

MODEL OFFICE SUBLEASE

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This Model Office Sublease is intended for simple and casual subleases of excess office space, typically in New York City. It is not appropriate for long-term or development-related subleases or subleases that contemplate major improvements. With changes, this Sublease can easily be used for retail or other space. The model starts from a Sublandlord's perspective, but assumes all parties want to avoid protracted negotiations. Hence the model is partly "prenegotiated" and includes protections that a Subtenant would often request. In using this Model Office Sublease, consider these points:

A. *Subrent and Escalations.* Focus special care on the definition of Subrent and the allocation of escalations, particularly defining the base years and any later adjustments that might affect those years. The provisions in this model reflect only one of many possible business deals. They must be fully thought through for every transaction.

B. *Technical Details.* Read the entire Overlease. Add correct Section references in the Sublease. Confirm that the Sublease defines (or properly refers to the Overlease for definitions of) all terms it uses, particularly "Sublandlord's Rent."

C. *Excluded Issues.* This Model Office Sublease does not fully consider the following issues, except through selective incorporation from the Overlease:

1. *Fixturization.* Required fixturization by Sublandlord or Subtenant (if any is planned, must consider issues, including plan development and construction matters, and substantially expand document) -- but see abbreviated optional language at the end;

2. *Nondisturbance.* Nondisturbance or recognition agreements from mortgagees or, in any serious way, from Overlandlord;

3. *Delivery.* Inability to deliver Subpremises or delay in delivering;

4. *Time Limits.* Shortening and lengthening of overlease time limits to preserve sublandlord flexibility (not standard, but not unheard of either);

5. *Bankruptcy.* Effect of Overlandlord bankruptcy (control over rejection, control of proceedings, allocation of damages, etc.); and

6. *Financial Statements.* Obligation for either Sublandlord or Subtenant to deliver periodic financial statements.

D. *Additional Points.* Checklist of points to consider:

1. *Use.* The "use" clause should permit Subtenant's use. If there is any issue or concern, the Sublease should: (a) provide that notwithstanding anything to the

contrary in the Overlease, as incorporated by reference, Subtenant may conduct its intended use; and (b) Overlandlord's Consent must also include a consent to Subtenant's intended use.

2. *Partial Premises.* If the Subpremises are only part of Sublandlord's Premises, consider issues regarding demising of the space. If the space being subleased will not be separately demised, confirm that this is legally permissible, and also think about co-existence issues, e.g., no loud construction work during business hours; administration of mail; preservation of confidentiality; general rules; other use and operational matters; etc. From Sublandlord's viewpoint, perhaps the Sublease can just allow Sublandlord to establish rules and procedures for these matters and Subtenant will comply with them.

3. *Comparison.* Review the Overlease to confirm that Sublandlord is not promising Subtenant anything that Sublandlord cannot deliver or greater rights than Sublandlord possesses under the Overlease.

4. *Nonrecourse?* This Sublease does not contain language that would: (a) limit Sublandlord's liability to its interest in the Overlease; (b) say that the Sublease automatically terminates if the Overlease does; or (c) terminate all liability of Sublandlord if Sublandlord assigns the Overlease and the assignee assumes it. Nonrecourse clauses of this type are typically inappropriate in a Sublease, where the value of the Overlease is probably negative. A Subtenant should insist that the Sublandlord commit to preserve the Overlease and hence the Sublease. In addition to rejecting any "nonrecourse" clauses in the Sublease, a Subtenant should also check the Overlease provisions that are being incorporated by reference. Do they include a nonrecourse clause that would benefit Sublandlord?

If the parties intend to give Sublandlord nonrecourse protections, Sublandlord should beware of case law that uses the "implied covenant of good faith and fair dealing" to let Subtenant assert personal liability against Sublandlord.¹

5. *Other Issues.* Subleases raise many issues, both: (a) all the same issues as leases (as summarized, for example, in the silent lease issues checklists co-authored by Joshua Stein and S.H. Spencer Compton); and (b) many issues unique to subleases. As a result, subleases can in some ways be more complex than direct leases. Anyone drafting or negotiating a sublease should consider the full range of these issues.

E. *Other Deliveries.* For items to be attached, see list after the signature blocks. Revise as necessary. Subtenant will want to see a copy of the Overlease. It is customary to white out economic terms in the Overlease before sending it to Subtenant, but Sublandlord may prefer to save the substantial legal time this exercise will entail to do right.

¹ See Joshua Stein, *The Perils of Subtenancy; A Roadmap for Recourse When the Sublandlord Defaults Under the Prime Lease*; and *Some Lessons for Nonrecourse Financing*, 22 ICSC Shopping Center Legal Update, No. 2, at 10 (Summer 2002) (discussing *Tapps of Nassau Supermarkets, Inc. v. Linden Boulevard L.P.*, 704 N.Y.S.d 27 [Sup. Ct. App. Div. 2000]); *The Perils of Subtenancy and a Roadmap for Recourse When the Sublandlord Defaults Under the Prime Lease*, Retail Law Strategist, April 2002, at 4 (shorter version of same article).

F. *Commencement Date.* If the Commencement Date is not the date of signing, what notices will need to be given? Should the parties sign a Commencement Date letter? In practice, written notice of commencement sounds like a great idea and a simple thing to do, but when the time actually comes Sublandlord and its counsel will either not remember, or may take time to get it done, and Sublandlord may lose subrent as a result. Sublandlord's counsel would be well advised to prepare the Commencement Date notice at the same time as the parties sign the Sublease, so Sublandlord will be able to issue the notice immediately.

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OFFICE SUBLEASE

This **OFFICE SUBLEASE** (the "Sublease") is entered into as of _____, 201__ (the "Execution Date") by and between _____, a _____ having an office at _____ ("Sublandlord") and _____, a _____ having an office at _____ ("Subtenant").

WITNESSETH

WHEREAS, Sublandlord is tenant under one or more lease documents and amendments thereto, all as described in **Exhibit A**, by and between _____ (with its predecessors and successors in interest, the "Overlandlord") and Sublandlord or its predecessor in interest (excluding any provisions redacted from the copy given to Subtenant, the "Overlease");

WHEREAS, pursuant to the Overlease, Overlandlord demised to Sublandlord the premises ("Sublandlord's Premises") identified as the _____ floor of the building commonly known as _____ (the "Building"), substantially as shown in the diagram attached as **Exhibit B**;

WHEREAS, Sublandlord desires to sublease to Subtenant, and Subtenant desires to sublease from Sublandlord, [part/all] of Sublandlord's Premises ([such portion,]the "Subpremises"), substantially as shown in the diagram attached as **Exhibit B²**; and

WHEREAS, the part of Sublandlord's Premises, if any, not constituting the Subpremises is referred to as the "Reserved Premises."

NOW, THEREFORE, Sublandlord and Subtenant agree as follows.

1. *Demising of Subpremises; Term.*

1.1 *Sublease of Subpremises.* Sublandlord subleases the Subpremises to Subtenant, and Subtenant subleases the Subpremises from Sublandlord, for the Term.

1.2 *Term.* The "Term" of this Sublease shall commence on the date (the "Commencement Date") that is the later to occur of (a) the date Sublandlord [delivers to Subtenant] [has obtained] the Standard Overlandlord Consent executed by Overlandlord and, if so provided, by Sublandlord, and (b) _____, 201__ and, without regard to the actual Commencement Date, expire on _____ (the "Expiration Date"), subject to any extension or renewal options that this Sublease expressly grants Subtenant. Sublandlord shall promptly notify Subtenant of the Commencement Date when it has occurred.

