elect by such notice to Tenant to repair such damage, this Lease shall be deemed to have been terminated by Landlord.

24.3.2 Tenant's Option. If pursuant to Subsection 24.3.1 Landlord elects to undertake such repairs, but the Landlord's Estimate of the Completion Date is more than one year after delivery of such notice, then Tenant shall have an option, exercisable by written notice thereof delivered to Landlord not later than the fifteenth (15th) business day after Landlord's delivery of Landlord's notice that the repairs will not be completed within such one year period, to terminate this Lease. If neither Landlord nor Tenant exercise such a right of termination with respect to a Casualty covered by this Subsection 24.3, then Landlord shall promptly, diligently and continuously undertake to repair such damage or destruction. Notwithstanding the immediately preceding sentence, in the event Landlord commences repair of such damage, and the repairs are not substantially completed within a period of time equal to 120% of the period of time between the date of such damage and the Landlord's Estimate of the Completion Date, as such Landlord's Estimate of the Completion Date may be extended by the number of days that the substantial completion of the repair work is delayed due to any Tenant-caused delays (the "Third 120% Period"), then Tenant shall have the right to terminate this Lease within five (5) business days after the expiration of the Third 120% Period, by notice to Landlord, which such termination shall be effective as of thirty (30) days after Tenant's delivery to Landlord of the Damage Termination Notice (the "Third Damage Termination Notice Period"). Landlord shall have the right to deliver to Tenant a notice at any time prior to the Landlord's Estimate of the Completion Date estimating a revised Landlord's Estimate of the Completion Date, upon receipt of which Tenant shall have thirty (30) days to elect whether or not to terminate this Lease or to approve the revised Landlord's Estimate of the Completion Date.

24.4 Destruction During Final Twenty-Four Months. Notwithstanding anything to the contrary contained in Subsection 24.2, if the Premises or the Building or a portion of the Common Areas the use of which is required for Tenant's business or Tenant's access to the Premises are wholly or partially damaged or destroyed within the final twenty-four (24) months of the Term, and no renewal rights have been exercised prior to such damage or destruction, and if as a result of such damage or destruction Tenant is denied access or use of the Premises for the conduct of its business operations for a period of ninety (90) consecutive business days, Tenant may, at its option, by giving Landlord written notice prior to substantial completion of the repairs, and in no event later than the 60th day after the Damage Notice Date, elect to terminate this Lease. In addition, notwithstanding anything to the contrary contained in Subsections or 24.2, if the Premises or the Building is wholly or partially damaged or destroyed (which partial damage is of such a degree that it requires Tenant to relocate from the Premises) within the final twenty-four (24) months of the Term, and no renewal rights have been exercised prior to such damage or destruction and Landlord elects to terminate all other leases for premises within the Building similarly affected by such damage or destruction during the final twenty-four (24) months of such lease term, Landlord may, at its option, by giving written notice prior to substantial completion of the repairs, and in no event later than sixty (60) days after the Damage Notice Date, elect to terminate this Lease.

24.5 Effective Date of a Lease Termination. Any notice of Tenant's election to terminate under this Section 24 shall include a statement of the effective date of such termination, which shall not be more than sixty (60) days after the date such notice is delivered; provided, however, that the immediately preceding clause shall not apply to Tenant's Damage Termination Notice (as such term is defined in Subsection 24.2.2) and Tenant's Non-Insured Damage Termination Notice (as such term is defined in Subsection 24.3.2). Any notice of Landlord's election to terminate under this Section 24 shall be effective (a) on the date Landlord delivers the notice, if the damage or destruction shall have prevented Tenant from conducting business at the Premises, or (b) on the sixtieth (60th) day after delivery of the notice, in the event that Tenant shall not have been so prevented from conducting business at the Premises. If Landlord terminates this Lease under this Section 24 and thereafter restores the Building to substantially the same condition existing prior to the damage or destruction, then Tenant shall have the right to deliver to Landlord, not later than sixty (60) days following commencement of such work of restoration, a notice electing to complete the term of this Lease in which event Landlord will restore the Premises to its condition prior to such damage as a part of such work of restoration.

24.6 Abatement of Rent. In the event that all or any portion of the Premises shall be rendered inaccessible or unusable to Tenant other than as a result of an act or omission of Tenant which was neither insured nor required to be insured under this Lease, then Rent shall be reduced proportionately for such portion of the Premises as shall be rendered inaccessible or unusable to Tenant, and unused by Tenant, during the period of time that such portion is unusable or inaccessible to Tenant, and unused by Tenant.

24.7 Destruction of Tenant's Personal Property, Retrofit Work or Property of the Tenant Parties. In the event a Casualty causes damage to or destruction of the Premises or the Building or the Facility, under no circumstances shall Landlord be required to repair damage to, or make any repairs to or replacements of, Tenant's Personal Property (as such term is defined in Subsection 6.2.4 above). However, as part of Operating Expenses, Landlord shall cause to be insured retrofit work and Alterations that do not consist of Tenant's Personal Property and shall cause proceeds of such insurance to be applied to the cost of repairing or restoring such retrofit work and Alterations. Landlord shall have no responsibility for any contents placed or kept in or on the Premises or the Building or the Facility by Tenant or the Tenant Parties.

25. EMINENT DOMAIN.

25.1 Definitions. The following terms shall have the indicated definitions as used herein: (a) "Condemnation" or "Taking" means (i) the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor and/or (ii) a voluntary sale or transfer by Landlord to any Condemnor, while legal proceedings for eminent domain are pending; (b) "Date of Taking" means the date the Condemnor has the right to possession of the property being condemned; (c) "Award" means all compensation, sums, or anything of value awarded, paid, or received on a total or partial Condemnation; and (d) "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

25.2 Permanent Taking.

25.2.1 Total Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

25.2.2 Partial Taking; Common Areas.

(a) Tenant's Rights. If any portion of the Premises is taken by Condemnation, this Lease shall remain in effect, except that Tenant shall have the right to elect to terminate this Lease if twenty-five percent (25%) or more of the rentable square footage of the Premises is taken, or if the portion taken renders the remainder of the Premises economically unusable by Tenant, as reasonably determined by Tenant's licensed architect. To be effective, such election to terminate must be made by written notice delivered to Landlord within thirty (30) days after the Decision Period (as such term is defined in Subsection 25.2.3 below). Tenant's notice shall contain a clear and unequivocal statement of its election to terminate and its reasons for this election.

(b) Interference. If any part of the Common Areas of the Facility is taken by Condemnation, this Lease shall remain in full force and effect so long as there is no material interference with access to the Premises. If such a Taking materially interferes with access to the Premises, either party may elect to terminate this Lease pursuant to this Section 25.

(c) Remaining Leases. If twenty-five percent (25%) or more of the Building or the Facility is taken by Condemnation (whether or not any Portion of the Premises shall have been taken), Landlord and Tenant may elect to terminate this Lease in the manner prescribed herein, provided that in the event that Landlord seeks to exercise its right to terminate this Lease, Landlord shall also terminate any remaining leases of tenants similarly affected in the Building.

25.2.3 Termination or Abatement. If either party elects to terminate this Lease under the provisions of Subsection 25.2.2 (such party is hereinafter referred to as the "Terminating Party"), it must terminate by giving notice to the other party (the "Non-terminating Party") within thirty (30) days after the nature and extent of the Taking have been finally determined (the "Decision Period"). The Terminating Party shall notify the Non-terminating Party of the date of termination, which date shall not be earlier than sixty (60) days after the Terminating Party has notified the Nonterminating Party of its election to terminate, nor later than the Date of Taking. If such notice of termination is not given within the Decision Period, this Lease shall continue in full force and effect except that the Minimum Monthly Rent and Tenant's Percentage Share shall be reduced by a fraction, the numerator of which is the rentable square footage taken from the Premises and the denominator of which is the rentable square footage in the Premises prior to the Taking.

25.2.4 Restoration. If there is a partial Taking of the Premises and this Lease remains in full force and effect pursuant to this Section 25, Landlord, at its cost, shall accomplish all necessary restoration so that the Premises are returned as near as practical to their condition immediately prior to the Date of Taking, but in no event shall Landlord be obligated to expend more for such restoration than the extent of funds actually paid to Landlord by the Condemnor. Landlord shall have the right to deliver to Tenant a notice at any time prior to the date Landlord's contractors certified to Landlord and Tenant as the date estimated that such work would be completed whereby Landlord sets forth a revised completion date, upon receipt of which Tenant shall have thirty (30) days to elect whether or not to terminate this Lease or to approve the revised completion date.

25.2.5 Award. Any Award arising from the Condemnation or the settlement thereof shall belong to and be paid to Landlord, and Tenant hereby assigns to Landlord any right of Tenant thereto, except that Tenant shall receive from the Award, to the extent that Landlord receives the Award, compensation for the following, if specified by amount in the Award by the Condemnor, so long as it does not reduce Landlord's Award with respect to the real property: Tenant's trade fixtures, tangible personal property, goodwill, loss of business, and relocation expenses. Tenant shall have the right to participate in condemnation proceedings for the purposes permitted under this Section 25 and to complain against the Condemnor authority for a separate award for such losses. In all events, Landlord shall be solely entitled to all Awards with respect to the real property, including the bonus value of the leasehold.

25.3 Temporary Taking. No temporary taking of the Premises or any part of the Premises and/or of Tenant's rights to the Premises or under this Lease shall terminate this Lease or give Tenant any right to any abatement of any rents owed to Landlord pursuant to this Lease, unless such temporary taking exceeds, or is contractually in excess of, a period of one (1) year from the date of such taking, in which event Tenant shall have a right to terminate this Lease pursuant to the termination procedures granted to Tenant in the case of a repair which cannot be completed within one (1) year as set forth in Section 24.2.2 above. effective at the end of such one (1) year period. Any award made to Tenant by reason of such temporary taking shall belong entirely to Tenant; provided, however, that if the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business in such remaining portion, and if Tenant does not conduct its business from such remaining portion, then the Minimum Monthly Rent and Tenant's Percentage Share of Operating Expenses allocable to such remaining portion shall be abated for the entire Premises, for such time as Tenant continues to be so prevented from using, and does not use, the Premises.

26. SALE BY LANDLORD.

In the event Landlord shall sell, assign, convey, or transfer its interest in the Facility or any part of the Facility, Tenant agrees to attorn to such transferee, assignee, or new owner. If all of Landlord's interest in the Facility shall be sold, assigned, conveyed, or transferred, then upon consummation of such sale, assignment, conveyance, or transfer, then Landlord shall, to the extent that such transferee, assignee or new owner assumes Landlord's liability and obligations accruing or to be performed from and after the date of such sale, assignment, transfer or conveyance, be freed and relieved from all liability and obligations accruing or to be performed from and after the date of such sale, assignment, transfer, or conveyance, and in such event Tenant agrees to look solely to the responsibility of such transferee, assignee, or new owner. In the event of such sale, assignment, transfer, or conveyance, Landlord shall transfer, or in lieu thereof grant a credit at closing, to such transferee, assignee, or new owner of the Facility the balance of the Deposit, if any, remaining after lawful deductions and in accordance with applicable Law, after notice to Tenant, and Landlord shall thereupon be relieved of all liability with respect to the Deposit. Notwithstanding the foregoing, no sale, conveyance, transfer, or assignment (other than an arms-length foreclosure or deed in lieu of foreclosure) shall relieve Landlord of its obligations hereunder unless and until the transferee shall have assumed and agreed to perform all of Landlord's obligations coming due under the Lease from and after the effective date of such transaction. Landlord shall not be relieved of any obligations that shall have accrued with respect to the period prior to the effective date of such transfer. Tenant shall only be required to look to the new landlord for the fulfillment of Landlord's obligations under this Lease.

27. ESTOPPEL CERTIFICATES.

Upon either party's prior request from time to time, the other party shall execute, acknowledge, and deliver to the requesting party, not later than fifteen (15) days after such request, a statement in the form attached hereto as Exhibit K (a) certifying the date of commencement of this Lease, (b) stating that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and the date and nature of such modifications), (c) stating the dates to which Rent has been paid, (d) acknowledging that there are not, to the certifying party's actual knowledge, any uncured defaults on the part of the other party, or specifying each such default if any are claimed, and (e) setting forth such other matters as may reasonably be requested. Landlord and Tenant intend that any such statement delivered pursuant to this Section may be relied upon by any permitted subtenant, assignee, or lender of Tenant, by the mortgagee or the beneficiary of any deed of trust, or by any purchaser or prospective purchaser of the Facility. If either party's failure to deliver such statement within the required time is not cured within fifteen (15) days after the requesting party's delivery of written notice of such default, such failure to deliver the statement shall, at the requesting party's option

(without any further notice or cure period otherwise provided under this Lease), be a material default under this Lease by the non-performing party, and it shall be conclusive upon the non-performing party that (i) this Lease is then in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) not more than one month's Rent has been paid in advance.

28. REQUIREMENTS OF LANDLORD'S LENDERS.

28.1 Financing Condition. Landlord may from time to time desire to mortgage all or a portion of the Facility for the purpose of securing financing from an institutional lender. In the event such institutional lender not affiliated to Landlord requires, as a condition of granting Landlord such financing, that this Lease be amended or modified, then Tenant shall, within ten (10) days after Landlord's request, consent to and execute any such reasonable amendment or modification of this Lease; provided, however, that such modification or amendment only concerns (a) the lender's right to notification, (b) requirements for the lender's prior consent or approval for any amendment, modification, or early termination of the Lease unless specifically granted in the Lease, for any waiver of any of the terms or conditions of the Lease to be performed or observed by Tenant, or for any estoppel certificate to be provided by Landlord, (c) restrictions on prepayments of Rent (unless required by this Lease), (d) the lender's right to require that rents be paid directly to the lender upon default of Landlord under the loan made by such lender and Notice to Tenant, (e) the resolution of ambiguities or correction or errors or omissions contained in this Lease, (f) restrictions on Tenant's ability to subordinate this Lease to junior financing, and/or (g) such other matters as Tenant may consent to, which consent shall not be unreasonably withheld. The parties acknowledge, however, that it would not be unreasonable for Tenant to withhold consent to any modification that affects the length of the Term or increases the Rent payable by Tenant hereunder or otherwise increases Tenant's obligations (other than notice requirements and other similarly ministerial obligations) or diminishes Tenant's rights under this Lease.

28.2 Mortgagee Protection. Tenant agrees to give any present or future mortgagee and/or trust deed holders, by registered mail, a copy of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified, in writing (by way of notice of assignment of rents and leases, execution of nondisturbance agreement, or otherwise), of the address of such mortgagee and/or trust deed holder. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease (if any), then the mortgagees and/or trust deed holders shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such reasonable additional time as may be necessary if, within such thirty (30) days, any mortgagee and/or trust deed holder has commenced and is diligently pursuing the remedies necessary to cure such default but in no event exceeding ninety (90) days after expiration of Landlord's cure period; provided, however, that if the default by Landlord is of such a nature that it may not be cured by such holder without the holder becoming owner of the Building and/or Facility, and so long as Tenant receives a commercially reasonable non-disturbance agreement from such holder, Tenant shall not exercise any rights to terminate this Lease other than any rights to terminate set forth in Exhibit B (but Tenant may exercise any offset or cure rights granted to Tenant by this Lease and such rights shall not be abrogated by the provisions of this Section 28), if such holder (a) commences a judicial or non-judicial foreclosure of Landlord's interest in the Building and/or Facility within sixty (60) days of the expiration of Landlord's cure period, (b) thereafter uses reasonable efforts to complete the foreclosure of Landlord's interest in the Building and/or Facility, and (c) cures such default within thirty (30) days after the completion of such foreclosure or, if the cure cannot reasonably be effected within thirty (30) days, commences the cure within such thirty (30) day period and thereafter diligently pursues it to completion but not in any event to exceed ninety (90) days after completion of such foreclosure. Such holder shall have the right to perform all obligations of Landlord under this Lease on behalf of Landlord without becoming an owner of the Building and/or Facility, but such holder shall have no obligation to cure any default under this Lease unless it becomes an owner of the Building and/or Facility, in which event this Lease shall not be terminated while such remedies are being diligently pursued.

29. INTENTIONALLY DELETED.

30. ATTORNEYS' FEES.

In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease (including an action or proceeding between one party and the trustee or debtor in possession while the other party is a debtor in a proceeding under the Bankruptcy Code (Title 11 of the United States Code or any successor statute to such Code), or in the event suit is brought for the recovery of any amount due and owing under this Lease, the prevailing party shall be entitled to recover all its costs and expenses in connection therewith (including court costs and reasonable attorneys' fees, costs and disbursements) from the unsuccessful party, whether or not such action, proceeding or appeal is prosecuted to judgment or other final determination. The term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other party by reason of the other party's breach or default and substantially obtains the relief sought, whether by compromise, settlement, or judgment. If such prevailing party shall recover in any such action, proceeding, or appeal, such costs and expenses (including court costs and reasonable attorneys' fees, costs and disbursements) shall be included in and as a part of such judgment.

31. NON-WAIVER.

The waiver by Landlord or Tenant of any term, covenant, agreement or condition contained in this Lease shall not be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant, agreement, condition or provision of this Lease. Nor shall any consent by Landlord or Tenant in any one instance dispense with necessity of consent in any subsequent or other instance. Nor shall any custom or practice that may develop between the parties in the administration of this Lease be construed to waive or lessen the right of Landlord or Tenant to insist upon performance by the other in strict accordance with all of the terms, covenants, agreements, conditions, and provisions of this Lease. The subsequent acceptance by a party hereto of any payment owed by the other party to that party under this Lease, or the payment of Rent by Tenant, shall not be deemed to be a waiver of any preceding breach by the other party of any term, covenant, agreement, condition, or provision of this Lease, other than the failure of the other party to make the specific payment so accepted by that party, regardless of either party's knowledge of such preceding breach at the time of the making or acceptance of such payment.

32. NOTICES.

All notices, notifications, demands, requests, consents, approvals, designations, elections, and waivers that may or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been duly given when delivered personally, or one business day after such notice or demand is sent by a reliable overnight courier service, or three (3) business days after it is sent by United States certified or registered mail, in each case with postage prepaid and the notice or demand addressed to the other party at its address set forth in Subsection 1.1.2 of this Lease, or to such other place as such party may from time to time by like notice designate.

33. JOINT AND SEVERAL LIABILITY.

If Tenant consists of a partnership or more than one person or other entity (collectively, the "Tenant Constituents"), then Tenant's obligations hereunder shall be joint and several as between all such Tenant Constituents (if more than one) and as between each all constituent general partners of any partnership constituting any Tenant Constituent. No partner, member or shareholder of the Original Tenant or Permitted Affiliate shall have any personal liability for breach of any covenant or obligation of the Original Tenant under this Lease, and no recourse shall be had or be enforceable against the assets of any partner, member, or shareholder of the Original Tenant or Permitted Affiliate for any payment of any sums due to Landlord or for enforcement of any other relief based upon any claim made by Landlord for the breach of any of the Original Tenant's covenants or obligations under this Lease. Notwithstanding anything to the contrary set forth in this Section 33, Landlord shall only pursue the assets of Tenant only for recovery of any sums due under this Lease and shall not proceed against the assets of individual partners of Tenant.

34. TIME.

Subject to the provisions of Section 18 (Force Majeure), time is of the essence of this Lease and each and all of its provisions.

35. SUCCESSORS.

Subject to the provisions of Section 14 (Assignment and Subletting) and Section 26 (Sale by Landlord), and except as otherwise provided to the contrary in this Lease, the terms, covenants, and conditions herein contained shall apply to, bind, and inure to the benefits of the heirs, successors, executors, administrators, and permitted assigns of the respective parties hereto.

36. ENTIRE AGREEMENT.

This Lease (including the exhibits, riders, addenda, and schedules referred to herein and made a part hereof) embodies the entire agreement between, and understanding of, the parties and supersedes all prior agreements and understandings (oral or written) between the parties with respect to the subject matter hereof. This Lease shall not be modified by any oral agreement, either express or implied, and all modifications hereof shall be in writing and signed by both Landlord and Tenant.

37. RESTRICTIONS ON OPTIONS.

37.1 Definition. As used in this Section 37, the word "Option" shall mean any of the following rights or options of Tenant, if any such rights or options are granted pursuant to an addendum or other modification to this standard lease form: (a) any right or option to extend the Term, (b) any option or any right of first refusal or first offer to lease the Premises or any other space within the Facility or other property of Landlord or its affiliates, and (c) any right or option of Tenant to terminate or cancel this Lease prior to the last day of the initial Term contemplated by Subsection 2.2.4.

37.2 Options Personal. Each Option, if any, granted to Tenant in this Lease is personal to the Original Tenant and may be exercised (i) only by the Original Tenant or a Permitted Affiliate while the Original Tenant and/or a Permitted Affiliate are directly (and not through subleases) occupying more than seventy-five percent (75%) of the Premises or (ii) if the Premises is either the practice office of the Original Tenant and/or a Permitted Affiliate or one of two practice offices of the Original Tenant and/or a Permitted Affiliate, in the City of San Francisco, and may not be exercised or assigned, voluntarily or involuntarily, by or to any person or entity other than the Original Tenant or a Permitted Affiliate. The

Options, if any, herein granted to the Original Tenant or a Permitted Affiliate are not assignable separate and apart from this Lease, nor may any Option be separated from this Lease in any manner, by reservation or otherwise.

37.3 Multiple Options. In the event that Tenant has multiple Options to extend or renew the Term, a later Option cannot be exercised unless the prior Option to extend or renew this Lease has been so exercised.

37.4 Strict Enforcement of Conditions and Limitations Upon Options.

37.4.1 Tenant hereby specifically acknowledges and agrees that the time limitations upon the exercise of any Option will be strictly enforced, that any attempt to exercise such Option at any other time shall be void and of no force or effect, and that if any such Option is not exercised within the applicable time period, Landlord intends immediately thereafter to undertake appropriate efforts relating to the marketing or management of the space affected by the Option. The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise such Option because of the provisions of this Subsection or for any other reason whatsoever.

37.4.2 Tenant further agrees that if an Event of Default has occurred and is continuing and Landlord has given Tenant prior notice thereof, on the date of giving the required notice of exercise of such Option, such notice shall at Landlord's sole election be totally ineffective, in which event this Lease shall expire at the end of the Term as theretofore in effect. Notwithstanding any provision of this Lease to the contrary, all Options shall automatically be void, and shall have no further effect, upon the commencement of any holdover by Tenant after the expiration or earlier termination of the Term.

37.5 Events of Bankruptcy. In addition to those events and occurrences constituting defaults or Events of Default under other provisions of this Lease, the occurrence of any of the following events shall also constitute a default and Event of Default for purposes of Subsection 37.4:

(a) Filing by Tenant of a voluntary petition under any applicable bankruptcy Law, or the issuance of an order for relief entered under any applicable bankruptcy Law, or the filing by Tenant of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for Tenant under the present or any future applicable Law relative to bankruptcy, insolvency, or other relief for debtors, or Tenant's consent to or acquiescence in the appointment of any trustee, receiver, conservator, or liquidator of Tenant or of all or any substantial part of its properties or its interest in the Premises (the term "acquiesce," as used in this clause, includes, but is not limited to, the failure to file a petition or motion to vacate, appeal, or discharge any order, judgment, or decree within sixty (60) days after entry of such order, judgment, or decree);

(b) Issuance or entry, by a court of competent jurisdiction, of any order, judgment, or decree approving a petition filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future applicable Law relating to bankruptcy, insolvency, or other relief for debtors, and acquiescence by Tenant in the entry of such order, judgment, or decree; or the failure of such order, judgment, or decree to be vacated or stayed within an aggregate of ninety (90) days (whether or not consecutive) after the date of entry thereof; or the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, conservator, or liquidator of Tenant or of all or any substantial part of its properties or its interest in the Premises and the failure of such appointment to be vacated or stayed within an aggregate of ninety (90) days (whether or not consecutive);

(c) Tenant's making a general arrangement or general assignment for the benefit of creditors or taking any other similar action for the protection or benefit of creditors.

38. RECORDING.

Tenant shall not record this Lease or any memorandum hereof without Landlord's prior written consent. Further, upon Landlord's written request at any time on or after the expiration or earlier termination of this Lease, Tenant shall promptly execute, acknowledge, and deliver to Landlord any quitclaim deed or other document required by any reputable title company, to remove any cloud or encumbrance created by this Lease upon the Facility. Tenant shall nevertheless have the right to record a Request for Notice of Default and Sale under any then applicable Law.

39. AUTHORIZATION TO SIGN LEASE.

Each individual executing this Lease on behalf of Landlord represents and warrants that he/she is duly authorized to do so pursuant to authority delegated by Landlord's duly authorized partnership formation documents and that this Lease is binding on Landlord in accordance with its terms. If Tenant is a partnership, each individual executing this Lease on behalf of Tenant represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with the terms of such entity's partnership agreement, and that this Lease is binding upon Tenant in accordance with its terms. If Landlord or Tenant consist of more than one legal entity, the foregoing representations, warranties, and covenants shall apply to any such entity that is a corporation or partnership, as the case may be.

40. BROKER PARTICIPATION.

In consideration for brokerage services rendered to Landlord in this transaction, Landlord shall pay its and Tenant's brokers (which brokers are identified in Subsection 1.1.10 above). Landlord shall pay its broker a commission as set forth in a separate agreement between such parties. Landlord shall pay Tenant's broker a commission equal to One Dollar and 50/100 ($1.50) per rentable square foot per year of direct lease term (prorated for partial years and capped at Ten Dollars ($10.00). One-half of the commission due to Tenant's broker for the Premises shall be paid on full execution and delivery of this Lease. The remaining one-half of the commission due to Tenant's broker shall be paid, for the eighth (8th) floor, upon the commencement of Tenant's occupancy thereof, and for the fifth (5th), sixth (6th) and seventh (7th) floors, on or before June 15, 2008. Except as otherwise set forth in the preceding sentences, each party agrees to indemnify, defend, and hold harmless the other party from any claim or loss arising out of any actual or alleged dealings of the indemnifying party with any real estate broker, agents or finder in connection with this transaction.

41. SURVIVAL OF CERTAIN RIGHTS AND OBLIGATIONS.

The respective parties' remedies, payment obligations, indemnities, waivers and releases under this Lease, with respect to Tenant's use or possession of the Premises during the Term and any holdover period, and with respect any cost or expense incurred during or with respect to the Term or any holdover period, shall survive the termination of this Lease.

42. PARKING.

42.1 Subject to the terms and conditions of this Section 42, Tenant shall be entitled but not obligated to use, in common with other tenants and Landlord and its agents, the number of undesignated vehicle parking spaces allocated to Tenant in Subsection 1.1.11, and which such spaces will be available

at all times during the Term for Tenant's use; provided, however, that if the size of the Premises shall hereafter be increased or reduced, whether pursuant to an amendment of lease or any modification to this Lease or otherwise, the number of parking spaces allocated to Tenant shall automatically be increased or reduced pro rata, as the case may be, provided further, however, that if the number of parking spaces in the Building's parking facility is expanded, then the number of parking spaces allocated to Tenant shall be increased pro rata.

42.2 The parking facility shall be operated on a parking assist/valet basis, and the hours of such operation shall be extended if demand warrants the same and provided that the cost of such additional operation is paid by the tenants of the Building who are users of such extended hours program.

42.3 Tenant's use of such parking spaces shall be subject to payment by Tenant of such standard monthly parking rates, if any, as may be charged from time to time to persons other than the officers and employees of Landlord and its affiliates, and subject to such non-discriminatory rules and regulations as may be reasonably established or altered from time to time by Landlord or its manager of such parking facilities, provided that, subject to any Laws, Tenant shall have access to the Building's parking facility at all times (i.e., 365 days a year, 24 hours a day) and provided further that such rates do not exceed any rates charged to other tenants of the Building nor do such rates exceed fair market rates for generally comparable parking facilities in Class A office buildings located within a two (2) block radius of the Building. If a dispute arises between the parties regarding the fair market rate for Tenant's vehicle parking spaces in the Building's parking facility, it shall be resolved by arbitration and in accordance with the provisions of Exhibit F attached to this Lease.

42.4 Tenant shall have the right to increase the number of parking spaces it contracts to use, subject to the maximum number set forth in Subsection 1.1.9, by providing Landlord with sixty (60) days' written notice of its intent to do same. Tenant shall have the right to decrease the number of parking spaces it contracts to use by providing Landlord with thirty (30) days' written notice of its intent to do same.

42.5 At Landlord's request, Tenant (or its designated employees with parking privileges) shall enter into commercially reasonable parking licenses or lease agreements or other arrangements then in use by Landlord (or Landlord's operator of the parking facilities) with respect to such monthly parking. Upon request, Tenant shall provide Landlord with the license plate numbers of all vehicles that Tenant's employees park in the Building's parking facility.

42.6 At all times, the Building's parking facility shall accommodate approximately thirty-three (33) cars to be parked on a visitor or "short term" parking basis and on an assist/valet basis, subject to governmental requirements and restrictions. In addition, a portion of the Building's parking facility shall be reserved for car pool parking (approximately 19 cars) and handicap parking (approximately five (5) cars) and motorcycle parking. If Tenant parks more vehicles in the Facility's parking area than are permitted under this Section, Landlord shall have the right, without limitation to Landlord's other remedies under this Lease, to collect from Tenant a daily charge, to be reasonably determined by Landlord, for each such additional vehicle.

42.7 Provided that Landlord determines that there has been a mutually agreed demonstrated need for off-site valet parking, Landlord shall attempt to contract for such service, subject to the availability of suitable off-site facilities within a reasonable proximity to the Building, and subject to the agreement of the users of such service (including Tenant) to pay for all of the cost of such off-site valet parking operation.

43. SEVERABILITY.

Should any provision of this Lease be illegal, void, invalid, inoperative, or unenforceable, no other provision of this Lease shall be affected thereby, and the remainder of this Lease shall be effective as though such illegal, void, invalid, inoperative, or unenforceable provision had not been included herein.

44. CERTAIN RIGHTS RESERVED BY LANDLORD.

Landlord hereby expressly reserves the rights set forth in the Subsections of this Section 44. Except to the extent otherwise expressly provided elsewhere in this Lease or otherwise required by Law, such rights shall be exercisable (a) without notice, (b) without liability to Tenant for damage or injury to property, persons, or business, (c) without effecting a constructive or actual eviction of Tenant or disturbance of Tenant's use, possession, or enjoyment of its Premises, and (d) without giving rise to any claim for setoff or abatement of Rent; provided, however, that Landlord shall use commercially reasonable efforts to minimize any interference with Tenant's business operations in Landlord's exercise of its rights hereunder. The enumeration of such rights of Landlord in the following Subsections is not intended to limit any other rights of Landlord or Tenant (or excuse Landlord from performing its express obligations under this Lease), whether expressed or implied, at law or under other provisions of this Lease.

44.1 Repairs. Landlord shall have the right to decorate and make repairs, alterations, additions, changes, and/or improvements, whether structural or otherwise, in and about the Building and elsewhere in the Facility, including, without limitation, construction of additional buildings or other new improvements and changes in the location, size, shape, and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, sidewalks, and walkways; provided, however that Landlord shall have no right to change the general concept and character of the main ground floor lobby of the Building. For such purposes Landlord may enter upon the Premises and, during the continuance of any such work, temporarily close doors, entryways, public space and corridors in the Building or elsewhere in the Facility, to interrupt or temporarily suspend building services and facilities and to change the arrangement and location of entrances, or passageways, doors and doorways, corridors, elevators, stairs, toilets, or other public parts of the Building or Facility, all without abatement of Rent and without affecting any of Tenant's obligations hereunder, except as otherwise expressly provided in this Lease (e.g., Subsections 17, 22.2 and 24.6).

44.2 Security. Landlord shall, in compliance with all applicable leases, have the right to take all such reasonable measures as Landlord may deem advisable for the security of the Building or the Facility and their occupants, including, without limitation, the lawful search of any person entering or leaving the Building, the evacuation of the Building (or any part thereof) for cause, suspected cause, or for drill purposes, the temporary denial of access to the Building (or any part thereof), and the closing of the Building after normal business hours and on Sundays and holidays, subject, however, to Tenant's right to admittance, when the Building is so closed, under such reasonable regulations as Landlord may prescribe from time to time.

45. WAIVER OF JURY TRIAL.

EACH PARTY HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS LEASE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY TENANT AND TENANT ACKNOWLEDGES THAT NEITHER LANDLORD NOR ANY PERSON ACTING ON BEHALF OF LANDLORD HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT.

46. INTERPRETATION.

The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular and, when appropriate, shall refer to action taken by or on behalf of Landlord or Tenant by their respective employees, agents, or authorized representatives. Words in masculine gender include the feminine and neuter. The titles of the Sections, Subsections, and other provisions of this Lease are for convenience only and they shall not in any way limit or amplify the terms or provisions of this Lease. All provisions, whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions. This Lease shall not be construed against either party more or less favorably by reason of authorship of origin of language. The only inference that shall be drawn from the fact of any provision of this Lease having been stricken, crossed out, or otherwise deleted is that said stricken, crossed out, or deleted provision is not a part of this Lease; no inference shall be drawn to the effect that the parties intended the opposite of what the stricken, crossed out, or deleted provision would have provided for. This Lease shall in all respects be governed by and construed and enforced in accordance with the Laws of the State of California, and any litigation concerning this Lease between the parties hereto shall be initiated in the City and County of San Francisco.

47. COOPERATION WITH GOVERNMENT SPONSORED PROGRAMS.

47.1 In General. Tenant hereby covenants and agrees, at its sole cost and expense, to participate in and cooperate with the requirements of any and all governmentally mandated programs adopted for the Building or the Facility concerning employment, transportation system management, child care facilities, recycling, energy or water conservation, safety, emergency training procedures and drills, or the like; provided, however, that a failure to so participate and cooperate with such requirements shall not be deemed a default to the extent that Tenant's failure to participate and cooperate with such requirements shall not have any adverse consequences to Landlord. Tenant shall designate floor wardens and assistant floor wardens for each floor of the Premises. Upon reasonable notice from Landlord, Tenant shall cause its floor wardens to attend Landlord's emergency response training during regular business hours. Tenant shall establish appropriate procedures for communicating Landlord's emergency procedures to all of Tenant's employees occupying the Premises.

47.2 Transportation. Tenant shall fully comply with all present or future governmentally mandated programs intended to manage parking, transportation or traffic in and around the Building, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities; provided, however, that a failure to so participate and cooperate with such requirements shall not be deemed a default but only to the extent that Tenant's failure to participate and cooperate with such requirements shall not have any adverse consequences to Landlord. Such programs may include, without limitation: (a) restrictions on the number of peak-hour vehicle trips generated by Tenant; (b) increased vehicle occupancy; (c) implementation of an in-house ridesharing program and an employee transportation coordinator; (d) working with employees and any Building or area-wide ridesharing program manager; (e) instituting employer-sponsored incentives (financial or in-kind) to encourage employees to rideshare; and (f) utilizing flexible work shifts for employees.

