

SUBLEASE (1999)

This form was prepared by the Committee on Real Property Law of the Association of the Bar of the City of New York. To view a commentary on this form, including instructions for its use, visit the Real Estate Law page at www.abcny.org.

SUBLEASE

dated as of

between

_____, Sublandlord

and

_____, Subtenant

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SUBLEASE

dated as of the Sublease Date between Sublandlord and Subtenant

W I T N E S E T H:

WHEREAS Sublandlord is now the tenant under the Overlease which demises portions (the "**Overlease Premises**") of the Building; and

WHEREAS Sublandlord desires to sublease to Subtenant, and Subtenant desires to sublease from Sublandlord, the Sublease Premises on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Sublandlord and Subtenant agree as follows:

1. Definitions and Basic Terms

Set forth below are certain definitions and basic terms of this Sublease.

- 1.1. Sublease Date _____
- 1.2. Sublandlord _____
- 1.3. Subtenant _____
- 1.4. Overlandlord the landlord under the Overlease. _____ is now the Overlandlord.
- 1.5. Overlease that certain lease dated _____ originally between _____, as landlord, and _____, as tenant, as amended on the following dates: _____ and as hereafter amended.
- 1.6. Incorporated Provisions all of the provisions of the Overlease except for those listed on Exhibit D hereto.
- 1.7. Building _____

1.8. Sublease Premises *[Check one.]*

___ all of the Overlease Premises now demised by the Overlease as shown on Exhibit A hereto.

___ the portion of the Overlease Premises shown on Exhibit A hereto.

1.9. Expiration Date _____

1.10. Sublease Base Rental Rate \$_____ per annum. Regardless of the Method of Charging for Electricity selected in Section 1.16, the Sublease Rental Rate does not include a charge for electricity.

1.11. Subtenant's Proportionate Share _____ per cent.

1.12. Sublease Premises Rentable Area _____ rentable square feet. This area is agreed upon by Sublandlord and Subtenant , and shall be used for purposes of this Sublease regardless of the actual area of the Sublease Premises. Sublandlord shall not be deemed to have represented the accuracy of the Sublease Premises Rentable Area.

1.13. *If Subtenant will pay additional rent based on increases in real estate taxes, check here ___ and complete Section 1.13.1 and 1.13.2.*

1.13.1. Sublease Real Estate Taxes Base Year _____

1.13.2. Real Estate Taxes _____
[Insert term used in the Overlease to refer to real estate taxes, e.g. Taxes, Real Estate Taxes, Impositions.]

1.14. If Subtenant will pay additional rent based on increases in operating expenses, check here ___ and complete Section 1.14.1 and 1.14.2.

1.14.1. Sublease _____
Operating
Expenses
Base Year

1.14.2. Operating _____
Expenses *[Insert term used in Overlease to refer to operating expenses, e.g. Operating Expenses, Expenses, Basic Cost.]*

1.15. If Subtenant will pay additional rent based on increases in the porter wage rate, check here ___ and complete Section 1.15.1, 1.15.2 and 1.15.3.

1.15.1. Sublease _____
Porter
Wage Base
Date

1.15.2. Porter _____
Wage
Multiplier *[Insert the applicable multiplier; e.g. in case of 1½ cent increase in rent for each 1 cent increase in the Porter Wage the multiplier would be 1½.]*

1.15.3. Porter _____
Wage Rate *[Insert term used in Overlease to refer to porter wage rate, e.g. Wage Rate.]*

1.16. Method of Charging for Electricity (as described on Exhibit E hereto) *[Check one.]*
Option A ___
Option B ___
Option C ___
Option D ___ Initial Electric Charge: \$ _____ per annum.
Option E ___ Initial Electric Charge: \$ _____ per annum.

- 1.17. Included Personal Property the items, if any, listed on Exhibit F hereto.
- 1.18. Personal Property Rent \$ _____ per annum.
- 1.19. Required Security Deposit Amount \$ _____
- 1.20. Recognized Broker _____
- 1.21. Sublandlord's Work the work, if any, listed on Exhibit B hereto
- 1.22. this Sublease this Agreement of Sublease, including the Incorporated Provisions as incorporated herein. The terms "herein," "hereunder", etc. refer to this Agreement of Sublease, including the Incorporated Provisions as incorporated herein.