² Subtenant may insist on mentioning square footage. If so, insert language similar to the following: "and containing approximately _____ rentable square feet of Sublandlord's Premises, which rentable square footage shall not be subject to survey or adjustment." Generally, any reference to square footage just invites trouble.

1.3 *Early Occupancy.* If Subtenant takes possession of the Subpremises or any of it before the Commencement Date (the “Early Occupancy Space”), then the Commencement Date for the Early Occupancy Space shall be the date Subtenant actually takes possession (and all of Subtenant’s rights and obligations hereunder for the Early Occupancy Space shall commence as of such earlier Commencement Date). The Expiration Date shall not change. The Rent Commencement Date for the Early Occupancy Space shall be accelerated by the same number of days by which the Commencement Date was accelerated.

1.4 *Option.* Provided that as of _____ (the “Option Exercise Deadline”), Subtenant is not in default under this Sublease beyond applicable cure periods, Subtenant shall have the one-time right (the “Option”) to extend the Term through _____, by giving Sublandlord written notice of exercise of the Option on or before 5:00 p.m. on the Option Exercise Deadline. Time is of the essence as to Subtenant’s exercise of the Option.

1.5 *Definitions.* The Term through _____ is referred to as the “Initial Term.” If Subtenant exercises the Option, then the period from _____ through _____ shall be referred to as the “Option Term” and the “Term” shall be redefined to include the Option Term.

2. *Subrent.*

Subtenant agrees to pay Sublandlord rent under this Sublease (the “Subrent”) in the following amounts at the following times, prorated daily for partial periods:

2.1 *Fixed Subrent.* Except during any Abatement Period (if any) that this Sublease expressly allows, Subtenant shall pay Sublandlord “Fixed Subrent” for the Subpremises in the following amounts in equal monthly installments:

2.1.1 *First Year.* From the Commencement Date through the end of the last calendar month preceding _____ (the “First Adjustment Date”), Fixed Subrent shall be \$ _____ per year.

2.1.2 *Subsequent Years.* On the First Adjustment Date and every twelve months thereafter, annual Fixed Subrent (before giving effect to any Abatement Period) shall increase by an amount equal to _____% of the previous year’s annual Fixed Subrent, as previously adjusted.

2.1.3 *CPI Increase.* On _____ and on each subsequent _____, annual Fixed Subrent (before giving effect to any Abatement Period) shall be adjusted as described in Section _____ of the Overlease, using as [the Base Year] calendar year _____. Such calculations shall be performed based on the statements of the [Price Index] to be provided by Overlandlord pursuant to Section _____ of the Overlease. Sublandlord shall promptly give Subtenant copies of such statements, deleting dollar figures for Sublandlord’s Rent. If Overlandlord fails to provide such statements in a timely manner satisfactory to Sublandlord, then Sublandlord shall obtain similar information from other reliable sources and the Fixed Subrent shall then be adjusted in accordance with this paragraph based on the information that Sublandlord obtains. Fixed Subrent shall be increased annually by the amount of and in accordance with the adjustment in this paragraph.

2.1.4 *Fixed Subrent Abatement.* Notwithstanding anything to the contrary in this Sublease, Subtenant need not pay Fixed Subrent during the first _____ days of the Term (the “Abatement Period”). The Fixed Subrent otherwise due for the Abatement Period shall be entirely abated. This shall not limit or reduce any other obligations of Subtenant or Sublandlord in the Abatement Period, including Subtenant’s obligation to pay all Subrent except Fixed Subrent. Effective on the first day after the Abatement Period (such day, the “Rent Commencement Date”) Subtenant shall commence to pay Fixed Subrent and shall continue to do so for the remaining Term.

2.2 *Additional Subrent.* Subtenant shall pay Sublandlord, as “Additional Subrent,” or shall reimburse Sublandlord as “Additional Subrent” for an amount equal to (or, where indicated, part of), the payments described below required by the Overlease. The parties shall endeavor to have Overlandlord bill Subtenant directly for any Additional Subrent arising from or by reference to the terms of the Overlease. No party is obligated to establish such a direct billing system. Should any failure of Subtenant to pay a direct bill from Overlandlord result in liability or loss to Sublandlord, Subtenant shall fully indemnify Sublandlord from such liability or loss, including payment of reasonable attorneys’ fees. To the extent that direct billing by Overlandlord is not established for any or all Additional Subrent, Subtenant shall pay Sublandlord each such item of Additional Subrent within 15 days after Sublandlord delivers to Subtenant an invoice with reasonably detailed supporting documentation for such item of Additional Subrent including any invoices from Overlandlord. In no event, however, shall Subtenant be required to pay Additional Subrent earlier than ten business days before the Overlease requires Sublandlord to make the payment to Overlandlord to which such Additional Subrent relates. The Additional Subrent shall consist of:

2.2.1 *Increased Escalations.* An amount (“Subtenant’s Escalation Contribution”) equal to Subtenant’s Contribution Share of any increases, above each applicable Subtenant’s Base Year, in Sublandlord’s payments required under the Overlease allocable to Sublandlord’s Premises arising from the following matters: taxes (Section _____), operating expenses (Section _____), porter’s wage increases (Section _____), and any other passthroughs of Overlandlord’s costs or similar escalations provided for under Section _____ (collectively, “Escalations”). Escalations shall, however, exclude any charges arising from work performed at Subtenant’s or Sublandlord’s request or other acts or omissions of Sublandlord or Subtenant. Subtenant’s “Base Year” for measuring each such increase shall be the applicable fiscal year(s) under the Overlease (e.g., tax year, operating year, etc.) that includes the [Execution Date] [first] [last] day [of the calendar year in which the Execution Date occurs]. Subtenant’s “Contribution Share” means ____%³.

[Delete whichever “electricity” clause does not apply. As another alternative, Subtenant could agree to pay a particular percentage of Sublandlord’s electricity bill.]

2.2.2 *Electricity.* An amount per annum, payable in equal monthly installments, equal to the product of (a) Subtenant’s Contribution Share times (b) the Electricity Rent Inclusion Factor (“ERIF”) in force from time to time under the Overlease. If Overlandlord

³ This would equal the square footage of only the Subpremises) divided by the square footage of all of Sublandlord’s Premises), but one would not want to include that calculation in the Sublease.

converts to submetering, then Sublandlord shall reasonably allocate Landlord's electricity and related charges between the Subpremises and any Reserved Premises. Subtenant shall pay the charges so allocated to the Subpremises. Sublandlord shall pay (without contribution by Subtenant) the charges so allocated to the Reserved Premises.

2.2.3 *Electricity*. The sum of \$_____ per annum (the "Electricity Reimbursement"), payable in equal monthly installments, which sum is calculated as the product of (a) _____, the rentable square footage of the Subpremises times (b) Subtenant's estimated electrical consumption of \$_____ per rentable square foot. The Electricity Reimbursement is intended to reimburse Sublandlord for the actual cost of Subtenant's electricity consumption. Either Sublandlord or Subtenant may, at any time, request that a survey of electrical consumption be performed by an electrical consultant, whose fees shall be shared equally by Sublandlord and Subtenant. Upon completion of such survey, the parties shall reasonably recalculate Subtenant's Electricity Reimbursement, which recalculation shall be effective prospectively and for six months retroactively (with appropriate adjusting payments between Sublandlord and Subtenant as to the preceding six months). Notwithstanding anything to the contrary in this paragraph, Subtenant shall not be entitled to claim any offset or reduction against Fixed Subrent or Additional Subrent (other than subsequent Electricity Reimbursements) on account of any recalculation of Subtenant's Electricity Reimbursement under this paragraph.