47.3 Assistance. Pursuant to the City of San Francisco Planning Code Section 163, the Landlord has entered into an agreement with the San Francisco Department of City Planning to provide and implement a transportation management program for tenants of the Building and to participate in a

program designed to coordinate commute alternatives marketing and brokerage for employees in the Greater Downtown San Francisco, California area. During the term of the Tenant's tenancy, Landlord agrees to provide transportation brokerage and commute assistance services, as part of Operating Expenses, to the Tenant to assist the Tenant in meeting the transportation needs of its employees to the extent required by law. Tenant agrees to cooperate with and assist the Landlord's transportation management coordinator (the "Coordinator"), through designation of a responsible employee, to distribute to Tenant's employees written materials promoting and encouraging the use of public transit and/or ridesharing, and distribute and return to the Coordinator transportation survey questionnaire forms; provided, however, that a failure to so participate and cooperate with such requirements shall not be deemed a default under this Lease but only to the extent that Tenant's failure to participate and cooperate with such requirements shall not have any adverse consequences for Landlord. Tenant may agree, at its option, to participate in other activities required of Landlord and/or ridesharing by employees in the Building.

48. PARTIES TO ACT REASONABLY AND IN GOOD FAITH.

Except in those instances where this Lease provides for a contrary standard, whenever in this Lease the consent or approval of the Landlord or Tenant is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed (except, however, with respect to any Landlord consent, for matters which, in the opinion of a neutral, qualified third-party expert, could have a material adverse effect on the Building's plumbing, heating, mechanical, life safety, ventilation, air conditioning, or electrical systems, could affect the structural integrity of the Building, or could affect the exterior appearance of the Building, Landlord may withhold such consent or approval in its sole discretion but shall act in good faith, unless this Lease elsewhere expressly provides other standards for such matters). Except in those instances where a contrary standard or right is set forth in this Lease, whenever the Landlord or Tenant is granted a right to take action, exercise discretion, or make an allocation, judgment, or other determination, such party shall act reasonably and in good faith and take no action that might result in the frustration of the reasonable expectations of a sophisticated tenant and a sophisticated landlord concerning the benefits to be enjoyed under, and subject to all the provisions of, this Lease.

49. OFFER.

Preparation of this Lease by Landlord or Landlord's agent and submission of same to Tenant shall not be deemed an offer to lease and neither party shall act in reliance on said Lease being thereafter signed. This Lease shall become binding upon Landlord and Tenant only when fully executed by both Landlord and Tenant.

50. LANDLORD'S DISCLOSURE REGARDING HAZARDOUS SUBSTANCES.

50.1 In General. By signing this Lease, Tenant represents that Tenant has read and understood the required disclosures, if any, of Landlord set forth in the paragraph below, which disclosures relate to certain Hazardous Substances known or suspected to exist at the Premises, Building, or Facility, but in doing so Tenant neither assumes nor releases Landlord from its express obligations with respect to environmental matters set forth in this Lease.

50.2 Disclosures. California law requires landlords to disclose to tenants the existence of certain Hazardous Substances. Accordingly, the existence of gasoline and other automotive fluids, maintenance fluids, copying fluids and other office supplies and equipment, certain construction and finish materials, tobacco smoke, cosmetics and other personal items, and asbestos-containing materials ("ACM") must be disclosed. Gasoline and other automotive fluids will likely be found in the garage area of the Building. Cleaning, lubricating and hydraulic fluids used in the operation and maintenance of the

Building will likely be found in the utility areas of the Building not generally accessible to Building occupants or the public. Many Building occupants will use copy machines and printers with associated fluids and toners, and pens, markers, inks, and office equipment that may contain Hazardous Substances. Certain adhesives, paints and other construction materials and finishes which will be used in portions of the Building may contain Hazardous Substances. Building occupants and other persons entering the Building from time-to-time may use or carry prescription and non-prescription drugs, perfumes, cosmetics and other toiletries, and foods and beverages, some of which may contain Hazardous Substances. Landlord further covenants that any costs related to removal or remediation of Hazardous Substances which are present as a result of these prior uses shall not be charged as an Operating Expense. Landlord covenants to comply during the Term with all local, state and federal laws and regulations applicable, to Hazardous Substances, including any such laws and regulations requiring disclosure to tenants regarding the existence of Hazardous Substances within the Building.

51. SIGNAGE

51.1 Grant of Signage Rights. Subject to the terms and conditions of this Section 51, Tenant shall be entitled to install an appropriate and tasteful "plaque-type" sign, including its name and logo, (a) at each of the ground floor main entry doors of the Building, (b) on both sides of the lower level elevator bank in the lobby of the Building, (c) in each elevator lobby on each full floor of Tenant's Premises, and (d) on the main entry doors to the Premises from any elevator lobbies. Subject to the terms and conditions of this Section 51, Tenant shall have the right to install in each elevator lobby on each multi-tenant floor of Tenant's Premises building standard signage. Landlord and Tenant shall jointly and reasonably select the location, design, size, construction materials, and method of installation of the non-multi-tenant floor signage. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to use the same materials and graphics as used by other tenants of the Building for its signage. Tenant shall have the opportunity to install signage in the same locations as were granted to PricewaterhouseCoopers relative to its lease of, among other premises in the Building, the Phase II Premises, so long as the following conditions are met: (a) Tenant has leased from Landlord more than 100,000 RSF of space in the Building and occupies same; (b) Tenant pays for all costs associated with removal, installation and restoration of the signage; (c) all signage, type, size and installation are subject to Landlord approval.

51.2 Costs and Installation. The costs of Tenant's signage and the installation thereof shall be paid for by Tenant, but such costs may be reimbursed from the Allowance (as such term is defined in Subsection 1.1 of Exhibit B). Tenant shall adhere to Landlord's reasonable requirements regarding Tenant's installation of Tenant's signs. At Landlord's election, Landlord may install Tenant's ground floor or exterior signs on Tenant's behalf. If Landlord does so elect to install any of Tenant's Signs, and provided that Landlord shall first provide Tenant with its estimate of the costs of such installation, Landlord shall be reimbursed by Tenant (either directly or through a credit against the Allowance) for the reasonable out-of-pocket cost of such installation.

51.3 Multi-Tenant Directory. Landlord shall provide, at no charge to Tenant, directory listings on a multi-tenant directory which will consist of a board identifying Tenant and a computer directory to be installed in the Building's main lobby naming Tenant and the names of Tenant's partners. Tenant shall not be charged for any changes to directory listings.

52. RENEWAL OPTIONS (WITH ARBITRATION)

52.1 Grant of Renewal Options. Subject to the terms and conditions of this Section and Section 37 of the Lease, and provided Tenant occupies at least seventy-five percent (75%) of the 84,607 RSF demised as the Phase I and Phase II Premises, Tenant shall have two (2) options (each, a "Renewal

Option") to extend the Term for a period of five (5) additional years each (each, a "Renewal Term"). A Renewal Option shall be exercisable one time only upon written notice (an "Option Notice") given to Landlord not fewer than twelve (12) months prior to the expiration of the "Then Scheduled Term." As used herein, the term "Then Scheduled Term" shall mean the Term set forth in Subsection 1.1.4 of the Lease, as extended by Tenant's exercise of its rights under this Section 52.

52.2 Minimum Monthly Rent. For purposes of this Section 52, the term "Minimum Monthly Rent" shall be deemed to include both the Minimum Monthly Rent payable pursuant to Subsection 5.1 of the Lease and also any monthly rent paid for any storage space Tenant may then be leasing from Landlord. In the event the Renewal Option is validly exercised in accordance with the terms and conditions of this Section, then the Term shall be extended to include the Renewal Term, during which all the terms and conditions contained in this Lease shall remain in full force and effect, except that (a) the Minimum Monthly Rent during such Renewal Term shall be 100% of the "Then Prevailing Market Rent," as defined below, (b) Landlord shall not be obligated to supply, nor shall Tenant be entitled to, any further tenant improvements or any further allowances therefor or further rent concessions of any kind in connection with the Renewal Term, except as set forth in Subsection 52.4 below, and (c) the Base Expense Year and the Base Tax Year shall be the calendar year in which the first day of the Renewal Term occurs. Provided that the Renewal Option shall have been validly exercised by Tenant, the "Then Prevailing Market Rent" shall be determined in the following manner.

52.2.1 Then Prevailing Market Rent.

(a) The term "Then Prevailing Market Rent" shall mean, as of the time a determination thereof is to be made, the "effective" rental rate, expressed as a rental rate per rentable square foot of "AS IS" leased space, being charged in arms'-length transactions ("Comparable Transactions") within the sub-areas of the Financial District of the Building for new leases and renewal leases (and not for subleases) for space comparable to the Premises (taking into consideration size, floor level, location of property, build-out and other factors mentioned below), in the Facility and other Comparable Buildings. However, in no event shall Then Prevailing Market Rent be less than the Minimum Monthly Rent payable during the last month of the then current Term.

(b) In considering "Comparable Transactions" for purposes of determining the Then Prevailing Market Rent for a Renewal Term, appropriate consideration shall be given to (and where appropriate, adjustments shall be made in deriving the Then Prevailing Market Rent from the rental rate under Comparable Transactions because of) any differences between any of the following considerations, unless excluded under Subsection 52.2.1(c) below: (a) the length of the Renewal Term, as compared to the term of the lease or renewal term (where such renewal provisions contain "net effective" language such as that set forth in this Subsection 52.2.1(b) under such Comparable Transactions, (b) the size and location within the sub-areas of the Financial District of the Building and the size, location, and floor level of the Premises and the age and quality of construction of the Facility and the Premises, as compared to such other space or such other high-rise office building in Comparable Transactions, (c) services provided or to be provided by Landlord, as compared to services provided under Comparable Transactions, (d) base years, CPI adjustments, or escalations, if applicable, under this Lease (as extended into the Renewal Term), as compared to such matters under Comparable Transactions, (e) the level, quality or extent of then existing tenant improvements in the Premises and any agreed upon tenant improvement allowances or refurbishment allowances provided for the Renewal Term under this Lease, as compared with the level, quality or extent of any tenant improvements or such tenant improvement allowances or refurbishment allowances to be provided under such Comparable Transactions, (f) free rent, (g) utility costs, relocation or moving allowances, (h) lease takeover/assumption contributions, and (i) other relevant factors pertaining to the Premises, Facility, or this Lease (as extended into the Renewal Term), as such factors are used in Landlord's determination of Prevailing Market as compared to such corresponding factors in Comparable Transactions.

52.2.2 Landlord's Proposed Rental Rate. Landlord's representatives may at any time engage in preliminary negotiations with Tenant concerning rental rates that they would recommend to senior management. However, not earlier than eighteen (18) and not later than thirteen (13) months before the expiration of the Then Scheduled Term, Landlord shall give Tenant, within thirty (30) days of request therefor (provided that Tenant requested such statement not later than fourteen (14) months prior to the Then Scheduled Term), a formal written statement of Landlord's proposed rental rate(s) for the Minimum Monthly Rent for each year of the proposed Renewal Term (the "Landlord's Proposed Rental Rate"), as approved by Landlord's senior management. Landlord shall set Landlord's Proposed Rental Rate at a rate equal to 100% of Landlord's good faith estimate of the Then Prevailing Market Rent. If Tenant accepts such estimate of the Then Prevailing Market Rent, or if the parties agree upon some other rental rate, they shall immediately execute an amendment to this Lease stating the Minimum Monthly Rent that shall apply to the Renewal Term.

52.2.3 Arbitration. If Tenant believes that Landlord's Proposed Rental Rate, as the same may have been revised in writing during the course of negotiations, is in excess of the Then Prevailing Market Rent for the Premises, then Tenant may elect, by delivering written notice (the "Arbitration Notice") to Landlord not later than nine (9) months before the expiration of the Then Scheduled Term, to arbitrate, in the manner described below, the Then Prevailing Market Rent for the Premises. The Arbitration Notice shall not be effective unless it includes a statement of Tenant's own good faith estimate of the Then Prevailing Market Rent for the Premises (the "Tenant's Proposed Rental Rate"). In such event, the Then Prevailing Market Rent shall be determined by arbitration as provided below, each party being bound to its last written estimate provided to the other party prior to the commencement of arbitration or with the delivery of Tenant's Arbitration Notice. The judgment or the award rendered in any such arbitration may be entered in any court having jurisdiction and shall be final and binding upon the parties. The arbitration shall be conducted and determined in San Francisco, California, in accordance with the American Arbitration Association's commercial arbitration rules then pertaining to the metropolitan area in which the arbitration is conducted, as modified by the following provisions:

(a) Within ten (10) business days after delivery of Tenant's Arbitration Notice, Landlord and Tenant shall each, at its cost, appoint an arbitrator. The arbitrators each shall have at least ten (10) years' experience with leases in Comparable Buildings and shall not have previously worked for the party appointing such arbitrator or their investors or affiliates (for purposes of determining whether such arbitrator shall have previously been employed, the fact that such arbitrator shall have previously served as a third party in a dispute resolution matter shall not apply, but such fact must be fully disclosed to the other party). If a party does not appoint an arbitrator within such ten (10) business day period but a qualified arbitrator is appointed by the other party, the single arbitrator appointed shall be the sole arbitrator and shall set the Then Prevailing Market Rent. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's estimated Then Prevailing Market Rent is the closest to the actual Then Prevailing Market Rent as determined by the arbitrators, taking into account the requirements of Subsection 52.2.1(c).

(b) The two (2) arbitrators so appointed shall within ten (10) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria as set forth hereinabove for qualification of the initial two (2) arbitrators.

(c) The three (3) arbitrators shall within thirty (30) days after the appointment of the third arbitrator reach a decision as to whether Landlord's or Tenant's submitted Then Prevailing Market Rent is the closest to the actual Then Prevailing Market Rent, and shall use the closest of Landlord's or Tenant's submitted Then Prevailing Market Rent as the Then Prevailing Market Rent for purposes of calculating the Then Prevailing Market Rent, and shall notify Landlord and Tenant thereof.

(d) The decision of the majority of the three (3) arbitrators shall be binding upon Landlord and Tenant.

(e) If the two (2) arbitrators fail to agree upon and appoint a third arbitrator within the time period provided in Subsection 52.2.3(a) above, then the parties shall mutually select the third arbitrator. If Landlord and Tenant are unable to agree upon the third arbitrator within ten (10) days, then either party may, upon at least five (5) days' prior written notice to the other party, request the Presiding Judge of the San Francisco County Superior Court, acting in his private and nonjudicial capacity, to appoint the third arbitrator. Following the appointment of the third arbitrator, the panel of arbitrators shall within thirty (30) days thereafter reach a decision as to whether Landlord's or Tenant's submitted Then Prevailing Market Rent shall be used and shall notify Landlord and Tenant thereof.

(f) The cost of the arbitrators and the arbitration proceeding shall be paid by the non-prevailing party.

(g) Within fifteen (15) days after the Then Prevailing Market Rent shall have been established pursuant to this Section 52, the parties shall execute a mutually acceptable amendment to this Lease memorializing Tenant's exercise of such renewal option and stating the Minimum Monthly Rent for the Renewal Term as so established at 100% of said Then Prevailing Market Rent.

(h) The arbitrators shall have the right to consult experts and competent authorities with factual information or evidence pertaining to the matter to be determined by them, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The arbitrators shall render their decision and award in writing with counterpart copies to each party. The arbitrator shall have no power to modify the provisions of this Lease.

(i) If one or more of the arbitrators should resign, die, withdraw, or otherwise be unable to perform his or her duties, either party may declare such office vacant, in which event the vacancy shall be filled in the same manner provided herein for the initial selection of such arbitrator.

52.3 Termination of Tenant's Right to Renew. If Tenant shall not have delivered to Landlord, within the time period allowed under Subsection 52.2.3 above for delivery of an Arbitration Notice, a notice accepting Landlord's determination of the rental for the Renewal Term, or an executed Arbitration Notice, then, at Landlord's election, upon written notice to Tenant, the right of Tenant to renew shall terminate.

53. EXPANSION OPTION.

Landlord hereby grants to Tenant the right to expand the Premises on a one-time basis onto one of the following three increments of space: (i) Floors 2, 3 and 4; (ii) Floors 2 and 3; or (iii) Floor 4. Tenant must elect which of such increments (the "Expansion Premises") it has determined to lease by delivery of written notice to Landlord not later than March 1, 2009. The Minimum Monthly Rent for Expansion Premises space taken during the Expansion Option shall be at the Then Prevailing Market Rent as defined in Subsection 52.2.1 above; provided, however, that in no event shall the Minimum Monthly Rent for such space be less than the Minimum Monthly Rent payable during the last month of the then current Term. In the event that Landlord and Tenant shall not be able to agree on the Then Prevailing Market Rent for such space, then the Then Prevailing Market Rent shall be determined pursuant to the arbitration procedure described in Subsection 52.2.1 above.

54. DAY CARE CENTER AND EXERCISE ROOM

The Facility currently includes a day care center (as mandated pursuant to the final conditions of approval for the Facility dated December 5, 1991 as may be subsequently amended by Landlord and the City of San Francisco) currently planned to be 3,000 square feet with customary hours of operation and operated in compliance with Laws and in a first-class manner and an "Exercise Room" for the use of the tenants of the building , both operated on a first-come, first-serve basis, and usable pursuant to rules and procedures as adopted by Landlord in its sole discretion, including the requirement of indemnity agreements and waivers as preconditions to their use. Either or both of such enterprises may be located in the Marine Electric Building. Tenant and other tenants of the Building shall be given priority in the utilization of the day care center to the extent permitted by law (i.e., as openings for new children occur, Tenant and the other tenants of the Building shall be notified of such openings before the general public is notified of such openings). Tenant shall be entitled to Tenant's Percentage Share of any openings at the day care center from time to time during the Term. Any revenue from the day care center in excess of its operating expenses will be credited against the Operating Expenses of the Building generally.

55. COVENANT OF QUIET ENJOYMENT.

Provided Tenant performs the terms, conditions and covenants of this Lease, and subject to the terms and provisions hereof, Landlord covenants to secure and to maintain for the benefit of Tenant the quiet and peaceful possession of the Premises, for the Term, without hindrance, claim or molestation by Landlord or any other person lawfully claiming under Landlord. The foregoing covenant is in lieu of any other covenant, express or implied.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above, acknowledging that each party has freely entered into this Lease of its own free will and volition.

Landlord:

GLL FREMONT STREET PARTNERS, a California partnership

By: GLL US Office L.P., a Delaware limited partnership, its Managing General Partner

By: GLL US Office Corp., a Delaware corporation, its Managing General Partner

By: _____

Print Name: _____

Its: _____

Tenant:

RIVERBED TECHNOLOGY, INC., a Delaware corporation

By: _____

Print Name: _____

Title: _____

Exhibit 10.41

LEASE

between

ONE PENN PLAZA LLC,

Landlord,

and

RIVERBED TECHNOLOGY, INC.,

Tenant.

One Perm Plaza
New York, New York 10119

as of January 25, 2007

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EXHIBITS

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THIS LEASE, dated as of the 25th day of January, 2007, by and between ONE PENN PLAZA LLC, a New York limited liability company, having an address c/o Vornado Office Management LLC, 888 Seventh Avenue, New York, New York 10119, as landlord, and RIVERBED TECHNOLOGY, INC., a Delaware corporation, having an address at 501 Second Street, Suite 410, San Francisco, CA 94107, as tenant (the Person that holds the interest of the landlord hereunder at any particular time being referred to herein as "Landlord"; subject to Section 17.1(F) hereof, the Person that holds the interest of the tenant hereunder at any particular time being referred to herein as "Tenant").

WITNESSETH:

WHEREAS, Landlord wishes to demise and let unto Tenant, and Tenant wishes to hire and take from Landlord, on the terms and subject to the conditions set forth herein, the premises as shown on Exhibit "A" attached hereto and made a part hereof on the twenty-first (21st) floor (Suite 2134) of the building that is known by the street address of One Penn Plaza, New York, New York 10119 (such premises being collectively referred to herein as the "Premises"; such building being referred to herein as the "Building"; the Building, together with the plot of land on which the Building is constructed, being collectively referred to herein as the "Real Property").

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the mutual receipt and legal sufficiency of which the parties hereto hereby acknowledge, Landlord and Tenant hereby agree as follows:

Article 1
DEMISE, TERM, FIXED RENT

1.1. Demise; Early Access.

(A) Subject to the terms hereof, Landlord hereby demises and lets to Tenant and Tenant hereby hires and takes from Landlord the Premises for the term to commence on the Commencement Date and to end on the last day of the calendar month during which occurs the day immediately preceding the date that is five (5) years after the Rent Commencement Date (the "Fixed Expiration Date"; the Fixed Expiration Date, or such earlier date that the term of this Lease terminates pursuant to the terms hereof or pursuant to law, being referred to herein as the "Expiration Date"; the term commencing on the Commencement Date and ending on the Expiration Date being referred to herein as the "Term").

(B) Subject to the terms of this Section 1.1 (B), Tenant shall be permitted to access the Premises prior to the Commencement Date (the "Early Access") during the performance of Landlord's Work solely for purposes of installing telecommunications cabling and related equipment; provided, however, that such access shall be subject to and in accordance with all of the provisions of this Lease other than the obligation to pay Fixed Rent (as if the Commencement Date had then occurred) and Tenant shall cooperate with Landlord in connection with such access and coordinate the scheduling of any such installation with performance of Landlord's Work.

1.2. Commencement Date.

(A) The term of this Lease shall commence on the date that Landlord delivers vacant and exclusive possession of the Premises to Tenant (such date that Landlord delivers vacant and exclusive possession of the Premises to Tenant being referred to herein as the "Commencement Date").

(B) The term "Rental" shall mean, collectively, the Fixed Rent, the Tax Payment and the additional rent payable by Tenant to Landlord hereunder.

1.3. Rent Commencement Date.

The term "Rent Commencement Date" shall mean the thirtieth (30th) day after the Commencement Date.

1.4. Fixed Rent.

(A) The annual fixed rent for the Premises (the annual fixed rent payable hereunder for the Premises at any particular time being referred to herein as the "Fixed Rent") shall be:

(1) the product obtained by multiplying (x) the Electricity Inclusion Rate, by (y) the number of square feet of Rentable Area comprising the Premises, for the period commencing on the Commencement Date and ending on the date immediately preceding the Rent Commencement Date;

(2) Two Hundred Nineteen Thousand Fifteen Dollars and Ninety-Six Cents ($219,015.96) ($18,251.33 per month) for the period commencing on the Rent Commencement Date and ending on the day immediately preceding the date that is one (1) year after the Rent Commencement Date;

(3) Two Hundred Twenty-Four Thousand One Hundred Ninety-Eight Dollars and Four Cents ($224,198.04) ($18,683.17 per month) for the period commencing on the date that is one (1) year after the Rent Commencement Date and ending on the day immediately preceding the date that is two (2) years after the Rent Commencement Date;

(4) Two Hundred Forty-One Thousand Two Hundred Forty-Two Dollars and Seventy-Two Cents ($241,242.72) ($20,103.56 per month) for the period commencing on the date that is two (2) years after the Rent Commencement Date and ending on the day immediately preceding the date that is three (3) years after the Rent Commencement Date;

(5) Two Hundred Forty-Six Thousand Nine Hundred Eighty Dollars and Forty Cents ($246,980.40) ($20,581.70 per month) for the period commencing on the date that is three (3) years after the Rent Commencement Date and ending on the day immediately preceding the date that is four (4) years after the Rent Commencement Date; and

(6) Two Hundred Fifty-Two Thousand Eight Hundred Sixty-One Dollars and Sixty Cents ($252,861.60) ($21,071.80 per month) for the period commencing on the date that is four (4) years after the Rent Commencement Date and ending on the Fixed Expiration Date.

1.5. Payments of Fixed Rent.

(A) Subject to Section 1.5(E) hereof, Tenant shall pay the Fixed Rent in lawful money of the United States of America that is legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments, in advance, on the first (1st) day of each calendar month during the Term commencing on the Rent Commencement Date, at the office of Landlord or such other place as Landlord may designate from time to time on at least thirty (30) days of advance notice to Tenant, without any set-off, offset, abatement or deduction whatsoever (except to the extent otherwise expressly set forth herein).

(B) Landlord shall have the right to require Tenant to pay the Fixed Rent and any other items of Rental when due by wire transfer of immediately available funds to an account that Landlord designates from time to time on at least thirty (30) days of advance notice to Tenant.

(C) Subject to Section 1.5(B) hereof, Tenant shall have the right to pay the Fixed Rent and any other items of Rental by wire transfer of immediately available funds to an account that Landlord designates from time to time on at least thirty (30) days of advance notice to Tenant. Landlord shall so designate an account within thirty (30) days after Tenant's request therefor from time to time.

(D) If the Rent Commencement Date is not the first (1st) day of a calendar month, then (x) the Fixed Rent due hereunder for the calendar month during which the Rent Commencement Date occurs shall be adjusted appropriately based on the number of days in such calendar month, and (y) subject to Section 1.5(E) hereof, Tenant shall pay to Landlord such amount (adjusted as aforesaid for such calendar month) on the Rent Commencement Date. If the Expiration Date is not the last day of a calendar month, then the Fixed Rent due hereunder for the calendar month during which the Expiration Date occurs shall be adjusted appropriately based on the number of days in such calendar month.

(E) Tenant shall pay to Landlord on the date hereof an amount equal to Eighteen Thousand Two Hundred Fifty-One Dollars and Thirty-Three Cents ($18,251.33), which Landlord shall apply to the Fixed Rent that first comes due hereunder from and after the Rent Commencement Date until such amount is exhausted.

(F) The Fixed Rent as set forth in this Article 1 shall be adjusted from time to time to correspond to adjustments in the Electricity Inclusion Factor that are made in accordance with Article 5 hereof.

1.6. Certain Definitions.

(A) The term "Affiliate" shall mean a Person that (1) Controls, (2) is under the Control of, or (3) is under common Control with, the Person in question.

(B) The term "Applicable Rate" shall mean, at any particular time, the lesser of (x) four hundred (400) basis points above the Base Rate at such time, and (y) the maximum rate permitted by applicable law at such time.

(C) The term "Base Rate" shall mean the rate of interest announced publicly from time to time by Citibank, N.A., or its successor, as its "prime lending rate" (or such other term as may be used by Citibank, N.A. (or its successor), from time to time, for the rate presently referred to as its "prime lending rate").

(D) The term "Business Days" shall mean all days, excluding Saturdays, Sundays and Holidays.

(E) The term "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, All Items (1982-84 = 100), seasonally adjusted, for the most specific area that includes the location of the Building (which the parties acknowledge is currently New York – Northern New Jersey – Long Island, NY – NJ – CT – PA), or any successor index thereto. If the Consumer Price Index is converted to a different standard reference base or otherwise revised, then the determination of adjustments provided for herein shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if said Bureau does not publish such conversion factor, formula or table, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc. or any other nationally recognized publisher of similar statistical information. If the Consumer Price Index ceases to be published, and there is no successor thereto, then Landlord and Tenant shall use diligent efforts, in good faith, to agree upon a substitute index for the Consumer Price Index. Either party shall have the right to submit the issue of the designation of such substitute index to an Expedited Arbitration Proceeding.

(F) The term "Control" shall mean direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation or other majority equity interest if not a corporation and the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute or by contract.

(G) The term "Holidays" shall mean all days observed as legal holidays by either (x) the State of New York, (y) the United States of America, or (z) the labor unions that service the Building; provided, however, that if (x) all of the labor unions that service the Building do not observe a particular day as a holiday, and (y) the State of New York or the United States of America do not otherwise observe such day as a holiday, then such day shall constitute a Holiday for purposes hereof only to the extent that Landlord requires the services that are provided by members of the particular labor union to perform the corresponding service for Tenant hereunder (so that if, for example, (x) the labor union for office cleaning personnel observes a particular day as a holiday but the labor union for the engineers that operate the HVAC System does not observe such day as a holiday, and (y) the State of New York or the United States of America does not otherwise observe such day as a holiday, then such day shall constitute a Holiday for purposes of determining whether Landlord is required to provide office cleaning services on such day, but such day shall not constitute a Holiday for purposes of determining whether Landlord is required to provide HVAC services on such day).

(H) The term "Out-of-Pocket Costs" shall mean costs that a Person pays to a third party that is not an Affiliate of such Person (and, accordingly, Out-of-Pocket Costs shall not include (i) the costs that such Person incurs in compensating its own employees to perform a service or supervise work within the scope of their employment, or (ii) the administrative costs that such Person incurs in operating its own offices).

(I) The term "Person" shall mean any natural person or persons or any legal form of association, including, without limitation, a partnership, a limited partnership, a corporation, and a limited liability company.

(J) The term "Rentable Area" shall mean, with respect to a particular floor area, the area thereof (expressed as a particular number of square feet), as determined in accordance with the standards that the parties used to calculate that the area of the Premises is three thousand nine hundred eleven (3,911) square feet in the aggregate.

(K) The term "Usable Area" shall mean, with respect to a particular floor area, the usable area thereof (expressed as a particular number of square feet), as determined in accordance with The Recommended Method of Floor Measurement of Office Buildings, Effective January 1, 1987, as published by The Real Estate Board of New York, Inc.

Article 2
ESCALATION RENT

2.1. Tax Definitions.

(A) The term "Assessed Valuation" shall mean the amount for which the Real Property is assessed pursuant to applicable provisions of the New York City Charter and of the Administrative Code of The City of New York, in either case for the purpose of calculating all or any portion of the Taxes.

(B) The term "Base Taxes" shall mean the quotient obtained by dividing (i) the Taxes for the Base Tax Period, by (ii) the number of Tax Years in the Base Tax Period.

(C) The term "Base Tax Period" shall mean the period consisting of two (2) fiscal years commencing on July 1, 2006 and ending on June 30, 2008.

(D) The term "Excluded Amounts" shall mean (w) any taxes imposed on Landlord's income, (x) franchise, estate, inheritance, capital stock, excise, excess profits, gift, payroll or stamp taxes imposed on Landlord, (y) any transfer taxes or mortgage taxes that are imposed on Landlord in connection with the conveyance of the Real Property or granting or recording a mortgage lien thereon, and (z) any other similar taxes imposed on Landlord.

(E) Subject to the terms of this 2.1(E), the term "Taxes" shall mean the aggregate amount of real estate taxes and any general or special assessments that in each case are imposed upon the Real Property, including, without limitation, (i) any fee, tax or charge imposed by any Governmental Authority for any vaults or vault spaces that in either case are appurtenant to the Real Property (except that Taxes shall not include such fee, tax or charge to the extent that Landlord leases or licenses such vaults or vault spaces to a third party), and (iii) any taxes or assessments levied, in whole or in part, for public benefits to the Real Property (including, without limitation, any business improvement district taxes and assessments). Taxes shall be calculated without taking into account (a) any discount that Landlord receives by virtue of any early payment of Taxes, (b) any penalties or interest that the applicable Governmental Authority imposes for the late payment of such real estate taxes or assessments, (c) any Excluded Amounts, (d) any real estate taxes that are separately assessed against a sign or billboard that is affixed to the Building or otherwise located on the Real Property, and (e) any exemption or deferral of Taxes to which the Real Property is entitled under any program that a Governmental Authority adopts to promote the improvement or redevelopment of real property. If, because of any change in the taxation of real estate, any other tax or assessment, however denominated (including, without limitation, any franchise, income, profits, sales, use, occupancy, gross receipts or rental tax), is imposed upon the Real Property, the owner thereof, or the occupancy, rents or income derived therefrom, in substitution for any of the Taxes (to the extent that such substitution is evidenced by either the terms of the legislation imposing such tax or assessment, the legislative history thereof, or other documents or evidence that reasonably demonstrate that the applicable Governmental Authority intended for such tax or assessment to constitute a substitution for any Taxes), then such other tax or assessment to the extent substituted shall be included in Taxes for purposes hereof (assuming that the Real Property is Landlord's sole asset and the income therefrom is Landlord's sole income). If any such real estate taxes or assessments are payable in installments without interest, premium or penalty, then Landlord shall include in Taxes for any particular Tax Year only the installment of such real estate taxes or assessments that the applicable Governmental Authority requires Landlord to pay (and that Landlord actually pays) during such Tax Year.

(F) The term "Tax Payment" shall mean, with respect to any Tax Year, the product obtained by multiplying (i) the excess of (A) Taxes for such Tax Year, over (B) the Base Taxes, by (ii) Tenant's Tax Share (it being understood that the Tax Payment shall be due with respect to each Tax Year following the first Tax Year in the Base Tax Period).

(G) The term "Tax Statement" shall mean a statement that shows the Tax Payment for a particular Tax Year.

(H) The term "Tax Year" shall mean the first period from July 1 through June 30 (or such other period as hereinafter may be duly adopted by the Governmental Authority then imposing Taxes as its fiscal year for real estate tax purposes) in the Base Tax Period and each subsequent period from July 1 through June 30 (or such other period as hereinafter may be duly adopted by the Governmental Authority then imposing Taxes as its fiscal year for real estate tax purposes).

(I) The term "Tenant's Tax Share" shall mean, subject to the terms hereof, no and one thousand seven hundred nine ten-thousandths percent (0.1709%).

2.2. Tax Payment.

(A) Subject to the provisions of this Section 2.2, Tenant shall pay to Landlord, as additional rent, the Tax Payment.

(B) Landlord shall have the right to give a statement to Tenant from time to time pursuant to which Landlord sets forth Landlord's good faith estimate of the Tax Payment for a particular Tax Year (any such statement that Landlord gives to Tenant being referred to herein as a "Prospective Tax Statement"; one-twelfth (l/12th) of the Tax Payment shown on a Prospective Tax Statement being referred to herein as the "Monthly Tax Payment Amount"). If Landlord gives (or is deemed to have given) to Tenant a Prospective Tax Statement, then, subject to the terms of this Section 2.2(B), Tenant shall pay to Landlord, as additional rent, on account of the Tax Payment due hereunder for such Tax Year, the Monthly Tax Payment Amount, on the first (1st) day of each subsequent calendar month until Tenant has paid to Landlord, pursuant to this Section 2.2(B), the full amount of the Tax Payment as so estimated in the Prospective Tax Statement. Tenant shall pay the Monthly Tax Payment Amount to Landlord in the same manner as the monthly installments of the Fixed Rent hereunder. Landlord shall not have the right to require Tenant to commence Tenant's payment of the Monthly Tax Payment Amount for a particular Tax Year earlier than the one hundred fiftieth (150th) day of the immediately preceding Tax Year. If Landlord gives (or is deemed to have given) to Tenant a Prospective Tax Statement after the one hundred fiftieth (150th) day of the immediately preceding Tax Year, then Tenant shall also pay to Landlord, within thirty (30) days after the date that Landlord gives the Prospective Tax Statement to Tenant, an amount equal to the excess of (I) the product obtained by multiplying (x) the Monthly Tax Payment Amount, by (y) the number of calendar months that have theretofore elapsed since the one hundred fiftieth (150th) day of the immediately preceding Tax Year, over (II) the aggregate amount theretofore paid by Tenant to Landlord on account of the Tax Payment for the Tax Year to which the Prospective Tax Statement relates. Landlord shall not have the right to use this Section 2.2(B) to collect more than fifty percent (50%) of the Tax Payment shown on a particular Prospective Tax Statement earlier than the thirtieth (30th) day before the date that the first installment of Taxes is due to the applicable Governmental Authority for a particular Tax Year. If Landlord gives (or is deemed to have given) to Tenant a Prospective Tax Statement for a particular Tax Year, then Landlord shall also provide to Tenant, within one hundred eighty (180) days after the last day of such Tax Year, a Tax Statement for such Tax Year.