2. Demise; Term; Permitted Use

- 2.1. Sublandlord hereby subleases to Subtenant, and Subtenant hereby hires from Sublandlord, the Sublease Premises upon and subject to the terms and conditions hereinafter set forth.
- 2.2. The term of this Sublease shall commence on the first date (the "**Commencement Date**") on which all of the following shall have occurred:
 - 2.2.1. Overlandlord shall have consented hereto in accordance with Section 15 below;
 - 2.2.2. all occupants of the Sublease Premises, if any, shall have vacated the same;
 - 2.2.3. if any Sublandlord's Work is listed on Exhibit B hereto, the same shall have been substantially completed (as such phrase is defined in Section 4.3); and
 - 2.2.4. either (a) Sublandlord shall have notified Subtenant that the foregoing conditions have been satisfied, or (b) Subtenant shall have commenced to occupy the Sublease Premises.

If Subtenant shall take occupancy of the Sublease Premises prior to the Commencement Date, such occupancy shall be subject to all of the terms and conditions of this Sublease, including the obligation to pay rent. The provisions of

this Section 2.2 shall be regarded as an “express provision to the contrary” within the meaning of Section 223-a of the Real Property Law.

- 2.3. If either party hereto shall so request, the parties hereto shall execute and deliver an instrument confirming the Commencement Date, but the failure of either party to execute and deliver such instrument shall not affect the Commencement Date.
- 2.4. The term of this Sublease shall expire on the Expiration Date or on such earlier date upon which such term shall expire or be terminated pursuant to any of the provisions of this Sublease or pursuant to law.
- 2.5. Subtenant shall use the Sublease Premises for the purposes permitted under the Overlease, and for no other purposes.

3. Rents.

- 3.1. Subtenant shall pay to Sublandlord rent (“**Base Rent**”) at the rate per annum equal to the Sublease Base Rental Rate, payable in equal monthly installments in advance on the Commencement Date and on the first day of each month thereafter, pro-rated for any partial month. Upon execution of this Sublease, Subtenant shall make an advance payment of one month’s Base Rent to be applied to the first full month’s Base Rent.
- 3.2. If Section 1.13 above is checked then, commencing on the Commencement Date, Subtenant shall pay to Sublandlord additional rent equal to Subtenant's Proportionate Share of all amounts payable by Sublandlord attributable to increases in Real Estate Taxes above Real Estate Taxes for the Sublease Real Estate Taxes Base Year. If Section 1.13 above is not checked then neither this Section nor the provisions of Sections 3.4, 3.5, and 3.6 regarding Real Estate Taxes shall be effective.
- 3.3. If Section 1.14 above is checked then, commencing on the Commencement Date, Subtenant shall pay to Sublandlord additional rent equal to Subtenant's Proportionate Share of all amounts payable by Sublandlord attributable to increases in Operating Expenses above Operating Expenses for the Sublease Operating Expenses Base Year. If Section 1.14 above is not checked then neither this Section nor the provisions of Sections 3.4, 3.5, and 3.6 regarding Operating Expenses shall be effective.
- 3.4. Subtenant's payments under Section 3.2 in respect of Real Estate Taxes and Section 3.3 in respect of Operating Expenses shall be due on the dates on which Sublandlord's payments under the corresponding provisions of the Overlease are due to Overlandlord and shall be pro-rated for any partial month or year; provided, however, that (except for subsequent continuing equal monthly payments) no such payment shall be due until ten days after Sublandlord shall have furnished Subtenant with

notice thereof, together with a copy of the related bill and supporting documentation received by Sublandlord.