2.2.4 *Electricity*. The parties acknowledge that a properly operating submeter or direct meter is in place for Sublandlord's Premises. Sublandlord shall [reasonably] allocate [based on Subtenant's Contribution Share] Sublandlord's electricity and related charges between the Subpremises and any Reserved Premises. Subtenant shall pay the charges so allocated to the Subpremises. Sublandlord shall pay (without contribution from Subtenant) the charges so allocated to the Reserved Premises.

2.2.5 *Other Payments*. Any and all other payments (except Sublandlord's Rent) due in accordance with the Overlease for the Subpremises during the Term, including any charges arising from work performed at Subtenant's request or directly or indirectly on account of other acts or omissions of Subtenant (including the nature of Subtenant's use of the Subpremises and Subtenant's breach of this Sublease or the Overlease). To the extent that any payments required by the Overlease relate both to the Subpremises and to any Reserved Premises, Sublandlord shall allocate such payments in a reasonable and equitable manner[, in accordance with Subtenant's Contribution Share unless such allocation is manifestly unreasonable]. Sublandlord and Subtenant shall each pay its share accordingly. Subtenant shall make all such payments at least 15 days before the Overlease requires Sublandlord to make the corresponding payment to Overlandlord. In no event, however, shall Subtenant be required to make any such payment earlier than five business days after receipt of an invoice from Sublandlord. Notwithstanding anything to the contrary in this Sublease, "Additional Subrent" shall exclude any charges to the extent such charges arise from (i) goods or services provided or work performed for the benefit of Sublandlord, or (ii) acts or omissions of Sublandlord.

2.3 *Initial Payment*. Sublandlord acknowledges receipt of \$_____ (by check, subject to collection) from Subtenant on account of Fixed Subrent. Sublandlord shall credit such sum against Fixed Subrent due for the first _____ months of the Term (after any Abatement Period). If the Commencement Date does not occur for any reason except Sublandlord's default

under this Sublease or a failure to obtain Overlandlord's consent to this Sublease, then Sublandlord may retain all sums Subtenant paid under this paragraph.

3. *Subletting Covenants.*

3.1 *Incorporation of Overlease.* The Overlease, as it relates to the Subpremises, is incorporated by reference in this Sublease, except as follows.

3.1.1 *Defined Terms.* Wherever the Lease refers to a term in the lefthand column of the following table, this Sublease shall be deemed to refer to the adjacent term in the righthand column of the table. All other defined terms in the Overlease shall be deemed appropriately modified[, as necessary in Sublandlord's reasonable judgment,] to reflect the circumstances of this Sublease.

Each Reference to:	Shall be Deemed Replaced by a Reference to:
Lease	This Sublease
Overlandlord	sublandlord
Sublandlord's Premises	Subpremises only
Sublandlord's Rent	Subrent
Tenant	Subtenant

3.1.2 *Exclusions.* The following Sections of the Overlease, relating to the following matters, shall not be incorporated by reference:⁴

Section:	Subject:
Throughout	Addresses of parties
	Brokerage
	Conditions to effectiveness of Overlease
	Limitation of Overlandlord's liability
	Memorandum of Lease
	Nondisturbance by holders of senior estates
	Overlandlord's and Sublandlord's initial fixturation, including development of plans and specifications, and any payments by Overlandlord or Sublandlord for such work (but the general provisions of the Overlease that relate to alterations by Sublandlord as Tenant are incorporated by reference)
	Overlandlord's consent to any assignment, subletting or other transfer of the Overlease or any interest therein

⁴ Items listed here typically would be excluded from the Sublease. Tailor as appropriate for the particular circumstances.

Section:	Subject:
	Overlease Term
	Rentable square footage of Sublandlord's Premises
	Representations or warranties by Overlandlord
	Sublandlord's free rent or rent abatement
	Sublandlord's options, if any, including options to extend or cancel the Overlease or expand Sublandlord's Premises
	Sublandlord's rent
	Sublandlord's security deposit or letter of credit, if any, delivered to Overlandlord, unless this Sublease expressly requires a similar delivery by Subtenant, in which case this Sublease shall govern the amount and the incorporated terms of the Overlease shall govern administration

3.1.2.1 *Dispute Resolution.* Wherever the Overlease provides a dispute resolution procedure or a procedure to determine any matter relevant to this Sublease, if any dispute arises that relates [solely] [or in substantial part] to the Subpremises, Sublandlord shall consult with Subtenant in exercising Sublandlord's rights under or otherwise complying with such procedure pursuant to the Overlease. Provided that Sublandlord shall have acted in good faith, Subtenant shall be bound by the result of any such procedure. Subtenant shall have no separate right to invoke such procedure as between Sublandlord and Subtenant. If Subtenant's Contribution Share exceeds 50%, then Sublandlord shall have the right but not the obligation to require Subtenant to act on Sublandlord's behalf in any such dispute resolution procedure, all at Subtenant's expense, and the outcome of any such dispute resolution procedure shall bind both Sublandlord and Subtenant. Subtenant shall have no other right to participate in or be consulted regarding dispute resolution under the Overlease.

3.1.2.2 *Other.* In addition, this Sublease does not incorporate by reference any other terms of the Overlease that, by their nature or purpose, are [in Sublandlord's reasonable judgment] inapplicable or inappropriate to the subleasing of the Subpremises.

3.1.3 *Interaction of Sublease and Overlease.* Wherever this Sublease conflicts with an incorporated term of the Overlease, as incorporated in this Sublease, this Sublease shall govern, but wherever reasonably possible such a conflict shall be resolved by treating Subtenant's obligations under both documents as cumulative. Any reference in this Sublease to a section within the Overlease refers to such section in the oldest document listed in **Exhibit A** containing such a section, as modified by subsequent documents listed in **Exhibit A**.

3.2 *Compliance with Overlease.* Subtenant agrees, solely for the benefit of Sublandlord, to be bound by, and to fully comply with all obligations of Sublandlord arising under, the Overlease, except to the extent that this Sublease requires Sublandlord to perform any obligation under the Overlease, including Sublandlord's payment of Sublandlord's Rent under the Overlease. Subtenant shall do nothing that violates the Overlease.

3.3 *Abatement Rights.* Subtenant may not assert against Sublandlord any right to abate rent that may exist under the Overlease, but if any such right becomes relevant for the Subpremises, then Sublandlord shall use reasonable efforts to pursue such abatement. Subtenant shall be entitled to an abatement against Subrent equal to the lesser of (a) the dollar amount of the abatement that Sublandlord actually recovers on behalf of Subtenant to the extent such abatement arises from Overlandlord's acts and omissions and is fairly allocable to the Subpremises, based on the circumstances or (b) the amount of Subtenant's Subrent for the part of the Subpremises that such abatement affects. Nothing in this paragraph limits any liability of Sublandlord to Subtenant based on Sublandlord's acts or omissions.