(C) Tenant shall pay to Landlord an amount equal to the excess (if any) of (i) the Tax Payment as reflected on a Tax Statement that Landlord gives to Tenant, over (ii) the aggregate amount that Tenant has theretofore paid to Landlord on account of the Tax Payment (if any) as contemplated by Section 2.2(B) hereof, within thirty (30) days after the date that Landlord gives such Tax Statement to Tenant. Tenant shall have the right to credit against the Rental thereafter coming due hereunder an amount equal to the excess (if any) of (i) the aggregate amount that Tenant has theretofore paid to Landlord on account of the Tax Payment as contemplated by Section 2.2(B) hereof, over (ii) the Tax Payment as reflected on such Tax

Statement; provided, however, that if the Expiration Date occurs prior to the date that such credit is exhausted, then Landlord shall pay to Tenant the unused portion of such credit on or prior to the thirtieth (30th) day after the Expiration Date (it being understood that Landlord's obligation to make such payment to Tenant shall survive the Expiration Date). If Landlord gives Tenant a Tax Statement, then, unless Landlord otherwise specifies in such Tax Statement, Landlord shall be deemed to have given to Tenant a Prospective Tax Statement, for the Tax Year immediately succeeding the Tax Year that is covered by such Tax Statement, that reflects a Tax Payment for such immediately succeeding Tax Year in an amount equal to the Tax Payment for such Tax Year that is covered by such Tax Statement.

(D) If the Rent Commencement Date occurs later than the first (1st) day of the Tax Year that immediately succeeds the first Tax Year of the Base Tax Period, then the Tax Payment for the Tax Year during which the Rent Commencement Date occurs shall be an amount equal to the product obtained by multiplying (X) the Tax Payment that would have been due hereunder if the Rent Commencement Date was the first (1st) day of such Tax Year, by (Y) a fraction, the numerator of which is the number of days in the period beginning on the Rent Commencement Date and ending on the last day of such Tax Year, and the denominator of which is three hundred sixty-five (365) (or three hundred sixty-six (366), if such Tax Year includes the month of February in a leap year).

(E) If the Expiration Date is not the last day of a Tax Year, then the Tax Payment for the Tax Year during which the Expiration Date occurs shall be an amount equal to the product obtained by multiplying (X) the Tax Payment that would have been due hereunder if the Expiration Date was the last day of such Tax Year, by (Y) a fraction, the numerator of which is the number of days in the period beginning on the first (1st) day of such Tax Year and ending on the Expiration Date, and the denominator of which is three hundred sixty-five (365) (or three hundred sixty-six (366), if such Tax Year includes the month of February in a leap year).

(F) The Tax Payment shall be computed initially on the basis of the Assessed Valuation in effect on the date that Landlord gives the applicable Tax Statement to Tenant (as the Taxes may have been settled or finally adjudicated prior to such time) regardless of any then pending application, proceeding or appeal to reduce the Assessed Valuation, but shall be subject to subsequent adjustment as provided in Section 2.3 hereof.

(G) Tenant shall pay the Tax Payment regardless of whether Tenant is exempt, in whole or part, from the payment of any Taxes by reason of Tenant's diplomatic status or otherwise.

(H) If Taxes are required to be paid on any date or dates other than as presently required by the Governmental Authority imposing Taxes, then the due date of the installments of the Tax Payment shall be adjusted so that each such installment is due from Tenant to Landlord thirty (30) days prior to the date that the corresponding payment is due to the Governmental Authority (with the understanding, however, that Tenant shall not be required to pay a Tax Payment to Landlord earlier than the thirtieth (30^{th}) day after the date that Landlord gives the applicable Tax Statement to Tenant).

(I) Landlord's failure to give to Tenant a Tax Statement for any Tax Year shall not impair Landlord's right to give to Tenant a Tax Statement for any other Tax Year.

(J) Landlord shall give to Tenant a copy of the relevant tax bill for each Tax Year (to the extent that the applicable Governmental Authority has issued such tax bill to Landlord) promptly after Tenant's request therefor from time to time.

2.3. Tax Reduction Proceedings.

(A) Landlord (and not Tenant) shall be eligible to institute proceedings to reduce the Assessed Valuation.

(B) If, after a Tax Statement has been sent to Tenant, an Assessed Valuation that Landlord used to compute the Tax Payment for a Tax Year is reduced, and, as a result thereof, a refund of Taxes is actually received by, or credited to, Landlord, then Landlord, promptly after Landlord's receipt of such refund (or such refund is credited to Landlord, as the case may be), shall send to Tenant a Tax Statement adjusting the Taxes for such Tax Year and setting forth, based on such adjustment, the portion of such refund for which Tenant is entitled a credit as set forth in this Section 2.3(B). Landlord shall have the right to deduct from such refund the Out-of-Pocket Costs that Landlord incurs in obtaining such refund (so that Landlord, in calculating the adjusted Tax Payment, takes into account only the net proceeds of such refund that Landlord receives (or that is credited to Landlord)). Landlord shall credit the portion of such refund to which Tenant is entitled against the Rental thereafter coming due hereunder. If (x) Tenant is entitled to a credit against Rental pursuant to this Section 2.3(B), and (y) the Expiration Date occurs prior to the date that such credit is exhausted, then Landlord shall pay to Tenant the unused portion of such credit on or prior to the thirtieth (30th) day after the Expiration Date (and Landlord's obligation to make such payment shall survive the Expiration Date). If (i) Landlord receives such refund (or a credit therefor) after the Expiration Date, and (ii) Tenant is entitled to a portion thereof as contemplated by this Section 2.3(B), then Landlord shall pay to Tenant an amount equal to Tenant's share of such refund (or such credit) within thirty (30) days after the date that such refund is paid to Landlord (or such refund is credited to Landlord, as the case may be) (and Landlord's obligation to make such payment shall survive the Expiration Date).

(C)

(1) If the Assessed Valuation for a Tax Year in the Base Tax Period is reduced at any time after the date that Landlord gives a Tax Statement to Tenant for a Tax Year, then Landlord shall have the right to give to Tenant a revised Tax Statement that recalculates the Tax Payment for a Tax Year (using the Taxes that reflect such reduction in such Assessed Valuation). Tenant shall pay to Landlord an amount equal to the excess of (i) the Tax Payment as reflected on such revised Tax Statement, over (ii) the Tax Payment as reflected on the prior Tax Statement, within thirty (30) days after Landlord gives such revised Tax Statement to Tenant.

(2) If the Assessed Valuation for a Tax Year in the Base Tax Period is increased at any time after the date that Landlord gives a Tax Statement to Tenant for a Tax Year, then Landlord shall give to Tenant a revised Tax Statement that recalculates the Tax

Payment for a Tax Year (using the Taxes that reflect such increase in such Assessed Valuation). Landlord shall credit against the Rental thereafter coming due hereunder an amount equal to Tenant's overpayment of the Tax Payment (calculated as aforesaid using such increased Assessed Valuation). If (x) Tenant is entitled to a credit against Rental pursuant to this Section 2.3(C)(2), and (y) the Expiration Date occurs prior to the date that such credit is exhausted, then Landlord shall pay to Tenant the unused portion of such credit on or prior to the thirtieth (30th) day after the Expiration Date (and Landlord's obligation to make such payment shall survive the Expiration Date). If (i) such increase in such Assessed Valuation occurs after the Expiration Date, and (ii) Tenant is entitled to a credit against Rental as contemplated by this Section 2.3(C)(2), then Landlord shall pay to Tenant an amount equal to such credit within thirty (30) days after the date that such increase in such Assessed Valuation occurs (and Landlord's obligation to make such payment shall survive the Expiration Date).

2.4. Building Additions.

If Landlord makes improvements to the Building to expand the Rentable Area thereof, then, with respect to the period from and after the date that Taxes are assessed on the Building to reflect such improvements, (I) Tenant's Tax Share shall be recalculated as of the date that Taxes are so assessed as the quotient (expressed as a percentage) that is obtained by dividing (x) the number of square feet of Rentable Area in the Premises, by (y) the number of square feet of Rentable Area in the Building (after taking into account such expansion of the Rentable Area thereof) and (II) Base Taxes shall be an amount equal to the product obtained by multiplying (x) Base Taxes immediately prior to the date that Taxes are assessed on the Building to reflect such improvements, by (y) a fraction, the numerator of which is the Taxes that are assessed against the Building (after taking such improvements into account), and the denominator of which is the Taxes that are assessed against the Building (before taking such improvements into account).

Article 3
USE

3.1. Permitted Use.

(A) Subject to Section 3.2 hereof, Tenant shall use the Premises, and Tenant shall cause any other Person claiming by, through or under Tenant to use the Premises, in either case only as general, administrative and executive offices and for uses reasonably incidental thereto.

(B) Landlord acknowledges that the following items qualify as uses that are incidental to Tenant's use of the Premises as general, administrative and executive offices (provided that Tenant's use of the Premises for such purposes supports Tenant's primary use of the Premises as general, administrative and executive offices):

(1) pantries and vending machines;

(2) conference rooms and board rooms;

(3) data processing centers;

(4) duplicating and photographic reproduction facilities;

(5) mailroom and messenger facilities; and

(6) secured storage facilities for Tenant's Property, including, without limitation, equipment, records and files.

Nothing contained in this Section 3.1(B) impairs Tenant's obligation to perform Alterations in accordance with the provisions of Article 7 hereof. Landlord and Tenant acknowledge that the parties' description of particular incidental uses in this Section 3.1(B) does not impair Tenant's right to use the Premises for other uses that are otherwise reasonably incidental to Tenant's use of the Premises as general, administrative and executive offices as provided in this Section 3.1.

3.2. Limitations.

Tenant shall not use the Premises or any part thereof, or permit the Premises or any part thereof to be used:

(1) for the conduct of "off-the-street" retail trade;

(2) by any Governmental Authority or any other Person having sovereign or diplomatic immunity (it being understood, however, that this clause (2) shall not prohibit a Permitted Party from permitting representatives of a Governmental Authority to enter a portion of the Premises temporarily to perform audits or other similar regulatory review of such Permitted Party's business);

(3) for the sale, storage, preparation, service or consumption of food or beverages in any manner whatsoever (except that a Permitted Party has the right to store, prepare, and serve food and beverages, by any reasonable means (including, without limitation, by means of customary vending machines), for consumption by such Permitted Party's personnel and business guests in the Premises);

(4) as an employment agency, executive search firm or similar enterprise, labor union, school, or vocational training center (except for the training of employees of a Permitted Party who are employed at the Premises); or

(5) for gaming or gambling.

3.3. Rules.

Subject to the terms of this Section 3.3, Tenant shall comply with, and Tenant shall cause any other Person claiming by, through or under Tenant to comply with, the rules set forth in Exhibit "3.3" attached hereto and made a part hereof, and other reasonable rules that Landlord hereafter adopts from time to time on reasonable advance notice to Tenant, including, without limitation, rules that govern the performance of Alterations (such rules that are attached hereto,

and such other rules, being collectively referred to herein as the "Rules"). Landlord shall not have any obligation to enforce the Rules or the terms of any other lease against any other tenant, and Landlord shall not be liable to Tenant for violation thereof by any other tenant. Landlord shall not enforce any Rule against Tenant (i) that Landlord is not then enforcing against all other office tenants in the Building, or (ii) in a manner that differs in any material respect from the manner in which Landlord is enforcing the applicable Rule against other office tenants in the Building. If a conflict or inconsistency exists between the Rules and the provisions of the remaining portion of this Lease, then the provisions of the remaining portion of this Lease shall control.

3.4. Promotional Displays.

Tenant shall not have the right to use any window in the Premises for any sign or other display that is designed principally for advertising or promotion.

3.5. Core Toilets.

Tenant shall have the right to use the toilets that are located in the core area of the Building on any floor of the Building where the Premises is located and where the Premises does not include the entire Rentable Area of such floor (in common with the other occupants of such floor of the Building).

3.6. Wireless Internet Service.

Subject to the terms of this Section 3.6, Tenant shall have the right to install wireless Internet service in the Premises. Tenant shall not solicit other occupants of the Building to use wireless Internet service that emanates from the Premises. Tenant shall not permit the signals of Tenant's wireless Internet service (if any) to emanate beyond the Premises in a manner that interferes in any material respect with any Building Systems or with any other occupant's use of other portions of the Building. Nothing contained in this Section 3.6 diminishes Tenant's obligation to perform Alterations in accordance with the provisions of Article 7 hereof.

3.7. Telecommunications.

Landlord shall permit Tenant to gain access to the facilities of the telecommunications provider that services the Building from time to time through the telecommunication closet on the floor of the Building where the Premises is located (it being understood that Landlord's granting such access to Tenant shall not constitute Landlord's agreement to provide telecommunications services to Tenant or to otherwise have responsibility for the operation or security thereof). Tenant shall be permitted to use any telecommunications lines existing in the Premises on the Commencement Date; provided, however, that Landlord in no way warrants the existence, condition or sufficiency of such telecommunications lines and any such lines shall be in "as in" condition

Article 4
SERVICES

4.1. Certain Definitions.

(A) The term "Building Hours" shall mean the period from 8:00 am to 6:00 pm on Business Days.

(B) The term "Building Systems" shall mean the service systems of the Building, including, without limitation, the mechanical, gas, steam, electrical, sanitary, HVAC, elevator, plumbing, and life-safety systems of the Building (it being understood that the Building Systems shall not include any systems that Tenant installs in the Premises as an Alteration).

(C) The term "HVAC" shall mean heat, ventilation and air-conditioning.

(D) The term "HVAC Systems" shall mean the Building Systems that provide HVAC.

(E) The term "Overtime Periods" shall mean any times that do not constitute Building Hours; provided, however, that the Overtime Periods for the freight elevator shall also include the lunch period of the personnel who operate the freight elevator or the related loading facility.

4.2. Elevator Service.

(A) Subject to the terms of Section 9.6(C) hereof, Article 10 hereof and this Section 4.2, Landlord shall provide Tenant with passenger elevator service for the Premises using the Building Systems therefor. Tenant's use of the passenger elevators shall be in common with other occupants of the Building. Tenant shall have the use of the passenger elevators that service the Premises at all times, except that Landlord, during Overtime Periods, shall have the right to limit reasonably the passenger elevators that Landlord makes available to service the Premises (provided that there is available to Tenant on a non-exclusive basis at all times at least one (1) passenger elevator that services the Premises). Tenant shall use the passenger elevators only for purposes of transporting persons to and from the Premises.

(B) Subject to the terms of Section 9.6(C) hereof, Article 10 hereof and this Section 4.2, Landlord shall provide Tenant with freight elevator service for the Premises using the Building Systems therefor. Tenant's use of the freight elevator shall be in common with other occupants of the Building. Landlord shall have the right to prescribe reasonable rules from time to time regarding the rights of the occupants in the Building (including, without limitation, Tenant) to use the freight elevator (governing, for example, the responsibility of occupants of the Building to reserve freight elevator use in advance, particularly for Overtime Periods). Tenant shall use the freight elevator in accordance with applicable Requirements. If Tenant uses the freight elevator during Overtime Periods, then Tenant shall pay to Landlord, as additional rent, an amount calculated at the reasonable hourly rates that Landlord charges from time to time therefor, within thirty (30) days after Landlord's giving to Tenant an invoice therefor; provided, however, that Tenant shall not be required to pay for the first twelve (12) hours of Tenant's

overtime use of the freight elevator only for Tenant's initial move into the Premises (but not for purposes associated with the ordinary conduct of Tenant's business). Landlord shall have the right to charge Tenant for a particular minimum number of hours of usage of the freight elevator during Overtime Periods to the extent that the applicable union contract or service contract requires Landlord to engage the necessary personnel (including, without limitation, a freight elevator operator and loading dock attendant) for such minimum number of overtime hours. If (x) Tenant requests Landlord to provide Tenant with freight elevator service during Overtime Periods as provided in this Section 4.2(B), and (y) another tenant in the Building also uses, or other tenants in the Building also use, the applicable freight elevator during such Overtime Period, then Landlord shall allocate equitably the charges described in this Section 4.2(B) among Tenant and such other tenant or tenants.

4.3. Heat, Ventilation and Air-Conditioning.

(A) Subject to the terms of Article 10 hereof and this Section 4.3, Landlord shall operate the HVAC System to provide HVAC at the perimeter of the Premises. Except to the extent otherwise part of Landlord's Work, Landlord shall not be required to make any installations in the Premises to distribute HVAC within the Premises. Landlord shall not be required to repair or maintain during the Term (i) any installations that exist in the Premises on the Commencement Date that distribute within the Premises HVAC that the HVAC System provides, or (ii) any system that is located in the Premises on the Commencement Date that provides supplemental HVAC for the Premises (in addition to the HVAC provided by the HVAC System). Tenant shall keep closed the curtains, blinds, shades or screens that Tenant installs on the windows of the Premises in accordance with the terms hereof to the extent reasonably necessary to reduce the interference of direct sunlight with the operation of the HVAC System.

(B) Landlord shall operate the HVAC System for Tenant's benefit during Overtime Periods if Tenant so advises Landlord not later than 2:00 pm on the Business Day immediately preceding the day on which Tenant requires HVAC during Overtime Periods. If Landlord so provides HVAC to the Premises during Overtime Periods (as so requested by Tenant), then Tenant shall pay to Landlord, as additional rent, an amount calculated at the reasonable hourly rates that Landlord charges from time to time therefor, within thirty (30) days after Landlord gives to Tenant an invoice therefor. Landlord shall have the right to charge Tenant for a particular minimum number of hours of usage of the HVAC System during Overtime Periods to the extent that the applicable union contract or service contract requires Landlord to engage the necessary personnel (including, without limitation, a building engineer) for such minimum number of overtime hours.

4.4. Cleaning.

(A) Subject to the terms of Article 10 hereof and this Section 4.4, Landlord shall cause the Premises to be cleaned substantially in accordance with the standards set forth in Exhibit "4.4" attached hereto and made a part hereof. Landlord shall not be required to clean the portions of the Premises (if any) (x) that Tenant uses for the storage, preparation, service or consumption of food or beverages, (y) in which Tenant is performing Alterations, or (z) in which the interior installation has been demolished in all material respects. Tenant shall pay to

Landlord, as additional rent, the reasonable costs incurred by Landlord in removing from the Building any of Tenant's refuse and rubbish to the extent exceeding the amount of refuse and rubbish usually generated by a tenant that uses the Premises for ordinary office purposes. Tenant shall make such payments to Landlord not later than the thirtieth (30th) day after the date that Landlord gives to Tenant an invoice therefor from time to time.

(B) Tenant, at Tenant's expense, shall exterminate the portions of the Premises that Tenant uses for the storage, preparation, service or consumption of food against infestation by insects and vermin regularly and, in addition, whenever there is evidence of infestation. Tenant shall engage Persons to perform such exterminating that are approved by Landlord, which approval Landlord shall not unreasonably withhold, condition or delay. Tenant shall cause such Persons to perform such exterminating in a manner that is reasonably satisfactory to Landlord.

(C) Tenant, at Tenant's expense, shall clean daily all portions of the Premises used for the storage, preparation, service or consumption of food or beverages. Tenant shall not have the right to perform any cleaning services (or any other similar facilities management services such as, for example, matron services or handyman services) in the Premises using any Person other than the cleaning contractor that Landlord has engaged from time to time to perform cleaning services in the Building for Landlord; provided, however, that (x) Landlord shall not have the right to require Tenant to use such cleaning contractor unless the rates that such cleaning contractor agrees to charge Tenant for such additional cleaning services are commercially reasonable, and (y) subject to Section 4.8 hereof, Tenant shall have the right to use Tenant's own employees for such additional cleaning services. If such cleaning contractor does not agree to charge Tenant for such additional cleaning services (or such similar services) at commercially reasonable rates, then Tenant may employ to perform such additional cleaning services (or such similar services) another cleaning contractor that Landlord approves, which approval Landlord shall not unreasonably withhold, condition or delay.

(D) Tenant shall comply with any refuse disposal program (including, without limitation, any waste recycling program) that Landlord imposes reasonably after having given Tenant reasonable advance notice of the effectiveness thereof or that is required by Requirements.

(E) Tenant shall not clean any window in the Premises, nor require, permit, suffer or allow any window in the Premises to be cleaned, in either case from the outside in violation of Section 202 of the New York Labor Law, any other Requirement, or the rules of the Board of Standards and Appeals, or of any other board or body having or asserting jurisdiction.

4.5. Water.

Landlord shall provide, through the Building Systems, hot and cold water at one (1) connection point at the perimeter of the Premises only for ordinary drinking, pantry, cleaning and lavatory purposes. Landlord shall not be required to make any installations in the Premises to distribute water within the Premises. Landlord shall not be required to repair or maintain during the Term any installations that exist in the Premises on the Commencement Date that distribute water in the Premises. Nothing contained in this Section 4.5 limits the provisions of Article 10 hereof.

4.6. Directory.

Subject to the terms of this Section 4.6, Landlord shall make available to Tenant, from and after the Commencement Date, the computerized directory in the lobby of the Building for purposes of listing the names of the personnel of Permitted Parties. Landlord shall reprogram such directory to add or delete names of the personnel or Permitted Parties promptly after Tenant's request from time to time, except that Tenant shall not have the right to make any such request more frequently than once in any particular period of ninety (90) days. Tenant shall pay to Landlord, as additional rent, a reasonable charge for any such reprogramming requested by Tenant, within thirty (30) days after the date that Landlord gives to Tenant an invoice therefor (it being understood that Tenant shall not be required to pay such charge for the initial programming of such computerized directory). If Landlord replaces the computerized directory with a standard directory in the lobby of the Building, then Tenant shall be entitled to a portion of such listings on such directory based on the proportion that the number of square feet of Rentable Area of the Premises bears to the number of square feet of Rentable Area of the Building (other than any retail portion thereof) for purposes of listing the names of the personnel of Permitted Parties as provided in this Section 4.6. Landlord reserves the right to remove the directory in the lobby of the Building at any time (without making a replacement thereof).

4.7. No Other Services.

Landlord shall not be required to provide any services to support Tenant's use and occupancy of the Premises, except to the extent expressly set forth herein.

4.8. Labor Harmony.

If (i) Tenant employs, or permits the employment of, any contractor, mechanic or laborer in the Premises, whether in connection with any Alteration or otherwise, (ii) such employment interferes or causes any conflict with other contractors, mechanics or laborers engaged in the maintenance, repair, management or operation of the Building or any adjacent property owned or managed by Landlord, and (iii) Landlord gives Tenant notice thereof (which notice may be given verbally to the person employed by Tenant with whom Landlord's representative ordinarily discusses matters relating to the Premises), then Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building promptly and shall take such other action as may be reasonably necessary to resolve such conflict.

Article 5
ELECTRICITY

5.1. Capacity.

Tenant, during the Term, shall use electricity in the Premises only in such manner that complies with the requirements of the Utility Company. Tenant shall not permit the demand for

electricity in the Premises to exceed six (6) watts of electrical capacity (demand load) per square foot of Usable Area of the Premises (exclusive of the electrical capacity that is required to operate the Building Systems) which is the electrical capacity that serves the Premises on the Commencement Date (such electrical capacity being referred to herein as the "Base Electrical Capacity").

5.2. Electricity for the Building.

Landlord shall arrange with a Utility Company to provide electricity for the Building. Landlord shall not be liable to Tenant for any failure or defect in the supply or character of electricity furnished to the Building, except to the extent that such failure or defect results from Landlord's negligence or willful misconduct. Except to the extent otherwise part of Landlord's Work, Landlord shall not be required to make any installations in the Premises to distribute electricity within the Premises. Landlord shall not be required to maintain or repair during the Term any installations that exist in the Premises on the Commencement Date that distribute electricity within the Premises.

5.3. Electric Rent Inclusion.

(A) Subject to the terms of this Section 5.3, Landlord shall furnish electricity to the Premises on a "rent inclusion" basis; that is, Landlord shall not charge Tenant (in addition to the Fixed Rent) for such electricity that Landlord furnishes to the Premises. The Fixed Rent includes an annual charge for electricity in an amount equal to Eleven Thousand Seven Hundred Thirty-Three Dollars and No Cents ($11,733.00) (such annual charge that is included in the Fixed Rent being referred to herein as the "Initial Electricity Inclusion Factor"; the Initial Electricity Inclusion Factor, as it may be changed from time to time pursuant to the provisions of this Section 5.3, being referred to as the "Electricity Inclusion Factor"; the quotient obtained by dividing (x) the Electricity Inclusion Factor at any particular time, by (y) the number of square feet of Rentable Area comprising the Premises at such time, being referred to herein as the "Electricity Inclusion Rate"). Nothing contained in this Section 5.3 shall permit Tenant to demand electric current for the Premises that exceeds the Base Electrical Capacity.

(B) The term "Average Cost per Peak Demand Kilowatt" shall mean, with respect to any particular period, the quotient obtained by dividing (x) the aggregate charge imposed by the Utility Company on Landlord for the Utility Company's making available electricity that satisfies the Building's peak demand for electricity during such period, by (y) the number of kilowatts that constituted such peak demand, as reflected on the electric meter or meters for the Building.

(C) The term "Average Cost per Kilowatt Hour" shall mean, with respect to any particular period, the quotient obtained by dividing (x) the aggregate charge imposed by the Utility Company on Landlord for the electricity supplied to the Building for such period (other than the aggregate charge imposed by the Utility Company on Landlord for the Utility Company's making available electricity that satisfies the Building's peak demand for electricity during such period), by (y) the number of kilowatt hours of electricity used in the Building during such period, as reflected on the electric meter or meters for the Building.

(D) The term "Utility Company" shall mean, collectively, the local electrical energy distribution company and the competitive energy provider with which Landlord has made arrangements to obtain electric service for the Building; provided, however, that if Landlord makes arrangements to produce electricity to satisfy all or a portion of the requirements of the Building, then (I) Utility Company shall also refer to the producer of such electricity, and (II) the charges imposed by such producer shall be included in the calculation of Average Cost per Kilowatt Hour and Average Cost per Peak Demand Kilowatt .

(E) Landlord, at any time and from time to time during the Term, shall have the right to cause a reputable and independent electrical engineer or electrical consulting firm that in either case Landlord selects reasonably (such engineer or consulting firm being referred to herein as "Landlord's Engineer") to (i) survey Tenant's electrical usage in the Premises, and (ii) estimate (x) the number of kilowatt hours of electricity used in the Premises during each calendar month (an estimate of the number of kilowatt hours of electricity used in the Premises during each calendar month being referred to herein as a "Usage Estimate"), and (y) the number of kilowatts that constitutes the peak demand for electricity in the Premises (an estimate of the number of kilowatts of peak demand in the Premises being referred to herein as a "Peak Demand Estimate"). If Landlord causes Landlord's Engineer to perform such survey and prepare such estimate, then Landlord shall give to Tenant a copy of the report prepared by Landlord's Engineer that sets forth the Usage Estimate of Landlord's Engineer and the Peak Demand Estimate of Landlord's Engineer (such report being referred to herein as the "Landlord Survey Report").

(F) If Landlord gives a Landlord Survey Report to Tenant, then Tenant shall have the right to dispute such Landlord Survey Report only by (i) giving notice thereof to Landlord on or prior to the thirtieth (30th) day after the date that Landlord gives the Landlord Survey Report to Tenant, and (ii) delivering to Landlord, on or prior to the sixtieth (60th) day after the date that Landlord gives such Landlord Survey Report to Tenant, a report (the "Tenant Survey Report"), prepared by a reputable and independent electrical engineer or electrical consulting firm that Tenant selects reasonably (such engineer or consulting firm being referred to herein as "Tenant's Engineer") that sets forth the Usage Estimate of Tenant's Engineer and the Peak Demand Estimate of Tenant's Engineer.

(G) If Tenant gives Landlord a Tenant Survey Report in accordance with the terms of Section 5.3(F) hereof, then Landlord shall cause Landlord's Engineer, and Tenant shall cause Tenant's Engineer, to consult with each other to attempt to agree on a Usage Estimate and a Peak Demand Estimate. If Landlord's Engineer and Tenant's Engineer fail to agree on a Usage Estimate and a Peak Demand Estimate within thirty (30) days after the date that Tenant gives the Tenant Survey Report to Landlord, then either party shall have the right to submit the determination of such Usage Estimate and such Peak Demand Estimate to an Expedited Arbitration Proceeding.

(H) If the Usage Estimate and the Peak Demand Estimate are determined as provided in this Section 5.3, then the Electricity Inclusion Factor (and, accordingly, the Fixed Rent) shall be increased to the extent (if any) necessary so that the Electricity Inclusion Factor equals an amount equal to the product obtained by multiplying (x) twelve (12), by (y) the sum of

(a) the product obtained by multiplying (I) the Usage Estimate, by (II) the Average Cost per Kilowatt Hour for the calendar month most recently invoiced to Landlord by the Utility Company, and (b) the product obtained by multiplying (I) the Peak Demand Estimate, by (II) the Average Cost per Peak Demand Kilowatt for the calendar month most recently invoiced to Landlord by the Utility Company. The aforesaid increase in the Electricity Inclusion Factor shall be made as of the date that Landlord gives the Landlord Survey Report to Tenant (it being understood that the parties shall make an appropriate retroactive adjustment to reflect the Electricity Inclusion Factor being adjusted as aforesaid as of the date that Landlord gives the Landlord Survey Report to Tenant). Nothing contained in this Section 5.3(H) limits the provisions of Section 5.3(I) hereof.

(I) The parties shall increase the Electricity Inclusion Factor from time to time during the Term to reflect the percentage increase in the Average Cost per Kilowatt Hour from the Average Cost per Kilowatt Hour that is in effect as of the date hereof, or as of the date of the most recent adjustment in the Electricity Inclusion Factor pursuant to Section 5.3(H) hereof, as the case may be. If the Electricity Inclusion Factor increases pursuant to this Section 5.3(I), then the Fixed Rent shall also be increased correspondingly. Nothing contained in this Section 5.3(I) limits the provisions of Section 5.3(H) hereof.

(J) Landlord shall have the right to require Tenant, at any time during the Term, to obtain electricity from Landlord for the Premises on a submetering basis as contemplated by this Section 5.4 hereof (rather than a "rent inclusion" basis as contemplated by this Section 5.3) by giving not less than sixty (60) days of advance notice thereof to Tenant (Landlord's aforesaid right being referred to herein as the "Submeter Conversion Right"). If Landlord exercises the Submeter Conversion Right, then the Fixed Rent for the remainder of the Term (from and after the date that Landlord's exercise of the Submeter Conversion Right becomes effective) shall be decreased by the Electricity Inclusion Factor that is then in effect.

5.4. Submetering.

(A) Subject to the provisions of this Section 5.4, if Landlord exercises the Submeter Conversion Right, then Landlord shall measure Tenant's demand for and consumption of electricity in the Premises using a submeter that is, or submeters that are, installed and maintained by Landlord. Landlord shall pay the cost of installing such submeter or submeters. If, at any time during the Term, Tenant performs Alterations that require modifications to the aforesaid submeter or submeters that Landlord installs, or that require a supplemental submeter or supplemental submeters, then Tenant shall perform such modification, or the installation of such supplemental submeter or submeters, at Tenant's cost, as part of the applicable Alteration.

(B) If Landlord exercises the Submeter Conversion Right, then Tenant shall pay to Landlord, as additional rent, an amount (the "Electricity Additional Rent") equal to one hundred four percent (104%) of the sum of:

(1) the product obtained by multiplying (x) the Average Cost per Peak Demand Kilowatt, by (y) the number of kilowatts that constituted the peak demand for electricity in the Premises for the applicable billing period, as registered on the submeter or submeters for the Premises, and`

(2) the product obtained by multiplying (x) the Average Cost per Kilowatt Hour, by (y) the number of kilowatt hours of electricity used in the Premises for the applicable billing period, as registered on the submeter or submeters for the Premises.

(C) Landlord shall give Tenant an invoice for the Electricity Additional Rent from time to time (but no less frequently than quarter-annually). Tenant shall pay the Electricity Additional Rent to Landlord on or prior to the thirtieth (30th) day after the date that Landlord gives to Tenant each such invoice. Tenant shall not have the right to object to Landlord's calculation of the Electricity Additional Rent unless Tenant gives Landlord notice of any such objection on or prior to the ninetieth (90th) day after the date that Landlord gives Tenant the applicable invoice for the Electricity Additional Rent. If Tenant gives Landlord a notice objecting to Landlord's calculation of the Electricity Additional Rent, as aforesaid, then Tenant shall have the right to review Landlord's submeter readings and Landlord's calculation of the Electricity Additional Rent, at Landlord's offices or, at Landlord's option, at the offices of Landlord's managing agent, in either case at reasonable times and on reasonable advance notice to Landlord. Either party shall have the right to submit a dispute regarding the Electricity Additional Rent to an Expedited Arbitration Proceeding.

5.5. Termination of Electric Service.

(A) If Landlord is required by any Requirement to discontinue furnishing electricity to the Premises as contemplated by this Lease, then this Lease shall continue in full force and effect and shall be unaffected thereby, except that from and after the effective date of any such Requirement, (x) Landlord shall not be obligated to furnish electricity to the Premises, and (y) Tenant shall not be obligated to pay to Landlord the charges for electricity as described in this Article 5 (and, accordingly, if Landlord is then providing electricity to the Premises on a "rent inclusion" basis, the Fixed Rent shall be reduced by the Electricity Inclusion Factor that is then in effect).