- 3.5. If Overlandlord shall issue to Sublandlord any credit or refund in respect of Real Estate Taxes or Operating Expenses relating to any part of the term of this Sublease, Sublandlord shall (a) provide Subtenant with a copy of the supporting documentation received by Sublandlord and (b) give to Subtenant a credit or refund equal to Subtenant's Proportionate Share of the portion of such credit or refund remaining after deducting therefrom:
 - 3.5.1. the portion, if any, of such credit or refund resulting from any reduction in Real Estate Taxes to an amount less than the Real Estate Taxes for the Sublease Real Estate Taxes Base Year or any reduction in Operating Expenses to an amount less than the Operating Expenses for the Sublease Operating Expenses Base Year, and
 - 3.5.2. any reasonable costs and expenses, including reasonable attorneys' fees, incurred by Sublandlord in connection with obtaining such credit or refund.
- 3.6. If the amount of Real Estate Taxes for the Sublease Real Estate Taxes Base Year or the amount of Operating Expenses for the Sublease Operating Expenses Base Year shall be reduced (by reason of assessment reduction, audit, or otherwise), the reduced amount shall be used in computing Subtenant's liability under Section 3.2 or 3.3, with respect to periods after such reduction and for recomputing Subtenant's liability with respect to periods prior to such reduction. Subtenant shall pay Sublandlord any additional amounts due in respect of such prior periods within ten days of Sublandlord's bill therefor which shall be accompanied by a copy of the supporting documentation received by Sublandlord.
- 3.7. If Section 1.15 is checked then Subtenant shall pay to Sublandlord additional rent at a per annum rate from time to time equal to the product of (a) the excess, if any, of the Porter Wage Rate then in effect over the Porter Wage Rate in effect on the Sublease Porter Wage Base Date, (b) the Porter Wage Rate Multiplier, and (c) the Sublease Premises Rentable Area. The per annum rate of additional rent payable under this Section shall change each time the Porter Wage Rate shall change. The additional rent payable under this Section shall be payable in equal monthly installments in advance on the same dates as those on which the Base Rent is payable, pro-rated for any partial month; provided, however, that neither the initial payment under this Section nor any increase therein shall be due until Sublandlord shall have provided Subtenant with at least ten days prior notice of the amount thereof. Upon request, Sublandlord shall furnish Subtenant with any documentation received from Overlandlord relating to the Porter Wage Rate.

- 3.8. Subtenant shall, within ten days of demand, pay or reimburse Sublandlord for all amounts payable under the Overlease arising out of Subtenant's requests for services or other acts or omissions, including (a) supplemental chilled or condenser water, (b) above building standard or overtime HVAC, (c) extra cleaning, (d) overtime or dedicated freight elevator service, and (e) any maintenance, repair or other service for which a separate charge is made by Overlandlord. This Section 3.8 shall not be applicable to electricity, which is covered by Section 9 hereto.
- 3.9. As used herein the term "additional rent" shall refer to all sums of money which shall become due and payable by Subtenant to Sublandlord hereunder, other than Base Rent, and the term "rents" shall refer to Base Rent and additional rent. All rents shall be payable in lawful money of the United States at such place and to such person as Sublandlord shall from time to time designate.
- 3.10. Subtenant shall promptly pay all rents as and when the same shall become due and payable without set-off, offset or deduction of any kind whatsoever and, if Subtenant fails to pay any additional rent when due, Sublandlord shall have all of the rights and remedies provided for herein or at law or in equity as in the case of non-payment of Base Rent.
- 3.11. Sublandlord's failure to deliver any statements or bills required to be delivered to Subtenant hereunder, or Sublandlord's failure to make a demand under this Sublease, shall not be a waiver of, or cause Sublandlord to forfeit or surrender, its rights to collect any rents which may have become due pursuant to this Sublease. Subtenant's liability for rents accruing during the term of this Sublease, and Sublandlord's obligation to refund overpayments of or adjustments to rents paid to it by Subtenant, shall survive the expiration or sooner termination of this Sublease.

4. Condition of the Sublease Premises; Sublandlord's Work

- 4.1. Subtenant represents that it has examined (or waived examination of) the Sublease Premises. Sublandlord has not made and does not make any representations or warranties as to the physical condition of the Sublease Premises (including any latent defects in the Sublease Premises), the uses to which the Sublease Premises may be put, or any other matter or thing affecting or relating to the Sublease Premises, except as specifically set forth in this Sublease.
- 4.2. Except as provided in Section 4.3, (a) Subtenant agrees to accept the Sublease Premises in their "as is" condition on the date hereof, as the same may be affected by reasonable wear and tear after the date hereof, and (b) Sublandlord shall have no obligation whatsoever to alter, improve, decorate or otherwise prepare the Sublease Premises, or any portion thereof, for Subtenant's occupancy.