3.4 *Payment of Sublandlord's Rent.* Provided that Subtenant complies with its payment obligations and material nonmonetary obligations under this Sublease (including payment of all Subrent when and as due), Sublandlord shall pay Overlandlord all rent required by the Overlease ("Sublandlord's Rent") within the applicable cure periods under the Overlease. This does not limit any express obligation of Subtenant in this Sublease to reimburse Sublandlord for any such rent or pay any other sum.

3.5 *Rights and Benefits Under Overlease.* To the extent that they apply to the Subpremises, Subtenant shall have all the rights, privileges, and benefits granted to or conferred upon Sublandlord as Tenant under the Overlease, provided that Subtenant's exercise of such rights, privileges, and benefits shall not cause Sublandlord to be in default under the Overlease.

3.5.1 *Additional Costs.* To the extent Subtenant requires services beyond those provided for in this Sublease, Subtenant shall contract directly with and pay Overlandlord for such services. Such services may include additional cleaning; after-hours heating, ventilation, or air-conditioning; freight car service; and loading dock security services (the "Additional Services"). Subtenant shall indemnify Sublandlord for any costs associated with the Additional Services. If Overlandlord refuses to deal directly with Subtenant about Additional Services, then Sublandlord shall have no liability to Subtenant but shall without charge act as an intermediary in such communications. Sublandlord shall have no responsibility for Overlandlord's failure to provide Additional Services except as this Sublease expressly provides.

3.6 *Overlandlord's Performance.* Wherever the Overlease (as incorporated by reference in this Sublease) would require Sublandlord to provide any benefit or service, Subtenant shall be entitled to receive such benefit or service directly from Overlandlord under the Overlease. Sublandlord shall have no liability to Subtenant, and Subtenant's obligations under this Sublease shall not be reduced, restricted, diminished, or deferred, if Sublandlord fails to provide any service or benefit required under the Overlease, or to perform any obligation under the Overlease, unless both: (a) Subtenant is not in default under this Sublease; and (b) Sublandlord's failure results from Sublandlord's default under the Overlease. Subtenant shall have no direct recourse against Overlandlord. Sublandlord agrees, for Subtenant's benefit, upon Subtenant's written request, to diligently endeavor to enforce Overlandlord's obligations under the Overlease, to attempt to cause Overlandlord to provide Subtenant with the service or other benefit in question. Subtenant shall reimburse all reasonable costs and expenses Sublandlord incurs in enforcing or attempting to enforce the Overlease against Overlandlord (subject to equitable proration to the extent that such proceeding also relates to any Reserved Premises).

Subtenant may not require Sublandlord to perform any obligation of Overlandlord under the Overlease or otherwise.

3.7 *Preservation of Overlease.* So long as Subtenant is not in default under this Sublease beyond applicable notice and cure periods, Sublandlord shall, with respect to all periods within the Term of this Sublease (including any potential Option Terms): (a) preserve the Overlease and keep the Overlease in full force and effect as it relates to the Subpremises; (b) not agree to any amendment to the Overlease that would materially adversely affect Subtenant, including by increasing any Subrent; (c) not, without Subtenant's written consent, exercise any right to terminate the Overlease (including any right to treat the Overlease as terminated in any bankruptcy or insolvency proceeding affecting Overlandlord), except on account of casualty or condemnation; (d) exercise any renewal options under the Overlease before the applicable deadline; (e) perform all its obligations under the Overlease, except any obligations Sublandlord contests in good faith; and (f) pay Overlandlord any sums payable to Overlandlord on account of entering into this Sublease. If Sublandlord enters into any amendment of the Overlease that would affect Subtenant, then Sublandlord shall promptly give Subtenant a copy (with terms that do not affect Subtenant deleted) and the definition of "Overlease" shall be deemed modified to reflect such amendment. Sublandlord shall continue to have the sole right to exercise any and all rights, privileges, and remedies under the Overlease.

3.8 *Consent to Certain Matters.* Notwithstanding anything to the contrary in this Sublease, Sublandlord's consent shall be required for each of the following matters:

3.8.1 *Transfers.* Sublandlord's consent shall be required, and Sublandlord may withhold its consent for any reason or no reason (or require payment as a condition to its consent), if Subtenant desires to subsublet any or all of the Subpremises, assign this Sublease, or otherwise transfer or convey its estate under this Sublease or any part of such estate, or permit anyone other than Subtenant to use or occupy any or all of the Subpremises (a "Transfer"). The term "Transfer" shall also include any transaction (including a transfer of more than 49% of the direct or indirect ownership interests in Subtenant) that is in substance in whole or in part a transfer of this Sublease or would be deemed an assignment of the Lease (or require Overlandlord's consent), under the terms of the Lease, if such transaction affected Tenant. Any Transfer shall also require Overlandlord's approval to the extent that the Overlease (or Overlandlord's consent to this Sublease) requires. This paragraph shall supersede any provisions of the Overlease by which Overlandlord consents in advance to any assignment, sublet, or other transaction. Subtenant shall pay any taxes (and payments to Overlandlord that the Overlease requires) assessed or payable for any Transfer by Subtenant.

3.8.2 *Alterations.* Subtenant shall make no material alteration, improvement, decoration, or other physical change to the Subpremises (an "Alteration") without Sublandlord's written consent, not to be unreasonably withheld. Alterations are also subject to Overlandlord's approval to the extent the Overlease provides. To the extent that Sublandlord approves any Alteration, Subtenant shall comply with all applicable requirements of the Overlease as if incorporated by reference in this Sublease. [Next two sentences are optional.] Subtenant recognizes and acknowledges that Sublandlord may determine to use and occupy the Subpremises immediately after the Term and that Sublandlord's configuration and fixturation of the Subpremises for Subtenant have been determined accordingly. Therefore, without limiting

Sublandlord's right to otherwise reasonably disapprove any Alteration Subtenant proposes, Sublandlord may disapprove any proposed Alteration if Sublandlord determines it would materially interfere with Sublandlord's plans for the Subpremises after the Expiration Date, or otherwise materially diminish the utility of the Subpremises to Sublandlord after the Expiration Date. Sublandlord may withhold its consent for any reason or no reason to: (a) any Alteration that would be located in or visible from public areas on any floor that includes any Reserved Premises, except Subtenant's reasonable installation of Subtenant's business sign and logo, provided such latter installation complies with the Overlease and is performed in a manner reasonably satisfactory to Sublandlord; or (b) any Alteration that the Overlease would require Sublandlord to remove at the end of the term of the Overlease unless Subtenant agrees in writing to perform such removal at the end of the Term and provides such assurances of removal as Sublandlord shall reasonably request.

3.8.3 *Additional Requirements.* Wherever the Overlease requires Overlandlord's consent to any action or matter (including any such consent that would be required to be obtained from Overlandlord if such action or matter arose under the Lease), Subtenant shall obtain both Sublandlord's and Overlandlord's consent to such action or matter. [If Overlandlord consents to any action or matter requiring Overlandlord's consent but not otherwise expressly referred to in this Sublease, then Sublandlord shall not unreasonably withhold consent to such action or matter.]

3.9 *Notices from Overlandlord.* Each party shall immediately give the other a copy of any notice received from Overlandlord to the extent relevant to the calculation of any Subrent or giving notice of an alleged default, or exercise of Overlandlord's remedies, under the Overlease. If the Overlease entitles Sublandlord to do so, then Sublandlord shall request that Overlandlord simultaneously deliver to Subtenant a copy of any notice(s) that Overlandlord gives to Sublandlord relating to the Overlease.

3.10 *Representations and Warranties.* Sublandlord represents and warrants that the Overlease is the entire agreement between Overlandlord and Sublandlord relating to Sublandlord's Premises and is in full force and effect, and neither Sublandlord nor Overlandlord is in default beyond applicable cure periods under the Overlease. To the extent that Overlandlord makes any representations and warranties in the Overlease: (a) Sublandlord represents and warrants to Subtenant that Sublandlord is not actually aware of any breach of such representations and warranties; and (b) if any such representations and warranties are breached, then Subtenant shall have no claim against Sublandlord except to the extent of an equitable allocation of any payment, settlement, or rent offset that Sublandlord obtains from Overlandlord because of such breach. Subtenant represents and warrants to Sublandlord that Subtenant has reviewed and is fully familiar with the Overlease and the Subpremises. Except as this Sublease provides, neither party makes any representation or warranty about the Overlease, the Subpremises or any other matter.

4. *Interaction of Estates; Effect on Overlandlord.*

4.1 *Priorities.* This Sublease is unconditionally subject and subordinate to: (i) the Overlease, as amended from time to time in compliance with this Sublease; (ii) all estates and interests to which the Overlease is expressly subject and subordinate, including any and all

underlying ground leases and mortgages affecting Overlandlord's estate, all as amended from time to time; and (iii) all the terms, conditions and covenants of items "i" and "ii." If, pursuant to the Overlease, Overlandlord or Overlandlord's ground lessor(s) or mortgagee(s) request(s) additional documentation (consistent with such limitations and requirements, if any, as the Overlease provides) to confirm the foregoing subordination, then Subtenant shall promptly execute it.

4.2 *Attornment.* If the Overlease terminates and this Sublease otherwise remains in full force and effect, then Subtenant shall, at Overlandlord's option, attorn to and recognize Overlandlord as landlord under this Sublease (as this Sublease may have been amended by agreement between the parties) and shall, promptly upon Overlandlord's request, execute and deliver all instruments necessary or appropriate to confirm such attornment and recognition, provided that such instruments comply with any applicable restrictions and requirements in the Overlease. Provided Subtenant's possession of the Subpremises is not disturbed and Overlandlord recognizes this Sublease, Subtenant waives any right to terminate this Sublease or surrender possession of the Subpremises because the Overlease terminates.

4.3 *No Effect on Overlease, Overlandlord.* Notwithstanding anything to the contrary in this Sublease, including Overlandlord's consent to this Sublease: (a) Overlandlord shall have no obligations of any kind to Subtenant; and (b) the Overlease remains in full force and effect between Overlandlord and Sublandlord. Nothing in this Sublease (except upon termination of the Overlease if Overlandlord exercises its right to require Subtenant to recognize and attorn to Overlandlord) shall create any privity or contractual or landlord-tenant relationship of any kind between Overlandlord and Subtenant or cause Overlandlord to be a third party beneficiary of this Sublease or otherwise entitled to enforce (or to limit any amendment or cancellation of) this Sublease.

4.4 *Involuntary Termination of Overlease.* If the Overlease terminates for any reason, then the Term shall automatically terminate one minute before such termination unless Overlandlord elects or agrees otherwise in writing. Sublandlord's and Subtenant's obligations under this Sublease shall automatically and immediately cease and terminate upon any such expiration of the Term, but this shall not limit (1) either party's obligations and liability that accrued before the date of termination or (2) Subtenant's obligations to vacate the Subpremises and return the Subpremises to Sublandlord in the condition required by this Sublease.

5. *Leasing Covenants.*

5.1 *Delivery - Beginning and End of Term.* Except to the extent, if any, that this Sublease provides otherwise: (a) Subtenant accepts the Subpremises "as is" on the Execution Date (subject to reasonable wear and tear from such date through the Commencement Date) except that Sublandlord shall deliver the Subpremises to Subtenant, substantially as shown in **Exhibit B**, vacant and in "broom clean" condition on the Commencement Date; and (b) Sublandlord need not perform any construction or other preparation of the Subpremises for Subtenant. Subtenant shall return the Subpremises to Sublandlord in the same condition in which Subtenant received the Subpremises, subject to reasonable wear and tear. At Sublandlord's option, Subtenant shall also comply with all requirements the Overlease would impose regarding Sublandlord's delivery of Sublandlord's Premises to Overlandlord at the

expiration of the Overlease. [Notwithstanding anything to the contrary in this paragraph or in the Overlease, Subtenant need not remove or restore any Alteration installed with Sublandlord's consent or by Sublandlord, unless such removal or restoration was a condition to Sublandlord's consent or agreed upon in writing.] [To the extent that Subtenant performs any Alteration, whether or not material and whether or not Sublandlord consents to it, Subtenant shall on or before the Expiration Date restore the Subpremises to its condition at the Commencement Date, substantially as it existed when delivered to Subtenant, except normal wear and tear.] At the end of the Term Subtenant shall remove from the Subpremises all of Subtenant's furniture, belongings, personal property, trash, debris, and all other movable items of any kind. To the extent that Subtenant fails to do so, Subtenant shall upon demand reimburse Sublandlord for the cost of disposing of same, including a reasonable allocation of Sublandlord's staff time.

5.2 *Quiet Enjoyment.* So long as Subtenant pays the Subrent and performs its obligations under this Sublease, in all cases within any applicable notice and cure periods, Subtenant shall peaceably have, hold, and enjoy the Subpremises during the Term, subject to the terms of the Overlease and this Sublease.

5.3 *Insurance.* Subtenant shall provide all insurance required by the Overlease, as incorporated in this Sublease (including, in any event, whether or not the Overlease requires it, \$3,000,000 in combined single limit liability coverage for bodily injury and property damage, which requirement Sublandlord may reasonably increase from time to time to reflect inflation) for the Subpremises during the Term and shall deliver to Sublandlord upon execution of this Sublease and at least 30 days before expiration of each insurance policy certificates of such insurance. Such certificates shall: (a) designate Sublandlord and Overlandlord as an additional insureds; and (b) provide that the insurance they evidence shall not be cancelled or terminated without 30 days prior written notice to Sublandlord. A copy of Subtenant's initial certificate of insurance is attached as **Exhibit C**.

5.4 *Indemnity.* Sublandlord and Subtenant shall each indemnify and hold the other harmless from and against any and all loss, liability or expense, including reasonable attorneys' fees, incurred or suffered by the other party on account of the indemnifying party's failure to perform its obligations, or because of a material breach by the indemnifying party of any representation or warranty made by it, under this Sublease (including the Overlease as incorporated by reference) or the indemnifying party's negligence or intentionally wrongful acts.