(B) If Landlord discontinues Landlord's furnishing electricity to the Premises pursuant to a Requirement, then Tenant shall use Tenant's diligent efforts to obtain electricity for the Premises directly from the Utility Company. Tenant shall pay directly to the Utility Company the cost of such electricity. Tenant shall have the right to use the electrical facilities that then exist in the Building to obtain such direct electric service (without Landlord having any liability or obligation to Tenant in connection therewith). Nothing contained in this Section 5.5 shall permit Tenant to use electrical capacity in the Building that exceeds the Base Electrical Capacity. Tenant, at Tenant's expense, shall make any additional installations that are required for Tenant to obtain electricity from the Utility Company.

(C) Landlord shall not discontinue furnishing electricity to the Premises as contemplated by this Section 5.5 (to the extent permitted by applicable Requirements) until Tenant obtains electric service directly from the Utility Company.

Article 6
INITIAL CONDITION OF THE PREMISES

6.1. Condition of Premises.

Subject to Section 8.1 hereof and Section 6.2 hereof, (a) Tenant shall accept possession of the Premises in the condition that exists on the Commencement Date "as is," and (b) Landlord shall have no obligation to perform any work or make any installations in order to prepare the Building or the Premises for Tenant's occupancy. Except as expressly set forth herein, Landlord has made no representations or promises with respect to the Building, the Real Property or the Premises. Promptly following Substantial Completion of Landlord's Work, Landlord shall deliver to Tenant a Form ACP-5 covering the Premises.

6.2. Landlord's Work.

(A) Subject to Section 6.3 hereof, Landlord shall perform, at Landlord's expense, the work (such work being collectively referred to herein as "Landlord's Work") to construct the Premises as described on the plans and specifications based on the Initial Plans, as and to the extent approved by Landlord subject to and in accordance with Article 3 hereof (the "Landlord's Work Plans") prepared by Tenant, at Tenant's expense, which are based on the Initial Plans to the extent approved by Landlord subject to the provisions of Article 3 hereof. On or before December 15, 2006, Tenant shall prepare, at Tenant's expense, and provide Landlord with six (6) copies of the plans and specifications for Landlord's Work (the "Initial Plans") (including, without limitation, layout, architectural, mechanical and structural drawings, to the extent applicable) in CADD format that contain sufficient detail for Landlord and Landlord's consultants to reasonably assess the proposed Landlord's Work and which are based on the Preliminary Drawing No. SP-1, dated November 7, 2006, prepared by Spin Design, Inc., a copy of which is attached hereto as Exhibit "6.2". Nothing contained herein shall obligate Landlord to install furniture systems, furniture, telecommunications wiring or computer systems even if the same are shown on the Initial Plans or Landlord's Work Plans. Notwithstanding anything contained herein to the contrary, in the event that Substantial Completion shall be delayed by reason of (i) failure by Tenant to deliver the Initial Plans to Landlord on or before December 15, 2006, (ii) Tenant's delay in revising or supplying additional information with respect to the Initial Plans if requested by Landlord, (iii) any acts or omissions of Tenant including, without limitation, the Early Access, any changes or change orders to the Initial Plans or Landlord's Work Plans, (iv) Unavoidable Delays, (v) items of Landlord's Work that are Long Lead Work, (vi) any failure of Tenant to make payment due under this Article 6 (with the understanding that Landlord shall not be obligated to perform items of Landlord's Work to the extent Tenant fails to timely pay therefor as required hereunder, (vii) Landlord's Work requiring materials that are not Building standard or require finishes or fitting in excess of Building standard and (viii) Tenant's failure to respond to review the bids referred to in Section 6.3 hereof following receipt (the aggregate period of the delays referred to in clauses (i) through (viii) above being referred to herein as "Tenant Delays"), then the Commencement Date and Substantial Completion of Landlord's Work shall be deemed to have occurred on the date it would have but for Tenant Delays. Landlord's Work shall be performed and completed in a good and workmanlike, in accordance with all applicable Requirements. Landlord shall notify Tenant (which notice may be

oral) if any items of Landlord's Work are Long Lead Work. Landlord shall transfer to Tenant any warranties received by Landlord in connection with Landlord's Work provided that such transfer shall not void such warranties.

(B) Landlord shall have the right to delegate Landlord's obligations to perform all or any portion of the Landlord's Work to an Affiliate of Landlord (it being understood, however, that Landlord's delegating such obligations to an Affiliate of Landlord shall not diminish Landlord's liability for the performance of Landlord's Work in accordance with the terms of this Section 6.2. Landlord shall also have the right to assign to such Affiliate of Landlord the rights of Landlord hereunder to receive from Tenant the payments for the performance of the portions of Landlord's Work (it being understood that if (i) Landlord so assigns such rights to such Affiliate of Landlord, and (ii) Landlord gives Tenant notice thereof, then Tenant shall pay directly to such Affiliate any such amounts otherwise due and payable to Landlord hereunder). Landlord shall not be required to maintain or repair during the Term any items of Landlord's Work except as otherwise expressly provided in this Lease, it being agreed that Landlord shall make available to Tenant all guaranties or warranties received by Landlord in connection with Landlord's Work to the extent such guaranties or warranties shall not be rendered invalid thereby.

(C) For purposes hereof, the term "Long Lead Work" shall mean any item which is not a stock item and must be specially manufactured, fabricated or installed or is of such an unusual, delicate or fragile nature that there is a substantial risk that (i) there will be a delay in its manufacture, fabrication, delivery or installation, or (ii) after delivery of such item will need to be reshipped or redelivered or repaired so that, in Landlord's reasonable judgment, the item in question cannot be completed when the standard items are completed even though the items of Long Lead Work in question are (1) ordered together with the other items required and (2) installed or performed (after the manufacture or fabrication thereof) in order and sequence that such Long Lead Work and other items are normally installed or performed in accordance with good construction practice. In addition, Long Lead Work shall include any standard item, which in accordance with good construction practice should be completed after the completion of any item of work in the nature of the items described in the immediately preceding sentence.

6.3. Tenant's Contribution to the Cost of Landlord's Work.

(A) Subject to the terms of this Section 6.2(A), Tenant shall pay to Landlord, as additional rent, an amount equal to the excess, if any, of (I) the Work Cost, over (II) Ninety-Seven Thousand Seven Hundred Seventy-Five Dollars and No Cents ($97,775.00) (the amount of any such excess being referred to herein as "Tenant's Work Cost"). The term "Work Cost" shall mean the sum of (x) the "hard" costs that Landlord incurs in performing Landlord's Work and (y) the "soft" costs that Landlord incurs in performing Landlord's Work, such as architects' and engineers' fees, permit costs, and filing fees, and the cost of electricity consumed at the Premises during the performance of Landlord's Work. In the event that any change order or a field condition that requires a change to Landlord's Work results in an increase of Tenant's Work Cost, Landlord shall have the right before proceeding with such change to require Tenant (x) to agree in writing to such increase in cost within two (2) Business Days from the date of Landlord's request (which request may be oral) for Tenant's agreement and (y) to pay such

increase within thirty (30) days of Landlords invoice therefor. If Tenant shall fail or refuse to so agree to and/or pay for such increase then Landlord shall have the right (but not the obligation) to either refuse to perform such change order and continue the performance of Landlord's Work without making the changes thereto contemplated by such change order or to revise the scope of Landlord's Work so as not to require a change resulting from a field condition.

(B) Landlord shall submit to at least three (3) reputable construction companies as reasonably designated by Landlord, with reasonable promptness after the date hereof, a bid package that describes Landlord's Work. Landlord shall use Landlord's diligent efforts to obtain from each of such construction companies a *bona fide* bid to perform Landlord's Work. Landlord shall have the right to request that the construction companies submit alternative bids, assuming, for example, that (a) the construction company acts as a general contractor for a fixed price, (b) the construction company acts as a construction manager for a construction management fee (without providing a guaranteed maximum price), and (c) the construction company acts as a construction manager for a construction management fee and provides a guaranteed maximum price. Landlord shall advise Tenant by facsimile sent to Randy Gottfried at facsimile number (415) 247-8801 of Landlord's receipt of the bids from the aforesaid construction companies. Landlord shall provide Tenant with two (2) Business Days to review such bids and to advise Landlord of any changes to Landlord's Work Plans in connection with such bids. If Tenant shall fail to so advise Landlord within such two (2) Business Day period then Landlord shall have the right to commence and perform Landlord's Work without any such changes thereto. Landlord shall have the right to let the construction contract to the lowest responsible bidder (with the understanding that Landlord shall have the right to exercise Landlord's reasonable business judgment in selecting the form of contractual arrangement for the construction contract) (the aforesaid construction contract that Landlord lets for Landlord's Work being referred to herein as the "Construction Contract").

(C) Landlord shall have the right to give to Tenant, after Landlord lets the Construction Contract, a notice of Landlord's reasonable estimate of the Work Cost and the Tenant's Work Cost that derives therefrom (such notice being referred to herein as the "Work Estimate Notice"). Tenant shall pay to Landlord, within thirty (30) days after the date that Landlord gives such notice to Tenant, an amount equal to Tenant's Work Cost as reflected in the Work Estimate Notice (any such payment that Tenant makes to Landlord being referred to herein as the "Work Estimate Payment"). Landlord shall give to Tenant, within sixty (60) days after the date that Landlord Substantially Completes Landlord's Work, a notice that sets forth the Work Cost therefor and the Tenant's Work Cost that derives therefrom (such notice being referred to herein as the "Final Cost Notice"). Tenant shall pay to Landlord, within thirty (30) days after the date that Landlord gives the Final Cost Notice to Tenant, an amount equal to the excess (if any) of (I) Tenant's Work Cost, as reflected in the Final Cost Notice, over (II) the Work Estimate Payment (if any). Landlord shall pay to Tenant, within ten (10) days after the date that Landlord gives the Final Cost Notice to Tenant, an amount equal to the excess (if any) (I) the Work Estimate Payment, over (II) Tenant's Work Cost as reflected in the Final Cost Notice.

Article 7
ALTERATIONS

7.1. General.

(A) Except as otherwise provided in this Article 7, Tenant shall not make any Alterations without Landlord's prior consent.

(B) Tenant may make Decorative Alterations without Landlord's prior consent.

(C) The term "Alterations" shall mean alterations, installations, improvements, additions or other physical changes in each case in or to the Premises that are made by or on behalf of Tenant or any other Person claiming by, through or under Tenant; provided, however, that Alterations shall not include Landlord's Work.

(D) The term "Decorative Alterations" shall mean Alterations that constitute merely decorative changes to the Premises (such as, for example, the installation of carpeting or other customary floor coverings or painting or the installation of customary wall coverings) that in each case do not involve electrical, plumbing or mechanical connections.

(E) The term "Initial Alterations" shall mean the Alterations to prepare the Premises for Tenant's initial occupancy.

(F) The term "Specialty Alterations" shall mean Alterations that (i) perforate a floor slab in the Premises or a wall the encloses the core of the Building, (ii) require the reinforcement of a floor slab in the Premises, (iii) consist of the installation of a raised flooring system, (iv) consist of the installation of a vault or other similar device or system that is intended to secure the Premises or a portion thereof in a manner that exceeds the level of security that a reasonable Person uses for ordinary office space, or (v) involve material plumbing connections (such as kitchens and executive bathrooms outside of the Building core).

(G) The term "Substantial Completion" or words of similar import shall mean that the applicable work has been substantially completed in accordance with the applicable plans and specifications, if any, it being agreed that (i) such work shall be deemed substantially complete notwithstanding the fact that minor or insubstantial details of construction or demolition, mechanical adjustment or decorative items remain to be performed, and (ii) with respect to work that is being performed in the Premises, such work shall be deemed substantially complete only if the incomplete elements thereof do not interfere materially with Tenant's use and occupancy of the Premises for the conduct of business.

(H) The term "Tenant's Property" shall mean Tenant's personal property (other than fixtures), including, without limitation, Tenant's movable fixtures, movable partitions, telephone equipment, computer equipment, furniture, furnishings and decorations.

7.2. Basic Alterations.

(A) Subject to the terms of Section 7.1(B) hereof and Section 7.14 hereof, Landlord shall not unreasonably withhold, condition or delay its consent to any proposed Alteration, provided that such Alteration (i) does not materially affect the external aesthetic appearance of the Building at street level, (ii) does not affect adversely any part of the Building other than the Premises, (iii) does not require any alterations, installations, improvements, additions or other physical changes to be performed in or made to any portion of the Building other than the Premises, (iv) does not affect adversely the proper functioning of any Building System, (v) does not reduce the value or utility of the Building, (vi) does not affect adversely the structure of the Building, (vii) does not impede Landlord's access to Reserved Areas in any material respect, and (viii) does not violate or render invalid the certificate of occupancy for the Building or any part thereof (any Alteration that satisfies the requirements described in clauses (i) through (viii) above being referred to herein as a "Basic Alteration").

(B) Nothing contained in this Section 7.2 limits the provisions of Section 7.12 hereof.

7.3. Approval Process.

(A) Tenant shall not perform any Alteration (other than Decorative Alterations) unless Tenant first gives to Landlord a notice thereof (an "Alterations Notice") that (i) refers specifically to this Section 7.3, (ii) includes six (6) copies of the plans and specifications for the proposed Alteration (including, without limitation, layout, architectural, mechanical and structural drawings, to the extent applicable) in CADD format that contain sufficient detail for Landlord and Landlord's consultants to reasonably assess the proposed Alteration, and (iii) indicates whether Tenant considers the proposed Alterations to constitute a Basic Alteration.

(B) Landlord shall have the right to object to a proposed Alteration only by giving notice thereof to Tenant, and setting forth in such notice a statement in reasonable detail of the grounds for Landlord's objections.

(C) Landlord shall have the right to (a) disapprove any plans and specifications for a particular Alteration in part, (b) reserve Landlord's approval of items shown on such plans and specifications pending Landlord's review of other plans and specifications that Tenant is otherwise required to provide to Landlord hereunder, and (c) condition Landlord's approval of such plans and specifications upon Tenant's making revisions to the plans and specifications or supplying additional information (which Landlord shall have the right to request only reasonably if the applicable Alteration constitutes a Basic Alteration). Nothing contained in this Section 7.3(C) limits the provisions of Section 7.2 hereof or Section 7.3(B) hereof.

(D) Tenant acknowledges that (i) the review of plans or specifications for an Alteration by or on behalf of Landlord, or (ii) the preparation of plans or specifications for an Alteration by Landlord's architect or engineer (or any architect or engineer designated by Landlord), is solely for Landlord's benefit, and, accordingly, Landlord makes no representation or warranty that such plans or specifications comply with any Requirements or are otherwise adequate or correct.

7.4. Performance of Alterations.

(A) Tenant, at Tenant's expense, prior to the performance of any Alteration, shall obtain all permits, approvals and certificates required by any Governmental Authorities in connection therewith. Landlord shall have the right to require Tenant to make all filings with Governmental Authorities to obtain such permits, approvals and certificates using an expeditor designated reasonably by Landlord (provided that the charges imposed by such expeditor are commercially reasonable). Landlord shall execute any applications for any permits, approvals or certificates required to be obtained by Tenant in connection with any permitted Alteration (provided that the applicable Requirement requires Landlord to execute such application) within ten (10) Business Days after Tenant's request from time to time and shall otherwise cooperate reasonably with Tenant in connection therewith. Tenant shall not have the right to require Landlord to so execute such applications prior to the date that Landlord approves the applicable Alteration. Tenant shall reimburse Landlord for any reasonable Out-of-Pocket Costs, including, without limitation, reasonable attorneys' fees and disbursements, that Landlord incurs in so executing such applications and cooperating with Tenant, within thirty (30) days after the date that Landlord gives to Tenant an invoice therefor from time to time.

(B) Prior to performing any Alteration, Tenant shall also furnish to Landlord duplicate original policies of, or, at Tenant's option, certificates of, (1) worker's compensation insurance in amounts not less than the statutory limits (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors, in connection with such Alteration), and (2) commercial general liability insurance (including property damage and bodily injury coverage), in each case in customary form, and in amounts that are not less than Five Million Dollars ($5,000,000) with respect to general contractors and One Million Dollars ($1,000,000) with respect to subcontractors, naming the Landlord Indemnitees as additional insureds; provided, however, that on each anniversary of the Commencement Date, the aforesaid amounts shall be adjusted to reflect the percentage increase in the Consumer Price Index from the Consumer Price Index that is in effect on the Commencement Date. Landlord acknowledges that Tenant's contractors and subcontractors may satisfy the liability insurance requirements as set forth in this Section 7.4(B) with an umbrella insurance policy if such umbrella insurance policy contains an aggregate per location endorsement that provides the required level of protection for the Premises.

(C) Within thirty (30) days after the Substantial Completion of each Alteration (other than Decorative Alterations), Tenant, at Tenant's expense, shall (1) obtain certificates of final approval for each Alteration to the extent required by any Governmental Authority, (2) furnish Landlord with copies of such certificates, and (3) give to Landlord copies of the "as- built" plans and specifications for such Alterations in CADD format.

(D) All Alterations (other than Decorative Alterations) shall be made and performed substantially in accordance with the plans and specifications therefor as approved by Landlord. All Alterations shall be made and performed in accordance with all Requirements and he Rules. All materials and equipment incorporated in the Premises as a result of any Alterations shall be first-quality.

7.5. Financial Integrity.

(A)

(1) Tenant shall not permit any materials or equipment that are incorporated as fixtures into the Premises in connection with any Alterations to be subject to any lien, encumbrance, chattel mortgage or title retention or security agreement.

(2) Subject to the terms of Section 7.5(A)(3) hereof, Tenant shall not make any Alteration at a cost for labor and materials (as reasonably estimated by Landlord's architect, engineer or contractor) in excess of Ten Thousand Dollars ($10,000), either individually or in the aggregate with any other Alterations constructed in any particular period of twelve (12) consecutive months, prior to Tenant's delivering to Landlord a performance bond and a payment bond that covers Tenant's obligation to pay the applicable contractor and the applicable contractor's obligation to pay its subcontractors (in either case issued by a surety company and in form reasonably satisfactory to Landlord), each in an amount equal to one hundred twenty percent (120%) of such estimated cost; provided, however, that on each anniversary of the Commencement Date, the aforesaid amount of Ten Thousand Dollars ($10,000) shall be adjusted to reflect the percentage increase in the Consumer Price Index from the Consumer Price Index that is in effect on the Commencement Date.

(3) If Tenant is obligated to deliver a performance bond and a payment bond to Landlord as provided in Section 7.5(A)(2) hereof, then Tenant shall have the right to deposit with Landlord an amount in cash equal to the amount of such bonds that is otherwise required by Section 7.5(A)(2) hereof (such amount in cash being referred to herein as the "Work Deposit"). If Tenant deposits the Work Deposit with Landlord, then (i) Tenant shall not have the obligation to deliver to Landlord the performance bond and the payment bond as provided in Section 7.5(A)(2) hereof for the applicable Alteration, and (ii) Landlord shall disburse the Work Deposit (or the applicable portion thereof) to Tenant or Tenant's designee from time to time, within ten (10) days after Tenant's request therefor (but in no event more frequently than once during any particular calendar month), provided that Tenant delivers to Landlord, simultaneously with each such disbursement, waivers of lien from all contractors, subcontractors, materialmen, architects, engineers and other Persons who may file a lien against the Real Property for material theretofore supplied, or labor or services theretofore performed, in connection with the applicable Alterations. If any mechanic's lien is filed against the Real Property for work claimed to have been done for, or for materials claimed to have been furnished to, Tenant (or any Person claiming by, through or under Tenant), then Landlord shall have the right (but not the obligation) to use the Work Deposit to discharge such mechanic's lien. Nothing contained in this Section 7.5(A)(3) diminishes Tenant's obligations under Section 7.5(A)(4) hereof. Landlord shall pay to Tenant any remaining balance of the Work Deposit for a particular Alteration within ten (10) days after the date that (x) Tenant has Substantially Completed the applicable Alteration, and (y) Tenant has delivered to Landlord waivers of lien from all contractors, subcontractors, materialmen, architects, engineers and other Persons who may file a lien against the Real Property in connection with such Alterations.

(4) Tenant shall discharge of record any mechanic's lien that is filed against the Real Property for work claimed to have been done for, or for materials claimed to have been furnished to, Tenant (or any Person claiming by, through or under Tenant) within ten (10) days after Tenant has received notice thereof, at Tenant's expense, by payment or filing the bond required by law. Nothing contained in this Section 7.5(A)(4) (x) limits Tenant's right to challenge the claim that is made by the Person that files a mechanic's lien, provided that Tenant discharges such lien of record as aforesaid, or (y) obligates Tenant to discharge of record any mechanic's lien that derives from Landlord's acts or omissions.

(B) Subject to the terms of this Section 7.5(B), within thirty (30) days after the Substantial Completion of any Alterations (other than Decorative Alterations), Tenant shall deliver to Landlord: (i) waivers of lien from all contractors, subcontractors, materialmen, architects, engineers and other Persons who may file a lien against the Real Property in connection with such Alterations, and (ii) a certificate from a licensed architect that Tenant engages in accordance with the terms of this Article 7 certifying that, in his or her opinion, the Alterations have been Substantially Completed in substantial accordance with the final detailed plans and specifications for such Alterations as approved by Landlord. Tenant shall not be required to deliver to Landlord any waiver of lien if Tenant is disputing in good faith the payment which would otherwise entitle Tenant to such waiver, provided that (x) Tenant keeps Landlord advised in a timely fashion of the status of such dispute and the basis therefor, and (y) Tenant delivers to Landlord the waiver of lien promptly after the date that the dispute is settled. Nothing contained in this Section 7.5(B), however, shall relieve Tenant from complying with the provisions of Section 7.5(A)(4) hereof.

7.6. Effect on Building.

If (i) as a result of any Alterations, any alterations, installations, improvements, additions or other physical changes are required to be performed in or made to any portion of the Building other than the Premises in order to comply with any Requirements (any such alterations, installations, improvements, additions or changes being referred to herein as a "Building Change"), and (ii) such Building Change would not otherwise have had to be performed or made pursuant to applicable Requirements at such time, then (x) Landlord may perform such Building Change, and (y) Tenant shall pay to Landlord the reasonable Out-of-Pocket Costs thereof, as additional rent, within thirty (30) days after Landlord gives to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein. Landlord shall seek to accomplish any such Building Change that minimizes the cost thereof to the extent reasonably practicable. Landlord shall give Tenant reasonable advance notice of Landlord's performance of the Building Change, and shall consult reasonably from time to time with Tenant in connection therewith (with the understanding that such consultations shall include, without limitation, Landlord's providing Tenant with the information that Landlord has in its possession regarding the expected cost of such Building Change).

7.7. Time for Performance of Alterations.

If the performance of any Alteration by or on behalf of Tenant, or any other Person claiming by, through or under Tenant, during Building Hours interferes with or interrupts the maintenance, repair, management or operation of the Building in any material respect or interferes with or interrupts the use and occupancy of the Building by other tenants in the Building in any material respect, then Landlord shall have the right to require Tenant to perform such Alteration at other times that Landlord reasonably designates from time to time.

7.8. Removal of Alterations and Tenant's Property.

On or prior to the Expiration Date, Tenant, at Tenant's expense, shall remove Tenant's Property from the Premises, and, at Tenant's option, Tenant also may remove, at Tenant's expense, all Alterations made by or on behalf of Tenant or any other Person claiming by, through or under Tenant; provided, however, in any case, that Tenant shall repair and restore in a good and workmanlike manner to good condition any damage to the Premises or the Building caused by such removal. Landlord, upon notice to Tenant given at least sixty (60) days prior to the Expiration Date, may require Tenant to remove any Specialty Alterations (other than any such alterations that were installed as part of Landlord's Work) from the Premises, and to repair and restore in a good and workmanlike manner to good condition any damage to the Premises or the Building caused by such removal. If (x) the Expiration Date is not the Fixed Expiration Date, and (y) Landlord gives a notice to Tenant on or prior to the thirtieth (30th) day after the Expiration Date to the effect that Landlord does not wish to retain a particular Specialty Alteration, then Tenant shall pay to Landlord the reasonable Out-of-Pocket Costs that are incurred by Landlord in so removing such Specialty Alterations, and in so repairing and restoring any such damage to the Building or the Premises, within thirty (30) days after Landlord submits to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein. Any Alterations that remain in the Premises after the Expiration Date shall be deemed to be the property of Landlord (with the understanding, however, that Tenant shall remain liable to Landlord for any default of Tenant in respect of Tenant's obligations under this Section 7.8).

7.9. Contractors and Supervision.

(A) All Alterations (other than Decorative Alterations) shall be performed only under the supervision of a licensed architect that Landlord approves, which approval Landlord shall not unreasonably withhold, condition or delay.

(B) Subject to the provisions of this Section 7.9(B), Tenant shall perform all Alterations (other than Decorative Alterations) using contractors, subcontractors, engineers and mechanics that in each case Landlord designates from time to time and charge commercially reasonable prices. Landlord shall give Tenant a notice containing a list of such contractors, such subcontractors and such engineers that Landlord designates promptly after Tenant's request therefor from time to time (it being understood that Landlord shall include in such list the names of at least three (3) subcontractors for each trade and at least three (3) general contractors).

7.10. Landlord's Expenses.

Tenant shall pay to Landlord, from time to time, as additional rent, the reasonable Out-of-Pocket Costs incurred by Landlord in connection with an Alteration (other than Decorative Alterations) (including, without limitation, the reasonable Out-of-Pocket Costs that Landlord incurs in reviewing the plans and specifications for such Alterations, and inspecting the progress of such Alterations), within thirty (30) days after Landlord gives Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein.

7.11. Pantry.

Landlord shall not unreasonably withhold, condition or delay Landlord's approval of an Alteration consisting of the installation of a pantry in the Premises for the purpose of warming food for Tenant's personnel and business guests (but not for use as a public restaurant). Any vending machines that Tenant installs in the Premises and that involve plumbing connections shall have a waterproof pan located thereunder, connected to a drain.

7.12. Window Coverings.

Tenant shall install on the windows of the Premises only the curtains, blinds, shades or screens that Landlord approves, which approval Landlord shall not unreasonably withhold, condition or delay (it being understood that Landlord, in considering whether to grant such approval, shall have the right to take into account the impact of Tenant's proposed installation on the exterior appearance of the Building).

7.13. Air-Cooled HVAC Installations.

Except to the extent otherwise part of Landlord's Work, Tenant shall not have the right to install a supplementary HVAC system for the Premises that requires vents or louvers to be installed on the exterior of the Building.

7.14. Sprinkler Installation

Subject to the terms of this Section 7.14, if Tenant, at any time during the Term, makes an Alteration that involves the removal of all or substantially all of the finished ceiling in the Premises (or a material portion thereof) (any such Alteration being referred to herein as a "Ceiling Alteration"), then Tenant, at Tenant's cost, shall install in the plenum above the finished ceiling in the Premises (or such portion thereof), as part of the Ceiling Alteration, the piping and sprinkler heads for a fire suppression system in the Premises (or such portion thereof) in accordance with standards that are employed customarily in designing and installing such fire suppression systems in first-class office buildings (such piping and sprinkler heads being referred to herein as a "Sprinkler Distribution System"). Tenant's installation of a Sprinkler Distribution System shall itself constitute an Alteration for purposes of this Article 7. Landlord shall have the right to condition Landlord's approval of the Ceiling Alteration upon Tenant's performance of the Alteration for the installation of a Sprinkler Distribution System. If Tenant makes a Ceiling Alteration, then Tenant shall install a Sprinkler Distribution System as provided in this Section 7.14 regardless of whether (x) a Requirement then requires a Sprinkler Distribution System to be

installed, or (y) a standpipe system exists in the core of the Building to which Tenant has access to attach the Sprinkler Distribution System. If (x) Tenant installs a Sprinkler Distribution System as provided in this Section 7.14, and (y) such standpipe system exists in the Building (either at the time that Tenant installs the Sprinkler Distribution System or at a subsequent time during the Term), then Tenant, at Tenant's cost, shall connect the Sprinkler Distribution System to such standpipe system as an Alteration. Nothing contained in this Section 7.14 obligates Tenant to (x) perform a Ceiling Alteration in the Premises, or (y) install a Sprinkler Distribution System to the extent that a Sprinkler Distribution System is already installed in the Premises (or the applicable portion thereof). Nothing contained in this Section 7.14 diminishes Tenant's obligation to make Alterations in the Premises to the extent required by Section 11.1 hereof.

Article 8
REPAIRS

8.1. Landlord's Repairs.

Subject to the terms of this Article 8 and to Article 15 hereof and Article 16 hereof, Landlord shall maintain and make all necessary repairs to and replacements of (i) the Building Systems that service the Premises, (ii) the structural portions of the Building, (iii) the roof of the Building, (iv) the sidewalks that are adjacent to the Building, (v) the exterior walls of the Premises, (vi) the windows of the Premises, (vii) the public portions of the Building, and (viii) the Premises (to the extent that the necessity for such repair derives from a Work Access) in each case in conformity with the standards that are customary for first-class office buildings in the vicinity of the Building. Nothing contained in this Section 8.1 requires Landlord to maintain or repair the systems within the Premises that distribute within the Premises electricity, HVAC or water.

8.2. Tenant's Repairs.

(A) Subject to the terms of this Article 8 and to Article 15 hereof and Article 16 hereof, Tenant, at Tenant's expense, shall take good care of the Premises (including, without limitation, (i) the fixtures and equipment that are installed in the Premises on the Commencement Date, (ii) the Alterations, and (iii) the systems within the Premises that distribute within the Premises electricity, HVAC or water). Tenant shall make all repairs to the Premises as and when needed to preserve the Premises in good condition, except for reasonable wear and tear, obsolescence and damage for which Tenant is not responsible pursuant to the provisions of Article 15 hereof. Nothing contained in this Section 8.2(A) shall require Tenant to perform any repairs to the Premises that are Landlord's obligation to perform under Section 8.1 hereof. All repairs made by Tenant as contemplated by this Section 8.2(A) shall be in conformity with the standards that are customary for first-class office buildings in the vicinity of the Building. Tenant shall perform such repairs in accordance with the terms of Article 7 hereof.

(B) Subject to the terms of this Section 8.2(B), if (a) Landlord gives Tenant a notice that Tenant has failed to perform a repair that this Section 8.2 obligates Tenant to perform, and (b) Tenant fails to proceed with reasonable diligence to make such repair within twenty (20) days after the date that Landlord gives such notice to Tenant (or such shorter period that

Landlord designates in such notice to the extent reasonably required under the circumstances to alleviate an imminent threat to persons or property), then (i) Landlord may make such repair, and (ii) Tenant shall pay to Landlord, as additional rent, the reasonable Out-of-Pocket Expenses thereof, with interest thereon at the Applicable Rate calculated from the date that Landlord incurs such expenses, within thirty (30) days after Landlord gives Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein. If (x) a particular repair that this Section 8.2 obligates Tenant to perform cannot be performed with reasonable diligence during the aforesaid period of twenty (20) days (or during such shorter period that Landlord designates, as the case may be), and (y) Tenant commences such repair during such period of twenty (20) days (or such shorter period that Landlord designates), then Landlord shall not have the right to perform such repair on Tenant's behalf as otherwise described in this Section 8.2(B) unless Tenant fails to pursue such repair with reasonable continuity and diligence. Nothing contained in this Section 8.2(B) limits the remedies that are available to Landlord after the occurrence of an Event of Default.

8.3. Certain Limitations.

(A) Tenant, at Tenant's expense, shall repair in accordance with the terms set forth in Section 8.2 hereof all damage to the Premises, or to any other part of the Building or the Building Systems, in each case to the extent resulting from the negligence or willful misconduct of, or Alterations made by, Tenant or any other Person claiming by, through or under Tenant; provided, however, that Landlord shall have the right to perform any such repair to the extent that such repair affects the structure of the Building or such repair affects any Building System, in which case Tenant shall pay to Landlord an amount equal to the Out-of-Pocket Costs that Landlord reasonably incurs in performing such repair, on or prior to the thirtieth (30th) day after the date that Landlord gives to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein. Nothing contained in this Section 8.3(A) limits the provisions of Section 14.3 hereof.

(B) Landlord, at Landlord's expense, shall repair promptly all damage to the Premises that results from Landlord's negligence or willful misconduct. Nothing contained in this Section 8.3(B) limits the provisions of Section 14.3 hereof.

8.4. Overtime.

Subject to the provisions of this Section 8.4, Landlord shall have no obligation to employ contractors or labor at overtime or premium pay rates in connection with Landlord's making repairs as contemplated by this Article 8. If Landlord's repair (or the condition that Landlord is required to repair) (i) denies Tenant from having reasonable access to the Premises, (ii) threatens the health or safety of any occupant of the Premises, or (iii) materially interferes with Tenant's ability to conduct its business in the Premises during Tenant's ordinary business hours, then Landlord shall employ contractors or labor at overtime or premium pay rates to the extent reasonably necessary. Landlord, at Tenant's request, shall also perform any other repair that this Article 8 requires Landlord to perform, to the extent reasonably practicable, using contractors or labor at overtime or premium pay rates, in which case Tenant shall pay to Landlord, as additional rent, an amount equal to the excess of (x) the Out-of-Pocket Costs that Landlord incurs in

performing such repair (using contractors or labor at overtime or premium pay rates), over (y) the Out-of-Pocket Costs that Landlord would have incurred in performing such repair without using contractors at overtime or premium pay rates, within thirty (30) days after the date that Landlord gives to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein (it being understood that if more than one tenant requests that Landlord perform any such repair using contractors or labor at overtime or premium pay rates, then Landlord shall allocate such costs among such tenants equitably).

Article 9
ACCESS: LANDLORD'S CHANGES

9.1. Access.

(A) Subject to the terms of this Lease, Tenant, during the Term, shall have access to the Premises at all times, twenty-four (24) hours per day, every day of the year.

(B) Subject to the terms of this Section 9.1(B), Landlord and Landlord's designees may enter the Premises at reasonable times upon reasonable prior notice to Tenant (which notice may be given verbally to the person employed by Tenant with whom Landlord's representative ordinarily discusses matters relating to the Premises) to (i) examine the Premises, (ii) show the Premises to prospective tenants during the last twelve (12) months of the Term, (iii) show the Premises to prospective purchasers or master lessees of Landlord's interest in the Real Property, (iv) show the Premises to Mortgagees or Lessors (or prospective Mortgagees or Lessors), (v) gain access to Reserved Areas, or (vi) make repairs, alterations, improvements, additions or restorations that (I) Landlord is required to make pursuant to the terms of this Lease (including, without limitation, Landlord's Work), or (II) are reasonably necessary in connection with the maintenance, repair, or operation of the Real Property (Landlord's entry upon the Premises to perform such repairs, alterations, improvements, additions or restorations being referred to herein as a "Work Access"). Landlord shall not be required to give Tenant advance notice of the entry by Landlord or Landlord's designees into the Premises as contemplated by this Section 9.1(B) to the extent necessary by reason of the occurrence of an emergency (with the understanding, however, that Landlord shall give Tenant notice of such emergency access as promptly as reasonably practicable thereafter). Landlord, in connection with a Work Access, shall have the right to bring into the Premises, and, to the extent required, store in the Premises in a reasonable manner for the duration of the Work Access, the materials and tools that Landlord reasonably requires to perform the applicable repair, alteration, improvement, addition or restoration. Landlord shall have no liability to Tenant for any loss sustained by Tenant by reason of Landlord's entry upon the Premises; provided, however, that (w) nothing contained in this Section 9.1(B) diminishes Landlord's obligation to repair the Premises (to the extent that the necessity for such repair derives from a Work Access) as provided in Section 8.1 hereof, and (x) subject to Section 14.3 hereof, Landlord shall remain liable to Tenant for personal injury or property damage that derives from Landlord's negligence or wilful misconduct in connection with any such entry upon the Premises.

9.2. Landlord's Obligation to Minimize Interference.

(A) Subject to Section 9.2(B) hereof, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of the Premises in connection with Landlord's accessing the Premises as contemplated by Section 9.1 hereof.

(B) Subject to the provisions of this Section 9.2(B), Landlord shall have no obligation to employ contractors or labor at overtime or premium pay rates in connection with a Work Access as contemplated by this Article 8. If a Work Access (i) denies Tenant from having reasonable access to the Premises, (ii) threatens the health or safety of any occupant of the Premises, or (iii) materially interferes with Tenant's ability to conduct its business in the Premises during Tenant's ordinary business hours, then Landlord shall employ contractors or labor at overtime or premium pay rates to the extent reasonably necessary. Landlord, at Tenant's request, shall also conduct a Work Access, to the extent reasonably practicable, using contractors or labor at overtime or premium pay rates, in which case Tenant shall pay to Landlord, as additional rent, an amount equal to the excess of (x) the Out-of-Pocket Costs that Landlord incurs in conducting such Work Access (using contractors or labor at overtime or premium pay rates), over (y) the Out-of-Pocket Costs that Landlord would have incurred in conducting such Work Access without using contractors at overtime or premium pay rates, within thirty (30) days after the date that Landlord gives to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein (it being understood that if more than one tenant requests that Landlord conduct such Work Access using contractors or labor at overtime or premium pay rates, then Landlord shall allocate such costs among such tenants equitably).

9.3. Reserved Areas.

The Premises shall not include (i) the demising walls of the Premises (except for the interior face thereof), (ii) the walls of the Premises that constitute the curtain wall for the Building (except for the interior face thereof), (iii) balconies, terraces and roofs that are adjacent to the Premises, and (iv) space that is used for Building Systems or other purposes associated with the operation, repair, management or maintenance of the Real Property, including, without limitation, shafts, stacks, stairways, chutes, pipes, conduits, ducts, fan rooms, mechanical rooms, plumbing facilities, and service closets (the areas described in clauses (iii) and (iv) above being collectively referred to herein as the "Reserved Areas").

9.4. Ducts. Pipes and Conduits.

Landlord shall have the right to install, use and maintain ducts, cabling, pipes and conduits in and through the Premises, provided that (a) such ducts, cabling, pipes and conduits are concealed within or above partitioning columns, walls or ceilings, except that if such ducts, cabling, pipes or conduits are installed in areas that are utility areas (such as storage areas, mailrooms or mud rooms), then such ducts, cabling, pipes or conduits may also be installed on partitioning walls, columns or ceilings, (b) such ducts, cabling, pipes and conduits do not reduce the usable area of the Premises by more than a de minimis amount, and (c) Landlord installs such ducts, cabling, pipes and conduits in a manner that minimizes, to the extent reasonably practicable, any adverse effect on an Alteration theretofore performed in the Premises. If

Landlord requires access to the Premises to make the installations as contemplated by this Section 9.4, then Landlord shall perform such installations in accordance with the terms hereof that govern a Work Access.

9.5. Keys.

Tenant shall provide Landlord, from time to time, with the keys to the Premises (or with the appropriate means to access the Premises using Tenant's electronic security systems).

9.6. Landlord's Changes.

(A) Subject to Section 9.6(B) hereof, Tenant shall have the right to use, in common with the other occupants of the Building, the portions of the Building that Landlord dedicates from time to time as common area for the general use of the occupants of the Building.

(B) Landlord, from time to time, shall have the right to change the arrangement or location of the public portions of the Building, including, without limitation, lobbies, entrances, passageways, doors, corridors, stairs and toilets that in each case are not located in the Premises, provided any such change does not (a) unreasonably reduce or unreasonably interfere with Tenant's access to the Building or the Premises, (b) reduce the floor area of the Premises (except to a de minimis extent), or (c) reduce to a material extent the level or quality of services that are available to Tenant on the Commencement Date.

(C) Landlord, from time to time, shall have the right to change, or reduce the number of, the passenger or freight elevators serving the Premises, provided that such change or reduction does not reduce to a material extent the passenger or freight elevator service standards that the passenger and freight elevators meet on the date hereof.

(D) Landlord, from time to time, shall have the right to change the name, number or designation by which the Building is commonly known.

(E)

(1) Landlord shall have the right, from time to time, to close, obstruct or darken the windows of the Premises temporarily to the extent required to comply with a Requirement or to perform repairs, maintenance, alterations, or improvements to the Building. Landlord shall have the right to close, obstruct or darken the windows of the Premises permanently to the extent required to comply with a Requirement that does not become applicable to the Building by virtue of Landlord's performance of elective construction in the Building.

(2) If, at any time, the windows of the Premises are closed, obstructed or darkened temporarily, as aforesaid, then Landlord shall perform (or cause to be performed) such repairs, maintenance, alterations or improvements, or shall comply with the applicable Requirement (or cause such Requirement to be complied with), in each case with reasonable diligence, and otherwise take such action as may be reasonably necessary to minimize the period during which such windows are temporarily closed, obstructed or darkened (it being understood,

however, that subject to Section 8.4 hereof, Landlord shall not be required to perform such repairs, maintenance, alterations or improvements using contractors or labor at overtime or premium pay rates).

Article 10
UNAVOIDABLE DELAYS AND INTERRUPTION OF SERVICE

10.1. Unavoidable Delays.

Subject to Article 15 hereof and Article 16 hereof, this Lease and the obligation of Tenant to pay Rental hereunder and to perform all of Tenant's other covenants shall not be affected, impaired or excused, and Landlord shall not have any liability to Tenant, to the extent that Landlord is unable to perform Landlord's covenants under this Lease by reason of any cause beyond Landlord's reasonable control, including, without limitation, strikes, labor troubles, acts of terrorism or the occurrence of an act of God; provided, however, that Landlord shall not have the right to claim under this Section 10.1 that Landlord's failure to have funds available to make a payment of money constitutes an excuse for Landlord's performance of an obligation of Landlord hereunder.

10.2. Interruption of Services.

Landlord, from time to time, shall have the right to interrupt or curtail the level of service provided by the Building Systems to the extent reasonably necessary to accommodate the performance of repairs, additions, alterations, replacements or improvements that in Landlord's reasonable judgment are desirable or necessary. Landlord shall give Tenant reasonable advance notice of any such interruption or curtailment (to the extent that Landlord does not need to arrange for such interruption or curtailment to manage an emergency) and schedule any such interruption or curtailment at times that minimizes, to the extent reasonably practicable, the effect of such interruption or curtailment on Tenant's ability to conduct its business in the Premises during Tenant's ordinary business hours. If such interruption or curtailment of the level of service provided by the Building Systems (i) denies Tenant from having reasonable access to the Premises, (ii) threatens the health or safety of any occupant of the Premises, or (iii) materially interferes with Tenant's ability to conduct its business in the Premises during Tenant's ordinary business hours, then Landlord shall employ contractors or labor at overtime or premium pay rates to the extent reasonably necessary. Landlord, at Tenant's request, shall also schedule any such interruption or curtailment, to the extent reasonably practicable, using contractors or labor at overtime or premium pay rates, in which case Tenant shall pay to Landlord, as additional rent, an amount equal to the excess of (x) the Out-of-Pocket Costs that Landlord incurs in so scheduling such interruption or curtailment (using contractors or labor at overtime or premium pay rates), over (y) the Out-of-Pocket Costs that Landlord would have incurred in scheduling such interruption or curtailment without using contractors at overtime or premium pay rates, within thirty (30) days after the date that Landlord gives to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein (it being understood that if more than one tenant requests that Landlord conduct such Work Access using contractors or labor at overtime or premium pay rates, then Landlord shall allocate such costs among such tenants equitably).

10.3. Rent Credit.

Subject to the terms of this Section 10.3, if (I) (i) Landlord fails to perform Landlord's covenants hereunder, (ii) Landlord interrupts or curtails the level of service provided by Building Systems as contemplated by Section 10.2 hereof, or (iii) Landlord performs repairs, alterations, improvements, additions or restorations in the Building, and (II) Tenant, by reason of the event described in clause (I) above, is unable for at least fifteen (15) consecutive Business Days to operate Tenant's business in the Premises (or a portion thereof) in substantially the same manner that Tenant conducted its business prior to such event, then Tenant shall be entitled to a credit to apply against the Fixed Rent thereafter coming due hereunder in an amount equal to the product obtained by multiplying (A) the quotient obtained by dividing (a) the sum of the Fixed Rent for the Premises, by (b) three hundred sixty-five (365) (or three hundred sixty-six (366) in a leap year), by (c) the number of square feet of Rentable Area in the Premises, by (B) the number of square feet of Rentable Area of the portion of the Premises which is unusable, as aforesaid, by (C) the number of days in the period commencing on (and including) the date immediately following the date that is fifteen (15) Business Days after the event that is described in clause (I) above and ending on the date that such portion of the Premises becomes usable. If (x) Tenant is entitled to a credit against Rental pursuant to this Section 10.3, and (y) the Expiration Date occurs prior to the date that such credit is exhausted, then Landlord shall pay to Tenant the unused portion of such credit on or prior to the thirtieth (30th) day after the Expiration Date (and Landlord's obligation to make such payment shall survive the Expiration Date). This Section 10.3 shall not apply in respect of the occurrence of a fire or other casualty or in respect of a condemnation. This Section 10.3 shall not limit the provisions of Section 5.2 hereof.

Article 11
REQUIREMENTS

11.1. Tenant's Obligation to Comply with Requirements.

(A) Subject to the terms of this Article 11, Tenant, at Tenant's expense, shall comply with all Requirements applicable to the Premises, including, without limitation, (i) Requirements that are applicable to the performance of Alterations, (ii) Requirements that become applicable by reason of Alterations having been performed, and (iii) Requirements that are applicable by reason of the specific nature or type of business operated by Tenant (or any other Person claiming by, through or under Tenant) in the Premises. Tenant shall not be required to make any Alteration or other changes to the structural components of the Building or to the Building Systems in either case to comply with any Requirement unless (a) such Alteration or other change is required by reason of Alterations having been performed by Tenant (or another Person claiming by, through or under Tenant), or (b) such Alteration or other change is required by reason of the specific nature of the use of the Premises by Tenant (or such other Person) (as opposed to the use of the Premises for the general purposes otherwise permitted under Section 3.1 hereof), or (c) such Alteration or other change is required to install, modify or replace any fire suppression device or system in the Premises (including, without limitation, sprinkler systems).

(B) The term "Requirements" shall mean, collectively, (i) all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders of all Governmental Authorities, and of any applicable fire rating bureau, or other body exercising similar functions, and (ii) all requirements that the issuer of Landlord's Property Policy imposes (including, without limitation, any such requirements that such issuer requires as the basis for the premium that such issuer charges Landlord for Landlord's Property Policy), provided that such requirements that the issuer of Landlord's Property Policy imposes are reasonably consistent with the requirements imposed by reputable insurers of comparable properties in The City of New York.

(C) The term "Governmental Authority" shall mean the United States of America, the State of New York, The City of New York, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, or any quasi-governmental authority, now existing or hereafter created, having jurisdiction over the Real Property or any portion thereof.

(D) Subject to the terms of this Section 11.1(D), if (a) Landlord gives Tenant a notice that Tenant has failed to comply with a Requirement as required by this Section 11.1, and (b) Tenant fails to proceed with reasonable diligence to comply with such Requirement within twenty (20) days after the date that Landlord gives such notice to Tenant (or such shorter period that Landlord designates in such notice to the extent reasonably required under the circumstances to alleviate an imminent threat to persons or property), then (i) Landlord may perform the work and otherwise take steps that are required to comply with such Requirement, and (ii) Tenant shall pay to Landlord, as additional rent, the reasonable Out-of-Pocket Expenses thereof, with interest thereon at the Applicable Rate calculated from the date that Landlord incurs such expenses, within thirty (30) days after Landlord gives Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein. If (x) Tenant's compliance with a particular Requirement as required by this Section 11.1 cannot be accomplished with reasonable diligence during the aforesaid period of twenty (20) days (or during such shorter period that Landlord designates, as the case may be), and (y) Tenant commences such compliance during such period of twenty (20) days (or such shorter period that Landlord designates), then Landlord shall not have the right to perform the work and otherwise take steps that are required to comply with such Requirement on Tenant's behalf as otherwise described in this Section 11.1(D) unless Tenant fails to pursue such compliance with reasonable continuity and diligence. Nothing contained in this Section 11.1(D) limits the remedies that are available to Landlord after the occurrence of an Event of Default.

11.2. Landlord's Obligation to Comply with Requirements.

Landlord shall comply with all Requirements applicable to the Premises and the Building (including, without limitation, Requirements in respect of which the violation thereof impedes Tenant's performance of Alterations in the Premises) other than the Requirements with respect to which Tenant is required to comply pursuant to Section 11.1 hereof, subject, however, to Landlord's right to contest in good faith the applicability or legality thereof (provided that Landlord's contesting such Requirements does not interfere in any material respect with Tenant's use and occupancy of the Premises).

11.3. Tenant's Right to Contest Requirements.

Subject to the provisions of this Section 11.3, Tenant, at Tenant's expense, may contest by appropriate proceedings prosecuted diligently and in good faith the legality or applicability of any Requirement affecting the Premises (any such proceedings instituted by Tenant being referred to herein as a "Compliance Challenge"). Tenant shall not have the right to institute a Compliance Challenge unless Tenant first gives Landlord notice thereof. Tenant shall not institute any Compliance Challenge if, by reason of Tenant's delaying its compliance with the applicable Requirement or by reason of the Compliance Challenge, (a) Landlord (or any Landlord Indemnitee) may be imprisoned, (b) the Real Property or any part thereof may be condemned or vacated, or (c) the certificate of occupancy for the Premises or the Building may be suspended. If Landlord or any Landlord Indemnitee may be subject to any civil fines or penalties or other criminal penalties or if Landlord or any Landlord Indemnitee may be liable to any third party in either case by reason of Tenant's delaying its compliance with the applicable Requirement or by reason of the Compliance Challenge, then Tenant shall furnish to Landlord, at Tenant's option, either (x) a bond of a surety company that is issued by, and in form and substance, reasonably satisfactory to Landlord, or (y) such other security that is reasonably satisfactory to Landlord, and, in either case, in an amount equal to one hundred twenty percent (120%) of the sum of (A) the cost of such compliance, (B) the criminal or civil penalties or fines that may accrue by reason of such non-compliance (as reasonably estimated by Landlord), and (C) the amount of such liability to third parties (as reasonably estimated by Landlord). If Tenant initiates any Compliance Challenge, then Tenant shall keep Landlord advised regularly as to the status of such proceedings. Landlord shall have the right to use the aforesaid bond or other security to satisfy any such fines or penalties that are levied or assessed against a Landlord Indemnitee. Landlord shall return to Tenant the aforesaid bond or other security (or the unapplied portion thereof, as the case may be), promptly after Tenant completes the Compliance Challenge.

11.4. Certificate of Occupancy.

(A) Subject to the terms of this Section 11.4(A), Landlord covenants that from and after the Commencement Date a temporary or permanent certificate of occupancy covering the Premises (or such other certificate as may be required by Requirements from time to time to lawfully occupy the Premises) shall be in full force and effect permitting the Premises to be used for the general purposes that are permitted under Article 3 hereof. Nothing contained herein constitutes Landlord's covenant, representation or warranty that the Premises or any part thereof lawfully may be used or occupied for any particular purpose or in any particular manner; provided, however, that Landlord shall not have the right to amend the certificate of occupancy for the Premises (or such other certificate as may be required by Requirements from time to time to lawfully occupy the Premises) in a manner that limits the uses that Tenant may perform in the Premises in accordance with Article 3 hereof. Landlord shall have no liability to Tenant under this Section 11.4(A) to the extent such certificate of occupancy (or such other certificate) is not in full force and effect by reason of Tenant's default hereunder or by reason of Alterations.

(B) Tenant shall use the Premises only in a manner that conforms with the certificate of occupancy that is in effect for the Premises. Tenant shall not have the right to amend the certificate of occupancy for the Premises or the Building without Landlord's prior approval.

Article 12
QUIET ENJOYMENT

12.1. Quiet Enjoyment.

Landlord covenants that Tenant may peaceably and quietly enjoy the Premises for the Term, subject, nevertheless, to the terms and conditions of this Lease.

Article 13
SUBORDINATION

13.1. Subordination.

(A) This Lease shall be subject and subordinate to the priority of each Superior Lease that hereafter exists (and does not exist as of the date hereof) in respect of which the Lessor is not an Affiliate of Landlord. This Lease shall be subject and subordinate to the lien of each Mortgage that hereafter exists (and does not exist as of the date hereof) in respect of which the Mortgagee is not an Affiliate of Landlord.

(B) The term "Lessor" shall mean a lessor under a Superior Lease.

(C) The term "Mortgage" shall mean any trust indenture or mortgage which now or hereafter encumbers Landlord's estate in the Premises.

(D) The term "Mortgagee" shall mean any trustee, mortgagee or holder of a Mortgage.

(E) The term "Superior Lease" shall mean any lease pursuant to which Landlord now or hereafter obtains or retains its interest in the Premises (to the extent that Landlord's interest in the Premises is a leasehold estate).

13.2. Attornment.

If, at any time prior to the Expiration Date, a Person succeeds to Landlord's interest in the Real Property by reason of a foreclosure under a Mortgage or by reason of the termination of a Superior Lease (any such Person being referred to herein as the "Successor"), then Tenant, at the Successor's election, shall attorn, from time to time, to the Successor, in either case upon the then executory terms of this Lease, for the remainder of the Term. If the Successor is not an Affiliate of the Person that constituted Landlord immediately prior to such Successor's obtaining an interest in the Premises, then the Successor shall not be:

(A) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord), except to the extent that (i) such act or omission

continues after the date that the Successor succeeds to Landlord's interest in the Real Property, and (ii) such act or omission of such prior landlord is of a nature that the Successor can cure by performing a service or making a repair, or

(B) subject to any defenses or offsets that Tenant has against any prior landlord (including, without limitation, the then defaulting landlord) (except for any offsets expressly permitted under this Lease), or

(C) bound by any payment of Rental that Tenant has made to any prior landlord (including, without limitation, the then defaulting landlord) more than thirty (30) days in advance of the date that such payment is due (other than the Rental that Tenant pays pursuant to Section 1.5(E) hereof), or

(D) bound by any obligation to make any payment to or on behalf of Tenant to the extent that such obligation accrues prior to the date that the Successor succeeds to Landlord's interest in the Real Property, or

(E) bound by any obligation to perform any work or to make improvements to the Premises, except for:

(1) Landlord's Work,

(2) repairs and maintenance that Landlord is required to perform pursuant to the provisions of this Lease and that first become necessary, or the need for which continues, after the date that the Successor succeeds to Landlord's interest in the Real Property,

(3) repairs to the Premises that become necessary by reason of a fire or other casualty that occurs from and after the date that the Successor succeeds to Landlord's interest in the Real Property and that Landlord is required to perform pursuant to Article 15 hereof,

(4) repairs to the Premises or any part thereof that become necessary by reason of a fire or other casualty that occurs prior to the date that the Successor succeeds to Landlord's interest in the Real Property and that Landlord is required to perform pursuant to Article 15 hereof, to the extent that the Successor can make such repairs from the net proceeds of Landlord's Property Policy that are actually made available to the Successor (with the understanding, however, that if (i) a fire or other casualty occurs prior to the date that the Successor succeeds to Landlord's interest in the Real Property, (ii) Landlord is required to repair the resulting damage to the Building pursuant to Article 15 hereof, and (iii) the Successor cannot make such repairs from such net proceeds, then Tenant shall have the right to terminate this Lease by giving notice thereof to the Successor within fifteen (15) days after the date that the Successor gives Tenant notice that the Successor does not intend to perform such repairs),

(5) repairs to the Premises as a result of a partial condemnation that occurs from and after the date that the Successor succeeds to Landlord's interest in the Real Property and that Landlord is required to perform pursuant to Article 16 hereof, and

(6) repairs to the Premises as a result of a partial condemnation that occurs prior to the date that the Successor succeeds to Landlord's interest in the Real Property and that Landlord is required to perform pursuant to Article 16 hereof, to the extent that the Successor can make such repairs from the net proceeds of any condemnation award made available to the Successor (with the understanding, however, that if (i) a partial condemnation occurs prior to the date that the Successor succeeds to Landlord's interest in the Real Property, (ii) Landlord is required to make repairs to the Building pursuant to Article 16 hereof by reason of such partial condemnation, and (iii) the Successor cannot make such repairs from such net proceeds, then Tenant shall have the right to terminate this Lease by giving notice thereof to the Successor within fifteen (15) days after the date that the Successor gives Tenant notice that the Successor does not intend to perform such repairs),

(F) bound by any amendment or modification of this Lease made without the consent of the Successor after the date that Tenant is given notice of the applicable Mortgage or the applicable Superior Lease (as the case may be), or

(G) bound to return the Cash Security Deposit or the Letter of Credit until the Cash Security Deposit or the Letter of Credit has come into the Successor's actual possession and Tenant is entitled to the Cash Security Deposit or the Letter of Credit pursuant to the terms of this Lease.

The provisions of this Section 13.2 shall apply notwithstanding that, as a matter of law, this Lease terminates upon the termination of any Superior Lease or the foreclosure of a Mortgage. No further instrument shall be required to give effect to Tenant's attorning to a Successor as contemplated by this Section 13.2. Tenant, however, upon demand of any Successor, shall execute, from time to time, instruments, in a recordable form and in a form reasonably satisfactory to the Successor, confirming the foregoing provisions of this Section 13.2.

13.3. Amendments to this Lease.

Tenant shall execute and deliver, from time to time, amendments to this Lease, promptly after Landlord's request, to the extent that (x) such amendments are reasonably required by a Mortgagee or a Lessor that in either case is not an Affiliate of Landlord (or are reasonably required by a proposed Mortgagee or proposed Lessor that in either case is not an Affiliate of Landlord and that consummates the applicable Mortgage or the applicable Superior Lease contemporaneously with Tenant's execution and delivery of such amendment hereof), and (y) Landlord gives to Tenant reasonable evidence to the effect that such Mortgagee or Lessor requires such amendments; provided, however, that Tenant shall not be required to agree to any such amendments to this Lease that (i) increase Tenant's monetary obligations under this Lease, (ii) adversely affect or diminish Tenant's rights under this Lease (except in either case to a *de minimis* extent), or (iii) increase Tenant's other obligations under this Lease (except to a *de minimis* extent).

13.4. Tenant's Estoppel Certificate.

Tenant, within ten (10) Business Days after Landlord's request from time to time (but not more frequently than three (3) times in any particular period of twelve (12) months), shall deliver

to Landlord a written statement executed by Tenant, in form reasonably satisfactory to Landlord, (1) stating that this Lease is then in full force and effect and has not been modified (or if this Lease is not in full force and effect, stating the reasons therefor, or if this Lease is modified, setting forth all modifications), (2) setting forth the date to which the Fixed Rent, the Tax Payment and other items of Rental have been paid, (3) stating whether, to the actual knowledge of Tenant (without having made any investigation), Landlord is in default under this Lease, and, if Landlord is in default, setting forth the specific nature of all such defaults, and (4) stating any other matters reasonably requested by Landlord and related to this Lease. Tenant acknowledges that any such statement that Tenant delivers to Landlord pursuant to this Section 13.4 may be relied upon by (x) any purchaser or owner of the Real Property or any interest therein (including, without limitation, any Lessor), or (y) any Mortgagee.

13.5. Rights to Cure Landlord's Default.

If (x) a Superior Lease or Mortgage exists, (y) the Lessor or Mortgagee is not an Affiliate of Landlord, and (z) Landlord gives Tenant notice thereof, then Tenant shall not seek to terminate this Lease by reason of Landlord's default hereunder until Tenant has given written notice of such default to such Lessor or such Mortgagee in either case at the address that has been furnished to Tenant. If any such Lessor or Mortgagee notifies Tenant, within ten (10) Business Days after the date that such Lessor or Mortgagee receives such notice from Tenant, that such Lessor or Mortgagee intends to remedy such act or omission of Landlord, then Tenant shall not have the right to so terminate this Lease unless such Lessor or Mortgagee fails to remedy such act or omission of Landlord within a reasonable period of time after the date that such Lessor or Mortgagee gives such notice to Tenant (it being understood that such Lessor or Mortgagee shall not have any liability to Tenant for the failure of such Lessor or Mortgagee to so remedy such act or omission of Landlord during such period).

13.6. Zoning Lot Merger Agreement.

Tenant hereby waives irrevocably any rights that Tenant may have in connection with any zoning lot merger or transfer of development rights with respect to the Real Property, including, without limitation, any rights that Tenant may have to be a party to, to contest, or to execute any Declaration of Restrictions (as such term is used in Section 12-10 of the Zoning Resolution of The City of New York effective December 15,1961, as amended) with respect to the Real Property, which would cause the Premises to be merged with or unmerged from any other zoning lot pursuant to such Zoning Resolution or to any document of a similar nature and purpose. Tenant agrees that this Lease shall be subject and subordinate to any Declaration of Restrictions or any other document of similar nature and purpose now or hereafter affecting the Real Property (it being understood, however, that Landlord shall not permit such Declaration of Restrictions or any such other document to impair Tenant's rights hereunder, or expand Tenant's obligations hereunder, except, in either case, to a *de minimis* extent). In confirmation of such subordination and waiver, Tenant, from time to time, shall execute and deliver promptly any certificate or instrument that Landlord reasonably requests.

13.7. Tenant's Financial Statements.

Subject to the terms of this Section 13.7, Tenant shall provide to Landlord (a) the balance sheet of Tenant and each Predecessor Tenant (if any) in either case dated as of the last day of each fiscal year (to the extent that the last day of each such fiscal year occurs during the Term), (b) the income statement of Tenant and each Predecessor Tenant (if any) for each such fiscal year that occurs, in whole or in part, during the Term, and (c) the statement of changes in financial condition of Tenant and each Predecessor Tenant (if any) for each such fiscal year that occurs, in whole or in part, during the Term, in each case on or prior to the one hundred twentieth (120^{th}) day after the last day of each such fiscal year (such financial statements being collectively referred to herein as "Tenant's Statements"). Tenant shall cause Tenant Statements to be prepared in accordance with generally accepted accounting principles, consistently applied. Landlord shall not disclose Tenant's Statements to any third party, except that Landlord may disclose Tenant's Statements (i) to Persons that provide (or that propose to provide), directly or indirectly, debt or equity capital to Landlord or Landlord's Affiliates and that provide Landlord with reasonable assurances that such Persons will maintain the confidentiality of Tenant's Statements, (ii) to Persons that purchase (or that propose to purchase) the Real Property or any portion thereof and that provide Landlord with reasonable assurances that such Persons will maintain the confidentiality of Tenant's Statements, (iii) to Lessors (or prospective Lessors) that provide Landlord with reasonable assurances that such Lessors (or prospective Lessors) will maintain the confidentiality of Tenant's Statements, (iv) to Persons that provide professional services for Landlord (such as, for example, Landlord's attorneys and accountants) and that provide Landlord with reasonable assurances that such Persons will maintain the confidentiality of Tenant's Statements, (v) to the extent required by law, (vi) to the extent reasonably required by Landlord in enforcing Landlord's rights hereunder, and (vii) to the extent that Tenant's Statements are otherwise available to the general public. Tenant shall not have any obligation to provide Tenant's Statements to Landlord as provided in this Section 13.7 during the period that (x) the stock of Tenant is publicly traded on a recognized stock exchange, and (y) Tenant's Statements are available to the general public under filings that Tenant makes with the Securities and Exchange Commission.

Article 14
INSURANCE

14.1. Tenant's Insurance.

(A) Tenant, at Tenant's expense, shall obtain and keep in full force and effect (i) an insurance policy for Tenant's Property and the Specialty Alterations, in either case to the extent insurable under the available standard forms of "all-risk" insurance policies, in an amount equal to one hundred percent (100%) of the replacement value thereof (subject, however, at Tenant's option, to a reasonable deductible) (the insurance policy described in this clause (i) being referred to herein as "Tenant's Property Policy"), (ii) a policy of worker's compensation insurance, to the extent required by law (such policy being referred to herein as "Tenant's Worker's Compensation Policy"), and (iii) a policy of commercial general liability and property damage insurance on an occurrence basis, with a broad form contractual liability endorsement

(the insurance policy described in this clause (iii) being collectively referred to herein as "Tenant's Liability Policy"). Tenant's Property Policy and Tenant's Liability Policy shall name Tenant as the insured. Tenant's Property Policy shall also include business interruption insurance that is sufficient in amount to pay the Fixed Rent and the Tax Payment due hereunder for a period of at least one (1) year. Tenant's Liability Policy shall name the Landlord Indemnitees as additional insureds thereunder.

(B) Tenant's Liability Policy shall contain a provision that (a) no act or omission of Tenant shall affect or limit the obligation of the insurer to pay the amount of any loss sustained, and (b) the policy is non-cancelable with respect to the Landlord Indemnitees unless at least thirty (30) days of advance written notice is given to Landlord, except that Tenant's Liability Policy may be cancelable on no less than ten (10) days of advance written notice to Landlord for non-payment of premium. If Tenant receives any notice of cancellation or any other notice from the insurance carrier which may adversely affect the coverage of the insureds under Tenant's Property Policy or Tenant's Liability Policy, then Tenant shall immediately deliver to Landlord a copy of such notice. The minimum amounts of liability under Tenant's Liability Policy shall be a combined single limit with respect to each occurrence in the amount of Five Million Dollars ($5,000,000) for injury (or death) to persons and damage to property, which minimum amount Landlord may increase from time to time to the amount of insurance that in Landlord's reasonable judgment is then being customarily required by prudent landlords of first- class buildings in the vicinity of the Building from tenants leasing space similar in size, nature and location to the Premises.

(C) Tenant shall cause Tenant's Liability Policy, Tenant's Worker's Compensation Policy and Tenant's Property Policy to be issued by reputable and independent insurers that are (x) permitted to do business in the State of New York, and (y) rated in Best's Insurance Guide, or any successor thereto, as having a general policyholder rating of A and a financial rating of at least XII (it being understood that if such ratings are no longer issued, then such insurer's financial integrity shall conform to the standards that constitute such ratings from Best's Insurance Guide as of the date hereof).

(D) Tenant has the right to satisfy Tenant's obligation to carry Tenant's Liability Policy with an umbrella insurance policy if such umbrella insurance policy contains an aggregate per location endorsement that provides the required level of protection for the Premises. Tenant has the right to satisfy Tenant's obligation to carry Tenant's Property Policy with a blanket insurance policy if such blanket insurance policy provides, on a per occurrence basis, that a loss that relates to any other location does not impair or reduce the level of protection available for the Premises below the amount required by this Lease.

14.2. Landlord's Insurance.

(A) Subject to the terms of this Section 14.2, Landlord shall obtain and keep in full force and effect insurance against loss or damage by fire and other casualty to the Building, to the extent insurable on commercially reasonable terms under then available standard forms of "all-risk" insurance policies, in an amount equal to one hundred percent (100%) of the replacement value thereof or, at Landlord's option, in such lesser amount as will avoid co-

insurance (such insurance being referred to herein as "Landlord's Property Policy"). Tenant acknowledges that (i) Landlord's Property Policy may encompass rent insurance, (ii) the risks that Landlord's Property Policy covers may include, without limitation, fire, war, terrorism, environmental matters, and flood, and (iii) Landlord may also obtain a commercial general liability insurance policy.

(B) Landlord shall not be liable to Tenant for any failure to insure any Alterations unless Tenant notifies Landlord of the completion of such Alterations and the cost thereof, and maintains adequate records with respect to such Alterations to facilitate the adjustment of any insurance claims with respect thereto. Landlord shall have the right to provide that the coverage of Landlord's Property Policy is subject to a reasonable deductible. Tenant shall cooperate with Landlord and Landlord's insurance companies in the adjustment of any claims for any damage to the Building or the Alterations. Landlord shall not be required to carry insurance on Tenant's Property or the Specialty Alterations. Landlord shall not be required to carry insurance against any loss suffered by Tenant due to the interruption of Tenant's business.

14.3. Mutual Waiver of Subrogation.

(A) Subject to the provisions of this Section 14.3, Landlord and Tenant shall each obtain an appropriate clause in, or endorsement on, Landlord's Property Policy or Tenant's Property Policy (as the case may be) pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery. Landlord and Tenant also agree that, having obtained such clauses or endorsements of waiver of subrogation or consent to a waiver of right of recovery, they shall not make any claim against or seek to recover from the Landlord Indemnitees or the Tenant Indemnitees (as the case may be) for any loss or damage to its property or the property of others resulting from fire or other hazards covered by Landlord's Property Policy or Tenant's Property Policy (as the case may be); provided, however, that the release, discharge, exoneration and covenant not to sue herein contained shall be limited by and be coextensive with the terms and provisions of the waiver of subrogation clause or endorsements or clauses or endorsements consenting to a waiver of right of recovery.

(B) If the payment of an additional premium is required for the inclusion of a waiver of subrogation provision as described in Section 14.3(A) hereof, then each party shall advise the other party of the amount of any such additional premiums and the other party at its own election may, but shall not be obligated to, pay such additional premium. If (x) Tenant is the party that elects to pay such additional premium to include such a waiver in Landlord's Property Policy, and (y) other tenants in the Building make concurrently a similar election, then the aforesaid amount that Tenant is obligated to pay to Landlord on account of such additional premium shall be only the portion thereof that Landlord allocates equitably to Tenant. If such other party does not elect to pay such additional premium, then the party whose insurer is charging the additional premium shall not be required to obtain such waiver of subrogation provision.

(C) If either party is unable to obtain the inclusion of such waiver of subrogation provision even with the payment of an additional premium, then such party shall attempt to name the other party as an additional insured (but not a loss payee) under the

applicable insurance policy. If the payment of an additional premium is required for naming the other party as an additional insured (but not a loss payee), then such party shall advise the other of the amount of any such additional premium and the other party at its own election may, but shall not be obligated to, pay such additional premium. If (x) Tenant is the party that elects to pay such additional premium to name Tenant as an additional insured (but not as loss payee), and (y) other tenants in the Building make concurrently a similar election, then the aforesaid amount that Tenant is obligated to pay to Landlord on account of such additional premium shall be only the portion thereof that Landlord allocates equitably to Tenant. If such other party does not elect to pay such additional premium or if it is not possible to have the other party named as an additional insured (but not loss payee), even with the payment of an additional premium, then (in either event) the party whose insurer refuses to include such waiver of subrogation provision shall so notify the other party and such party shall not have the obligation to name the other party as an additional insured.

14.4. Evidence of Insurance.

On or prior to the Commencement Date, each party shall deliver to the other party appropriate certificates of insurance required to be carried by the parties pursuant to this Article 14, including evidence of waivers of subrogation and naming of additional insureds in either case as required by Section 14.3 hereof. Each party shall deliver to the other party evidence of each renewal or replacement of a policy at least twenty (20) days prior to the expiration of such policy.

14.5. No Concurrent Insurance.

Tenant shall not obtain any property insurance (under Tenant's Property Policy or otherwise) that covers the property that is covered by Landlord's Property Policy.

14.6. Tenant's Obligation to Comply with Landlord's Fire and Casualty Insurance.

If (i) Tenant (or any other Person claiming by, through or under Tenant) uses the Premises for any purpose other than general office use , and (ii) the use of the Premises by Tenant (or such other Person) causes the premium for Landlord's Property Policy to exceed the premium that would have otherwise applied therefor if Tenant (or such Person) used the Premises for general office use, then Tenant shall pay to Landlord, as additional rent, an amount equal to such excess, on or prior to the thirtieth (30th) day after the date that Landlord gives to Tenant an invoice therefor, together with reasonable supporting documentation for the charges set forth therein. Nothing contained in this Section 14.6 expands Tenant's rights under Article 3 hereof.

Article 15
CASUALTY

15.1. Notice.

Tenant shall notify Landlord promptly of any fire or other casualty that occurs in the Premises.

15.2. Landlord's Restoration Obligations.

Subject to the terms of this Section 15.2, Landlord, with reasonable diligence, shall repair the damage to (i) the Premises (including, without limitation, the Alterations), (ii) the Building Systems that service the Premises, and (iii) the common elements of the Building that Tenant uses to gain access to the Premises, in each case to the extent caused by fire or other casualty. The restoration work to be performed by Landlord shall include, without limitation, any portion of Landlord's Work that Landlord did not Substantially Complete on the date that the fire or other casualty occurred. Landlord shall commence the performance of such repairs as promptly as reasonably practicable after the occurrence of such fire or other casualty. Landlord shall use commercially reasonable efforts to perform such repairs diligently, in a good and workmanlike manner, and in a manner that minimizes to the extent reasonably practicable interference with Tenant's use and occupancy of any portion of the Premises that remains tenantable. Landlord shall not be required to restore Tenant's Property or the Specialty Alterations. Landlord shall not be required to commence such restoration until Tenant gives Landlord the notice described in Section 15.1 hereof (unless Landlord otherwise has received actual notice of the fire or other casualty). Landlord shall not be obligated to restore any Alterations unless (i) Tenant has Substantially Completed the performance thereof, (ii) Tenant has given Landlord notice to the effect that Tenant has Substantially Completed such Alterations, (iii) Tenant has given Landlord notice of the cost incurred by Tenant in performing such Alterations, and (iv) Tenant has maintained records with respect to such Alterations in a form that allows Landlord to make a full insurance recovery therefor under Landlord's Property Policy. If (x) Tenant, as part of the Initial Alterations, demolishes all or a material part of the interior installation that exists in the Premises on the Commencement Date, and (y) the Premises (including any Alterations) is damaged by fire or other casualty at any time prior to the date that Tenant Substantially Completes the Initial Alterations therein, then Landlord's obligation to repair the Premises (and any Alterations) shall be limited to (w) the performance of Landlord's Work (to the extent that the performance of Landlord's Work remains feasible after such fire or other casualty), (x) the part of the Building Systems serving the Premises on the Commencement Date, but not the distribution portions of such Building Systems located within the Premises, (y) the floor and ceiling slabs of the Premises, and (z) the exterior walls of the Premises, all to substantially the same condition that existed on the Commencement Date. Landlord shall have the right to adapt the restoration of the Premises as contemplated by this Section 15.2 to comply with applicable Requirements that are then in effect. Landlord shall not be obligated to restore the Premises as provided in this Section 15.2 to the extent that this Lease terminates by reason of such fire or other casualty as provided in this Article 15.

15.3. Rent Abatement.

(A) The Fixed Rent and the Tax Payment that is otherwise due and payable hereunder shall not be reduced by reason of a fire or other casualty (and, accordingly, Tenant shall remain obligated to pay the Fixed Rentand the Tax Payment that comes due hereunder during the period that Landlord is performing the restoration work described in Section 15.2 hereof).

15.4. Landlord's Termination Right.

If the Building is so damaged by fire or other casualty that, in Landlord's opinion, substantial alteration, demolition, or reconstruction of the Building is required (regardless of whether the Premises have been damaged or rendered untenantable), then Landlord may terminate this Lease by giving Tenant notice thereof on or prior to the ninetieth (90th) day after such fire or other casualty. If Landlord elects to terminate this Lease as aforesaid, then (I) the Term shall expire on a date set by Landlord that (A) is not sooner than (i) the tenth (10th) day after the date that Landlord gives such notice (if all or substantially all of the Premises is rendered untenantable by such fire or other casualty), and (ii) the ninetieth (90th) day after the date that Landlord gives such notice (if less than all or substantially all of the Premises is rendered untenantable by such fire or other casualty), and (B) is not later than the first (1st) anniversary of the date on which such fire or other casualty occurs, and (II) Tenant, on such date set by Landlord, shall vacate the Premises and surrender the Premises to Landlord in accordance with the terms of this Lease that govern Tenant's obligations upon the expiration or earlier termination of the Term. Upon the termination of this Lease under this Section 15.4, the Rental shall be apportioned and any prepaid portion of the Rental for any period after the Expiration Date shall be refunded promptly by Landlord to Tenant (and Landlord's obligation to make such refund shall survive the Expiration Date).

15.5. Tenant's Termination Right.

(A) Landlord, within forty-five (45) days after the earlier to occur of (x) the date that Tenant gives Landlord notice of the occurrence of a fire or other casualty as contemplated by Section 15.1 hereof, and (y) the date that Landlord otherwise has actual notice of such fire or other casualty, shall give to Tenant a statement prepared by a reputable and independent contractor setting forth such contractor's estimate in good faith as to the time required for Landlord to Substantially Complete the restoration described in Section 15.2 hereof (such statement that Landlord gives to Tenant being referred to herein as the "Casualty Statement"); provided, however, that Landlord shall not be required to give Tenant a Casualty Statement if Landlord has theretofore exercised Landlord's right to terminate this Lease under Section 15.4 hereof. If the estimated time period as set forth in the Casualty Statement exceeds one (1) year from the date of the applicable fire or other casualty, then Tenant may elect to terminate this Lease by giving notice to Landlord not later than the thirtieth (30th) day after the date that Landlord gives the Casualty Statement to Tenant. If Tenant makes such election to so terminate this Lease, then the Term shall expire on the thirtieth (30th) day after Tenant gives such notice to Landlord.

(B) This Lease shall terminate if (i) a fire or other casualty occurs, and, by reason thereof, Landlord has an obligation to perform a restoration as contemplated by Section 15.2 hereof, (ii) Tenant does not exercise Tenant's right to terminate this Lease under Section 15.5(A) hereof in connection with such fire or other casualty (or Tenant does not have the right to terminate this Lease under Section 15.5(A) hereof in connection with such fire or other casualty), (iii) Landlord fails to Substantially Complete the performance of the restoration work that Landlord is required to perform on or prior to the later to occur of (I) one (1) year after the date of the applicable fire or other casualty, and (II) the date that is ninety (90) days after the last day of the estimated time period set forth in the Casualty Statement (the later of the dates described in clause (I) and clause (II) above being referred to herein as the "Second Bite Date"), (iv) Tenant gives Landlord notice no earlier than the Second Bite Date to the effect that this Lease will terminate under this Section 15.5(B) if Landlord fails to Substantially Complete the restoration within ninety (90) days after the Second Bite Date, and (v) Landlord fails to Substantially Complete the restoration within ninety (90) days after the Second Bite Date.

(C) If the Term terminates as provided in this Section 15.5, then (I) Tenant shall vacate the Premises and surrender the Premises to Landlord on the date of such termination "as is" and otherwise in accordance with the terms of this Lease that govern Tenant's obligations upon the expiration or earlier termination of the Term, (II) any Rental due hereunder shall be apportioned as of the date of such termination, and (III) any portion of the Rental that is then prepaid by Tenant and relates to the period after the date that the abatement of Rental as described in Section 15.3 hereof becomes effective shall be promptly refunded by Landlord to Tenant (with the understanding that Landlord's obligation to make any such refund shall survive such termination of this Lease).

15.6. Termination Rights at End of Term.

If the Premises are substantially damaged by a fire or other casualty that occurs during the period of twelve (12) months immediately preceding the Fixed Expiration Date, then either Landlord or Tenant may elect to terminate this Lease by notice given to the other party within thirty (30) days after such fire or other casualty occurs. If either party makes such election, then the Term shall expire on the thirtieth (30th) day after the notice of such election is given, and, accordingly, Tenant, on or prior to such thirtieth (30th) day, shall vacate the Premises and surrender the Premises to Landlord in accordance with the provisions of this Lease that govern Tenant's obligation to deliver vacant and exclusive possession of the Premises to Landlord upon the expiration of the Term. Upon the termination of this Lease under this Section 15.6, the Rental shall be apportioned and any prepaid portion of the Rental for any period after the Expiration Date shall be refunded promptly by Landlord to Tenant (and Landlord's obligation to make such refund shall survive the Expiration Date). For purposes of this Section 15.6, the term "substantially damaged" shall mean that: (a) a fire or other casualty precludes Tenant from using more than fifty percent (50%) of the Premises for the conduct of its business, and (b) Tenant's inability to so use the Premises (or the applicable portion thereof) is reasonably expected to continue until at least the earlier to occur of (i) the Fixed Expiration Date, and (ii) the one hundred eightieth (180th) day after the date that such fire or other casualty occurs.

15.7. No Other Termination Rights.

Tenant shall have no right to cancel this Lease by virtue of a fire or other casualty except to the extent specifically set forth herein. This Article 15 is intended to constitute an "express agreement to the contrary" for purposes of Section 227 of the New York Real Property Law.

Article 16
CONDEMNATION

16.1. Effect of Condemnation.

(A) Subject to the provisions of Section 16.2 hereof, if the entire Real Property, the entire Building or the entire Premises is condemned or otherwise acquired by the exercise of the power of eminent domain, then this Lease shall terminate as of the date that such condemnation or acquisition is consummated.

(B) If only a part of the Real Property and not the entire Premises is so acquired or condemned, then:

(1) except as hereinafter provided in this Section 16.1, this Lease shall remain effective, and, from and after the date that the condemnation or acquisition is consummated, (w) the Fixed Rent shall be reduced in the proportion that the number of square feet of Rentable Area of the part of the Premises so acquired or condemned bears to the total Rentable Area of the Premises immediately prior to such acquisition or condemnation, and (x) Tenant's Tax Share shall be redetermined based upon the proportion that the number of square feet of Rentable Area of the Premises that is remaining after such acquisition or condemnation bears to the number of square feet of Rentable Area of the Building that is remaining after such acquisition or condemnation;

(2) on or prior to the sixtieth (60th) day after the date that the condemnation or acquisition is consummated, Landlord shall have the right to terminate this Lease by giving notice to Tenant if either (i) at least fifteen percent (15%) of the usable area of the Premises is so acquired or condemned, or (ii) Landlord terminates leases (including this Lease) for at least percent (%) of the usable area of the Building (excluding any portion of the Building leased to or occupied by Landlord or Landlord's Affiliates); and

(3) if (a) the part of the Real Property so acquired or condemned contains more than fifteen percent (15%) of the usable area of the Premises immediately prior to such acquisition or condemnation, or (b) by reason of such acquisition or condemnation, Tenant no longer has reasonable means of access to the Premises, then Tenant may elect to terminate this Lease by giving notice to Landlord on or prior to the sixtieth (60th) day after the date that Tenant is given notice of such acquisition or condemnation being consummated.

The Term shall expire on the thirtieth (30th) day after the date that Landlord or Tenant give any such notice to terminate this Lease.

(C) Landlord shall refund to Tenant, promptly after the date that such taking or acquisition becomes effective, any Rental that Tenant has theretofore paid for the Premises (or the applicable portion thereof that is so taken or acquired) to the extent that such Rental is properly allocable to the period after the date that such taking or acquisition becomes effective (and Landlord's obligation to make such refund shall survive the Expiration Date).

(D) If this Lease terminates pursuant to the provisions of this Section 16.1, then the Rental for the portion of the Premises that is not taken or acquired shall be apportioned as of the termination date. Landlord shall refund promptly to Tenant any Rental that Tenant has theretofore paid for any period after the date that such termination becomes effective (and Landlord's obligation to make such refund shall survive the Expiration Date).

(E) If a part of the Premises is so acquired or condemned and this Lease and the Term is not terminated pursuant to the foregoing provisions of this Section 16.1, then Landlord, at Landlord's expense, shall restore the part of the Premises that is not so acquired or condemned to a self-contained rental unit inclusive of Alterations that Tenant has theretofore Substantially Completed, except that if such acquisition or condemnation occurs prior to the Substantial Completion of the Initial Alterations, then Landlord shall only be required to restore the part of the Premises not so acquired or condemned to a self-contained rental unit exclusive of any Alterations.

16.2. Condemnation Award.

Subject to Section 16.3 hereof, Landlord shall be entitled to receive the entire award for any such acquisition or condemnation of all or any part of the Real Property. Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term, and, accordingly, Tenant hereby expressly assigns to Landlord all of its right in and to any such award. Nothing contained in this Section 16.2 shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the value of any Tenant's Property included in such taking, for any moving expenses or for the costs incurred by Tenant in performing the Initial Alterations (prior to Tenant's Substantial Completion thereof) in the portion of the Premises that is not so condemned or acquired.

16.3. Temporary Taking.

If the whole or any part of the Premises is acquired or condemned temporarily during the Term, then (a) Tenant shall give prompt notice thereof to Landlord, (b) the Term shall not be reduced or affected in any way, (c) Tenant shall continue to pay in full all items of Rental payable by Tenant hereunder without reduction or abatement, and (d) Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that if the acquisition or condemnation is for a period extending beyond the Term, then such award or payment shall be apportioned equitably between Landlord and Tenant. Tenant, at Tenant's expense, shall make Alterations to restore the Premises to the condition existing prior to any such temporary acquisition or condemnation.

Article 17
ASSIGNMENT AND SUBLETTING

17.1. General Limitations.

(A) Subject to the terms of this Article 17, without the prior consent of Landlord in each instance, Tenant shall not, and Tenant shall not permit any other Permitted Party to, consummate a Transfer. The term "Transfer" shall mean:

(1) (a) an assignment of a Permitted Party's rights under, or a delegation of such Permitted Party's duties under, the applicable Occupancy Agreement by express assignment or by operation of law or by other means, (b) a mortgage or other encumbrance of such Permitted Party's interest in the applicable Occupancy Agreement, in whole or in part, (c) a subletting, or further subletting, of the Premises or any part thereof, or (d) the occupancy of the Premises or any part thereof by any Person other than such Permitted Party; and

(2) any transaction that modifies or supplements (or further modifies or supplements) an Occupancy Agreement to decrease the rental that is payable thereunder, to change the premises that is demised thereby, or to change the term thereof, in either case in any material respect (it being understood that (i) a termination or cancellation of an Occupancy Agreement shall not constitute a Transfer for purposes hereof, and (ii) such modification or supplement shall be treated for purposes hereof as a transaction on the terms of such Occupancy Agreement, as so modified or supplemented, for the balance of the term thereof).

(B) The term "Occupancy Agreement" shall mean the lease, sublease, license or other agreement pursuant to which a Permitted Party has the right to occupy the Premises.

(C) The term "Permitted Party" shall mean Tenant and any other Person that has the right to occupy the Premises in accordance with the terms of this Article 17 (other than a Person that has the right to occupy the Premises by virtue of Landlord's exercising Landlord's rights under Section 17.3 hereof).

(D) Subject to Section 17.7 hereof, the transfer of Control in a Permitted Party, however accomplished, whether in a single transaction or in a series of unrelated or related transactions, shall constitute an assignment of such Permitted Party's interest in the applicable Occupancy Agreement for purposes of this Article 17.

(E) The consent by Landlord to any Transfer shall not relieve Tenant from its obligation to obtain the prior consent of Landlord to any other Transfer to the extent required by this Lease.

(F) The assignment by any Person that constitutes Tenant of the tenant's interest under this Lease shall not relieve such Person of the obligations of the tenant under this Lease. Such Person's liability under this Lease shall continue notwithstanding (x) the subsequent release of any other Person that constitutes Tenant from liability under this Lease, (y) any limitation on any such other Person's liability hereunder by virtue of the Bankruptcy Code, or (z) any modification or amendment of this Lease that Landlord consummates with any such other

Person that constitutes Tenant subsequently; provided, however, that if such other Person is not an Affiliate of such Person, then any such modification or amendment shall not expand such Person's liability hereunder.

(G) Notwithstanding anything to the contrary contained herein, Tenant shall not, and Tenant shall not permit any other Permitted Party to, enter into any lease, sublease, license, concession or other agreement for use or occupancy of the Premises or any portion thereof which provides for a rental or other payment for such use or occupancy based in whole or in part on the net income or profits derived by any Person from the property leased, occupied or used, or which would require the payment of any consideration that would not qualify as "rents from real property," as that term is defined in Section 856(d) of the Internal Revenue Code of 1986, as amended.

(H) If Tenant assigns the tenant's interest under this Lease in violation of the terms of this Article 17, then such assignment shall be void and of no force and effect against Landlord; provided, however, that Landlord (x) may collect an amount equal to the then Rental from the assignee as a fee for such assignee's use and occupancy, and (y) shall apply the net amount collected to the Rental reserved in this Lease. If the Premises or any part thereof are sublet to, occupied by, or used by any Person other than Tenant (regardless of whether such subletting, occupancy or use violates this Article 17), then Landlord (a) after the occurrence of an Event of Default, may collect amounts from the subtenant, user or occupant as a fee for its use and occupancy, and (b) shall apply the net amount collected to the Rental reserved in this Lease. No such assignment, subletting, occupancy or use, with or without Landlord's prior consent, nor any such collection or application of fees for use and occupancy, shall (i) be deemed a waiver by Landlord of any term, covenant or condition of this Lease, (ii) be deemed the acceptance by Landlord of such assignee, subtenant, occupant or user as tenant hereunder, or (iii) relieve Tenant of the obligations of the tenant under this Lease.

17.2. Landlord's Expenses.

Tenant shall reimburse Landlord for a reasonable processing fee, any reasonable Out-of-Pocket Costs that Landlord incurs in connection with any proposed Transfer, including, without limitation, reasonable attorneys' fees and disbursements, and the reasonable costs of making investigations as to the acceptability of the proposed Transferee, within thirty (30) days after Landlord gives to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein.

17.3. Recapture Procedure.

(A) Tenant shall have the right to institute the procedure described in this Section 17.3 (the "Recapture Procedure") only by giving to Landlord notice thereof (a "Transfer Notice"), which:

(1) refers expressly to this Section 17.3 and indicates that such notice constitutes a Transfer Notice,

(2) includes a copy of the documents that Tenant intends to use to evidence the proposed Transfer,

(3) identifies the Person to which Tenant proposes to make the Transfer (the Person to which a Transfer is made being referred to herein as a "Transferee"), and

(4) sets forth the date on which Tenant proposes that the term of a Transfer that constitutes a sublease, license or other similar agreement that grants occupancy rights will commence, or that a Transfer that constitutes an assignment will occur, as the case may be (such date being referred to herein as the "Transfer Date") (it being understood that the Transfer Date shall be no sooner than sixty (60) days, and no later than one hundred eighty (180) days, after the date that Tenant gives the Transfer Notice to Landlord) (the material terms of a proposed Transfer as set forth in the Transfer Notice being referred to herein as the "Proposed Transfer Terms").

(B) The term "Transfer Expenses" shall mean the actual Out-of-Pocket Expenses that the Permitted Party that makes the applicable Transfer (the "Transferor") pays solely in consummating a Transfer, including, without limitation, (i) brokerage commissions, (ii) allowances that a Transferor makes available to the Transferee to fund the cost of Alterations that the Transferee makes to the Premises, (iii) costs that a Transferor pays in making Alterations to prepare the Premises solely for the Transferee's initial occupancy, (iv) the amount payable to Landlord under Section 17.2 hereof for such Transfer, (v) reasonable attorneys' fees and disbursements that a Transferor pays in connection with consummating such Transfer, and (vi) the transfer taxes (and other similar charges and fees) that Tenant pays pursuant to Section 17.5 hereof.

(C) The term "Amortized Transfer Expenses" shall mean, with respect to any period, the amount of the Transfer Expenses that amortize during such period if the Transfer Expenses are amortized, in equal monthly installments, with interest calculated at the Base Rate, over the period that the Transferee is obligated to make payments to a Transferor in respect of the applicable Transfer.

(D) The term "Recapture Date" shall mean the thirtieth (30th) day after the date that Tenant gives the Transfer Notice to Landlord.

(E)

(1) If (x) Tenant gives a Transfer Notice to Landlord, and (y) the Transfer described in the Transfer Notice constitutes a sublease for the Premises with respect to which the term thereof expires on or prior to the date that is twelve (12) months before the Fixed Expiration Date (any sublease that expires before such date being referred to herein as a "Short-Term Sublease"), then Landlord shall have the right to sublease (or to cause the Recapture Subtenant to sublease) the Premises from Tenant, on the terms set forth in this Section 17.3(E), by giving notice thereof (the "Recapture Sublease Notice") to Tenant not later than the Recapture Date (as to which date time shall be of the essence) (any such sublease of the Premises that Landlord elects to consummate under this Section 17.3(E) being referred to herein as a "Recapture Sublease").

(2) If Landlord gives a Recapture Sublease Notice to Tenant, then Tenant shall, and Landlord shall (or Landlord shall cause the Recapture Subtenant to), consummate a Recapture Sublease for the Premises on the following terms:

(a) Landlord shall give to Tenant, within twenty (20) days after the date that Landlord gives to Tenant the Recapture Sublease Notice, a proposed sublease that conforms with the terms set forth in this Section 17.3(E) and is otherwise on the terms set forth in this Lease. Tenant shall execute and deliver such sublease promptly after Landlord's submission thereof to Tenant. Landlord shall execute and deliver (or cause the Recapture Subtenant to execute and deliver) such sublease promptly after Tenant delivers to Landlord the counterpart thereof that is executed by Tenant.

(b) Landlord shall have the right to designate that the subtenant under the Recapture Sublease is a Person other than Landlord (the Person that constitutes the subtenant under a Recapture Sublease being referred to herein as the "Recapture Subtenant").

(c) The rental payable by the Recapture Subtenant to Tenant shall be calculated on either of the following methods, as designated by Landlord (with the understanding that Landlord shall be deemed to have elected clause (i) below if Landlord does not designate otherwise in the Recapture Sublease Notice):

(i) the excess of (I) the rental that would have been payable by the Transferee for the applicable calendar month as contemplated by the Proposed Transfer Terms, over (II) the Amortized Transfer Expenses for such month that would have resulted from the Proposed Transfer Terms; or

(ii) the Fixed Rent and the Escalation Rent that is due under this Lease for the Recapture Space.

(d) The term of the Recapture Sublease shall commence on the Transfer Date and shall extend for the term set forth in the Transfer Notice as part of the Proposed Transfer Terms (with the understanding that the Recapture Subtenant shall have the right to extend the term of the Recapture Sublease for a term that corresponds, or for terms that correspond, to any renewal right or renewal rights that are set forth in the Transfer Notice as part of the Proposed Transfer Terms).

(e) If, during the term of the Recapture Sublease (or during the period that the Recapture Subtenant, or any Person claiming by, through or under the Recapture Subtenant, remains in occupancy of the Premises after the term of the Recapture Sublease expires or earlier terminates), an event or circumstance occurs that is attributable to the Recapture Subtenant (or a Person claiming by, through or under the Recapture Subtenant), then such event or circumstance shall not constitute a default by Tenant hereunder (and, accordingly, Tenant shall not have liability to Landlord in connection therewith).

(f) Tenant shall have the right to offset against the Rental due hereunder an amount equal to the rental that the Recapture Subtenant fails to pay when due to Tenant.

(g) The Recapture Subtenant (and any Person claiming by, through or under the Recapture Subtenant), during the term of the Recapture Sublease, shall have the right to make alterations to the Premises; provided, however, that the Recapture Subtenant shall be required to restore the Premises upon the expiration of the term of the Recapture Sublease to the extent required by the applicable Proposed Transfer Terms.

(h) The Recapture Subtenant shall have the right to further sublease the Premises, or assign the Recapture Subtenant's rights as subtenant under the Recapture Sublease, to any third party, without Tenant having any rights to consent thereto or to receive additional payments from the Recapture Subtenant in connection therewith.

(i) The Recapture Subtenant shall not have the right to receive from Tenant any free rent, tenant improvement allowance or other similar concession that constitutes part of the Proposed Transfer Terms.

(F)

(1) If (x) Tenant gives a Transfer Notice to Landlord, and (y) the Transfer described in the Transfer Notice constitutes either a sublease for the Premises (other than a Short-Term Sublease) or an assignment, then Landlord shall have the right to terminate this Lease with respect to the Premises, on the terms set forth in this Section 17.3(F), by giving notice thereof (the "Recapture Termination Notice") to Tenant not later than the Recapture Date (any such termination of this Lease with respect to the Premises being referred to herein as a "Recapture Termination").

(2) If Landlord gives to Tenant a Recapture Termination Notice, then the Term shall terminate on the Transfer Date. If the Term so terminates on the Transfer Date, then Tenant, on the Transfer Date, shall vacate the Premises and deliver exclusive possession thereof to Landlord in accordance with the terms of this Lease that govern Tenant's obligations upon the expiration or earlier termination of the Term.

(3) If (x) Landlord elects to consummate a Recapture Termination, and (y) the Transfer described in the applicable Transfer Notice constitutes a sublease or sublicense, then Tenant shall pay to Landlord, as additional rent, on the first day of each calendar month during the period from the Transfer Date to the date that the term of such sublease or sublicense would have expired under the Proposed Transfer Terms, an amount equal to the excess (if any) of:

(a) the Fixed Rent and the Tax Payment that would have otherwise been due under this Lease since the Transfer Date for the Premises, over

(b) the sum of (A) the excess of (I) the rental that would have been payable by the Transferee since the Transfer Date as contemplated by the Proposed Transfer Terms, over (II) the Amortized Transfer Expenses under the Proposed Transfer Terms that would have theretofore accrued, and (B) the amounts theretofore paid by Tenant to Landlord under this Section 17.3(F)(3) in respect of such Recapture Termination.

Tenant's obligation to pay such amount to Landlord shall survive the termination of this Lease.

(4) If (x) Landlord elects to consummate a Recapture Termination, and (y) the Transfer described in the applicable Transfer Notice constitutes an assignment of Tenant's interest under this Lease, then Tenant shall pay to Landlord the sum of:

(a) the present value of the consideration (if any) that would have been payable by Tenant to the Transferee under the Proposed Transfer Terms (calculated as of the Transfer Date using a discount rate equal to the Base Rate), and

(b) the excess, if any, of (I) the present value of the Transfer Expenses that Tenant would have incurred under the Proposed Transfer Terms, over (II) the present value of the consideration (if any) that would have been payable by the Transferee to Tenant under the Proposed Transfer Terms (in either case calculated as of the Transfer Date using a discount rate equal to the Base Rate).

Tenant shall pay the amounts described in clauses (a) and (b) above on the Transfer Date. Tenant's obligation to pay such amounts to Landlord shall survive the termination of this Lease (or the termination of this Lease only with respect to the Recapture Space, as the case may be).

17.4. Certain Transfer Rights.

Subject to Section 17.7 hereof, Landlord shall not unreasonably withhold, condition or delay Landlord's consent to a Permitted Party's consummating a Transfer, provided that:

(A) Tenant has theretofore instituted the Recapture Procedure for such Transfer; provided, however, that Tenant shall not be required to have instituted the Recapture Procedure for a Transfer that is proposed to be consummated by a Permitted Party other than Tenant;

(B) Landlord's right to elect to consummate a Recapture Termination with respect to the proposed Transfer has lapsed (without Landlord's having exercised Landlord's rights to consummate a Recapture Termination); provided, however, that this Section 17.4(B) shall not apply for a Transfer that is proposed to be consummated by a Permitted Party other than Tenant;

(C) the Transfer is on terms that are at least as favorable to the Transferor as the Proposed Transfer Terms; provided, however, that this Section 17.4(C) shall not apply for a Transfer that is proposed to be consummated by a Permitted Party other than Tenant;

(D) the Transfer occurs no earlier than the thirtieth (30th) day before the Transfer Date and no later than the thirtieth (30th) day after the Transfer Date; provided, however, that this Section 17.4(D) shall not apply for a Transfer that is proposed to be consummated by a Permitted Party other than Tenant;

(E) Tenant submits to Landlord a counterpart of the documents that the Transferor intends to use to consummate the proposed Transfer, which have been executed and delivered by the proposed Transferor and the proposed Transferee, and which are subject to no conditions to the effectiveness thereof (other than Landlord's granting Landlord's consent thereto);

(F) the Premises has not been listed or otherwise publicly advertised at a rental rate that is less than the prevailing rental rate set by Landlord for comparable space in the Building, or, if there is no comparable space, the prevailing rental rate reasonably determined by Landlord (it being agreed that nothing contained in this clause (F) prohibits a Permitted Party from (I) consummating a Transfer at a rental rate that is less than such prevailing rate, or (II) disseminating broker's fliers or other marketing materials that indicate that the rental rate for the Premises is available upon request);

(G) no Event of Default has occurred and is continuing;

(H) the proposed Transferee has a financial standing (taking into consideration the obligations of the Transferee under the applicable Occupancy Agreement) that is reasonably satisfactory to Landlord;

(I) the proposed Transferee is of a character, is engaged in a business, and proposes to use the Premises in a manner that in each case is in keeping with the standards of a first-class office building in the vicinity of the Building;

(J) the proposed Transferee, or any Affiliate of the proposed Transferee, does not occupy any space in the Building;

(K) neither the proposed Transferee, nor an Affiliate of the proposed Transferee, is a Person with whom Landlord is then engaged in *bona fide* negotiations regarding the leasing or subleasing of space in the Building;

(L) any sublease (or further sublease) of the Premises does not consist of less than the entire Rentable Area thereof;

(M) the Transferor and each other Permitted Party (if any) whose interest is superior to the interest of the Transferor, and the Transferee, executes and delivers to Landlord a consent to the Transfer in a form reasonably designated by Landlord;

(N) if the Transfer constitutes an assignment of the tenant's interest under this Lease, the assignee has expressly assumed all of the obligations of Tenant hereunder to the extent accruing from and after the date that the Transfer is effective; and

(O) if the Transfer constitutes a sublease (or a further sublease), such sublease provides expressly that (i) such sublease is subject and subordinate to the Lease (and to the terms thereof), and (ii) if this Lease terminates, then Landlord, at Landlord's option, may take over all of the right, title and interest of the Transferor under such sublease, and the Transferee, at Landlord's option, shall attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be:

(1) liable for any act or omission of the Transferor under such sublease (except for any such acts or omissions that (x) continue after the date that Landlord succeeds to the interest of the Transferor under such sublease, and (y) may be remedied by the providing a service or performing a repair),

(2) subject to any defense or offsets which the Transferee may have against the Transferor that accrue prior to the date that Landlord succeeds to the interest of the Transferor,

(3) bound by any previous payment that the Transferee made to the Transferor more than thirty (30) days in advance of the date that such payment was due,

(4) bound by any obligation to make any payment to or on behalf of the Transferee that accrues prior to the date that Landlord succeeds to the interest of the Transferor under such sublease,

(5) bound by any obligation to perform any work or to make improvements to the Premises (other than the obligation to perform maintenance, repairs or restoration that in each case first becomes necessary from and after the date that Landlord succeeds to the interest of the Transferor under such sublease) (with the understanding, however, that if (I) the Premises is damaged by fire or other casualty, or affected by condemnation, prior to the date that Landlord succeeds to the interest of the Transferor under such sublease, (II) Landlord would have otherwise been required to perform the restoration of the Premises, or the applicable portion thereof, that is required by virtue of such fire or other casualty, or such condemnation, in accordance with the terms hereof, and (III) Landlord does not elect to perform such restoration by giving notice thereof to the subtenant on or prior to the tenth (10^{th}) day after the date that Landlord so succeeds, then such subtenant shall have the right to terminate such sublease (and such subtenant's obligation to so attorn to Landlord, as aforesaid) by giving notice thereof to Landlord within ten (10) days after the last day of such period of ten (10) days during which Landlord has the right to give such notice to such subtenant),

(6) bound by any amendment or modification of such sublease made without Landlord's consent, or

(7) bound to return the Transferee's security deposit, if any, until such deposit has come into Landlord's actual possession and the Transferee is entitled to such security deposit pursuant to the terms of such sublease (the requirements of a proposed sublease as set forth in this Section 17.4(O) being collectively referred to herein as the "Basic Sublease Provisions").

17.5. Transfer Taxes.

Tenant shall pay any transfer taxes (and other similar charges and fees) that any Governmental Authority imposes in connection with any Transfer (including, without limitation, any such transfer taxes, charges or fees that a Governmental Authority imposes in connection with Landlord's exercising Landlord's rights to consummate a Recapture Termination).

17.6. Transfer Profit.

(A) Subject to the terms of this Section 17.6 and Section 17.7 hereof, Tenant shall pay as additional rent to Landlord, on the first (1st) day of each calendar month during the Term in the same manner as Fixed Rent, an amount equal to the excess of (I) fifty percent (50%) of the Transfer Profit for each Transfer that is determined as of the last day of the immediately preceding calendar month, over (II) the aggregate amount of the payments that Tenant has theretofore paid to Landlord for such Transfer under this Section 17.6(A).

(B)

(1) The term "Transfer Profit" shall mean, with respect to any particular Transfer, the excess (if any) of (x) the Transfer Inflow for such Transfer for the period beginning on the first (1st) day of the term of the applicable Transfer (if such Transfer is a sublease or sublicense) or the date that such Transfer becomes effective (if such Transfer is an assignment of the tenant's interest under this Lease or an assignment of the subtenant's interest under a sublease or a sublicense (or further sublease or sublicense)) (as the case may be), over (y) the sum of (a) the Transfer Outflow for such Transfer for such period, and (b) the Amortized Transfer Expenses for such Transfer for such period.

(2) The term "Transfer Inflow" shall mean, with respect to any particular Transfer for any particular period, the amount that the Transferor receives during such period from or on behalf of the Transferee in connection with the applicable Transfer.

(3) The term "Transfer Outflow" shall mean:

(a) with respect to any Transfer that is a sublease or sublicense (or a further sublease or sublicense), the aggregate amount that the Transferor pays during the applicable period for the Premises to the counterparty under the Occupancy Agreement through which the Transferor derives its rights to the Premises, and

(b) with respect to any Transfer that is an assignment of the tenant's interest under this Lease or the subtenant's interest under a sublease or sublicense (or further sublease or sublicense), zero.

(C) If the Transferor (or an Affiliate thereof) receives in a transaction that occurs concurrently with the applicable Transfer consideration from the Transferee (or an Affiliate thereof) for the sale or lease of personal property or for services that the Transferor (or an Affiliate thereof) agrees to provide for the Transferee (or an Affiliate thereof), then (I) the Transfer Inflow shall include (in addition to the consideration that the Transferor receives for the Transfer) an amount equal to such other consideration, and (II) the Transfer Outflow shall include (in addition to the items that are otherwise includible in Transfer Outflow for purposes hereof) (a) the cost that the Transferor (or such Affiliate thereof) incurs in acquiring the personal property that the Transferor (or such Affiliate thereof) sells to the Transferee (or an Affiliate thereof) in such concurrent transaction (to the extent that such cost has not theretofore been amortized in accordance with generally accepted accounting principles), (b) the amortization of the cost that the Transferor (or such Affiliate thereof) incurs in acquiring any personal property that the Transferor (or such Affiliate thereof) leases to the Transferee, or (c) the cost that the Transferor (or an Affiliate thereof) incurs in providing such services, as the case may be.

17.7. Permitted Transfers.

(A) The term "Net Worth Assignment Requirement" shall mean the requirement that Tenant has provided to Landlord, not later than the tenth (10^{th}) Business Day after the applicable assignment has been consummated, an audited balance sheet for the applicable Permitted Party or if not available, a balance sheet certified by Tenant's Chief Financial Officer and the assignee that in either case is dated no earlier than the last day of the most recently ended fiscal quarter (or the last day of the fiscal quarter that immediately precedes the most recently ended fiscal quarter, if the applicable assignment occurs less than sixty (60) days after the last day of the most recently ended fiscal quarter) and that reflects that the assignee's tangible net worth, as determined in accordance with generally accepted accounting principles, consistently applied, is not less than the tangible net worth of the applicable Permitted Party on the Commencement Date (if the Transferor is Tenant) or on the first day of the term of the Occupancy Agreement through which the Transferor holds its interest in the Premises (if the Transferor is not Tenant).

(B) A Permitted Party shall have the right to assign such Permitted Party's entire interest under the applicable Occupancy Agreement to an Affiliate of such Permitted Party without (x) Landlord's prior approval, (y) Landlord's having the right to consummate a Recapture Termination in respect thereof, and (z) Tenant's being required to pay Transfer Profit to Landlord in connection therewith, provided that in each case (i) Tenant gives to Landlord, not later than the tenth (10th) Business Day after any such assignment is consummated, an instrument, duly executed by such Permitted Party and the aforesaid Affiliate of such Permitted Party, in form reasonably satisfactory to Landlord, to the effect that such Affiliate assumes all of the obligations of such Permitted Party under such Occupancy Agreement to the extent arising from and after the date of such assignment, (ii) Tenant, with such notice, provides Landlord with reasonable evidence to the effect that the Person to which such Permitted Party is so assigning such Permitted Party's interest under such Occupancy Agreement constitutes an Affiliate of such Permitted Party, and (iii) the Net Worth Assignment Requirement is satisfied.

(C) The merger or consolidation of a Permitted Party into or with another Person shall be permitted without (x) Landlord's prior approval, (y) Landlord's having the right to consummate a Recapture Termination in respect thereof, and (z) Tenant's being required to pay Transfer Profit to Landlord in connection therewith, provided that in each case (i) such merger or consolidation is not principally for the purpose of transferring such Permitted Party's interest in the applicable Occupancy Agreement, (ii) Tenant gives Landlord notice of such merger or consolidation not later than the tenth (10th) Business Day after the occurrence thereof, (iii) Tenant, within ten (10) Business Days after such merger or consolidation, provides Landlord with reasonable evidence that the requirement described in clause (i) above has been satisfied, and (iv) the Net Worth Assignment Requirement is satisfied.

(D) The assignment of a Permitted Party's entire interest under the applicable Occupancy Agreement in connection with the sale of all or substantially all of the assets of such

Permitted Party shall be permitted without (x) Landlord's prior approval, (y) Landlord's having the right to consummate a Recapture Termination in respect thereof, and (z) Tenant's being required to pay Transfer Profit to Landlord in connection therewith, provided that in each case (i) Tenant gives to Landlord, not later than the tenth (10th) Business Day after any such assignment is consummated, an instrument, duly executed by such Permitted Party and the Transferee, in form reasonably satisfactory to Landlord, to the effect that such Transferee assumes all of the obligations of such Permitted Party to the extent arising under the applicable Occupancy Agreement from and after the date of such assignment, (ii) such sale of all or substantially all of the assets of such Permitted Party is not principally for the purpose of transferring such Permitted Party's interest in such Occupancy Agreement, (iii) Tenant, within ten (10) Business Days after such sale, provides Landlord with reasonable evidence that the requirement described in clause (ii) above has been satisfied, and (iv) the Net Worth Assignment Requirement is satisfied.

(E) The direct or indirect transfer of shares or equity interests in a Permitted Party (including, without limitation, the issuance of treasury stock, or the creation or issuance of a new class of stock, in either case in the context of an initial public offering or in the context of a subsequent offering of equity securities) shall be permitted without (x) Landlord's prior approval, (y) Landlord's having the right to consummate a Recapture Termination in respect thereof, and (z) Tenant's being required to pay Transfer Profit to Landlord in connection therewith, provided that in each case (i) such transfer is not principally for the purpose of transferring the interest of such Permitted Party under the applicable Occupancy Agreement, (ii) Tenant gives Landlord notice of such transfer not later than the tenth (10th) Business Day after the occurrence thereof, and (iii) Tenant, within ten (10) Business Days after the date that such transfer occurs, provides Landlord with reasonable evidence that the requirement described in clause (i) has been satisfied (except that Tenant shall not be required to comply with this clause (iii) to the extent that such direct or indirect transfer of shares or equity interests is accomplished through the public "over-the-counter" securities market or through any recognized stock exchange).

(F) A Permitted Party shall have the right to sublease or license (or further sublease or sublicense) the Premises to an Affiliate of such Permitted Party, without (x) Landlord's prior approval, (y) Landlord's having the right to consummate a Recapture Termination in respect thereof, and (z) Tenant's being required to pay Transfer Profit to Landlord in connection therewith, provided that in each case (i) Tenant gives to Landlord a copy of such sublease or license, not later than the tenth (10th) Business Day after any such sublease or license is consummated, (ii) Tenant, with such copy of such sublease or license, provides Landlord with reasonable evidence to the effect that the Person to which such Permitted Party is so subleasing or licensing the Premises constitutes an Affiliate of such Permitted Party, and (iii) such sublease includes the Basic Sublease Provisions.

(G) If (I) (i) a Permitted Party assigns such Permitted Party's entire interest under the applicable Occupancy Agreement to an Affiliate of such Permitted Party, or (ii) a Permitted Party subleases or licenses (or further subleases or sublicenses) the Premises to an Affiliate of such Permitted Party, in either case without Landlord's consent as provided in this Section 17.7 and without paying to Landlord any Transfer Profit that derives therefrom, and (II)

the assignee or subtenant or sublicensee subsequently assigns the interest of such assignee or such subtenant or sublicensee under the applicable Occupancy Agreement to a third party in a Transfer that is not governed by the provisions of this Section 17.7 or further subleases or sublicenses the Premises to a third party in a Transfer that is not governed by the provisions of this Section 17.7, then, for purposes of calculating the Transfer Profit that is due to Landlord for such subsequent assignment or sublease or sublicense, the parties shall assume that the assignment or sublease or sublicense that the Permitted Party consummated without Landlord's approval under this Section 17.7 did not occur previously (and, accordingly, the parties, in calculating Transfer Profit for such Transfer that is not governed by this Section 17.7, shall include any Transfer Profit that resulted from the prior Transfer from the Permitted Party to its Affiliate).

Article 18
LANDLORD'S RIGHT TO RELOCATE TENANT

18.1. Landlord's Rights.

(A) Subject to the terms of this Section 18.1, Landlord, at any time and from time to time during the Term, shall have the right to relocate Tenant from the Premises (the Premises from which Tenant is being relocated pursuant to this Section 18.1 being referred to herein as the "Old Premises") to other space in the Building (such other space being referred to as the "New Premises"; Landlord's aforesaid right to relocate Tenant from the Old Premises to the New Premises being referred to herein as the "Relocation Option").

(B) Landlord shall have the right to exercise the Relocation Option only by giving notice thereof (the "Relocation Notice") to Tenant not later than ninety (90) days before the date that the aforesaid relocation becomes effective (the date that the relocation becomes effective being referred to herein as the "Relocation Date"). A Relocation Notice shall not be effective for purposes of this Section 18.1 unless Landlord includes therewith a floor plan identifying the New Premises. The New Premises shall (i) be comprised of Rentable Area equal to or greater than the Rentable Area of the Old Premises, and (ii) be similar in configuration to the Old Premises. In no event shall the Fixed Rent or Tenant's Tax Share increase if the New Premises is comprised of a Rentable Area greater than the Rentable Area of the Old Premises. Landlord, at Landlord's expense, shall construct in the New Premises, not later than the Relocation Date, an interior installation that is as comparable as reasonably practicable to the interior installation that then exists in the Old Premises.

(C) Tenant shall cooperate reasonably with Landlord in connection with Landlord's designing and performing the construction of such interior installation in the New Premises. Such interior installation that Landlord constructs in the New Premises shall constitute the same Landlord's Work, Alterations and Specialty Alterations (as the case may be) as the corresponding Landlord's Work, Alterations and Specialty Alterations constituted in the Old Premises (from and after the date that Landlord completes the installation thereof in accordance with the terms of this Section 18.1). Tenant shall vacate the Old Premises and surrender vacant and exclusive possession of the Old Premises to Landlord on or before the Relocation Date, provided that Landlord has theretofore delivered vacant and exclusive possession of the New

Premises to Tenant in accordance with the terms of this Section 18.1. Tenant shall not be required to remove any Landlord's Work, Alterations or Specialty Alterations from the Old Premises by virtue of Landlord's exercise of the Relocation Option. Landlord shall reimburse Tenant for any reasonable moving expenses and for any other reasonable costs and expenses incurred by Tenant in so relocating to the New Premises from the Old Premises, within thirty (30) days after Tenant's request therefor and Tenant's submission to Landlord of reasonable supporting documentation therefor.

(D) From and after the Relocation Date, all references to the Premises herein shall mean the New Premises rather than the Old Premises.

(E) Notwithstanding the foregoing to the contrary, if Landlord shall give the Relocation Notice then Tenant shall have the option in lieu of relocating, to terminate this Lease by giving notice to Landlord within five (5) Business Days of the Relocation Notice (time being of the essence) and in such event, on the Relocation Date, Tenant shall vacate the Old Premises and deliver exclusive possession thereof to Landlord in accordance with the terms of this Lease that govern Tenant's obligations on the expiration or termination of this Lease.

Article 19
DEFAULT

19.1. Events of Default.

The term "Event of Default" shall mean the occurrence of any of the following events:

(A) Tenant fails to pay any installment of Fixed Rent when due and such failure continues for three (3) Business Days after the date that Landlord gives notice of such failure to Tenant; provided, however, that if (x) Tenant fails to pay any installment of Fixed Rent when due, (y) Tenant has theretofore failed to pay at least three (3) installments of Fixed Rent when due during the immediately preceding period of twelve (12) months, and (z) Landlord has theretofore given Tenant notice of Tenant's aforesaid failure to pay when due at least three (3) installments of Fixed Rent during such period of twelve (12) months, then Tenant's failure to pay such installment of Fixed Rent shall constitute an Event of Default (without Landlord's being required to first give Tenant notice of such failure and an opportunity to cure such failure, as aforesaid);

(B) Tenant fails to pay any installment of Rental (other than Fixed Rent) when due and such failure continues for five (5) Business Days after the date that Landlord gives notice of such failure to Tenant;

(C) a Permitted Party's interest under the applicable Occupancy Agreement devolves upon or passes to any other Person, whether by operation of law or otherwise, except as expressly permitted under Article 17 hereof, and such Transfer is not reversed within ten (10) days after the date that such Transfer occurs;

(D) Tenant defaults in respect of Tenant's obligations under Section 4.8 hereof, and such default continues for more than three (3) Business Days after Landlord gives Tenant notice thereof;

(E) Tenant defaults in respect of Tenant's obligations under Section 7.5(A)(4) hereof, and such default continues for more than five (5) Business Days after Landlord gives Tenant notice thereof;

(F) if Tenant deposits the Letter of Credit with Landlord in accordance with the terms of Section 23.2 hereof, (i) Landlord presents the Letter of Credit for payment in accordance with the terms hereof, (ii) the issuer thereof fails to make payment thereon in accordance with the terms thereof, and (iii) either Tenant or such issuer fails to make such payment to Landlord within two (2) Business Days after the date that Landlord gives Tenant notice of such failure of such issuer;

(G) Tenant fails to deposit with Landlord any portion of the Cash Security Deposit that Landlord applies after the occurrence of an Event of Default as provided in Section 23.3 hereof or provide Landlord with a replacement Letter of Credit after Landlord presents the Letter of Credit for payment to apply the proceeds thereof after the occurrence of an Event of Default as provided in Section 23.3 hereof in either case within five (5) Business Days after the date that Landlord gives Tenant notice demanding that Tenant make such deposit or provide such replacement;

(H) Tenant defaults in the observance or performance of any other covenant of this Lease on Tenant's part to be observed or performed and Tenant fails to remedy such default within twenty (20) days after Landlord gives Tenant notice thereof, except that if (i) such default cannot be remedied with reasonable diligence during such period of twenty (20) days, (ii) Tenant takes reasonable steps during such period of twenty (20) days to commence Tenant's remedying of such default, and (iii) Tenant prosecutes diligently Tenant's remedying of such default to completion, then an Event of Default shall not occur by reason of such default; or

(I) the Premises are abandoned.

19.2. Termination.

If (1) an Event of Default occurs, and (2) Landlord, at any time thereafter, at Landlord's option, gives a notice to Tenant stating that this Lease and the Term shall expire and terminate on the third (3rd) Business Day after the date that Landlord gives Tenant such notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as of the third (3rd) Business Day after the date that Landlord gives Tenant such notice, and Tenant immediately shall quit and surrender the Premises, but Tenant shall nonetheless remain liable for all of its obligations hereunder, as provided in Article 21 hereof and Article 22 hereof.

Article 20
TENANT'S INSOLVENCY

20.1. Assignments pursuant to the Bankruptcy Code.

(A) The term "Bankruptcy Code" shall mean 11 U.S.C. Section 101 et seq., or any statute of similar nature and purpose.

(B) If Tenant, Tenant's trustee or Tenant as debtor-in-possession (each, an "Insolvency Party") proposes to assign the tenant's interest hereunder pursuant to the provisions of the Bankruptcy Code to any Person that has made a *bona fide* offer to accept an assignment of the tenant's interest under this Lease on terms acceptable to Tenant, then the Insolvency Party shall give to Landlord notice of such proposed assignment no later than twenty (20) days after the date that the Insolvency Party receives such offer, but in any event no later than ten (10) days before the date that the Insolvency Party makes application to a court of competent jurisdiction for authority and approval to consummate such assignment. Such notice given by the Insolvency Party to Landlord shall (a) set forth the name and address of such Person that has made such *bona fide* offer, (b) set forth all of the terms and conditions of such *bona fide* offer, and (c) confirm that such Person will provide to Landlord adequate assurance of future performance that conforms with the terms of Section 20.1(D) hereof. Landlord shall have the right to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the *bona fide* offer made by such Person (less any brokerage commissions that would otherwise be payable by the Insolvency Party out of the consideration to be paid by such Person in connection with such assignment of the tenant's interest under this Lease), by giving notice thereof to the Insolvency Party at any time prior to the effective date of such proposed assignment.

(C) Tenant shall pay to Landlord an amount equal to the reasonable Out-of-Pocket Costs that Landlord incurs in connection with Tenant's assignment of the tenant's interest hereunder pursuant to the provisions of the Bankruptcy Code, within thirty (30) days after Landlord's submission to Tenant of an invoice therefor that contains reasonable supporting documentation for the charges described therein.

(D) A Person that submits a *bona fide* offer to take by assignment the tenant's interest under this Lease as described in Section 20.1(B) hereof shall be deemed to have provided Landlord with adequate assurance of future performance only if such Person (a) deposits with Landlord simultaneously with such assignee's taking by assignment the tenant's interest under this Lease an amount equal to the then annual Fixed Rent, as security for the faithful performance and observance by such assignee of the tenant's obligations of this Lease (and such Person gives to Landlord, at least five (5) days prior to the date that the proposed assignment becomes effective, information reasonably satisfactory to Landlord that indicates that such Person has the ability to post such deposit), (b) gives to Landlord, at least five (5) days prior to the date that the proposed assignment becomes effective, such Person's financial statements, audited by a certified public accountant in accordance with generally accepted accounting principles, consistently applied, for the three (3) fiscal years that immediately precede such assignment, that indicate that such Person has a tangible net worth of at least ten (10) times the

then annual Fixed Rent for each of such three (3) years, and (c) gives to Landlord, at least five (5) days prior to the date that the proposed assignment becomes effective, such other information or takes such action that in either case Landlord, in its reasonable judgment, determines is necessary to provide adequate assurance of the performance by such assignee of the obligations of the tenant under this Lease; provided, however, that in no event shall such adequate assurance of future performance be less favorable to Landlord than the assurance contemplated by Section 365(b)(3) of the Bankruptcy Code (notwithstanding that this Lease may be construed as a lease of real property in a shopping center).

(E) If Tenant's interest under this Lease is assigned to any Person pursuant to the provisions of the Bankruptcy Code, then any such assignee shall (x) be deemed without further act or deed to have assumed all the obligations of the tenant arising under this Lease from and after the date of such assignment, and (y) execute and deliver to Landlord upon demand an instrument confirming such assumption.

(F) Nothing contained in this Article 20 limits Landlord's rights against Tenant under Article 17 hereof.

20.2. Replacement Lease.

If (i) Tenant is not the Person that constituted Tenant initially, and (ii) either (I) this Lease is disaffirmed or rejected pursuant to the Bankruptcy Code, or (II) this Lease terminates by reason of occurrence of an Insolvency Event, then, subject to the terms of this Section 20.2, the Persons that constituted Tenant hereunder previously, including, without limitation, the Person that constituted Tenant initially (each such Person that previously constituted Tenant hereunder (but does not then constitute Tenant hereunder), and with respect to which Landlord exercises Landlord's rights under this Section 20.2, being referred to herein as a "Predecessor Tenant") shall (1) pay to Landlord the aggregate Rental that is then due and owing by Tenant to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (2) enter into a new lease, between Landlord, as landlord, and the Predecessor Tenant, as tenant, for the Premises, and for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Fixed Expiration Date, at the same Fixed Rent and upon the then executory terms that are contained in this Lease, except that (a) the Predecessor Tenant's rights under the new lease shall be subject to the possessory rights of Tenant under this Lease and the possessory rights of any Person claiming by, through or under Tenant or by virtue of any statute or of any order of any court, and (b) such new lease shall require all defaults existing under this Lease to be cured by the Predecessor Tenant with reasonable diligence. Landlord shall have the right to require the Predecessor Tenant to execute and deliver such new lease on the terms set forth in this Section 20.2 only by giving notice thereof to Tenant and to the Predecessor Tenant within thirty (30) days after Landlord receives notice of any such disaffirmance or rejection (or, if this Lease terminates by reason of Landlord making an election to do so, then Landlord may exercise such right only by giving such notice to Tenant and the Predecessor Tenant within thirty (30) days after this Lease so terminates). If the Predecessor Tenant defaults in its obligation to enter into said new lease for a period often (10) days following Landlord's request therefor, then, in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies

against such Predecessor Tenant as if such Predecessor Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of such Predecessor Tenant's default thereunder.

20.3. Insolvency Events.

This Lease shall terminate automatically upon the occurrence of any of the following events:

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

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

(C) any case, proceeding or other action is commenced or instituted against a Tenant Obligor (a) seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, which in either of such cases (i) results in any such entry of an order for relief, adjudication of bankruptcy or insolvency or such an appointment or the issuance or entry of any other order having a similar effect, and (ii) remains undismissed for a period of sixty (60) days; or

(D) any case, proceeding or other action is commenced or instituted against a Tenant Obligor seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which is not vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or

(E) a Tenant Obligor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (A), (B), (C), or (D) above; or

(F) a trustee, receiver or other custodian is appointed for any substantial part of a Tenant Obligor's assets, and such appointment is not vacated or stayed within fifteen (15) Business Days (the events described in this Section 20.3 being collectively referred to herein as "Insolvency Events").

The term "Tenant Obligor" shall mean (a) Tenant, (b) any Person that comprises Tenant (if Tenant is comprised of more than one (1) Person), (c) any partner in Tenant (if Tenant is a general partnership), (d) any general partner in Tenant (if Tenant is a limited partnership), (e) any Person that has guarantied all or any part of the obligations of Tenant hereunder, and (f) any Person that previously constituted Tenant hereunder. If this Lease terminates pursuant to this Section 20.3, then (I) Tenant immediately shall quit and surrender the Premises, and (II) Tenant shall nonetheless remain liable for all of its obligations hereunder, as provided in Article 21 hereof and Article 22 hereof.

20.4. Effect of Stay.

Notwithstanding anything to the contrary contained herein, if (i) Landlord's right to terminate this Lease after the occurrence of an Event of Default, or the termination of this Lease upon the occurrence of an Insolvency Event, is stayed by order of any court having jurisdiction over an Insolvency Event, or by federal or state statute, (ii) the trustee appointed in connection with an Insolvency Event, or Tenant or Tenant as debtor-in-possession, fails to assume Tenant's obligations under this Lease on or prior to the earliest to occur of (a) the last day of the period prescribed therefor by law, (b) the one hundred twentieth (120th) day after entry of the order for relief, or (c) a date that is otherwise designated by the court, or (iii) said trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 20.1(D) hereof, then Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on five (5) Business Days of advance notice to Tenant, Tenant as debtor-in-possession or said trustee, and, upon the expiration of said period of five (5) Business Days, this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession or said trustee shall immediately quit and surrender the Premises as aforesaid.

20.5. Rental for Bankruptcy Purposes.

Notwithstanding anything contained in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, regardless of whether such amounts are expressly denominated as Rental, shall constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code, and Tenant's payment obligations with respect thereto shall constitute obligations to be timely performed pursuant to Section 365(d) of the Bankruptcy Code.

Article 21
REMEDIES AND DAMAGES

21.1. Certain Remedies.

(A) If (x) an Event of Default occurs and this Lease and the Term expires and comes to an end as provided in Article 19 hereof, or (y) this Lease terminates as provided in Section 20.3 hereof, then:

(1) Tenant shall immediately quit and peacefully surrender the Premises to Landlord, and Landlord and its agents may, without prejudice to any other remedy which Landlord may have, (a) re-enter the Premises or any part thereof, without notice, either by summary proceedings, or by any other applicable action or proceeding, or by lawful force (without being liable to indictment, prosecution or damages therefor), (b) repossess the Premises and dispossess Tenant and any other Persons from the Premises, and (c) remove any and all of their property and effects from the Premises; and

(2) Landlord, at Landlord's option, may relet the whole or any portion or portions of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Fixed Expiration Date, at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Landlord, in its sole discretion, may determine.

(B) Landlord shall have no obligation to relet the Premises or any part thereof and shall not be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting. Any such refusal or failure on Landlord's part shall not relieve Tenant of any liability under this Lease or otherwise affect any such liability. Landlord, at Landlord's option, may make such repairs, replacements, alterations, additions, improvements, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(C) In the event of a breach or threatened breach by Tenant, or any Persons claiming by, through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to (1) enjoin or restrain such breach, (2) invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach, and (3) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease. The right to invoke the remedies hereinbefore set forth are cumulative and nonexclusive and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

21.2. No Redemption.

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

21.3. Calculation of Damages.

(A) If this Lease terminates by reason of the occurrence of an Event of Default or by reason of the occurrence of an Insolvency Event, then Tenant shall pay to Landlord, on demand, and Landlord shall be entitled to recover:

(1) all Rental payable under this Lease by Tenant to Landlord (x) to the date that this Lease terminates, or (y) to the date of re-entry upon the Premises by Landlord, as the case may be;

(2) the excess of (a) the Rental for the period which otherwise would have constituted the unexpired portion of the Term, over (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of clause (2) of Section 21.1 (A) hereof for any part of such period (such excess being referred to herein as a "Deficiency"), as damages (it being understood that (x) such net amount described in clause (b) above shall be calculated by deducting from the rents collected under any such reletting all of Landlord's expenses in connection with the termination of this Lease, Landlord's re-entry upon the Premises and such reletting, including, but not limited to, all repossession costs, brokerage commissions, legal expenses, attorneys' fees and disbursements, alteration costs, contributions to work and other expenses of preparing the Premises for such reletting, (y) any such Deficiency shall be paid in monthly installments by Tenant on the days specified in this Lease for payment of installments of Fixed Rent or Escalation Rent (as the case may be), and (z) Landlord shall be entitled to recover from Tenant each monthly Deficiency as it arises, and no suit to collect the amount of the Deficiency for any month shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding); and

(3) regardless of whether Landlord has collected any monthly Deficiency as aforesaid, and in lieu of any further Deficiency, as and for liquidated and agreed final damages, an amount equal to the excess (if any) of (a) the Rental for the period which otherwise would have constituted the unexpired portion of the Term (commencing on the date immediately succeeding the last date with respect to which a Deficiency, if any, was collected), over (b) the then fair and reasonable net effective rental value of the Premises for the same period (which is calculated by (X) deducting from the fair and reasonable rental value of the Premises the expenses that Landlord would reasonably expect to incur in reletting the Premises, including, but not limited to, all repossession costs, brokerage commissions, legal expenses, attorneys' fees and disbursements, alteration costs, contributions to work and other expenses of preparing the Premises for such reletting, and (Y) taking into account the time period that Landlord would reasonably require to consummate a reletting of the Premises to a new tenant), both discounted to present value at the Base Rate. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, have been relet by Landlord to any Person other than an Affiliate of Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, then the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value of the Premises (or the applicable part thereof) so relet during the term of the reletting.

(B) If the Premises, or any part thereof, are relet together with other space in the Building, then the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this Section 21.3. Tenant acknowledges and agrees that in no event shall it be entitled to any rents collected or payable under any reletting, regardless of whether such rents exceed the Rental reserved in this Lease.

(C) Nothing contained in this Article 21 shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any applicable statute or rule of law, or of any sums or damages to which Landlord may be lawfully entitled in addition to the damages set forth in this Section 21.3.

Article 22
LANDLORD'S EXPENSES, LEGAL PROCEEDING COSTS AND LATE CHARGES

22.1. Landlord's Costs.

Tenant shall pay to Landlord an amount equal to the reasonable costs that Landlord incurs in instituting or prosecuting any legal proceeding against Tenant (or any other Person claiming by, through or under Tenant) to the extent that such legal proceeding derives from the occurrence of an Event of Default, together with interest thereon calculated at the Applicable Rate from the date that Landlord incurs such costs, within thirty (30) days after Landlord gives to Tenant an invoice therefor (it being understood that (x) Landlord shall have the right to collect such amount from Tenant as additional rent to the extent that Landlord incurs such costs during the Term and as damages to the extent that Landlord incurs such costs after the Expiration Date, and (y) the amount that Landlord has the right to collect from Tenant under this Section 0 shall be adjusted appropriately to reflect the extent to which Landlord is successful in such legal proceeding).

22.2. Legal Proceeding Costs.

If Landlord or Tenant, as the case may be, institutes or prosecutes any legal proceeding against the other arising out of this Lease, then the losing party in any such legal proceeding shall pay to the prevailing party an amount equal to the reasonable actual out-of-pocket costs that the prevailing party incurred in instituting or prosecuting such legal proceeding, together with interest thereon calculated at the Applicable Rate from the date that the prevailing party incurred such costs, within thirty (30) days after the prevailing party gives to the non-prevailing party an invoice therefore. If the determination in any such legal proceeding is that the prevailing party was partially liable, then the non-prevailing party shall pay to the prevailing party the percentage of the aforesaid costs equal to the percentage by which the prevailing party was successful (so that if, for example, the prevailing party was determined in any such proceeding to be twenty percent (20%) liable, then the non-prevailing party would pay the prevailing party only eighty percent (80%) of the prevailing party's costs to institute or prosecute such legal proceeding).

22.3. Interest on Late Payments.

If Tenant fails to pay any item of Rental on or prior to the third (3rd) day following the date that such payment is due, then Tenant shall pay to Landlord, in addition to such item of Rental, as a late charge and as additional rent, an amount equal to interest at the Applicable Rate on the amount unpaid, computed from the date such payment was due to and including the date of payment. Nothing contained in this Section 22.3 limits Landlord's rights and remedies, by operation of law or otherwise, after the occurrence of an Event of Default.

Article 23
SECURITY

23.1. Security Deposit.

Subject to the terms of this Article 23, Tenant, on the date hereof, shall deposit with Landlord, as security for the performance of Tenant's obligations under this Lease, an amount in cash equal to One Hundred Thirty-Eight Thousand One Hundred Eighty-Eight Dollars and Sixty-Seven Cents ($138,188.67) (the "Cash Security Deposit").

23.2. Letter of Credit.

Tenant, at any time during the Term, shall have the right to deliver to Landlord a "clean," unconditional, irrevocable and transferable letter of credit (the "Letter of Credit") that (i) is in the amount of the Cash Security Deposit, (ii) is in a form that is reasonably satisfactory to Landlord, (iii) is issued for a term of not less than one (1) year, (iv) is issued for the account of Landlord, (v) automatically renews for periods of not less than one (1) year unless the issuer thereof otherwise advises Landlord on or prior to the thirtieth (30th) day before the applicable expiration date, (vi) allows Landlord the right to draw thereon in part from time to time or in full, and (vii) is issued by, and drawn on, a bank that has a Standard & Poor's rating of at least "AA" (or, if Standard & Poor's hereafter ceases the publication of ratings for banks, a rating of a reputable rating agency as reasonably designated by Landlord that most closely approximates a Standard & Poor's rating of "AA" as of the date hereof) and that either (I) has an office in the city where the Building is located at which Landlord can present the Letter of Credit for payment, or (II) has an office in the United States and allows Landlord to draw upon the Letter of Credit without presenting a draft in person (such as, for example, by submitting a draft by fax or overnight delivery service)(the aforesaid rating of the bank that issues the Letter of Credit being referred to herein as the "Bank Rating"). If Tenant gives notice to Landlord at least thirty (30) days before the date that Tenant delivers to Landlord the Letter of Credit, then Landlord shall deliver to Tenant, simultaneously with Tenant's delivery of the Letter of Credit to Landlord, the Cash Security Deposit (or the portion thereof that then remains unapplied in accordance with the terms of this Article 23). If Tenant does not give such notice to Landlord, then Landlord shall deliver to Tenant the Cash Security Deposit (or such portion thereof) on or prior to the thirtieth (30th) day after Tenant gives the Letter of Credit to Landlord. As of the date hereof, Landlord shall accept Silicon Valley Bank as the issuer of the Letter of Credit.

23.3. Landlord's Rights.

If (i) an Event of Default occurs and is continuing, or (ii) Tenant fails to vacate the Premises and surrender possession thereof in accordance with the terms of this Lease upon the Expiration Date, then Landlord may apply the whole or any part of the Cash Security Deposit or present the Letter of Credit for payment and apply the proceeds thereof, as the case may be, (i) to the payment of any Rental that then remains unpaid, or (ii) to any damages to which Landlord is entitled hereunder and that Landlord incurs by reason of such Event of Default or Tenant's aforesaid failure to vacate the Premises or surrender possession thereof in accordance with the terms of this Lease upon the Expiration Date. If Landlord so applies any part of the Cash Security Deposit or the proceeds of the Letter of Credit, as the case may be, then Tenant, upon demand, shall deposit with Landlord the cash amount so applied or provide Landlord with a replacement Letter of Credit so that Landlord has the full amount of the required security at all times during the Term. If (x) Tenant deposits the Letter of Credit with Landlord as provided in Section 23.2 hereof, and (y) at any time the Bank Rating of the issuer of the Letter of Credit is less than "AA" (or, if Standard & Poor's hereafter ceases the publication of ratings for banks, the Bank Rating of the issuer of the Letter of Credit is less than a rating of a reputable rating agency as reasonably designated by Landlord that most closely approximates a Standard & Poor's rating of "AA" as of the date hereof), then Tenant shall deliver to Landlord a replacement Letter of Credit, issued by a bank that has a Bank Rating that satisfies the aforesaid requirement (and otherwise meets the requirements set forth in Section 23.2 hereof) within fifteen (15) days after the date that Landlord gives Tenant notice of such deficiency in such issuer's rating. If Tenant fails to deliver to Landlord such replacement Letter of Credit within such period of fifteen (15) days, then Landlord, in addition to Landlord's other rights at law, in equity or as otherwise set forth herein, shall have the right to present the Letter of Credit for payment and retain the proceeds thereof as security in lieu of the Letter of Credit (it being agreed that Landlord shall have the right to use, apply and transfer such proceeds in the manner described in this Article 23). Tenant shall reimburse Landlord for any reasonable costs that Landlord incurs in so presenting the Letter of Credit for payment within thirty (30) days after Landlord submits to Tenant an invoice therefor. Tenant shall not assign or encumber or attempt to assign or encumber the Cash Security Deposit. Nothing contained in this Section 23.3 limits Landlord's rights or remedies in equity, at law, or as otherwise set forth herein.