- 4.3. If any Sublandlord's Work is listed on Exhibit B hereto, then after Overlandlord shall have consented to this Sublease in accordance with Section 15 and shall have consented to such Sublandlord's Work if and to the extent required by the Overlease and after all occupants of the Sublease Premises, if any, shall have vacated the same, Sublandlord shall promptly commence and thereafter diligently prosecute to completion Sublandlord's Work. Sublandlord shall notify Subtenant when Sublandlord's Work is substantially completed (and if notice under this sentence shall not previously have been given, any notice by Sublandlord under Section 2.2.4 shall also constitute notice under this sentence). Any such notice shall be binding upon Subtenant unless, within ten days of its receipt thereof, Subtenant shall notify Sublandlord of the particular respects in which Subtenant claims that Sublandlord's Work was not substantially completed. Any dispute between Sublandlord and Subtenant regarding whether Sublandlord's Work has been completed or substantially completed or the date of such completion or substantial completion shall be resolved by an architect designated by Sublandlord (who may be the architect who prepared the plans for Sublandlord's Work). As used in this Sublease the term "substantially completed" shall mean completed except for details of construction (commonly known as "punch list items") the non-completion of which does not materially adversely affect Subtenant's use of the Sublease Premises.

5. Subordination to and Incorporation of the Overlease

- 5.1. This Sublease is subject and subordinate to the Overlease, and to all leases, mortgages and other rights or encumbrances to which the Overlease is subject or subordinate. This provision shall be self-operative but Subtenant shall within ten days of Sublandlord's request execute any instrument reasonably requested by Sublandlord or Overlandlord to evidence or confirm the same. Sublandlord represents that (a) a true and complete copy of the Overlease (excluding redacted terms and conditions not relevant to Subtenant) is attached hereto as Exhibit C, (b) the Overlease is in full force and effect, (c) to the best of Sublandlord's knowledge, Sublandlord is not in default in the payment of rent or additional rent under the Overlease, and (d) Sublandlord has not received any notice of default under the Overlease, except for any defaults which Sublandlord has cured and Overlandlord is no longer claiming to exist. Sublandlord shall not voluntarily terminate the Overlease except pursuant to a right of termination arising out of casualty or condemnation expressly set forth in the Overlease, and Sublandlord shall not amend the Overlease in a manner adverse to Subtenant in any material respect. If the Overlease shall terminate for any reason then this Sublease shall also terminate. Sublandlord shall not be liable for any such termination unless such termination (a) shall have arisen out of a default under the Overlease by Sublandlord not arising out of a default hereunder by Subtenant or (b) shall have been effected by Sublandlord in violation of this Section 5.1.

- 5.2. Except as otherwise expressly provided in, or otherwise inconsistent with, this Sublease, and except to the extent not applicable to the Sublease Premises, the Incorporated Provisions are hereby incorporated in this Sublease by reference with the same force and effect as if set forth herein, except that, unless the context requires otherwise:
- 5.2.1. references in such provisions to Owner, Landlord or Lessor shall be deemed to refer to Sublandlord;
 - 5.2.2. references in such provisions to Tenant or Lessee shall be deemed to refer to Subtenant;
 - 5.2.3. references in such provisions to the Premises or the Demised Premises shall be deemed to refer to the Sublease Premises;
 - 5.2.4. references in such provisions to other provisions of the Overlease that are not incorporated herein shall be disregarded; and
 - 5.2.5. references in such provisions to subleases, sublettings or subtenants shall be deemed to refer to subsubleases, subsublettings or subsubtenants.
- 5.3. Sublandlord shall not be deemed to have made any representation made by Overlandlord in any of the Incorporated Provisions. Moreover, Sublandlord shall not be obligated
- 5.3.1. to provide any of the services or utilities that Overlandlord has agreed in the Overlease to provide,
 - 5.3.2. to make any of the repairs or restorations that Overlandlord has agreed in the Overlease to make,
 - 5.3.3. to comply with any laws or requirements of public authorities with which Overlandlord has agreed in the Overlease to comply, or
 - 5.3.4. to take any action with respect to the operation, administration or control of the Building or any of its public or common areas that the Overlandlord has agreed in the Overlease to take,

(all the foregoing being herein called the “**Building Services**”) and Sublandlord shall have no liability to Subtenant on account of any failure of Overlandlord to do so, or on account of any failure by Overlandlord to observe or perform any of the terms, covenants or conditions of the Overlease required to be observed or performed by Overlandlord.