5.5 *Default; Remedies.* Notwithstanding anything to the contrary in this Sublease, if Subtenant defaults in performing any obligation under this Sublease or commits a default under this Sublease, including the terms of the Overlease as incorporated in this Sublease, then Subtenant shall remedy such default within the applicable cure period (if any), which period shall automatically commence to run against Subtenant at the same time it commences to run against Sublandlord provided that (in the case of a default by Subtenant under the Overlease) Sublandlord gives Subtenant, with reasonable promptness after receipt by Sublandlord, a copy of Overlandlord's notice of default. If Subtenant fails to perform its obligations under this Sublease (including the Overlease as incorporated by reference), then Sublandlord shall be entitled to exercise against Subtenant all remedies provided for in the Overlease (as incorporated by reference) in the case of Sublandlord's default under the Overlease, and any other remedies available at law or in equity. To the extent that Subtenant's default under this Sublease causes

Sublandlord to incur liability to Overlandlord or any loss, cost, damage or expense to Overlandlord, including payment of any holdover rent or other damages to Overlandlord (for Sublandlord's Premises or any part of it) if Subtenant fails to vacate all or any portion of the Subpremises at the end of the Term, Subtenant shall indemnify, defend, and hold harmless Sublandlord against all such liability, loss, cost, damage, and expense, including the payment of reasonable attorneys' fees.

5.6 *Additional Covenants.* Sublandlord and Sublandlord's designees shall have access to the Subpremises throughout the Term on reasonable oral notice for such purposes as Sublandlord shall reasonably require. In entering the Subpremises, Sublandlord shall comply with Subtenant's reasonable instructions. Subtenant shall pay all rent, occupancy, and other taxes assessed, imposed, or otherwise payable with respect to this Sublease or the Subrent, together with any and all property taxes assessed or payable against Subtenant's subleasehold estate under this Sublease or personal property of any kind, owned by or placed in, upon or about the Subpremises by Subtenant. If any governmental authority imposes any transfer tax on the creation of this Sublease (a "Transfer Tax"), then the party with the primary legal obligation to pay such Transfer Tax shall pay it. If during the Term any law is enacted that would limit, control or stabilize the Subrent or extend the Term beyond the Term expressly provided for in this Sublease, then Subtenant waives any rights or benefits under such law.

5.7 *Directory Entries.* Sublandlord shall exercise reasonable efforts to cause Overlandlord to allow Subtenant entries in the lobby directory for the Building as Subtenant reasonably requests consistent with the Overlease. If the Overlease limits such entries then Subtenant shall not be entitled to more than Subtenant's Contribution Share of the entries that the Overlease allows Sublandlord. Subtenant shall pay any fees or charges Overlandlord imposes for Subtenant's directory entries.

6. *Miscellaneous.*

6.1 *Attorneys' Fees.* If this Sublease is the subject of any litigation (including litigation to enforce an indemnity), then the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees. If Sublandlord or Subtenant represents itself in any such litigation, it shall be entitled to reimbursement of fees based on its standard hourly billing rates (including the value of the time of attorneys in any in-house law department based on the prevailing rates of outside law firms for attorneys of equivalent experience) as if it were outside counsel.

6.2 *Brokers.* Sublandlord and Subtenant each represents and warrants that it has not dealt with any broker or agent in connection with this Sublease except _____ (the "Broker"). _____ Sublandlord shall pay Broker's entire compensation pursuant to separate written agreement. Each party shall indemnify, defend, and hold the other harmless from and against any and all loss, cost, liability, and expense (including payment of reasonable attorneys' fees) that such other party incurs from a party's breach of its obligations under this paragraph or any inaccuracy in any representation or warranty made by the indemnitor in this paragraph.

6.3 *Late Payments.* If Subtenant fails to pay any Subrent when and as due under this Sublease, then without limiting Sublandlord's remedies, Subtenant shall pay Sublandlord interest

on such late payment at a rate equal to the prime or equivalent rate published in The Wall Street Journal or, if unavailable, a similar third-party source reasonably designated by Sublandlord, plus four percent (4%) per annum.

6.4 *Notices.* All notices under this Sublease shall be given, and shall become effective, in accordance with the notice provisions of the Overlease. The notice addresses of the parties are initially as set forth in the opening paragraph of this Sublease (subject to change by notice). A copy of any notice to a party shall be delivered to its attorney, if any, identified below.

6.4.1 *Sublandlord.* Copy of notice to be delivered to: _____,
Attention: _____, Esq.

6.4.2 *Subtenant.* Copy of notice to be delivered to: _____, Attention:
_____, Esq.

6.5 *Further Assurances.* Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the intent of the parties as expressed in this Sublease. Each party shall deliver reasonable estoppel certificates within ten days after request by the other party.

6.6 *Confidentiality.* The parties shall treat this Sublease and the Overlease as confidential. They shall exercise the same measures to preserve such confidentiality as they would for their own information whose confidentiality they desired to preserve. Nothing in this paragraph shall limit disclosure to either party's accountants or other advisers or as required by law. Any party that is legally required to disclose this Sublease or the Overlease shall endeavor where reasonably possible to give the other party prior notice and an opportunity to object.

6.7 *Interpretation.* Although the first draft of this Sublease was prepared by Sublandlord or Subtenant, the party preparing this Sublease has endeavored to prepare a balanced and reasonable document that equitably considers the needs of both parties. This Sublease shall not be construed against whichever party was the "drafter" of this Sublease. Wherever either party agrees not to unreasonably withhold consent to any matter, such consent shall not be unreasonably conditioned or delayed. The word "include" and its variants shall in each case be interpreted as if followed by the words: "without limitation."

6.8 *Execution.* This Sublease shall not be effective in any way (or create any obligations of any kind) unless and until it has been executed and delivered by both parties. Delivery of any draft(s) of this Sublease imposes no obligations on anyone. This Sublease may be executed in counterparts.

6.9 *Miscellaneous.* This Sublease contains the entire agreement between the parties and may not be changed orally. This Sublease shall bind the parties' successors and assigns. A party's attorney, if actually authorized to do so, shall have the power to give any notices, and to execute any amendments to this Sublease (and consents and agreements to extend time related to this Sublease) on behalf of such attorney's client. If Sublandlord assigns the Overlease, then Sublandlord shall simultaneously assign this Sublease to the same assignee and require such assignee to assume Sublandlord's obligations under this Sublease. Except to the extent that the

parties expressly state otherwise in writing: (a) Sublandlord and Subtenant do not intend to confer any benefits or enforcement rights on any person except Sublandlord and Subtenant; and (b) no person except Sublandlord and Subtenant shall have any right to enforce, or prevent the parties from agreeing to amend or terminate, this Sublease. Notwithstanding anything to the contrary in the Overlease, Overlandlord's consent to this Sublease, or any other document or agreement, Sublandlord and Subtenant expressly reserve the right to modify, cancel, or terminate this Sublease, on any terms they see fit, without consent by Overlandlord or any other person.⁵

6.10 *Overlandlord's Consent.* This Sublease shall be of no force or effect unless and until consented to by Overlandlord (to the extent the Overlease requires such consent), by Overlandlord's executing either: (a) the Overlandlord's Consent at the end of this Sublease; or (b) Overlandlord's standard form of sublease consent, if any, provided that such standard form of sublease consent is unconditional (other than a condition requiring execution by Sublandlord or Subtenant) and irrevocable and does not require Subtenant or Sublandlord to make any payment or assume any obligation not expressly required by this Sublease or by the express terms of the Overlease (the "Standard Overlandlord Consent"). The Standard Overlandlord Consent may restrict any Transfer of this Sublease. Subtenant shall be bound by any such restriction. Sublandlord shall promptly submit this fully executed Sublease to Overlandlord for Overlandlord's consent. Sublandlord shall exercise reasonable efforts to obtain Overlandlord's consent need not expend money to obtain such consent (other than nominal application fees and processing fees; reasonable attorneys' fees; and such payments, if any, as the Overlease expressly requires Sublandlord to make on account of entry into this Sublease, when and as such payments are due) unless Subtenant agrees, in its sole discretion, in writing in advance to reimburse Sublandlord for such expenses or to pay such expenses directly on behalf of Sublandlord. Sublandlord shall promptly notify Subtenant if and when Sublandlord's consent has been obtained. If Sublandlord does not obtain Overlandlord's consent on or before _____, then at any time before such consent has actually been obtained either party may, by notice to the other, terminate this Sublease and upon such termination neither party shall have any further rights or obligations under this Sublease. Sublandlord and Subtenant each agrees to execute the Standard Overlandlord Consent if required by its terms. Notwithstanding anything to the contrary in this Sublease, Subtenant shall not enter into possession of the Subpremises unless and until Overlandlord shall have consented to this Sublease. Nothing in this paragraph shall expand Overlandlord's right to withhold consent to this Sublease beyond any such rights, if any, as Overlandlord may have under the Overlease.