23.4. Return of Security.

Landlord shall return to Tenant the Cash Security Deposit (or the unapplied portion thereof, as the case may be) or the Letter of Credit (to the extent not theretofore presented for payment in accordance with the terms hereof), as the case may be, within thirty (30) days after Tenant performs all of the obligations of Tenant hereunder upon the expiration or earlier termination of the Term. Landlord's obligations under this Section 23.4 shall survive the expiration or earlier termination of the Term.

23.5. Transfer of Letter of Credit.

If Tenant gives the Letter of Credit to Landlord as contemplated by this Article 23, then Tenant, at Tenant's expense, shall cause the issuer thereof to amend the Letter of Credit to name

a new beneficiary thereunder in connection with Landlord's assignment of Landlord's rights under this Lease to a Person that succeeds to Landlord's interest in the Real Property, promptly after Landlord's request from time to time.

23.6. Renewal of Letter of Credit.

If (i) Tenant delivers the Letter of Credit to Landlord as contemplated by this Article 23, and (ii) Tenant fails to provide Landlord with a replacement Letter of Credit that complies with the requirements of this Article 23 on or prior to the thirtieth (30^{th}) day before the expiration date of the Letter of Credit that is then expiring, then Landlord may present the Letter of Credit for payment and retain the proceeds thereof as security in lieu of the Letter of Credit (it being agreed that Landlord shall have the right to use, apply and transfer such proceeds in the manner described in this Article 23). Tenant shall reimburse Landlord for any reasonable costs that Landlord incurs in so presenting the Letter of Credit for payment within thirty (30) days after Landlord submit to Tenant an invoice therefor. Landlord also shall have the right to so present the Letter of Credit and so retain the proceeds thereof as security in lieu of the Letter of Credit at any time from and after the thirtieth (30th) day before the Expiration Date if the Letter of Credit expires earlier than the ninetieth (90th) day after the Expiration Date.

23.7. Reduction in Security Amount.

(A) Subject to the terms of this Section 23.7, Tenant shall have the right to reduce the amount of the Cash Security Deposit or the Letter of Credit, as the case may be, to Seventy-Three Thousand Five Dollars and Thirty-Three Cents ($73,005.33) as of the date that is two (2) years after the Rent Commencement Date.

(B) Tenant shall have the right to request any such reduction only by giving notice thereof to Landlord at any time from and after the tenth (10th) day before the date that Tenant is entitled to such reduction. Tenant shall not be entitled to reduce the amount of the Cash Security Deposit or the Letter of Credit, as the case may be, if (I) an Event of Default has occurred and is continuing on the date that Tenant requests such reduction or the date that Landlord consummates such reduction, or (II) Landlord theretofore applied all or any portion of the security deposited hereunder. If Tenant requests and is entitled to any such reduction in accordance with the terms of this Section 23.7, then Landlord shall release the appropriate amount from the Cash Security Deposit within ten (10) days after the date that Tenant makes such request or permit Tenant, at Tenant's expense, to amend or replace the Letter of Credit to reflect such reduction, as the case may be.

Article 24
END OF TERM

24.1. End of Term.

On the Expiration Date, Tenant shall quit and surrender to Landlord the Premises, vacant, broom-clean, in good order and condition, ordinary wear and tear and damage for which Tenant is not responsible under the terms of this Lease excepted, and otherwise in compliance with the

provisions hereof. Tenant expressly waives, for itself and for any Person claiming by, through or under Tenant, any rights which Tenant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings that Landlord institutes to enforce the provisions of this Article 24.

24.2. Holdover.

If vacant and exclusive possession of the Premises is not surrendered to Landlord on the Expiration Date, then Tenant shall pay to Landlord on account of use and occupancy of the Premises, for each month (or any portion thereof) during which Tenant (or a Person claiming by, through or under Tenant) holds over in the Premises after the Expiration Date, (i) for the first month (or portion thereof) of such holder, an amount equal to one hundred fifty percent (150%) of the aggregate Rental that was payable under this Lease during the last month of the Term and (ii) thereafter, for each month (or portion thereof) an amount equal to two hundred percent (200%) of the aggregate Rental that was payable under this Lease during the last month of the Term. Landlord's right to collect such amount from Tenant for use and occupancy shall be in addition to any other rights or remedies that Landlord may have hereunder or at law or in equity (including, without limitation, Landlord's right to recover Landlord's damages from Tenant that derive from vacant and exclusive possession of the Premises not being surrendered to Landlord on the Expiration Date). Nothing contained in this Section 24.2 shall permit Tenant to retain possession of the Premises after the Expiration Date or limit in any manner Landlord's right to regain possession of the Premises, through summary proceedings or otherwise. Landlord's acceptance of any payments from Tenant after the Expiration Date shall be deemed to be on account of the amount to be paid by Tenant in accordance with the provisions of this Article 24.

Article 25
NO WAIVER

25.1. No Surrender.

(A) Landlord shall be deemed to have accepted a surrender of the Premises prior to the Fixed Expiration Date only if Landlord executes and delivers to Tenant a written instrument providing expressly therefor.

(B) No employee of Landlord or of Landlord's agents shall have any power to accept the keys to the Premises prior to the Expiration Date. The delivery of such keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of this Lease or a surrender of the Premises. If Tenant at any time desires to have Landlord sublet the Premises on Tenant's account, then Landlord or Landlord's agents are authorized to receive said keys for such purpose without releasing Tenant from any of Tenant's obligations under this Lease.

25.2. No Waiver by Landlord.

(A) Landlord's failure to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules, shall not be deemed to be a waiver thereof. The receipt by Landlord of Rental with knowledge of the breach of any covenant of this Lease by Tenant shall not be deemed a waiver of such breach.

(B) No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Fixed Rent or other item of Rental herein stipulated shall be deemed to be other than on account of the earliest stipulated Fixed Rent or other item of Rental, or as Landlord may elect to apply such payment. No endorsement or statement on any check or any letter accompanying any check or payment as Fixed Rent or other item of Rental shall be deemed to be an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Fixed Rent or other item of Rental or to pursue any other remedy provided in this Lease or otherwise available to Landlord at law or in equity.

(C) Landlord's failure during the Term to prepare and deliver any invoices, and Landlord's failure during the Term to make a demand for payment under any of the provisions of this Lease, shall not in any way be deemed to be a waiver of, or cause Landlord to forfeit or surrender, its rights to collect any item of Rental which may have become due during the Term (except to the extent otherwise expressly set forth herein). Tenant's liability for such amounts shall survive the expiration or earlier termination of this Lease (except to the extent otherwise expressly set forth herein).

(D) No provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing signed by Landlord.

25.3. No Waiver by Tenant.

(A) Tenant's failure to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease on Landlord's part to be performed, shall not be deemed to be a waiver. The payment by Tenant of any item of Rental or performance of any obligation of Tenant hereunder with knowledge of any breach by Landlord of any covenant of this Lease shall not be deemed a waiver of such breach, nor shall it prejudice Tenant's right to pursue any remedy against Landlord in this Lease provided or otherwise available to Tenant in law or in equity. No provision of this Lease shall be deemed to have been waived by Tenant, unless such waiver is in writing signed by Tenant.

(B) Tenant's failure during the Term to make a demand for payment under any of the provisions of this Lease shall not in any way be deemed to be a waiver of, or cause Tenant to forfeit or surrender, its rights to collect any amount which may have become due during the Term (except to the extent otherwise expressly set forth herein). Landlord's liability for such amounts shall survive the expiration or earlier termination of this Lease (except to the extent otherwise expressly set forth herein).

Article 26
JURISDICTION

26.1. Governing Law.

This Lease shall be construed and enforced in accordance with the laws of the State of New York.

26.2. Submission to Jurisdiction.

Tenant hereby (a) irrevocably consents and submits to the jurisdiction of any federal, state, county or municipal court sitting in the State of New York for purposes of any action or proceeding brought therein by Landlord against Tenant concerning any matters relating to this Lease, (b) irrevocably waives all objections as to venue and any and all rights it may have to seek a change of venue with respect to any such action or proceedings, (c) agrees that the laws of the State of New York shall govern in any such action or proceeding and waives any defense to any action or proceeding granted by the laws of any other country or jurisdiction unless such defense is also allowed by the laws of the State of New York, and (d) agrees that any final unappealable judgment rendered against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Tenant further agrees that any action or proceeding by Tenant against Landlord concerning any matters arising out of or in any way relating to this Lease shall be brought only in the State of New York, County of New York.

26.3. Waiver of Trial by Jury; Counterclaims.

(A) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or for the enforcement of any remedy under any statute, emergency or otherwise.

(B) If Landlord commences any summary proceeding against Tenant, then Tenant shall not interpose any counterclaim of whatever nature or description in any such proceeding (except to the extent that applicable law precludes Tenant from asserting such counterclaim in another proceeding), and shall not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant. Nothing contained in this Section 26.3(B) limits Tenant's right to assert claims against Landlord in a separate proceeding.

Article 27
NOTICES

27.1. Addresses; Manner of Delivery.

Except as otherwise expressly provided in this Lease, any bills, statements, consents, notices, demands, requests or other communications that a party desires or is required to give to the other party under this Lease shall (1) be in writing, (2) be deemed sufficiently given if (a) delivered by hand (against a signed receipt), (b) sent by registered or certified mail (return receipt requested), or (c) sent by a nationally-recognized overnight courier (with verification of delivery), and (3) be addressed in each case:

if to Tenant (prior to the Commencement Date), at:

501 Second Street, Suite 410
San Francisco, CA 94107
Attn: Randy Gottfried

if to Tenant (following the Commencement Date), at:

501 Second Street, Suite 410
San Francisco, CA 94107
Attn.: Randy Gottfried

and

One Penn Plaza
New York, NY 10119
Attn.: George Jabrine

if to Landlord, at:

c/o Vornado Office Management LLC
888 Seventh Avenue
New York, New York 10119

with a copy to:

Vornado Realty Trust
210 Route 4 East
Paramus, New Jersey 07652

Attn: Joseph Macnow

or to such other address or addresses as Landlord or Tenant may designate from time to time on at least ten (10) Business Days of advance notice given to the other in accordance with the provisions of this Article 27. Any such bill, statement, consent, notice, demand, request, or other

communication shall be deemed to have been given (x) on the date that it is hand delivered, as aforesaid, or (y) three (3) Business Days after the date that it is mailed, as aforesaid, or (z) on the first (1st) Business Day after the date that it is sent by a nationally-recognized courier, as aforesaid. Any such bills, statements, consents, notices, demands, requests or other communications that the Person that is the property manager for the Building gives to Tenant in accordance with the terms of this Article 27 shall be deemed to have been given by Landlord (except that Landlord, at any time and from time to time, shall have the right to terminate or suspend such property manager's right to give such bills, statements, consents, notices, demands, requests or other communications to Tenant by giving not less than five (5) days of advance notice thereof to Tenant).

Article 28
BROKERAGE

28.1. Broker.

Landlord and Tenant each represent to the other that it has not dealt with any broker, finder or salesperson in connection with this Lease other than NAI New York City (the "Broker").

Article 29
INDEMNITY

29.1. Tenant's Indemnification of the Landlord Indemnitees.

(A) Subject to the terms of this Section 29.1, Tenant shall indemnify the Landlord Indemnitees, and hold the Landlord Indemnitees harmless, from and against, all losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) that are incurred by a Landlord Indemnitee and that derive from a claim (a "Claim Against Landlord") made by a third party against such Landlord Indemnitee arising from or alleged to arise from:

(1) a wrongful act or wrongful omission of any Tenant Indemnitee during the Term (including, without limitation, claims that derive from a Permitted Party's conducting such Permitted Party's business in the Premises) (it being understood that Tenant shall not have responsibility under this clause (1) for any wrongful act or wrongful omission of a Recapture Subtenant);

(2) an event or circumstance that occurs during the Term in the Premises or in another portion of the Building with respect to which Tenant has exclusive use pursuant to the terms hereof (subject, however, to Landlord's rights of access under Article 9 hereof) (it being understood that Tenant's liability under this clause (2) shall not apply to the extent that Landlord exercises Landlord's rights under Section 17.3 hereof with respect to the Premises);

(3) the breach of any covenant to be performed by Tenant hereunder;

(4) a misrepresentation made by Tenant hereunder (including, without limitation, a misrepresentation of Tenant under Section 28.1 hereof);

(5) a Person with whom a Permitted Party has dealt making a claim for a leasing commission or other similar compensation in connection with a Transfer;

(6) a Compliance Challenge (or Tenant's delaying Tenant's compliance with a Requirement during the pendency of a Compliance Challenge); or

(7) Landlord's cooperating with Tenant as contemplated by Section 7.4(A) hereof.

Tenant shall not be required to indemnify the Landlord Indemnitees, and hold the Landlord Indemnitees harmless, in either case as aforesaid, to the extent that it is finally determined that the negligence or wilful misconduct of a Landlord Indemnitee contributed to the loss or damage sustained by the Person making the Claim Against Landlord. Nothing contained in this Section 29.1 limits the provisions of Section 31.19 hereof.

(B) The term "Landlord Indemnitees" shall mean, collectively, Landlord, each Lessor, each Mortgagee and their respective partners, members, managers, shareholders, officers, directors, employees, trustees and agents.

(C) The term "Tenant Indemnitees" shall mean each Permitted Party and their respective partners, members, managers, shareholders, officers, directors, employees, trustees and agents.

(D) The parties intend that the Landlord Indemnitees (other than Landlord) shall be third-party beneficiaries of this Section 29.1.

29.2. Landlord's Indemnification of the Tenant Indemnitees.

(A) Subject to the terms of this Section 29.2, Landlord shall indemnify the Tenant Indemnitees, and hold the Tenant Indemnitees harmless, from and against, all losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) that are incurred by a Tenant Indemnitee and that derive from a claim (a "Claim Against Tenant") made by a third party against such Tenant Indemnitee arising from or alleged to arise from:

(1) the breach of any covenant to be performed by Landlord hereunder;

(2) a misrepresentation made by Landlord hereunder (including, without limitation, a misrepresentation of Landlord under Section 28.1 hereof);

(3) Landlord's failure to pay the Broker a commission or other compensation in connection herewith; or

(4) a wrongful act or wrongful omission of any Landlord Indemnitee (including, without limitation, a wrongful act or wrongful omission of the Person that has the right to occupy the Premises by virtue of Landlord's exercising Landlord's rights under Section 17.3 hereof).

Landlord shall not be required to indemnify the Tenant Indemnitees, and hold the Tenant Indemnitees harmless, in either case as aforesaid, to the extent that it is finally determined that the negligence or wilful misconduct of a Tenant Indemnitee contributed to the loss or damage sustained by the Person making the Claim Against Tenant.

(B) The parties intend that the Tenant Indemnitees (other than Tenant) shall constitute third-party beneficiaries of this Section 29.2.

29.3. Indemnification Procedure.

(A) If at any time a Claim Against Tenant is made or threatened against a Tenant Indemnitee, or a Claim Against Landlord is made or threatened against a Landlord Indemnitee, then the Person entitled to indemnity under this Article 29 (the "Indemnitee") shall give to the other party (the "Indemnitor") notice of such Claim Against Tenant or such Claim Against Landlord, as the case may be (the "Claim"); provided, however, that the Indemnitee's failure to provide such notice shall not impair the Indemnitee's rights to indemnity as provided in this Article 29 except to the extent that the Indemnitor is prejudiced materially thereby. Such notice shall state the basis for the Claim and the amount thereof (to the extent such amount is determinable at the time that such notice is given).

(B) The Indemnitor shall have the right to defend against the Claim using attorneys that the Indemnitor designates and that the Indemnitee approves (it being understood that (I) the Indemnitee shall not unreasonably withhold, condition or delay such approval, (II) the Indemnitee shall be deemed to have approved such attorneys if the Indemnitee fails to respond within ten (10) days to the Indemnitor's request for approval, and (III) the attorneys designated by the Indemnitor's insurer shall be deemed approved by the Indemnitee for purposes hereof). The Indemnitor's failure to notify the Indemnitee of the Indemnitor's election to defend against the Claim within thirty (30) days after the Indemnitee gives such notice to the Indemnitor shall be deemed a waiver by the Indemnitor of its aforesaid right to defend against the Claim.

(C) Subject to the terms of this Section 29.3(C), if the Indemnitor elects to defend against the Claim pursuant to Section 29.3(B) hereof, then the Indemnitee may participate, at the Indemnitee's expense, in defending against the Claim. The Indemnitor shall have the right to control the defense against the Claim (and, accordingly, the Indemnitee shall cause its counsel to act accordingly). If there exists a conflict between the interests of the Indemnitor and the interests of the Indemnitee, then the Indemnitor shall pay the reasonable fees and disbursements of any counsel that the Indemnitee retains in so participating in the defense against the Claim. Except as otherwise provided in this Section 29.3(C), the Indemnitor shall not be required to pay the costs that Indemnitee otherwise incurs in engaging counsel to consult with Indemnitee in connection with the Claim.

(D) If the Claim is a Claim Against Landlord, then Landlord shall cooperate reasonably with Tenant in connection therewith. If the Claim is a Claim Against Tenant, then Tenant shall cooperate reasonably with Landlord in connection therewith.

(E) The Indemnitor shall not consent to the entry of any judgment or award regarding the Claim, or enter into any settlement regarding the Claim, except in either case with the prior approval of the Indemnitee (any such entry of any judgment or award regarding a Claim to which the Indemnitor consents, or any such settlement regarding a claim to which the Indemnitor agrees, being referred to herein as a "Settlement"). The Indemnitee shall not unreasonably withhold, condition or delay the Indemnitee's approval of a proposed Settlement, provided that (I) the Indemnitor pays, in cash, to the Person making the Claim, the entire amount of the Settlement contemporaneously with the Indemnitee's approval thereof (so that neither the Indemnitor nor the Indemnitee have any material obligations regarding the applicable Claim that remain executory from and after the consummation of the Settlement), or (II) the Person making the Claim releases the Indemnitee from any obligations owed to such Person pursuant to such Settlement that remain executory after the consummation thereof). If (x) the terms of the Settlement do not provide for the Indemnitor's making payment, in cash, to the Person making the Claim, the entire amount of the Settlement, contemporaneously with the Indemnitee's approval thereof (so that either the Indemnitor or the Indemnitee have any material obligations regarding the applicable Claim that remain executory from and after the consummation of the Settlement), (y) the Person making the Claim does not release the Indemnitee from any obligations owed to such Person pursuant to such Settlement that remain executory after the consummation thereof, and (z) the Indemnitee does not approve the proposed Settlement, then the Indemnitor's aggregate liability under this Article 29 for the Claim (including, without limitation, the costs incurred by the Indemnitor for legal costs and other costs of defense) shall not exceed an amount equal to the sum of (i) the aggregate legal costs and defense costs that the Indemnitor incurred to the date that the Indemnitor proposes such Settlement, (ii) the amount that the Indemnitor would have otherwise paid to the Person making the applicable Claim under the terms of the proposed Settlement, and (iii) the aggregate legal costs and defense costs that the Indemnitor would have reasonably expected to incur in consummating the proposed Settlement.

(F) If the Indemnitor does not elect to defend against the Claim as contemplated by this Section 29.3, then the Indemnitee may defend against, or settle, such claim, action or proceeding in any manner that the Indemnitee deems appropriate, and the Indemnitor shall be liable for the Claim to the extent provided in this Article 29.

Article 30
LANDLORD'S CONSENTS: ARBITRATION

30.1. Certain Limitations.

Subject to the terms of Section 30.2 hereof, Tenant hereby waives any claim against Landlord for Landlord's unreasonably withholding, unreasonably conditioning or unreasonably delaying any consent or approval requested by Tenant in cases where Landlord expressly agreed herein not to unreasonably withhold, unreasonably condition or unreasonably delay such consent or approval. If there is a determination that such consent or approval has been unreasonably

withheld, unreasonably conditioned or unreasonably delayed, then (1) the requested consent or approval shall be deemed to have been granted, and (2) Landlord shall have no liability to Tenant for its refusal or failure to give such consent or approval. Tenant's sole remedy for Landlord's unreasonably withholding, conditioning or delaying consent or approval shall be as provided in this Article 30.

30.2. Expedited Arbitration.

(A) If (i) this Lease obligates Landlord to not unreasonably withhold, condition or delay Landlord's consent or approval for a particular matter, (ii) Landlord withholds, delays or conditions its consent or approval for such matter, and (iii) Tenant believes that Landlord did so unreasonably, then Tenant shall have the right to submit the issue of whether Landlord unreasonably withheld, delayed or conditioned such consent or approval to an Expedited Arbitration Proceeding only by giving notice thereof to Landlord on or prior to the thirtieth (30th) day after the date that Landlord denied or conditioned such consent or approval, or the thirtieth (30th) day after the date that Tenant claims that Landlord's delaying such consent or approval first became unreasonable, as the case may be.

(B) The sole decision to be made in the Expedited Arbitration Proceeding shall be whether Landlord unreasonably withheld, delayed or conditioned its consent with respect to the particular matter being arbitrated. If the decision in the Expedited Arbitration Proceeding is that Landlord unreasonably withheld, conditioned, or delayed consent with respect to such matter, then (i) Landlord shall be deemed to have consented to such matter, and (ii) Landlord shall execute and deliver documentation that is reasonably requested by Tenant to evidence such consent.

(C) The term "Expedited Arbitration Proceeding" shall mean a binding arbitration proceeding conducted in The City of New York under the Commercial Arbitration Rules of the American Arbitration Association (or its successor) and administered pursuant to the Expedited Procedures provisions thereof; provided, however, that with respect to any such arbitration, (i) the list of arbitrators referred to in Section E-5(b) shall be returned within five (5) Business Days from the date of mailing; (ii) the parties shall notify the American Arbitration Association (or its successor) by telephone, within four (4) Business Days, of any objections to the arbitrator appointed and, subject to clause (vii) below, shall have no right to object if the arbitrator so appointed was on the list submitted by the American Arbitration Association (or its successor) and was not objected to in accordance with Section E-4(b) as modified by clause (i) above; (iii) the notification of the hearing referred to in Section E-7 shall be four (4) Business Days in advance of the hearing; (iv) the hearing shall be held within seven (7) Business Days after the appointment of the arbitrator; (v) the arbitrator shall have no right to award damages or vary, modify or waive any provision of this Lease; (vi) the decision of the arbitrator shall be final and binding on the parties; and (vii) the arbitrator shall not have been employed by either party (or their respective Affiliates) during the period of three (3) years prior to the date of the Expedited Arbitration Proceeding. The arbitrator shall determine the extent to which each party is successful in such Expedited Arbitration Proceeding in addition to rendering a decision on the dispute submitted. If the arbitrator determines that one (1) party is entirely unsuccessful, then such party shall pay all of the fees of such arbitrator. If the arbitrator determines that both parties

are partially successful, then each party shall be responsible for such arbitrator's fees only to the extent such party is unsuccessful (e.g., if Landlord is eighty percent (80%) successful and Tenant is twenty percent (20%) successful, then Landlord shall be responsible for twenty percent (20%) of such arbitrator's fees and Tenant shall be responsible for eighty percent (80%) of such arbitrator's fees).

Article 31
ADDITIONAL PROVISIONS

31.1. Tenant's Property Delivered to Building Employees.

Any Building employee to whom any property is entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property.

31.2. Not Binding Until Execution.

This Lease shall not be binding upon Landlord or Tenant unless and until Landlord and Tenant have executed and unconditionally delivered a fully executed counterpart of this Lease to each other.

31.3. No Third Party Beneficiaries.

Landlord and Tenant hereby acknowledge that they do not intend for any other Person to constitute a third-party beneficiary hereof, except to the extent otherwise set forth herein.

31.4. Extent of Landlord's Liability.

(A) The obligations of Landlord under this Lease shall not be binding upon the Person that constitutes Landlord initially after the sale, conveyance, assignment or transfer by such Person of its interest in the Building or the Real Property, as the case may be (or upon any other Person that constitutes Landlord after the sale, conveyance, assignment or transfer by such Person of its interest in the Building or the Real Property, as the case may be), to the extent such obligations accrue from and after the date of such sale, conveyance, assignment or transfer.

(B) The members, managers, partners, shareholders, directors, officers and principals, direct and indirect, comprising Landlord shall not be liable for the performance of Landlord's obligations under this Lease. Tenant shall look solely to Landlord to enforce Landlord's obligations hereunder.

(C) The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Real Property and the proceeds thereof (including, without limitation, proceeds of a sale or refinancing of Landlord's interest in the Real Property, casualty insurance proceeds, and condemnation awards). Tenant shall not look to any property or assets of Landlord (other than Landlord's interest in the Real Property and such proceeds thereof) in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations.

31.5. Extent of Tenant's Liability.

If Tenant is a corporation, limited partnership, limited liability partnership or limited liability company, then (i) the members, managers, limited partners, shareholders, directors, officers and principals, direct and indirect, comprising Tenant shall not be liable for the performance of Tenant's obligations under this Lease, and (ii) Landlord shall look solely to Tenant to enforce Tenant's obligations hereunder.

31.6. Survival.

Subject to the terms hereof, Tenant's liability for all amounts that are due and payable to Landlord hereunder shall survive the Expiration Date.

31.7. Recording.

Tenant shall not record this Lease. Tenant shall not record a memorandum of this Lease. Landlord shall have the right to record a memorandum of this Lease. If Landlord submits to Tenant a memorandum hereof that is in reasonable form, then Tenant shall execute, acknowledge and deliver such memorandum promptly after Landlord's submission thereof to Tenant.

31.8. Entire Agreement.

This Lease contains the entire agreement between the parties and supersedes all prior understandings, if any, with respect thereto. This Lease shall not be modified, changed, or supplemented, except by a written instrument executed by both parties.

31.9. Counterparts.

This Lease may be executed in counterparts, it being understood that all such counterparts, taken together, shall constitute one and the same agreement.

31.10. Exhibits.

If any inconsistency exists between the terms and provisions of this Lease and the terms and provisions of the Exhibits hereto, then the terms and provisions of this Lease shall prevail.

31.11. Gender; Plural.

Wherever appropriate in this Lease, personal pronouns shall be deemed to include the other gender and the singular to include the plural.

31.12. Divisibility.

If any term of this Lease, or the application thereof to any Person or circumstance, is held to be invalid or unenforceable, then the remainder of this Lease or the application of such term to any other Person or any other circumstance shall not be thereby affected, and each term shall remain valid and enforceable to the fullest extent permitted by law.

31.13. Vault Space.

If (i) Tenant uses or occupies any vaults, vault space or other space outside the boundaries of the Real Property that in each case is located below grade, and (ii) such space is diminished by any Governmental Authority or by any utility company, then such diminution shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rental, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord.

31.14. Adjacent Excavation.

If an excavation is made upon land adjacent to the Building, or is authorized to be made, then Tenant, upon reasonable advance notice, shall grant to the Person causing or authorized to cause such excavation a license to enter upon the Premises for the purpose of doing such work as said Person deems necessary to preserve the Building from injury or damage and to support the same by proper foundations, without any claim for damages or indemnity against Landlord, or diminution or abatement of Rental. Landlord acknowledges that Landlord's right to access the Premises as provided in this Section 31.14 is subject to the provisions of Article 9 hereof.

31.15. Captions.

The captions are inserted only for convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision thereof.

31.16. Parties Bound.

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors, and, except as otherwise provided in this Lease, their assigns.

31.17. Authority.

(A) Tenant hereby represents and warrants to Landlord that (i) Tenant is duly organized and validly existing in good standing under the laws of Delaware, and possesses all licenses and authorizations necessary to carry on its business, (ii) Tenant has full power and authority to carry on its business, enter into this Lease and consummate the transaction contemplated by this Lease, (iii) the individual executing and delivering this Lease on Tenant's behalf has been duly authorized to do so, (iv) this Lease has been duly executed and delivered by Tenant, (v) this Lease constitutes a valid, legal, binding and enforceable obligation of Tenant (subject to bankruptcy, insolvency or creditor rights laws generally, and principles of equity generally), (vi) the execution, delivery and performance of this Lease by Tenant will not cause or constitute a default under, or conflict with, the organizational documents of Tenant or any agreement to which Tenant is a party, (vii) the execution, delivery and performance of this Lease by Tenant will not violate any Requirement, and (viii) all consents, approvals, authorizations, orders or filings of or with any court or governmental agency or body, if any, required on the part of Tenant for the execution, delivery and performance of this Lease have been obtained or made.

(B) Landlord hereby represents and warrants to Tenant that (i) Landlord is duly organized and validly existing in good standing under the laws of New York, and possesses all licenses and authorizations necessary to carry on its business, (ii) Landlord has full power and authority to carry on its business, enter into this Lease and consummate the transaction contemplated by this Lease, (iii) the individual executing and delivering this Lease on Landlord's behalf has been duly authorized to do so, (iv) this Lease has been duly executed and delivered by Landlord, (v) this Lease constitutes a valid, legal, binding and enforceable obligation of Landlord (subject to bankruptcy, insolvency or creditor rights laws generally, and principles of equity generally), (vi) the execution, delivery and performance of this Lease by Landlord will not cause or constitute a default under, or conflict with, the organizational documents of Landlord or any agreement to which Landlord is a party, (vii) the execution, delivery and performance of this Lease by Landlord does not violate any Requirement, and (viii) all consents, approvals, authorizations, orders or filings of or with any court or governmental agency or body, if any, required on the part of Landlord for the execution, delivery and performance of this Lease have been obtained or made.

31.18. Rent Control.

If at the commencement of, or at any time or times during, the Term, the Rental reserved in this Lease is not fully collectible by reason of any Requirement, then Tenant shall enter into such agreements and take such other steps (without additional expense to Tenant) as Landlord may reasonably request and as may be legally permissible to allow Landlord to collect the maximum rents which may from time to time during the continuance of such legal rent restriction be legally permissible (and not in excess of the amounts reserved therefor under this Lease). Upon the termination of such legal rent restriction prior to the expiration of the Term, (a) the Rental shall become and thereafter be payable hereunder in accordance with the amounts reserved in this Lease for the periods following such termination, and (b) Tenant shall pay to Landlord, if legally permissible, an amount equal to the excess of (i) the items of Rental which would have been paid pursuant to this Lease but for such legal rent restriction, over (ii) the rents paid by Tenant to Landlord during the period or periods such legal rent restriction was in effect.

31.19. Consequential Damages.

Tenant shall have no liability for any consequential, indirect or punitive damages that Landlord suffers (it being understood, however, that nothing contained in this Section 31.19 limits Landlord's right to recover damages (x) as expressly provided in Section 21.3(A) hereof and in Section 24.2 hereof, or (y) for Tenant's failure to remove Specialty Alterations to the extent provided in Section 7.13 hereof). Landlord shall have no liability for any consequential, indirect or punitive damages that are suffered by Tenant or any Person claiming by, through or under Tenant.

31.20. Tenant's Advertising.

Tenant shall not use a picture, photograph or drawing of the Building (or a silhouette thereof) in Tenant's letterhead or promotional materials without Landlord's prior approval.

31.21. Specially Designated Nationals: Blocked Persons: Embargoed Persons.

(A) Tenant represents and warrants to Landlord that (a) Tenant and, to Tenant's actual knowledge, without independent inquiry, each person or entity directly or indirectly owning an interest in Tenant is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the 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) to Tenant's actual knowledge, without independent inquiry, none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by, any Embargoed Person, (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 Requirements or that this Lease is in violation of Requirements, 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 Requirements.

(B) Tenant covenants and agrees (a) to comply with all Requirements 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 Term shall be an Event of Default hereunder. Notwithstanding anything herein to the contrary, Tenant shall not knowingly 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 an Event of Default hereunder.

Article 32
LEASE CONDITION

Landlord has advised Tenant that this Lease is subject and subordinate to (i) that certain Agreement of Lease, dated as of June 25, 2002 the "Hannover Lease") between Landlord and Hannover Fairs USA, Inc. ("Hannover") and (ii) that certain Sublease Agreement, dated as of October 24, 2004 (the "Hannover Sublease") between Hannover and Landlord as successor-in-interest to Netscaler, Inc. Landlord has further advised Tenant that this Lease is subject to obtaining Hannover's consent hereto (the "Condition"). It being understood that until the expiration or earlier termination of the Hannover Lease, this Lease will be a subsublease and upon any such expiration or termination of the Hannover Lease, Landlord agrees to recognize this Lease, subject to the terms hereof, as a direct Lease between Landlord and Tenant. This Lease shall be of no force and effect unless and until the Condition is satisfied; it being understood and agreed, however, that if for any reason whatsoever, the Condition is not satisfied or waived by Landlord on or before the date that is forty-five (45) days after the date hereof, this Lease shall be void *ab initio,* and be of force and effect, and Landlord and Tenant shall have no obligations or liabilities to the other party under this Lease.

This page constitutes the signature page to the Lease, dated as of the of the 25th day of January, 2007, between ONE PENN PLAZA LLC, as landlord, and RIVERBED TECHNOLOGY, INC., as tenant, for certain space in the building known by the street address of One Penn Plaza, New York, New York 10119

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

ONE PENN PLAZA LLC

By: Vornado Realty L.P., member

By: Vornado Realty Trust, general partner

By: /s/David R. Greenbaum
Name: David R. Greenbaum
Title: President - New York Office Division

RIVERBED TECHNOLOGY, INC.

By: /s/RANDY S. GOTTFRIED
Name: RANDY S. GOTTFRIED
Title: CHIEF FINANCIAL OFFICER

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jerry M. Kennelly, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Riverbed Technology, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. [Paragraph omitted in accordance with SEC Release 34-47986]

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 27, 2007

/s/ Jerry M. Kennelly
Jerry M. Kennelly
President and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Randy S. Gottfried, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Riverbed Technology, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. [Paragraph omitted in accordance with SEC Release 34-47986]

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 27, 2007

/s/ Randy S. Gottfried
Randy S. Gottfried
Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32.1

Certification of Chief Executive Officer and Chief Financial Officer

Pursuant to 18 U.S.C. Section 1350,
as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

I, Jerry M. Kennelly, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Riverbed Technology, Inc. on Form 10-Q for the quarterly period ended March 31, 2007 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Riverbed Technology, Inc.

Date: April 26, 2007

/s/ Jerry M. Kennelly
Jerry M. Kennelly
President and Chief Executive Officer
(Principal Executive Officer)

I, Randy S. Gottfried, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Riverbed Technology, Inc. on Form 10-Q for the quarterly period ended March 31, 2007 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Riverbed Technology, Inc.

Date: April 26, 2007

/s/ Randy S. Gottfried
Randy S. Gottfried
Chief Financial Officer
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Riverbed Technology, Inc. and will be retained by Riverbed Technology, Inc. and furnished to the Securities and Exchange Commission or its staff upon request. This certification "accompanies" the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.