- 5.4. Sublandlord agrees:
- 5.4.1. upon Subtenant's request, to use reasonable efforts (excluding litigation), at Subtenant's expense, (a) to cause Overlandlord to provide any Building Service , or (b) to obtain Overlandlord's consent or approval whenever required by the Overlease (unless, in such instance, Sublandlord shall be entitled to withhold its consent or approval even if Overlandlord shall have granted its consent or approval), and
 - 5.4.2. that, if under the Overlease any right or remedy of Sublandlord or any duty or obligation of Overlandlord is subject to or conditioned upon Sublandlord's making any demand upon Overlandlord or giving any notice or request to Overlandlord then, if Subtenant shall so request, Sublandlord, at Subtenant's expense, shall make such demand or give such notice or request , except that Sublandlord shall not be required to request Overlandlord's consent or approval with respect to any act or thing as to which Sublandlord shall have determined in accordance with this Sublease to withhold its consent or approval.
- 5.5. Whenever Subtenant desires to do any act or thing which requires the consent or approval of Overlandlord:
- 5.5.1. Subtenant shall not do such act or thing without first having obtained the consent or approval of both Overlandlord and Sublandlord (and Sublandlord's right to withhold consent or approval shall be independent of Overlandlord's right);
 - 5.5.2. Subtenant shall not request Overlandlord's consent or approval directly (and no efforts by Sublandlord to obtain Overlandlord's consent or approval shall constitute Sublandlord's consent or approval or prejudice Sublandlord's right to withhold consent or approval); and
 - 5.5.3. in no event shall Sublandlord be required to give its consent or approval prior to Overlandlord doing so.
- 5.6. Notwithstanding any other provision of this Sublease, Subtenant shall perform all of its obligations hereunder at such times, by such dates or within such periods as Sublandlord shall be required to perform its corresponding obligations under the Overlease. If Overlandlord shall give any notice of failure or default under the Overlease arising out of any failure by Subtenant to perform any of its obligations hereunder (other than the payment of money) then Sublandlord shall promptly furnish Subtenant with a copy thereof. If the Overlease shall provide any grace or cure period

for such failure or default then the grace or cure period hereunder shall expire two (2) days prior to the date on which the grace or cure period under the Overlease shall expire. In no event shall this Section 5.6 extend the time, date or period by or within which Subtenant is required to perform.

- 5.7. If (a) Subtenant shall fail to perform any of its obligations hereunder and such failure shall continue beyond any cure period provided for herein, or (b) Overlandlord shall give any notice of failure or default under the Overlease arising out of any failure by Subtenant to perform any of its obligations hereunder then, in either case, Sublandlord shall have the right (but not the obligation) to perform or endeavor to perform such obligation, at Subtenant's expense, and Subtenant shall, within ten days of Sublandlord's demand from time to time, reimburse Sublandlord for all costs and expenses incurred by Sublandlord in doing so.

6. Insurance and Indemnification

- 6.1. Whenever, pursuant to any of the Incorporated Provisions as incorporated herein, Subtenant is required to furnish insurance to or for Sublandlord, Subtenant also shall be required to furnish such insurance to or for Overlandlord and such other persons as shall be entitled thereto under the Overlease, provided that, in the case of any such other person not named in the Overlease, Sublandlord shall have notified Subtenant thereof.
- 6.2. Whenever, pursuant to any of the Incorporated Provisions as incorporated herein, Subtenant is required to indemnify or defend Sublandlord, Subtenant shall be required also to indemnify or defend Overlandlord and such other persons as shall be entitled thereto under the Overlease.
- 6.3. In addition to Subtenant's obligations under Section 6.2, Subtenant shall indemnify, defend and hold harmless Sublandlord from and against any loss, cost, damage or expense (including reasonable attorneys' fees), or any claim therefor, arising out of (a) actions taken by Sublandlord at Subtenant's request pursuant to Section 5.4, or (b) any failure by Subtenant to observe or perform any of the terms, covenants or conditions of this Sublease required to be observed or performed by Subtenant, including any loss, cost, damage or expense which may result from (i) any default under or termination of the Overlease arising by reason of any such failure, or (ii) any holding over by Subtenant in the Sublease Premises beyond the expiration or sooner termination of this Sublease, including any such liability with respect to the entire Overlease Premises arising out of such holding over by Subtenant.