7. *Special Covenants.*⁶

7.1 *Sublandlord's Work.*

⁵ Overlandlords have been known to claim they are third-party beneficiaries under Subleases (although they disclaim any liability or obligation). This language attempts to defeat such claims. Sublandlord and Subtenant should watch for any language in the Overlease or Overlandlord's consent that might be deemed to make Overlandlord a third-party beneficiary, hence having the right to prevent amendment or cancellation of the Sublease.

⁶ These special covenants are deal-specific but often seen. Delete all of them except to the extent they apply to a particular Sublease.

7.1.1 *Sublandlord's Obligations.* Sublandlord agrees, at Sublandlord's expense, with reasonable diligence, to build out the Subpremises substantially in accordance with the diagram attached as **Exhibit A**, and substantially in accordance with the Buildout Specifications attached as **Exhibit __** ("Sublandlord's Work"). Sublandlord shall perform Sublandlord's Work in compliance with applicable law and codes, and in compliance with the Overlease.

7.1.2 *Subtenant's Obligations.* Subtenant shall pay for the actual incremental cost (including allocable general contractor's general conditions, insurance, overhead and profit; Overlandlord's charges, if any; incremental design charges; and any and all other costs, charges and expenses that Sublandlord would not otherwise have incurred, net of actual savings achieved) (the "Incremental Cost") Sublandlord incurs on account of the following elements of Sublandlord's Work: (a) _____ dividing rooms _____ (previously intended to be a single conference room) into ____ separate offices, including installation of partition wall between such rooms and a second door; (b) installing a pantry in office _____, including any utility lines, built-ins and special finishes; and (c) any changes in Sublandlord's Work that Subtenant requests and Sublandlord approves.

7.1.3 *Certification of Incremental Cost.* Sublandlord shall instruct Sublandlord's design consultant engaged from time to time (presently _____) (the "Design Consultant") to certify to Sublandlord and Subtenant the amount of any Incremental Cost, which certification shall reflect actual charges by the general contractor, subcontractors, Overlandlord, the Design Consultant, and other third parties. Subtenant shall reimburse Sublandlord for such Incremental Cost, as Additional Subrent, within ten days after receipt of an invoice accompanied by Design Consultant's certification.

7.1.4 *Progress Reports and Notice.* Sublandlord shall periodically inform Subtenant of the progress of Sublandlord's Work. Sublandlord shall endeavor to notify Subtenant 20, 10, and five days before the date when Sublandlord achieves substantial completion of Sublandlord's Work (the "Substantial Completion Date"). Sublandlord shall notify Subtenant of the Substantial Completion Date as promptly as possible after it has occurred. After the Substantial Completion Date, Sublandlord shall reasonably promptly complete any punchlist work affecting Sublandlord's Work.

7.1.5 *No Warranty Regarding Sublandlord's Work.* Sublandlord does not make, and shall not be deemed to make, any representation or warranty about Sublandlord's Work. At Subtenant's request, to the extent reasonably necessary for specific claim(s) actually then capable of being asserted against Sublandlord's contractors, Sublandlord shall assign to Subtenant, or at Sublandlord's option shall seek to enforce for Subtenant's benefit and at Subtenant's expense, the applicable warranties actually received by Sublandlord with respect to Sublandlord's Work, subject in each case to the terms and conditions of such warranties, and only to the extent necessary on account of the particular claim against such contractor(s) based on breaches of such warranties actually arising before the date of Subtenant's request. Sublandlord shall have absolutely no liability for any defects or faults, latent or patent, in Sublandlord's Work.

7.2 *Separation of Subpremises.* On or before the Commencement Date (or as promptly thereafter as reasonably feasible and permitted by law), Sublandlord shall, at its sole

cost and expense and in compliance with all applicable law: (i) install a temporary wall to block access from the Subpremises to the Reserved Premises; and (ii) perform any additional work necessary under applicable law to render the Subpremises a separately demised legal premises and a separate legal occupancy.

7.3 *Purchase of FF&E.* Simultaneously with the execution and delivery of this Sublease, Subtenant is purchasing from Sublandlord, and Sublandlord is selling to Subtenant, the fixtures, furnishings, and equipment attached to or installed at the Subpremises identified or described in **Exhibit** __ (the “FF&E”). The total purchase price for the FF&E is \$_____ the receipt of which (by check subject to collection) Sublandlord acknowledges. Of this amount, \$_____ is allocable to tangible personal property. On account of the transfer of such tangible personal property, Sublandlord is collecting from Subtenant ____% sales tax in the amount of \$_____, which sales tax Sublandlord shall promptly remit to the appropriate governmental authority. Sublandlord hereby transfers and conveys the FF&E to Subtenant “as is.”

SUBLANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FF&E, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, except Sublandlord represents and warrants that Sublandlord owns the FF&E subject to no liens or encumbrances of any kind.⁷

7.4 *Abandonment and Use of FF&E.* Sublandlord shall leave in the Subpremises, and does hereby convey, and transfer to Subtenant, as of the Execution Date, all items listed on **Exhibit** __ (the “FF&E”), for Subtenant’s use at no additional cost to Subtenant. Sublandlord delivers the FF&E to Subtenant in its then-current condition on the Execution Date. Sublandlord makes no representation or warranty about the FF&E, except that Sublandlord owns it free of any liens or adverse claims. No consideration is allocable to the FF&E. Sublandlord shall disconnect the FF&E from Sublandlord’s systems serving the Reserved Premises. Subtenant shall be solely responsible for the FF&E after the Execution Date for all purposes, as well as all costs of any equipment, inventory or work that may be required to connect or reconnect any systems, including the FF&E, for Subtenant’s use. Subtenant shall maintain, repair and operate the FF&E to the extent the Overlease requires it. Sublandlord shall not be obligated to maintain, repair, or replace any FF&E, or to provide Subtenant with any service contracts for the FF&E. Only after any FF&E has been disconnected from the Reserved Premises, Subtenant may remove or replace any FF&E without Sublandlord’s consent.

7.5 *Certain Fixturization Work.* Subtenant has entered into a separate written agreement with _____ (the “Contractor”) on certain additional fixturization work that Subtenant desires for the Subpremises. Subtenant shall pay for such fixturization work in accordance with Subtenant’s contract with Contractor. Subtenant shall indemnify Sublandlord and hold Sublandlord harmless from and against any and all loss, cost, liability and expense (including reasonable attorneys’ fees) arising from the fixturization work described in the contract with Contractor.

7.6 *Rearrangement of Doors.* The parties acknowledge that the present configuration of the Subpremises requires Subtenant to obtain access to the Subpremises by passing through

⁷ See next paragraph for a better way to deal with this issue.

Sublandlord's Premises, and/or would require Sublandlord (or another subtenant of Sublandlord) to pass through the Subpremises to obtain access to the Reserved Premises. Sublandlord shall promptly (and in any event within _____ after Overlandlord's written consent to this Sublease and to the work described in this paragraph), at Sublandlord's expense, rearrange and reconfigure the doorways to Sublandlord's Premises so that the Reserved Premises and the Subpremises each has direct access to common corridor space, and neither such space has direct access to the other such space. Sublandlord shall perform such rearrangement and reconfiguration in a reasonable manner that reasonably minimizes any interference with Subtenant's business or the usability of the Subpremises. Sublandlord shall endeavor to comply with Subtenant's reasonable requests regarding door placements.

7.7 *Nondisturbance/Recognition.* Sublandlord and Subtenant shall reasonably seek to have Overlandlord give Subtenant nondisturbance/recognition protections, but neither party shall be obligated to expend money or commence litigation for such purpose. Failure to obtain such protections shall not limit either Sublandlord's or Subtenant's rights or obligations under this Sublease.

7.8 *Security.* Simultaneously with execution of this Sublease, Subtenant is paying Sublandlord the sum of \$_____, to be held and applied by Sublandlord as security for Subtenant's performance of its obligations under this Sublease (the "Security"). If Subtenant defaults under this Sublease, then Sublandlord may apply the Security to cure such default. Subtenant shall replenish the Security (to the extent applied by Sublandlord to cure Subtenant's default) within five days. After the Term expires, Sublandlord shall within 30 days refund to Subtenant any Security then being held by Sublandlord less amounts applied to cure Subtenant's defaults. Sublandlord shall deposit the Security in an interest-bearing account of a banking organization with a place of business in New York State, all in compliance with New York General Obligations Law Section 7-103. Sublandlord shall promptly notify Subtenant of the name and address of the banking organization in which Sublandlord deposits the Security. Sublandlord shall be entitled to receive, as administration expenses, a sum equivalent to one percent per annum upon the Security, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest paid by the banking organization shall be the money of Subtenant and shall either be held in trust by Sublandlord, until repaid or applied for the use or rental of the Subpremises, or annually paid to Subtenant. Subtenant certifies that: (a) the taxpayer identification number below Subtenant's signature is Subtenant's true and correct taxpayer identification number, and (b) the Internal Revenue Service has not notified Subtenant that Subtenant is subject to backup withholding. If the Security exceeds \$50,000, then Subtenant may substitute a letter of credit for the Security, provided that: (a) such letter of credit and its issuer comply with such reasonable standards as Sublandlord shall establish; and (b) the parties enter into an ordinary and customary amendment to this Sublease to address such letter of credit.

7.9 *Reduction of Security.* Provided that as of _____, Subtenant is not in default under this Sublease, the Security shall be reduced as of such date to \$_____ and Sublandlord shall accordingly refund \$_____ of the Security to Subtenant. The Security shall thereafter remain \$_____ throughout the balance of the Term.

7.10 *Subtenant's Pending Sublease.* Subtenant has notified Sublandlord that Subtenant is endeavoring to sublease Subtenant's existing premises at _____ ("Subtenant's

Old Premises”). If, as of _____ (the “Termination Notice Date”), Subtenant has not yet subleased Subtenant’s Old Premises and obtained all necessary consents thereto, then provided that Subtenant has not taken possession of the Subpremises, Subtenant shall be entitled to so notify Sublandlord (the “Termination Notice”), whereupon: (a) this Sublease shall automatically terminate; (b) Sublandlord shall refund the Security to Subtenant; and (c) upon such refund of the Security, neither party shall have any further rights or obligations under this Sublease. The Termination Notice, if given, must be actually received by Sublandlord and its counsel by 5:00 p.m. on the Termination Notice Date. Time shall be of the essence as to Subtenant’s giving of the Termination Notice. After 5:00 p.m. on the Termination Notice Date, or after Subtenant takes possession of the Subpremises before the Termination Notice Date, Subtenant shall have no right to deliver a Termination Notice.

7.11 *Delayed Vacancy.* If Sublandlord has not vacated the Subpremises by the Commencement Date provided for in this Sublease, then: (a) such failure shall not defer the Commencement Date (provided only that Overlandlord shall have consented to this Sublease); (b) Sublandlord shall deliver the Subpremises to Subtenant on the Commencement Date (if Sublandlord has not previously done so in accordance with this Sublease); (c) if necessary in Sublandlord’s reasonable judgment as a temporary measure in order to accommodate and facilitate Sublandlord’s transition to new space, Sublandlord shall be entitled to temporarily retain the use and occupancy of _____ (_____) desks in the Subpremises, as designated by Subtenant, for a reasonable period of up to _____ days; (d) for the duration of Sublandlord’s partial use and occupancy as described in clause “c,” Subtenant’s Subrent shall be equitably abated in proportion to square footage actually used and occupied by Sublandlord; and (e) the parties shall cooperate and coordinate so as to minimize any inconvenience to either party to this Sublease resulting from their shared occupancy of the Subpremises.

7.12 *Early Access to Subpremises.* Sublandlord agrees that Subtenant may, without paying Subrent, enter the Subpremises between the Execution Date and the Commencement Date solely to install telephone and other communications equipment, a computer network, and furniture, and to perform any fixturation work permitted by the Overlease and this Sublease (but not for the conduct of Subtenant’s business), all in compliance with and subject to the terms of this Sublease (as if the Commencement Date had occurred) and the Overlease.

No Further Text on This Page.

IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the Execution Date.

SUBLANDLORD

SUBTENANT

By: _____

By: _____

Its: _____

Its: _____

Taxpayer Identification Number:

Taxpayer Identification Number:

Date Executed: _____

Date Executed: _____

OVERLANDLORD'S CONSENT

Overlandlord unconditionally and irrevocably consents to the foregoing Sublease. Overlandlord shall have no obligations to Subtenant by reason of this Sublease.⁸

OVERLANDLORD

By: _____, its general partner

By: _____

Its: _____

Date Executed: _____

Attachments:

Index of Defined Terms

Exhibit A = Description of Overlease and All Amendments

Exhibit B = Diagram of Sublandlord's Premises, Subpremises, and Reserved Premises

Exhibit C = Tenant's Initial Certificate of Insurance

[Additional Exhibits as Necessary]

⁸ This paragraph represents wishful thinking on the part of Sublandlord. Overlandlord will generally have its own form of consent, sometimes more extensive than the Sublease itself. As a practical matter, Sublandlord should find out Overlandlord's requirements early in the process, and tailor the Sublease and Sublease approval process to match those requirements.

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EXHIBIT A

OVERLEASE DOCUMENTS

(All documents are dated as of _____ unless otherwise indicated.)

EXHIBIT B

**DIAGRAM OF SUBLANDLORD'S PREMISES, SUBPREMISES,
AND RESERVED PREMISES**

EXHIBIT C

SUBTENANT'S INITIAL CERTIFICATE OF INSURANCE

4831-7222-4008, v. 1