7. Covenant of Quiet Enjoyment

Sublandlord covenants that Subtenant may peaceably and quietly enjoy the Sublease Premises without disturbance by Sublandlord or any person claiming by, through or under Sublandlord, subject nevertheless to the terms and conditions of this Sublease and to the Overlease and any other leases and mortgages to which this Sublease is subordinate.

8. Assignment and Subsubletting

8.1. Without the prior written consent of Overlandlord and Sublandlord (which Sublandlord may withhold in its sole discretion) in each instance:

(a) this Sublease shall not be assigned, encumbered or otherwise transferred, including by operation of law;

(b) the Sublease Premises shall not be subsublet by Subtenant in whole or in part; and

(c) the Sublease Premises shall not be used or occupied by any person other than Subtenant, in whole or in part.

Any change in the ownership or control of Subtenant having as its principal purpose the transfer of this Sublease shall be deemed an assignment of this Sublease.

8.2. Any subsublease shall be subject and subordinate to this Sublease. No assignment shall be valid or effective unless and until the assignee shall have delivered to Sublandlord an instrument, in form satisfactory to Sublandlord, pursuant to which the assignee assumes the due observance and performance of all of the obligations of Subtenant hereunder from and after the date of such assignment.

8.3. No assignment or subsublease shall release the Subtenant named herein or any of its successors from any liability hereunder. If this Sublease is assigned or the Sublease Premises or any part thereof are subsublet in violation of this Sublease then Sublandlord may collect rents from or accept performance from the assignee or subsubtenant and no such collection or acceptance shall effect any such release or be deemed to constitute Sublandlord's consent to any assignment or subsubleasing.

9. Electricity

9.1. Subtenant shall pay for electricity in accordance with the provisions of Exhibit E selected in Section 1.16.

- 9.2. Subtenant shall pay all sales, use and/or utility taxes attributable to the electricity furnished to the Sublease Premises; all amounts payable under this Section 9.2 shall be due within ten days of Sublandlord's bills therefor.
- 9.3. Sublandlord shall pay to Overlandlord or the utility company all charges for electricity furnished to the Overlease Premises, except as otherwise provided in Exhibit E, Option A, if applicable.
- 9.4. In no event shall Sublandlord have any liability for any defect in, or any interruption or failure of, the electricity furnished to the Sublease Premises. In no event shall Subtenant draw more electricity than that which the feeders, risers, panels and other electricity supply equipment serving the Sublease Premises are capable of safely supplying.

10. Alterations

- 10.1. Subtenant shall not make any alterations, installations, additions or improvements in or to the Sublease Premises without first having obtained the consent or approval of Overlandlord (if and to the extent required by the Overlease) and of Sublandlord. Sublandlord may withhold such consent or approval in its sole discretion.
- 10.2. If Overlandlord and Sublandlord shall consent to any alterations, installations, additions or improvements then Subtenant shall observe and perform all of the terms, covenants and conditions of the Overlease applicable thereto.

11. Personal Property

- 11.1. Sublandlord hereby leases to Subtenant, and Subtenant hereby hires from Sublandlord, the Included Personal Property listed on Exhibit F hereto, if any,. In consideration of the foregoing, Subtenant shall pay to Sublandlord, as additional rent payable in equal monthly installments together with each monthly payment of Base Rent, an amount per annum equal to the Personal Property Rent and any sales, use or other taxes that may be imposed in connection with the Subtenant's rental, use or right to use the Included Personal Property pursuant to this Sublease.
- 11.2. Subtenant shall:
 - 11.2.1. accept the Included Personal Property in its "as is" condition as of the date hereof, as the same may be affected by reasonable wear and tear after the date hereof,

- 11.2.2. insure the Included Personal Property against loss or damage by fire or other casualty (and all of the provisions of this Sublease applicable to insurance required to be carried by Subtenant shall be applicable thereto), and
- 11.2.3. surrender the Included Personal Property to Sublandlord in the Sublease Premises upon the expiration or sooner termination of this Sublease in the same condition as at the commencement of this Sublease, as the same may be affected by reasonable wear and tear or damage by fire or other casualty; provided, however, that if the Included Personal Property shall have been damaged by fire or other casualty and not repaired or replaced then upon such expiration or sooner termination Subtenant shall pay to Sublandlord the full replacement cost thereof.

12. Security Deposit

Concurrently with its execution and delivery of this Sublease, Subtenant shall deliver to Sublandlord a security deposit in the Required Security Deposit Amount to secure the faithful observance and performance by Subtenant of the terms and conditions of this Sublease. If Subtenant defaults in the observance or performance of any of such terms and conditions, Sublandlord may use or apply all or any part of such security deposit for the payment of any rent not paid when due or for the payment of any other amounts due Sublandlord by reason of such default, including any costs of Sublandlord's observing or performing such terms or conditions on Subtenant's behalf and any deficiencies in reletting or damages incurred by Sublandlord. If Sublandlord shall use or apply all or any part of such security deposit, Subtenant shall, immediately upon notice from Sublandlord, deliver to Sublandlord additional funds so as to restore the security deposit to the Required Security Deposit Amount. If Subtenant shall faithfully observe and perform all of the terms and conditions of this Sublease, the security deposit, or so much thereof as shall not have been used or applied in accordance with this Section 12, shall be returned to Subtenant after the expiration or sooner termination of this Sublease and the vacation and surrender of the Sublease Premises in accordance with this Sublease. If Sublandlord shall transfer the security deposit to an assignee of Sublandlord's interest under the Overlease, the Sublandlord making such transfer and assignment shall be deemed released from all liability to Subtenant with respect to the security deposit or the return thereof, and Subtenant agrees to look solely to the transferee and assignee with respect thereto. Subtenant shall not assign (other than to an assignee of this Sublease) or encumber its interest in the security deposit and no such assignment or encumbrance shall be valid or binding upon Sublandlord.

13. Notices

Any notice or other communication under this Sublease shall be in writing and shall be sent by United States express mail or by a nationally recognized overnight delivery service addressed to the party for whom intended at its address set forth on the signature page hereof, or to such other address as such party shall have designated by notice to the other in the manner herein prescribed. Any such notice, etc. shall be deemed given when delivered or refused or when delivery is attempted on a business day.

14. Broker

Subtenant represents and warrants to Sublandlord that Subtenant has dealt with no broker, agent or finder in connection with this Sublease other than the Recognized Broker and Subtenant agrees to indemnify Sublandlord against any claim for commission or other compensation in connection with this Sublease made against Sublandlord by any other broker, agent or finder with whom Subtenant has dealt, or is claimed to have dealt, in connection with this Sublease, and all costs, expenses and liabilities in connection therewith, including reasonable attorneys' fees and disbursements incurred by Sublandlord in the defense of any such claim. Sublandlord shall pay the commission due the Recognized Broker in accordance with a separate agreement.

15. Overlandlord Consent

This Sublease is subject to Overlandlord's consent. Sublandlord shall request the same and pay any fees or charges expressly provided for in the Overlease. Subtenant agrees promptly to provide any financial or other information requested by Overlandlord. Each party agrees promptly to execute and deliver a consent agreement in the form attached or in any other form requested by Overlandlord provided that the same is no less favorable to such party in any material respect than the form attached. If Overlandlord's consent is not received within 30 days of the full execution and delivery hereof, either party by notice to the other given prior the receipt of Overlandlord's consent, may cancel this Sublease, in which case Sublandlord shall promptly return to Subtenant all sums theretofore paid by Subtenant hereunder. Subtenant waives any claim against Overlandlord arising out of any failure or refusal by Overlandlord to grant consent.

16. Miscellaneous

16.1. In any instance in which Sublandlord is required by any provision of this Sublease or applicable law not unreasonably to withhold consent or approval, Subtenant's sole remedy shall be an action for specific performance or injunction requiring Sublandlord to grant such consent or approval, all other remedies which would otherwise be available being hereby waived by Subtenant. In any such action, the

- winning party shall be entitled to reimbursement of its reasonable attorneys' fees from the losing party.
- 16.2. This Sublease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Sublease. Any agreement hereafter made shall be ineffective to change, modify or discharge this Sublease in whole or in part unless such agreement is in writing and signed by the parties hereto.
- 16.3. The submission of this document by Sublandlord to Subtenant shall not constitute an offer by Sublandlord and Sublandlord shall not be bound in any way unless and until this Sublease is executed and delivered by both parties.

[continued on next page]

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

Sublandlord

Subtenant

_____ a _____

_____ a _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address for Notices:

Address for Notices:

with a copy to:

with a copy to:

