

# ITKOWITZ & HARWOOD

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January 21, 2005

## BY MAIL

Allegiance Claims Docketing Center  
U.S. Bankruptcy Court, S.D.N.Y.  
One Bowling Green  
Room 534  
New York, NY 10004

Re: In re Allegiance Telecom  
Consolidated Case No. 03-13057  
Our File No. 11026

Dear Madam or Sir:

We have recently learned that two, identical proofs of claim (#2904 and #2942) have been inadvertently filed with the Court. Because it is our understanding h that these proofs of claim are duplicates, we hereby withdraw proof of claim 2942.

We have been instructed by Jeff Anapolsky, Esq., attorney for the Allegiance Telecom Liquidating Trust, that we could resolve the duplicate claim by sending a letter to you.

If anything further is required, please do not hesitate to contact me.

Very truly yours,


Craig M. Notte

CMN:cmn

cc: Jeff Anapolsky, Esq. (via email)  
Richard Reilly, BMC (via email)

J:\1\_s\11026\allegiance claims ltr 1/21/05

claim 2942

UNITED STATES BANKRUPTCY COURT <u>Southern</u> DISTRICT OF <u>New York</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>Allegiance Telecom, Inc.</b>		Case Number <b>03-13057 (RDD)</b>
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 USC § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property) <b>Madison Third Building Companies, LLC</b>		<b>FILED</b> <b>U.S.B.C. SOUTHERN DISTRICT OF NEW YORK</b> <b>ALLEGANCE TELECOM, INC</b> <b>03-13057 (RDD)</b> <b>2877</b> <b>REC'D AUG 02 2004</b> THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent <b>Itkowitz &amp; Harwood</b> <b>305 Broadway, 7th Floor</b> <b>New York, New York 10007</b>		
Telephone number <b>(212) 822-1400 x 111</b>		
Account or other number by which creditor identifies debtor		<input type="checkbox"/> Check box if you are aware that anyone else has filed a claim relating to your claim. Attach a copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
<b>1 Basis for Claim</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold  <input type="checkbox"/> Services performed  <input type="checkbox"/> Money loaned  <input type="checkbox"/> Personal injury/wrongful death  <input type="checkbox"/> Taxes  <input checked="" type="checkbox"/> Other <u>Rent and additional rent</u> </div> <div style="width: 45%;"> <input type="checkbox"/> Retiree benefits as defined in 11 USC § 1114(a)  <input type="checkbox"/> Wages, salaries, and compensation (fill out below)            Last four digits of SS # _____            Unpaid compensation for services performed from _____ to _____  <div style="display: flex; justify-content: space-between; width: 100%;"> <span>(date)</span> <span>(date)</span> </div> </div> </div>		
<b>2 Date debt was incurred</b> <b>6/1/2004</b>		<b>3 If court judgment, date obtained</b>
<b>4 Total Amount of Claim at Time Case Filed</b> \$ <u>1,041,926.10</u> <div style="display: flex; justify-content: space-around; font-size: small;"> <span>(unsecured)</span> <span>(secured)</span> <span>(priority)</span> <span>(Total)</span> </div> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below</p> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5 Secured Claim</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any \$ _____		<b>7 Unsecured Priority Claim</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority \$ _____ Specify the priority of the claim <input type="checkbox"/> Wages, salaries or commissions (up to \$4 650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier - 11 USC § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 USC § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase lease or rental of property or services for personal, family, or household use - 11 USC § 507(a)(6) <input type="checkbox"/> Alimony maintenance or support owed to a spouse former spouse or child - 11 USC § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 USC § 507(a)(8) <input type="checkbox"/> Other Specify applicable paragraph of 11 USC § 507(a)(____) <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</small>
<b>6 Unsecured Nonpriority Claim</b> \$ <u>1,041,926.10</u> <input type="checkbox"/> Check this box if a) there is no collateral or lien securing your claim or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority		
<b>8 Credits</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		Allegiance Claim  02942 <div style="border: 2px solid black; padding: 5px; font-weight: bold; font-size: 1.5em; margin: 10px 0;">R E C E I V E D</div> <div style="text-align: center; font-size: 1.2em;">AUG 2 2004</div> <div style="border: 1px solid black; padding: 2px; font-weight: bold; font-size: 0.8em;">CLAIMS PROCESSING CENTER USBC SDNY</div>
<b>9 Supporting Documents</b> Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>10 Date-Stamped Copy</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date <b>7/9/2004</b>	Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any). <b>Craig M. Notte, Esq. Attorney for Creditor</b>	

### REJECTION CLAIM SCHEDULE

	YEAR	RENT	PORTER'S WAGE	RE TAXES	TOTAL
Amount due from June 1 -- December 31	2004	\$382,797 76	\$30,049 92	\$36,288 13	\$449,135 81
Amount due for the calendar year	2005	\$740,050 00	\$60,099 84	\$72,576 26	\$872,726 10
Amount due for the calendar year	2006	\$740,050 00	\$60,099 84	\$72,576 26	\$872,726 10
Amount due for the calendar year	2007	\$740,050 00	\$60,099 84	\$72,576 26	\$872,726 10
Amount due through March 31	2008	\$185,012 49	\$15,024 96	\$18,144 07	\$218,181 52
<b>TOTAL</b>		<b>\$2,787,960 25</b>	<b>\$195,324 48</b>	<b>\$272,160 98</b>	<b>\$3,285,495 63</b>

We may collect the greater of one (1) years' rent and additional rent due  
OR fifteen percent (15%) of the total for the remainder of the term,  
BUT NOT to exceed three (3) years' of rent and additional rent

**ONE (1) YEARS' RENT AND ADDITIONAL RENT**  
**TOTAL FOR THE REMAINDER OF THE TERM**  
**15% OF TOTAL REMAINDER**

**\$872,726 10**  
**\$3,285,495 63**  
**\$492,824 34**

**ONE (1) YEARS' RENT AND ADDITIONAL RENT**  
**ABANDONED FURNITURE REMOVAL COSTS (See Exhibit "B")**

**\$872,726 10**  
**\$169,200 00**

**TOTAL REJECTION DAMAGES SOUGHT**

**\$1,041,926 10**

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**805 THIRD AVE CO**

**Landlord,**

**ALLEGIANCE TELECOM, INC**

**Tenant**

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**LEASE**

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**Premises    805 Third Avenue  
New York, New York 10017  
Part of the 17<sup>th</sup> Floor**

**00074**

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INDENTURE OF LEASE made as of the 13<sup>th</sup> day of April, 1998, between 805 THIRD AVE CO , a New York partnership, having an office at 750 Lexington Avenue, New York, New York 10022 ("Landlord") and ALLEGIANCE TELECOM, INC , a Delaware corporation having an office at 4 Westbrook Center, Westchester, Illinois 60154 ("Tenant")

WITNESSETH

ARTICLE 1

Premises, Term

Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the following space ("Demised Premises") part of the 17th floor as shown crosshatched on the floor plan (Schedule A) attached hereto, in the office building known as and by the street number 805 Third Avenue, in the Borough of Manhattan, City and State of New York ("Building"), together with the non-exclusive right to use in common with the other tenants in the Building, the common areas, appurtenances and amenities of the Building, upon and subject to the terms, covenants and conditions hereinafter set forth

TO HAVE AND TO HOLD the Demised Premises unto Tenant for a term commencing on April 13, 1998 (the "Commencement Date"), and ending on March 31, 2008 (the "Expiration Date"), or on such earlier date upon which said term may expire or terminate pursuant to the conditions of this Lease or pursuant to law

IT IS MUTUALLY COVENANTED AND AGREED between Landlord and Tenant as follows

ARTICLE 2

Delivery of Demised Premises

Section 2 01 On the Commencement Date Landlord shall deliver to Tenant possession of Space A of the Demised Premises (as more

4/8/98  
Dk  
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particularly shown on Schedule A) and Tenant may thereupon commence the normal conduct of its business therein. Landlord shall not be required to do any work in Space A until Landlord has substantially completed its work to be performed in Space B (as hereinafter defined). Landlord, immediately following the delivery to it by Tenant of the building permits referred to in Schedule B, shall commence the performance of its work in Space B of the Demised Premises (as more particularly shown on Schedule A). Landlord, upon substantial completion of its work in Space B, shall give Tenant notice thereof, and Tenant shall thereupon vacate all or such portions of Space A, as may be required for Landlord to do its work therein, as more particularly shown on the plans referred to in Schedule B and move in Space B, whereupon Landlord shall promptly commence the work in Space A. Upon Landlord's substantial completion of its work in Space A, Tenant shall reoccupy the portions vacated and resume the conduct of its business therein. Landlord agrees to perform its work in a good and workmanlike manner and in compliance with all applicable Governmental Requirements (as hereinafter defined) provided Tenant's plans and specifications are in compliance with said Governmental Requirements, and shall use all reasonable efforts to minimize interference with the conduct of Tenant's business in the balance of the Demised Premises. Except as set forth on Schedule B, Landlord shall have no obligation to perform any other work in connection with preparing the Demised Premises for Tenant's occupancy. Landlord's work shall be deemed to be substantially completed even though minor details or adjustments, none of which materially interfere with Tenant's access to and use of the Demised Premises may not then have been completed, but Landlord agrees, at its sole cost and expense, to promptly thereafter complete all unfinished work. Notwithstanding the foregoing, if Landlord's work in Space B is not substantially completed by August 15, 1998, then Tenant shall be entitled to an additional abatement in the amount of \$780.21 for each one (1) business day thereafter until Landlord has substantially completed its work therein.

Section 2.02 Tenant has fully inspected the Demised Premises, is familiar with the condition thereof and agrees to accept possession of the same on the Commencement Date in their present "As Is" condition, except for Landlord's work set forth in Schedule B and any latent defects. Landlord will deliver to Tenant an ACP-5 certificate for the Demised Premises, upon Tenant's request.

Section 2.03 If, prior to the Commencement Date, Tenant shall enter the Demised Premises to make any installations, Landlord shall have no liability or obligation for the care or preservation of Tenant's property, except if damage thereto is due to the negligence or willful misconduct of Landlord, its agents, contractors or employees.



## **ARTICLE 3**

### **Rent**

**Section 3 01**      Tenant shall pay as rent for the Demised Premises, the following

(a)      a fixed minimum rent (the "minimum rent") at the following annual rates

(i)      for the first five (5) years of the term, the aggregate of the following

(a)      with respect to Space A, at the rate of \$400,750 per annum (or \$33,395 83 per month), commencing from and after the sixth (6th) month anniversary following the Commencement Date, provided such minimum rent shall be prorated for any period of less than a full month, and

(b)      with respect to Space B, at the rate of \$280,875 per annum (or \$23,406 25 per month), commencing from and after February 15, 1999, (subject to the last sentence of Section 2 01 above) provided such minimum rent shall be prorated for any period of less than a full month, and

(ii)      with respect to the entire Demised Premises, \$740,050 per annum (or \$61,670 83 per month) for the last five (5) years of the term, provided if the Expiration Date is not the last day of a month, then the minimum rent for such month shall be prorated, and

(iii)      Tenant shall be required to pay additional rent and all other sums from and after the Commencement Date, to the extent required by the terms hereof

(a)      all other sums and charges required to be paid by Tenant under the terms of this Lease (including without limitation, the payments required to be made under Article 22), which shall be deemed

to be and are sometimes referred to hereafter as  
additional rent

Section 3 02 The minimum rent shall be payable in equal monthly installments in advance on the first day of each and every month during the term of this Lease, except that the first installment of \$56,802 08 shall be paid upon the execution of this Lease and shall be applied to payment of the minimum rent for the seventh and eighth months of the term succeeding the Commencement Date

Section 3 03 Tenant shall pay the minimum rent and additional rent in lawful money of the United States which shall be legal tender for the payment of all debts, public and private, at the time of payment

Landlord and Tenant agree that, from this day forward, Tenant shall pay all rent, additional rent and other amounts now due or hereafter to become due to the Landlord or its agents under or in connection with this Lease, any tenant improvement or other similar agreement(s) and/or any other agreement executed or delivered in connection therewith (or the Demised Premises thereunder), including, without limitation, minimum rent, additional rent, "escalations", "pass-throughs", contributions or reimbursement on account of Tenant or other work, and all other items of rent and additional rent (collectively, the "Rents") (as and when due) directly to the following lock-box account

CRE-805 Third Avenue Rent  
P O Box 7247-7552  
Philadelphia, Pennsylvania 19170-7552

All Rent checks shall be made payable to the "805 Third Avenue Rent Account "

Landlord hereby irrevocably and unconditionally authorizes Tenant to rely upon and comply with any additional or other demands from Citibank, N A for the payment of any Rents due or to become due and, in each such case, Landlord will in no event have any claim or right against Tenant for any Rents paid by Tenant as provided above in this Section

The provisions of this Section shall not be modified, amended, terminated or supplemented without the prior written consent of Citibank, N A in each instance

Section 3 04 The minimum rent and additional rent shall be payable by Tenant without any set-off, abatement or deduction whatsoever and without notice or demand, except as otherwise expressly provided herein

## **ARTICLE 4**

### **Use**

**Section 4 01** Tenant shall use and occupy the Demised Premises for administrative, executive, sales (other than retail) and general office purposes only

**Section 4 02** Notwithstanding the provisions of Section 4 01, Tenant shall not use or allow the use of the Demised Premises or any part thereof (1) for the cooking and/or sale of food, except that Tenant may warm foods through a microwave and prepare coffee and similar light beverages, (2) for storage for sale of any alcoholic beverage in the Demised Premises, (3) for storage for and/or sale of any product or material from the Demised Premises, subject to (1) above, (4) for manufacturing or printing purposes, (5) for the conduct of a school or training facility or conduct of any business which results in the presence of the general public in the Demised Premises, (6) for the conduct of the business of an employment agency or personnel agency, (7) for the conduct of any public auction, gathering, meeting or exhibition, (8) for occupancy by a foreign, United States, state, municipal or other governmental or quasi-governmental body, agency or department or any authority or other entity which is affiliated therewith or controlled thereby and which has diplomatic or sovereign immunity or the like with respect to a commercial lease, (9) for messenger or delivery service (excluding Tenant's or any subtenant's own employees), (10) as a public stenographer or typist, (11) as a telephone or telegraph agency, (12) as medical offices, (13) as a travel agency, (14) as a dating service, (15) as a restaurant

**Section 4 03** If any governmental license or permit, other than a Certificate of Occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Demised Premises, or any part thereof, and if failure to secure such license or permit would in any way affect Landlord, Tenant, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same for inspection by Landlord. Tenant shall at all times comply with the terms and conditions of each such license or permit

**Section 4 04** Tenant shall not at any time use or occupy, or permit anyone to use or occupy, the Demised Premises, or do or permit anything to be done in the Demised Premises, in violation of the Certificate of Occupancy,

for the Demised Premises or for the Building, and will not permit or cause any act to be done or any condition to exist on the Demised Premises which may be dangerous unless safeguarded as required by law, or which in law constitutes a nuisance, public or private, or which may make void or voidable any insurance then in force covering the Building and building equipment

## **ARTICLE 5**

### **Alterations, Fixtures**

Section 5 01 Tenant, without Landlord's prior consent, shall make no structural alterations, installations, additions, or improvements affixed in or to the Demised Premises ("work") including, but not limited to, an air-conditioning or cooling system, or any unit or part thereof or other apparatus of like or other nature, railings, mezzanine floors, galleries and the like Tenant, subject to Landlord's consent which shall not be unreasonably withheld or delayed, may make non-structural interior work If any contractor, other than Landlord, shall perform work, such contractor shall first be approved by Landlord, and as a condition of such approval, Tenant shall pay to Landlord ten (10%) percent of the cost of such work for supervision, coordination and other expenses incurred by Landlord in connection therewith Workers' Compensation and public liability insurance and property damage insurance, all in amounts and with companies and/or forms reasonably satisfactory to Landlord, shall be provided and at all times maintained by Tenant's contractors engaged in the performance of the work, and before proceeding with the work, certificates of such insurance shall be furnished to Landlord If consented to by Landlord, all such work shall be done at Tenant's sole expense and in full compliance with all governmental authorities having jurisdiction thereover Upon completion of such work, Tenant shall deliver to Landlord full scale "as built" plans for the same All work affixed to the realty or if not so affixed but for which Tenant shall have received a credit, shall become the property of Landlord, subject to Tenant's right to replace same during the term hereof with items of substantially the same quality class and value, and shall remain upon, and be surrendered with, the Demised Premises as a part thereof at the end of the term or any renewal or extension term, as the case may be, without allowance to Tenant or charge to Landlord, unless Landlord elects otherwise on notice to Tenant given at the time Landlord consents to such work However, if Landlord shall so elect, otherwise, Tenant at Tenant's expense, at or prior to any termination of this Lease, shall remove all such work or such portion thereof as Landlord shall elect and Tenant shall restore the Demised Premises to its original condition,

reasonable wear and tear excepted, at Tenant's expense. If any Building facilities or services, including but not limited to air-conditioning and ventilating equipment installed by Landlord, are adversely affected or damaged by reason of the work by Tenant, Tenant, at its expense, shall repair such damage to the extent such damage has been caused by Tenant's work and shall correct the work so as to prevent any further damage or adverse effect on such facilities or services.

Section 5 02 Prior to commencing any work pursuant to the provisions of Section 5 01, Tenant shall furnish to Landlord

(a) Plans and specifications for the work to be done

(b) Copies of all governmental permits and authorizations which are required in connection with such work

(c) A certificate evidencing that Tenant (or Tenant's contractor) has procured workmen's compensation insurance covering all persons employed in connection with the work who might assert claims for death or bodily injury against Overlandlord, as defined in Article 25, Landlord, Tenant or the Building

(d) Such additional personal injury and property damage insurance (over and above the insurance required to be carried by Tenant pursuant to the provisions of Section 9 03) as Landlord may reasonably require because of the nature of the work to be done by Tenant

(e) A bond or other security satisfactory to Landlord, in the amount of one hundred ten (110%) percent of the cost of the work, to insure completion of such work

Section 5 03 Where furnished by or at the expense of Tenant (except the replacement of an item theretofore furnished and paid for by Landlord or for which Tenant has received a credit), all movable property, furniture, furnishings, roller files, equipment and trade fixtures ("personalty") other than those affixed to the realty shall remain the property of and shall be removed by Tenant on or prior to any termination or expiration of this Lease, and, in the case of damage by reason of such removal, Tenant, at Tenant's expense, promptly shall repair the damage. If Tenant does not remove any such personalty, Landlord, at its election, following the Expiration Date, (a) may cause the personalty to be removed and placed in storage at Tenant's expense or (b) may

treat the personalty as abandoned and may dispose of the personalty as it sees fit without accounting to Tenant for any proceeds realized upon such disposal

Section 5 04 Tenant agrees that the exercise of its rights pursuant to the provisions of this Article 5 shall not be done in a manner which would create any work stoppage, picketing, labor disruption or dispute or violate Landlord's union contracts affecting the Building or interfere with the business of Landlord or any Tenant or occupant of the Building In the event of the occurrence of any condition described above arising from the exercise by Tenant of its right pursuant to the provisions of this Article 5, Tenant shall, immediately upon notice from Landlord, cease the manner of exercise of such right giving rise to such condition In the event Tenant fails to cease such manner of exercise of its rights as aforesaid, Landlord, in addition to any rights available to it under this Lease and pursuant to law, shall have the right to injunction without notice With respect to Tenant's work, except for work done prior to the Commencement Date, Tenant shall make all arrangements for, and pay all expenses incurred in connection with, use of the freight elevators servicing the Demised Premises during those hours other than as provided in Section 21 01(a) in accordance with Landlord's customary charges therefor

## **ARTICLE 6**

### **Repairs**

Section 6 01 Tenant shall take good care of the Demised Premises and the fixtures therein and all portions of the HVAC, mechanical, plumbing and electrical systems within and exclusively serving the Demised Premises, and at its sole cost and expense make all repairs thereto as and when needed to preserve them in good working order and condition All damage or injury to the Demised Premises or the Building or to any building equipment caused by Tenant moving property in or out of the Building or by installation or removal of personalty or resulting from negligence or conduct of Tenant, its employees, agents, contractors, customers, invitees and visitors, shall be repaired, promptly by Tenant at Tenant's expense, and whether or not involving structural changes or alterations, to the satisfaction of Landlord All repairs shall include replacements or substitutions where necessary and shall be at least equal to the quality, class and value of the property repaired, replaced or substituted and shall be done in a good and workmanlike manner

**Section 6 02** Landlord, at its expense, shall maintain and make all repairs and replacements, structural and otherwise, to the exterior and public portions of the Building and to the Demised Premises as well as all Building Systems, unless Tenant is required to make them under the provisions of Section 6 01 or unless required as a result of the performance or existence of alterations performed by Tenant or on Tenant's behalf, in which event Tenant, at its expense, shall perform such maintenance, repairs or replacements. Tenant shall notify Landlord of the necessity for any repairs for which Landlord may be responsible under the provisions of this Section. Landlord shall have no liability to Tenant by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease, or required by law, to make in or to any portion of the Building or the Demised Premises, or in or to the fixtures, equipment or appurtenances of the Building or the Demised Premises. All such work shall be performed by Landlord as promptly as practical, diligently and in a good and workmanlike manner. Landlord shall use reasonable efforts to perform such work in a manner to minimize its interference with the customary conduct of Tenant's business, provided Landlord shall not be required to employ overtime or premium labor.

**Section 6 03** Tenant shall not store or place any materials or other obstructions in the lobby or other public portions of the Building, or on the sidewalk abutting the Building.

## **ARTICLE 7**

### **Floor Load, Noise**

**Section 7 01** Tenant shall not place a load upon any floor of the Demised Premises which exceeds the load per square foot which such floor was designed to carry (50 lbs live per square foot) and which is allowed by law.

**Section 7 02** Business machines and mechanical equipment belonging to Tenant which cause noise, vibration or any other nuisance that may be transmitted to the structure or other portions of the Building or to the Demised Premises, to such a degree as to be reasonably objectionable to Landlord or which interfere with the use or enjoyment by other tenants of their premises or the public portions of the Building, shall be placed and maintained by Tenant, at Tenant's expense, in settings of cork, rubber or spring type vibration eliminators sufficient to eliminate such objectionable or interfering noise or vibration.

## **ARTICLE 8**

### **Laws, Ordinances, Requirements of Public Authorities**

**Section 8 01 (a) Tenant, at its expense, shall comply with all laws, orders, ordinances, rules and regulations and directions of Federal, State, County and Municipal authorities and departments thereof having jurisdiction over the Demised Premises and the Building ("Governmental Requirements") referable to Tenant or the Demised Premises, whether or not arising by reason of Tenant's occupancy, use or manner of use of the Demised Premises or any installations made therein by or at Tenant's request, or any default by Tenant under this Lease. Tenant, at its expense, may contest the validity of such Governmental Requirements and postpone compliance therewith pending such contest, provided that Landlord shall not be subject to criminal penalty or to prosecution for a crime, nor shall the Demised Premises or any part thereof or the Building or land, or any part thereof be subject to being condemned or vacated or be subjected to any lien or encumbrance, nor if such non-compliance or contest shall constitute or result in any violation of any mortgage, financing and/or security agreement, or any ground or underlying lease affecting the Building and/or land, nor shall the same involve imminent danger or significant safety hazards, and Tenant shall keep Landlord advised as to the status of such proceedings**

**(b) Landlord, at its expense, shall comply with and cure Governmental Requirements relating to the public portions of the Building and to the Demised Premises, provided that Tenant is not obligated to comply with them under the provisions of subdivision (a) of this Section. Landlord, at its expense, may contest the validity of any Governmental Requirements and postpone compliance therewith pending such contest**

**Section 8 02 If Tenant receives written notice of any violation of any Governmental Requirements applicable to the Demised Premises, it shall give prompt notice thereof to Landlord**



Section 8 03 Tenant will not clean, nor allow any window in the Demised Premises to be cleaned, from the outside in violation of Section 202 of the Labor Law or the rules of the Board of Standards and Appeals or of any other board or body having or asserting jurisdiction

## **ARTICLE 9**

### **Insurance**

Section 9 01 Tenant shall not do or permit to be done any act or thing in or upon the Demised Premises which will invalidate or be in conflict with the Certificate of Occupancy for the Building or the terms of the insurance policies covering the Building and the property and equipment therein, and Tenant, at its expense, shall comply with all rules, orders, regulations and requirements of the New York Board of Fire Underwriters or any other similar body having jurisdiction, and of the insurance carriers, and shall not knowingly do or permit anything to be done in or upon the Demised Premises in a manner which increases the rate of insurance for the Building or any property or equipment therein over the rate which would otherwise then be in effect

Section 9 02 If, by reason of Tenant's failure to comply with the provisions of Section 9 01 or any of the other provisions of this Lease, the rate of insurance for the Building or the property and equipment of Landlord shall be higher than that which would otherwise then be in effect, Tenant shall pay to Landlord any additional or increased insurance premiums to the extent resulting therefrom thereafter paid by Landlord, and Tenant shall make such payment within ten (10) days following demand of Landlord In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make up" of any insurance rate for the Building or Demised Premises issued by the New York Fire Insurance Exchange, or other body establishing fire insurance rates for the Building, shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rates then applicable to the Building or Demised Premises

Section 9 03 (a) Tenant covenants to provide on or before the Commencement Date and to keep in force during the term hereof, the following insurance coverage

(i) For the benefit of Landlord, Tenant and Overlandlord (as defined in Article 25), a

comprehensive policy of liability insurance protecting and indemnifying Landlord, Tenant and the Overlandlord against any and all claims for personal injury, death or property damage occurring upon, in or about the Demised Premises, and the public portions of the Building in connection with any act of Tenant, its employees, agents, contractors, customers, invitees and visitors including, without limitation, personal injury, death or property damage resulting from any work performed by or on behalf of Tenant, with coverage of not less than \$3,000,000 00 combined single limit for personal injury, death and property damage arising out of one occurrence or accident

(ii) Fire and extended coverage in an amount adequate to cover the cost of replacement of all personal property, fixtures, furnishings and equipment, including Landlord's work, as set forth in Schedule B, and Tenant's work (as referred to in Section 5 01), located in the Demised Premises

(b) All such insurance shall (i) be effected under valid and enforceable policies, (ii) be issued by insurers of recognized responsibility authorized to do business in the State of New York, (iii) contain a provision whereby the insurer agrees not to cancel the insurance without ten (10) days' prior written notice to Landlord, and (iv) contain a provision that no act or omission of Tenant shall result in forfeiture of the insurance as against Landlord

On or before the Commencement Date, Tenant shall deliver to Landlord duplicate originals of the aforesaid policies or certificates evidencing the aforesaid insurance coverage, and renewal policies or certificates shall be delivered to Landlord at least thirty (30) days prior to the expiration date of each policy with proof of payment of the premiums thereof

**Section 9 04** Landlord agrees to maintain during the term hereof casualty and liability insurance policies for the Building

**Section 9 05** Landlord and Tenant shall each secure an appropriate clause in, or an endorsement upon, each fire or extended coverage policy obtained by it and covering the Building, the Demised Premises or the

personal property, fixtures and equipment located therein or thereon, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. The waiver of subrogation or permission for waiver of any claim herein before referred to shall extend to the agents of each party and its employees and, in the case of Tenant, shall also extend to all other persons and entities occupying or using the Demised Premises in accordance with the terms of this lease. If and to the extent that such waiver or permission can be obtained only upon payment of an additional charge, then, the party benefitting from the waiver or permission shall pay such charge upon demand, or shall be deemed to have agreed that the party obtaining the insurance coverage in question shall be free of any further obligations under the provisions hereof relating to such waiver or permission.

Subject to the foregoing provisions of this Section 9 05, and insofar as may be permitted by the terms of the insurance policies carried by it, (i) each party hereby releases the other with respect to any claim (including a claim for negligence) which it might otherwise have against the other party for loss, damages or destruction with respect to its property by fire or other casualty (including rental value or business interruption, as the case may be) occurring during the term of this Lease covered by insurance and (ii) Tenant releases other tenants but only to the extent that the policies of such other tenants permit a similar waiver for the benefit of Tenant and such other tenant gives such a waiver.

## **ARTICLE 10**

### **Damage by Fire or Other Cause**

Section 10 01 If the Demised Premises shall be damaged by fire or other casualty, the damage shall be repaired by and at the expense of Landlord and the minimum rent and additional rent provided in Article 22 until such repairs shall be completed and the Demised Premises can once again be lawfully occupied by Tenant, shall be apportioned according to the part of the Demised Premises which is usable by Tenant commencing with the date of the casualty. Landlord shall have no responsibility to repair any damage to Landlord's work performed pursuant to Schedule B or Tenant's work (as referred to in Section 5 01), the same being the responsibility of Tenant. No penalty shall accrue for delays which may arise by reason of adjustment of insurance by Landlord, unavoidable delays (as hereinafter defined), or any other cause beyond Landlord's

reasonable control Tenant shall give notice to Landlord promptly upon learning thereof in case of fire or other damage to the Demised Premises. If the Demised Premises are totally or substantially damaged or are rendered wholly or substantially unusable by fire or any such other casualty, or if the Building shall be so damaged that Landlord shall decide to demolish it or to rebuild it (whether or not the Demised Premises shall have been damaged), Landlord at its election may terminate this Lease by written notice to Tenant, within sixty (60) days after such fire or other casualty, and thereupon the term of this Lease shall expire by lapse of time upon the third (3rd) day after such notice is given, and Tenant shall vacate and surrender the Demised Premises to Landlord. Tenant shall not be liable under this Lease for anything accruing after the date of such expiration. Tenant hereby waives the provisions of Section 227 of the Real Property Law, and the provisions of this Article shall govern and control in lieu thereof. If the damage is due to the fault or neglect of Tenant, the debris shall be removed by, and at the expense of, Tenant.

Notwithstanding the foregoing, if Landlord does not substantially complete such repairs within six (6) months following the date of such casualty, then Tenant may elect to terminate this Lease by notice to Landlord within ten (10) days following the expiration of such six (6) month period, and thereupon the term of this Lease shall expire on the thirtieth (30<sup>th</sup>) day after such notice was given, and Tenant shall vacate and surrender the Demised Premises to Landlord, unless within such thirty (30) day period, Landlord substantially completes such restoration or rebuilding, in which event this Lease shall remain in full force and effect.

Section 10 02 No damages of compensation shall be payable by Landlord nor shall Tenant make any claim for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Demised Premises or of the Building. Landlord shall use its best efforts to commence and effect such repairs promptly and in such manner as not to unreasonably interfere with Tenant's occupancy, provided Landlord shall not be required to employ overtime or premium labor.

## **ARTICLE 11**

### **Assignment, Subletting, Mortgaging**

Section 11 01 Tenant will not, by operation of law or otherwise, assign, mortgage or encumber this Lease, or sublet or permit the

Demised Premises or any part thereof to be used by others, without Landlord's prior written consent in each instance. If this Lease be assigned, or if the Demised Premises or any part thereof be underlet or occupied by anybody other than Tenant, Landlord, may, after default by Tenant, collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the rent herein reserved, but no assignment, underletting, occupancy or collection shall be deemed a waiver of the provisions hereof, the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Landlord to any assignment, subletting, mortgage or encumbrance shall not in any manner be construed to relieve Tenant from obtaining Landlord's express consent to any other or further assignment, subletting, mortgage or encumbrance. In no event shall any permitted sublessee assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others, without Landlord's prior written consent in each instance.

Section 11.02. If Tenant shall at any time or times during the term of this Lease desire to assign this Lease or sublet all or part of the Demised Premises, Tenant shall give notice thereof to Landlord, which notice shall be accompanied by (a) a conformed or photostatic copy of the proposed assignment or sublease, the effective or commencement date of which shall be not less than thirty (30) nor more than 180 days after the giving of such notice, (b) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the Demised Premises, and (c) current financial information with respect to the proposed assignee or subtenant, including, without limitation, its most recent financial report. Such notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may, at its option, (i) sublease such space (hereinafter called the "Leaseback Space") from Tenant upon the terms and conditions hereinafter set forth (if the proposed transaction is a sublease of all or substantially all or part of the Demised Premises), (ii) terminate this Lease (if the proposed transaction is an assignment or a sublease of all or substantially all of the Demised Premises), or (iii) terminate this Lease with respect to the Leaseback Space (if the proposed transaction is a sublease of part of the Demised Premises), provided, however, that Tenant shall have the right to withdraw such offer within five (5) business days following receipt of notice of Landlord's election under clause (ii) or (iii) above. Said options may be exercised by Landlord by notice to Tenant at any time within thirty (30) days after such notice has been given by Tenant to Landlord, and during such thirty (30) day period Tenant shall not assign this Lease nor sublet such space to any person.

**Section 11 03** If Landlord exercises its option to terminate this Lease in the case where Tenant desires either to assign this Lease or sublet all or substantially all of the Demised Premises, then, provided Tenant has not withdrawn its offer as set forth above, this Lease shall end and expire on the date that such assignment or sublet was to be effective or commence, as the case may be, and the minimum rent and additional rent shall be paid and apportioned to such date

**Section 11 04** If Landlord exercises its option to terminate this Lease in part in any case where Tenant desires to sublet part of the Demised Premises, and provided Tenant has not withdrawn its offer as set forth above, then, (a) this Lease shall end and expire with respect to such part of the Demised Premises on the date that the proposed sublease was to commence, and (b) from and after such date the minimum rent and additional rent shall be adjusted, based upon the proportion that the rentable area of the Demised Premises remaining bears to the total rentable area of the Demised Premises, and (c) Tenant shall pay to Landlord, upon demand, the costs incurred by Landlord in physically separating such part of the Demised Premises from the balance of the Demised Premises and in complying with any laws and requirements of any public authorities relating to such separation

**Section 11 05** If Landlord exercises its option to sublet the Leaseback Space, such sublease to Landlord or its designee (as subtenant) shall be at the lower of (i) the rental rate per rentable square foot of minimum rent and additional rent then payable pursuant to this Lease or (ii) the rentals set forth in the proposed sublease, and shall be for the same term as that of the proposed subletting, and such sublease

(a) shall be expressly subject to all of the covenants, agreements, terms, provisions and conditions of this Lease except such as are irrelevant or inapplicable, and except as otherwise expressly set forth to the contrary in this Section,

(b) Such sublease shall be upon the same terms and conditions as those contained in the proposed sublease, except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this Section,

(c) Such sublease shall give the sublessee the unqualified and unrestricted right, without Tenant's permission, to assign such sublease or any interest therein and/or to sublet the Leaseback Space or any part or parts of the Leaseback Space and to make any and all changes,

alterations, and improvements in the space covered by such sublease at no cost or liability to Tenant and if the proposed sublease will result in all or substantially all of the Demised Premises being sublet, grant Landlord or its designee the option to extend the term of such sublease for the balance of the term of this Lease less one (1) day,

(d) Such sublease shall provide that any assignee or further subtenant, of Landlord or its designee, may, at the election of Landlord, be permitted to make alterations, decorations and installations in the Leaseback Space or any part thereof and shall also provide in substance that any such alterations, decorations and installations in the Leaseback Space therein made by any assignee or subtenant of Landlord or its designee may be removed, in whole or in part, by such assignee or subtenant, at its option, prior to or upon the expiration or other termination of such sublease provided that such assignee or subtenant, at its expense, shall repair any damage and injury to that portion of the Leaseback Space so sublet caused by such removal, and

(e) Such sublease shall also provide that (i) the parties to such sublease expressly negate any intention that any estate created under such sublease be merged with any other estate held by either of said parties, (ii) any assignment or subletting by Landlord or its designee (as the subtenant) may be for any purpose or purposes that Landlord, in Landlord's uncontrolled discretion, shall deem suitable or appropriate, (iii) Tenant, at Tenant's expense, shall and will at all times provide and permit reasonably appropriate means of ingress to and egress from the Leaseback Space so sublet by Tenant to Landlord or its designee, (iv) Landlord, at Tenant's expense, may make such alterations as may be required or deemed necessary by Landlord to physically separate the Leaseback Space from the balance of the Demised Premises and to comply with any laws and requirements of public authorities relating to such separation, and (v) that at the expiration of the term of such sublease, Tenant will accept the space covered by such sublease in its then existing condition, subject to the obligations of the sublessee to make such repairs thereto as may be necessary to preserve the premises demised by such sublease in good order and condition

**Section 11 06 (a) If Landlord exercises its option to sublet the Leaseback Space, Landlord shall indemnify and save Tenant harmless from all obligations under this Lease as to the Leaseback Space during the period of time it is so sublet to Landlord**

**(b) Performance by Landlord, or its designee, under a sublease of the Leaseback Space shall be deemed performance by Tenant of any similar obligation under this Lease and any default under any such sublease shall not give rise to a default under a similar obligation contained in this Lease, nor shall Tenant be liable for any default under this Lease or deemed to be in default hereunder if such default is occasioned by or arises from any act or omission of the tenant, or any third party acting by, through or on behalf of said tenant, under such sublease or is occasioned by or arises from any act or omission of any occupant holding under or pursuant to any such sublease**

**(c) Tenant shall have no obligation, at the expiration or earlier termination of the term of this Lease, to remove any alteration, installation or improvement made in the Leaseback Space by Landlord, its designee or any assignee or transferee of such sublease**

**Section 11 07 In the event Landlord does not exercise an option provided to it pursuant to Section 11 02 and provided that Tenant is not in default in any of Tenant's obligations under this Lease, Landlord's consent (which must be in writing and in form reasonably satisfactory to Landlord) to the proposed assignment or sublease shall not be unreasonably withheld or delayed, provided and upon condition that**

**(a) Tenant shall have complied with the provisions of Section 11 02 and Landlord shall not have exercised its option under said Section 11 02 within the time permitted therefor,**

**(b) In Landlord's judgment, the proposed assignee or subtenant is engaged in a business and the Demised Premises, or the relevant part thereof, will be used in a manner which (i) is limited to the use expressly permitted under Sections 4 01 and 4 02 of this Lease, and (ii) is in keeping with the then standards of the Building,**



(c) The proposed assignee or subtenant is a reputable person of good character and with sufficient financial worth considering the responsibility involved, and Landlord has been furnished with reasonable proof thereof, provided the same net worth as Tenant at the time it executed this Lease will be deemed adequate,

(d) Neither (i) the proposed assignee or sublessee nor (ii) any person which, directly or indirectly, controls, is controlled by or is under common control with, the proposed assignee or sublessee, is then an occupant of any part of the Building, provided there is comparable space in the Building available to lease by Landlord,

(e) The proposed assignee or sublessee is not a person with whom Landlord is currently negotiating to lease space in the Building,

(f) The proposed sublease shall be in form reasonably satisfactory to Landlord and shall comply with the provisions of this Article,

(g) Subject to the provisions of Section 11 02, at any one time there shall not be more than two (2) subtenants (including Landlord or its designee) in the Demised Premises,

(h) Tenant shall reimburse Landlord on demand for any reasonable costs that may be incurred by Landlord in connection with said assignment or sublease, including, without limitation, the reasonable costs incurred in making investigations as to the acceptability of the proposed assignee or subtenant, and reasonable legal costs incurred in connection with the granting of any requested consent,

(i) Tenant shall not have (i) advertised in any way the availability of the Demised Premises without prior notice to Landlord, or (ii) listed the same at a rental rate less than the minimum rent or additional rent at which Landlord is then offering to lease other space in the Building, and

(j) The proposed subtenant or assignee shall not be entitled, directly or indirectly, to diplomatic or sovereign

immunity and shall be subject to the service of process in and the jurisdiction of the courts of New York State

If Landlord fails to respond to Tenant's request for Landlord's consent to such proposed assignment or sublease within thirty (30) days following receipt thereof together with all required information, Landlord's consent shall be deemed to have been given

Except for any subletting by Tenant to Landlord or its designee pursuant to the provisions of this Article, each subletting pursuant to this Article shall be subject to all of the covenants, agreements, terms, provisions and conditions contained in this Lease. Notwithstanding any such subletting to Landlord or any such subletting to any other subtenant and/or acceptance of rent or additional rent by Landlord from any subtenant, Tenant shall and will remain fully liable for the payment for the minimum rent and additional rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be performed and all acts and omissions of any licensee or subtenant or anyone claiming under or through any subtenant which shall be in violation of any of the obligations of this Lease, and any such violation shall be deemed to be a violation by Tenant. Tenant further agrees that notwithstanding any such subletting, no other person claiming through or under Tenant (except as provided in Section 11 05) shall or will be made except upon compliance with and subject to the provisions of this Article. If Landlord shall decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise its option under Section 11 02, Tenant shall indemnify, defend and hold harmless Landlord against and from any and all loss, liability, damages, costs and expenses (including reasonable counsel fees) resulting from any claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

Section 11 08 In the event that (a) Landlord fails to exercise its options under Section 11 02 and consents to a proposed assignment or sublease, and (b) Tenant fails to execute and deliver the assignment or sublease to which Landlord consented within ninety (90) days after the giving of such consent, then, Tenant shall again comply with all of the provisions and conditions of Section 11 02 before assigning this Lease or subletting all or part of the Demised Premises

Section 11 09 With respect to each and every sublease or subletting authorized by Landlord under the provisions of this Lease, it is further agreed

(a) No subletting shall be for a term ending later than one day prior to the expiration date of this Lease,

(b) No sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until an executed counterpart of such sublease has been delivered to Landlord,

(c) Each sublease shall provide that it is subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and that in the event of termination, re-entry or dispossession by Landlord under this Lease Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not (i) be liable for any previous act or omission of Tenant under such sublease, (ii) be subject to any offset, not expressly provided in such sublease, which theretofore accrued to such subtenant against Tenant, or (iii) be bound by any previous modification of such sublease or by any previous prepayment of more than one month's rent

Section 11 10 If Landlord gives its consent to any assignment of this Lease or to any sublease, Tenant shall, in consideration therefor, pay to Landlord, as additional rent

(a) in the case of an assignment of this Lease or an assignment by any sublease, an amount equal to one-half of all sums and other considerations paid to Tenant from the assignee for such assignment or paid to Tenant by any sublessee or other person claiming through or under Tenant for such assignment (including, but not limited to sums paid for the sale of Tenant's or sublessee's fixtures, leasehold improvements, less, in case of a sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's or sublessee's federal income tax returns) The sums payable to Landlord under this Section 11 10(a) shall be paid to Landlord as and when paid by such assignee to Tenant, and

(b) in the case of a sublease, an amount equal to one-half of the rents and charges and other consideration payable under the

sublease to Tenant by the subtenant or paid to Tenant by any such sublessee or other person claiming through or under Tenant in connection with such subletting which is in excess of the minimum rent accruing and additional rent as provided in Article 22 during the term of the sublease in respect of the subleased space (at the rate per square foot payable by Tenant hereunder or such sublessee) pursuant to the terms of this Lease (including, but not limited to, sums paid for the sale or rental of Tenant's fixtures, leasehold improvements, less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's or sublessee's federal income tax returns) The sums payable to Landlord under this Section 11 10(b) shall be paid to Landlord as and when paid by such subtenant to Tenant

(c) For the purposes of computing the sums payable by Tenant to Landlord under subparagraphs (a) and (b) hereof, there shall be excluded from the consideration payable to Tenant by any assignee or sublessee any transfer taxes, rent concession, reasonable attorneys' fees, brokerage commissions, advertising costs and fix-up costs paid by Tenant with respect to such assignment or subletting, but only to the extent any such sums are allocable to the period of this Lease (in the case of any assignment), or the term of any sublease

Section 11 11 If Tenant is a corporation, a partnership or other entity, the provisions of Section 11 01 shall apply to a transfer (by one or more transfers) of a majority of the stock or other ownership interests of Tenant, as the case may be, as if such transfer of a majority of the stock or other ownership interests of Tenant were an assignment of this Lease, but said provisions and the provisions of Section 11 02, including, without limitation, Landlord's consent to or approval of such transaction, shall not apply to transactions with a corporation, partnership or other entity into or with which Tenant is merged or consolidated or to which substantially all of Tenant's assets are transferred or to any corporation or other entity which controls or is controlled by Tenant or is under common control with Tenant, provided that in any of such events (i) the successor to Tenant has a net worth computed in accordance with generally accepted accounting principles at least equal to the net worth of tenant herein named on the date of this Lease, and (ii) proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction

Section 11 12 Any assignment or transfer, whether made with Landlord's consent pursuant to Section 11 07 or without Landlord's consent pursuant to Section 11 11, shall be made only if, and shall not be effective until,

the assignee shall execute, acknowledge and deliver to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee shall assume the obligations of this Lease on the part of Tenant to be performed or observed and whereby the assignee shall agree that the provisions in this Article 11 shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments and transfers. The original named Tenant covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of minimum rent and/or additional rent by Landlord from an assignee, transferee, or any other party, the original named Tenant shall remain fully liable for the payment of the minimum rent and additional rent and for the other obligations of this Lease on the part of Tenant to be performed or observed.

**Section 11 13** The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant and the due performance of the obligations of this Lease on Tenant's part to be performed or observed shall not, except as expressly set forth in any such agreement, stipulation or waiver, be discharged, released or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

**Section 11 14** The listing of any name other than that of Tenant, whether on the doors of the Demised Premises, or the Building directory, if any, or otherwise, shall not operate to vest any right or interest in this Lease or in the Demised Premises, nor shall it be deemed to be the consent of Landlord to any assignment or transfer of this Lease, to any sublease of the Demised Premises, or to the use or occupancy thereof by others.

## **ARTICLE 12**

### **Liability of Landlord and Indemnity by Tenant**

**Section 12 01** Tenant shall indemnify Landlord against and save Landlord harmless from any liability to and claim by or on behalf of any person, firm, governmental authority, corporation or entity for personal injury, death or property damage, arising

(a) from the use by Tenant of the Demised Premises,  
or from any work whatsoever done or omitted to be done by

Tenant, its employees, agents, contractors, customers, invitees or visitors, or from any accident thereat other than Landlord's Work as defined in Schedule B, and

(b) from any breach or default by Tenant of and under any of the terms, covenants and conditions of this Lease on Tenant's part to be performed

Tenant also shall indemnify Landlord against and save Landlord harmless from all costs, reasonable counsel fees, expenses and penalties incurred by Landlord in connection with any such liability or claim other than such liability or claim incurred as a result of the negligence or willful misconduct of Landlord, its agents, contractors or employees

If any action or proceeding shall be brought against Landlord in connection with any such liability or claim, Tenant, on notice from Landlord, shall defend such action or proceeding, at Tenant's expense, by counsel reasonably satisfactory to Landlord, or by the attorney for Tenant's insurance carrier whose insurance policy covers the liability or claim

Section 12 02 Landlord shall not be liable for any damage to property of Tenant or of others entrusted to employees of the Building, nor for the loss of or damage to any property of Tenant by theft or otherwise Landlord and its agents shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Building or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature, nor shall Landlord be liable for any such damage caused by other tenants or persons in the Building or caused by operations in construction of any public or quasi-public work, nor shall Landlord be liable for any latent defect in the Demised Premises or in the Building If, at any time any windows of the Demised Premises are permanently closed, darkened or bricked up by reason of the requirements of law or temporarily closed or darkened by reason of repairs, alterations or maintenance by Landlord, Landlord shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction (Reference hereinabove to Landlord shall for all purposes be deemed to include the Overlandlord as defined in Article 25 )

The terms and conditions of this Section 12 02 shall not (i) be deemed to modify or release Landlord from its repair obligations under Section 6 02 above, or (ii) include any damage to person or property of Tenant caused by

the gross negligence or willful misconduct of Landlord, its agents, contractors or employees

Tenant shall reimburse and compensate Landlord, as additional rent, within ten (10) days after rendition of a reasonably detailed itemized statement for all expenditures made and for all losses, liabilities, claims, damages, fines, penalties and expenses incurred by Landlord arising from any default by Tenant under this Lease

Tenant shall give immediate notice to Landlord upon its discovery of accidents in the Demised Premises

Section 12 03 If in this Lease it is provided that Landlord's consent or approval as to any matter will not be unreasonably withheld, and it is established by a court or body having final jurisdiction thereover that Landlord has been unreasonable, the only effect of such finding shall be that Landlord shall be deemed to have given its consent or approval, but Landlord shall not be liable to Tenant in any respect for money damages by reason of withholding its consent

## **ARTICLE 13**

### **Moving of Heavy Equipment**

Tenant shall not move any safe, heavy equipment or bulky matter in or out of the Building without Landlord's written consent, which shall not be unreasonably withheld or delayed If the movement of such items requires special handling, Tenant agrees to employ only persons holding a Master Rigger's License to do said work and all such work shall be done in full compliance with the Administrative Code of the City of New York and other municipal requirements All such movements shall be made during hours which will least interfere with the normal operations of the Building, and all damage caused by such movement shall be promptly repaired by Tenant at Tenant's expense

## **ARTICLE 14**

### **Condemnation**

**Section 14 01** In the event that the whole or more than ten (10%) percent of the Demised Premises or any other portion of the Building which materially interferes with Tenant's occupancy and use of the Demised Premises shall be condemned or taken in any manner for any public or quasi-public use, this Lease and the term and estate hereby granted shall forthwith cease and terminate as of the date of vesting of title. In the event that ten (10%) percent or less of the Demised Premises shall be so condemned or taken, then, effective as of the date of vesting of title, the minimum rent and additional rent hereunder for such part shall be equitably abated and this Lease shall continue as to such part not so taken. In the event that only a part of the Building shall be so condemned or taken which does not materially interfere with Tenant's occupancy and use of the Demised Premises, then (a) if substantial structural alteration or reconstruction of the Building shall, in the reasonable opinion of Landlord, be necessary or appropriate as a result of such condemnation or taking (whether or not the Demised Premises be affected), Landlord may, at its option, terminate this Lease and the term and estate hereby granted as of the date of such vesting of title by notifying Tenant in writing of such termination within sixty (60) days following the date on which Landlord shall have received notice of the vesting of title, or (b) if Landlord does not elect to terminate this Lease, as aforesaid, this Lease shall be and remain unaffected by such condemnation or taking, except that the minimum rent and additional rent shall be abated to the extent, if any, hereinbefore provided. In the event that only a part of the Demised Premises shall be so condemned or taken and this Lease and the term and estate hereby granted are not terminated as hereinbefore provided, Landlord, out of the portion of the award allocated for such purpose and to the extent such award is sufficient, will restore with reasonable diligence the remaining structural portions of the Demised Premises as nearly as practicable to the same condition as it was in prior to such condemnation or taking.

**Section 14 02** In the event of termination in any of the cases hereinabove provided, this Lease and the term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the Expiration Date and the rent hereunder shall be apportioned as of such date.

**Section 14 03** In the event of any condemnation or taking hereinabove mentioned of all or a part of the Building, Landlord shall be entitled to receive the entire award in the condemnation proceeding, including any award made for the value of the estate vested by this Lease in Tenant, and Tenant



hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, and Tenant shall be entitled to receive no part of such award. Notwithstanding the foregoing, Tenant may make a separate claim for Tenant's moveable trade fixtures and moving expenses, provided the same shall not affect or reduce Landlord's award.

## **ARTICLE 15**

### **Entry, Right to Change Public Portions of the Building**

**Section 15 01** Tenant shall permit Landlord to erect, use and maintain pipes and conduits in and through the walls, within the ceiling or below the floors of the Demised Premises. Landlord, or its agents or designee shall have the right, at reasonable times and upon reasonable prior written notice (except no notice in an emergency), to enter the Demised Premises for the purpose of making such repairs or alterations as Landlord shall desire, shall be required or shall have the right to make under the provisions of this Lease, provided such work is made in a manner not to unreasonably interfere with Tenant's regular business operations in the Demised Premises, and shall also have the right to enter the Demised Premises for the purpose of inspecting them or exhibiting them to prospective purchasers or lessees of the Building or to prospective mortgagees or to prospective assignees of any such mortgagees. Landlord shall, during the progress of any work in the Demised Premises, be allowed to take all material into and upon the Demised Premises that may be required for the repairs or alterations above mentioned without the same constituting an eviction of Tenant in whole or in part and the rent reserved shall in no wise abate, except as otherwise provided in this Lease, while said repairs or alterations are being made.

**Section 15 02** During the twelve (12) months prior to the expiration of the term of this Lease, Landlord may exhibit the Demised Premises to prospective tenants upon reasonable prior notice to Tenant.

**Section 15 03** Landlord shall have the right at any time without thereby creating an actual or constructive eviction or incurring any liability to Tenant therefor, to change the arrangement or location of such of the following as are not contained within the Demised Premises: entrances, passageways, doors and doorways, corridors, elevators, stairs, toilets, and other like public service portions of the Building, provided such changes do not interfere with Tenant's access to or use of the Demised Premises.

Section 15 04 Landlord shall have the right at any time to name the Building as it desires and to change any and all such names at any time thereafter

## ARTICLE 16

### Conditional Limitations, Etc

Section 16 01 If at any time during the term of this Lease

(a) Tenant shall file a petition in bankruptcy or insolvency or for reorganization or arrangement or for the appointment of a receiver of all or a portion of Tenant's property, or

(b) Any petition of the kind referred to in subdivision (a) of this Section shall be filed against Tenant and such petition shall not be vacated, discharged or withdrawn within ninety (90) days, or

(c) Tenant shall be adjudicated a bankrupt by any court, or

(d) Tenant shall make an assignment for the benefit of creditors, or

(e) a permanent receiver shall be appointed for the property of Tenant by order of a court of competent jurisdiction by reason of the insolvency of Tenant (except where such receiver shall be appointed in an involuntary proceeding, if he shall not be withdrawn within ninety (90) days after the date of his appointment),

then Landlord, at Landlord's option, may terminate this Lease on five (5) days' notice to Tenant, and upon such termination, Tenant shall quit and surrender the Demised Premises to Landlord

Section 16 02 (a) If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code, 11 U S C § 101 et seq (the "Bankruptcy Code") to any person or entity who shall have made a bona

bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment, setting forth (i) the name and address of such person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such person's future performance under the Lease, including, without limitation, the assurance referred to in section 365(b)(3) of the Bankruptcy Code, shall be given to Landlord by Tenant not later than twenty (20) days after receipt by Tenant but in no event later than ten (10) days prior to the date that Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease

(b) If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's Property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid to Landlord

(c) Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption

(d) Nothing contained in this Section shall, in any way, constitute a waiver of the provisions of this Lease relating to assignment. Tenant shall not, by virtue of this Section, have any further rights relating to assignment other than those granted in the Bankruptcy Code.

(e) Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, shall constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code.

(f) The term "Tenant" as used in this Section includes any trustee, debtor in possession, receiver, custodian or other similar officer.

Section 16 03     If this Lease shall terminate pursuant to the provisions of Section 16 01

(a) Landlord shall be entitled to recover from Tenant arrears in minimum rent and additional rent and, in addition thereto as liquidated damages, an amount equal to the difference between the minimum rent and additional rent for the unexpired portion of the term of this Lease which had been in force immediately prior to the termination effected under Section 16 01 of this Article and the fair and the reasonable rental value of the Demised Premises, on the date of termination, for the same period, both discounted at the rate of eight (8%) percent per annum to the date of termination, or

(b) Landlord shall be entitled to recover from Tenant arrears in minimum rent and additional rent and, in addition thereto as liquidated damages, an amount equal to the maximum allowed by statute or rule of law in effect at the time when and governing the proceedings in which such damages are to be proved, whether or not such amount be greater or less than the amount referred to in subdivision (a) of this Section.

Section 16 04     (a) If Tenant shall fail to make any payment of any minimum rent or additional rent when the same becomes due and payable, or if Tenant shall fail to cancel or discharge any mechanic's lien or other lien within the

time period as provided in Section 17 02, or if the Demised Premises become vacant or deserted, and any such default shall continue for a period of seven (7) days after notice thereof by Landlord, or

(b) If Tenant shall be in default in the performance of any of the other terms, covenants and conditions of this Lease and such default shall not have been remedied within thirty (30) days after notice by Landlord to Tenant specifying such default and requiring it to be remedied, or where such default reasonably cannot be remedied within such period of thirty (30) days, if Tenant shall not have commenced the remedying thereof within such period of time and shall not be proceeding with due diligence to remedy it,

then Landlord, at Landlord's election, may terminate this Lease on five (5) days' notice to Tenant, and upon such termination Tenant shall quit and surrender the Demised Premises to Landlord

Section 16 05 If this Lease shall terminate as provided in this Article, or if Tenant shall be in default in the payment of minimum rent or additional rent when the same become due and payable, and such default shall continue for a period of seven (7) days after notice by Landlord to Tenant

(a) Landlord may re-enter and resume possession of the Demised Premises and remove all persons and property therefrom either by summary dispossession proceedings or by a suitable action or proceeding, at law or in equity, or by force or otherwise, without being liable for any damages therefor, and

(b) Landlord may re-let the whole or any part of the Demised Premises for a period equal to, greater or less than the remainder of the then term of this Lease, at such rental and upon such terms and conditions as Landlord shall deem reasonable to any tenant it may deem suitable and for any use and purpose it may deem appropriate Landlord shall not be liable in any respect for failure to re-let the Demised Premises or, in the event of such re-letting, for failure to collect the rent thereunder and any sums received by Landlord on a re-letting in excess of the rent reserved in this Lease shall belong to Landlord

**Section 16 06** If this Lease shall terminate as provided in this Article or by summary proceedings (except as to any termination under Section 16 01), Landlord shall be entitled to recover from Tenant as damages, in addition to arrears in minimum rent and additional rent,

(a) an amount equal to (i) all expenses incurred by Landlord in recovering possession of the Demised Premises and in connection with the re-letting of the Demised Premises, including, without limitation, the cost of repairing, renovating or remodeling the Demised Premises, and all brokers' commissions and legal fees incurred by Landlord in re-letting the Demised Premises, which amounts set forth in this subdivision (a) shall be due and payable by Tenant to Landlord at such time or times as they shall have been incurred, and

(b) an amount equal to the deficiency between the minimum rent and additional rent which would have become due and payable had this Lease not terminated and the net amount, if any, of rent collected by Landlord on re-letting the Demised Premises. The amounts specified in this subdivision shall be due and payable by Tenant on the several days on which such minimum rent and additional rent would have become due and payable had this Lease not terminated. Tenant consents that Landlord shall be entitled to institute separate suits or actions or proceedings for the recovery of such amount or amounts, and Tenant hereby waives the right to enforce or assert the rule against splitting a cause of action as a defense thereto.

Landlord, at its election, which shall be exercised by the service of a notice on Tenant, at any time after such termination of this Lease, may collect from Tenant and Tenant shall pay, in lieu of the sums becoming due under the provisions of subdivision (b) of this Section, an amount equal to the difference between the minimum rent and additional rent which would have become due and payable had this Lease not terminated (from the date of the service of such notice to the end of the term of this Lease which had been in force immediately prior to any termination effected under this Article) and the then fair and reasonable rental value of the Demised Premises for the same period, both discounted to the date of the service of such notice at the rate of eight (8%) percent per annum.

**Section 16 07** Tenant, for itself and for all persons claiming through or under it, hereby waives any and all rights which are or may be conferred upon Tenant by any present or future law to redeem the Demised Premises after a warrant to dispossess shall have been issued or after judgment in an action of ejectment shall have been made and entered

**Section 16 08** The words "re-enter" and "re-entry", as used in this Article, are not restricted to their technical legal meanings

**Section 16 09** Landlord shall not be required to give any notice of its intention to re-enter, except as otherwise provided in this Lease

**Section 16 10** In any action or proceeding brought by Landlord against Tenant, predicated on a default in the payment of minimum rent or additional rent, Tenant shall not have the right to and shall not interpose any set-off or counterclaim of any kind whatsoever, other than a claim which would be legally barred for failure to raise as a counterclaim in such action or proceeding. If Tenant has any claim which would not be so barred, Tenant shall be entitled only to bring an independent action therefor, and if such independent action is brought by Tenant, Tenant shall not be entitled to and shall not consolidate it with any pending action or proceeding brought by Landlord against Tenant for a default in the payment of minimum rent or additional rent

## **ARTICLE 17**

### **Mechanic's Liens**

**Section 17 01** If, subject to and notwithstanding Landlord's consent as required under this Lease, Tenant shall cause any changes, alterations, additions, improvements, installations or repairs to be made to or at the Demised Premises or shall cause any labor to be performed or material to be furnished in connection therewith, neither Landlord nor the Demised Premises, under any circumstances, shall be liable for the payment of any expense incurred or for the value of any work done or material furnished, and all such changes, alterations, additions, improvements, installations and repairs and labor and material shall be made, furnished and performed upon Tenant's credit alone and at Tenant's expense, and Tenant shall be solely and wholly responsible to contractors, laborers, and materialmen furnishing and performing such labor and material, except as provided above. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express

or implied, to any contractor, laborer or materialman to furnish to perform any such labor or material

Section 17 02 If, because of any act or omission (or alleged act or omission) of Tenant any mechanic's or other lien, charge or order for the payment of money shall be filed against the Demised Premises or the Building or Landlord's estate as tenant under any ground or underlying lease (whether or not such lien, charge or order is valid or enforceable as such), for work claimed to have been for, or materials furnished to, Tenant, Tenant, at Tenant's expense, shall cause it to be canceled or discharged of record by bonding or otherwise within twenty (20) days after such filing, and Tenant shall indemnify Landlord against and save Landlord harmless from and shall pay all reasonable costs, expenses, losses, fines and penalties, including, without limitation, reasonable attorneys' fees resulting therefrom

## **ARTICLE 18**

### **Landlord's Right to Perform Tenant's Obligations**

If Tenant shall default in the performance of any of the terms or covenants and conditions of this Lease, Landlord, without being under any obligation to do so and without hereby waiving such default, may remedy such default for the account and at the expense of Tenant Any payment made or expense incurred by Landlord for such purpose (including, but not limited to, reasonable attorneys' fees) with interest at the rate of one and one-half (1 ½ %) percent per month, shall be deemed to be additional rent hereunder and shall be paid by Tenant to Landlord on demand, or at Landlord's election, added to any subsequent installment or installments of minimum rent

## **ARTICLE 19**

### **Covenant of Quiet Enjoyment**

Landlord covenants that upon Tenant paying the minimum rent and additional rent and observing and performing all the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Demised Premises, subject nevertheless to



the terms and conditions of this Lease, and provided, however, that no eviction of Tenant by reason of paramount title, the foreclosure of any mortgage now or hereafter affecting the Demised Premises or by reason of any termination of any ground or underlying lease to which this Lease is subject and subordinate, whether such determination is by operation of law, by agreement or otherwise, shall be construed as a breach of this covenant nor shall any action be brought against Landlord by reason thereof

## **ARTICLE 20**

### **Excavation**

In the event that construction is to be commenced or an excavation is made or authorized for building or other purposes upon land adjacent to the Building, Tenant shall, if necessary, afford to the person or persons causing or authorized to commence construction or cause such excavation or to engage in such other purpose, license to enter upon the Demised Premises for the purpose of doing such work as shall reasonably be necessary to protect or preserve the Building, from injury or damage and to support the Building and any new structure to be built by proper foundations, pinning and/or underpinning, or otherwise

## **ARTICLE 21**

### **Services and Equipment**

Section 21 01      Landlord shall, at its cost and expense

(a) Provide operatorless passenger elevator service Mondays through Fridays from 8 00 A M to 6 00 P M , holidays excepted A passenger elevator will be available at all other times, seven (7) days per week A service elevator shall be available Mondays through Fridays, holidays excepted, only from 9 00 A M to 11 30 A M and from 2 30 P M to 5 30 P M

(b) Maintain and keep in good order and repair the central heating, ventilating and air-conditioning system

installed by Landlord and serving the Demised Premises. The system will be operated by Landlord on Mondays through Fridays, holidays excepted, from 8 00 A M to 6 00 P M

(c) Provide Building standard cleaning services in Tenant's office space and public portions of the Building, except no services shall be performed Saturdays, Sundays and holidays, in accordance with Schedule "E" annexed hereto and made part hereof

(d) Furnish adequate hot and cold water for lavatory and drinking purposes. If Tenant requires, uses or consumes water for any other purposes, Landlord may install a meter or meters or other means to measure Tenant's water consumption, and Tenant shall reimburse Landlord for the cost of the meter or meters and the installation thereof, and shall pay for the maintenance of said meter equipment and/or pay Landlord's cost of other means of measuring such water consumption by Tenant. Tenant shall pay to Landlord on demand the cost of all water consumed as measured by said meter or meters or as otherwise measured, including sewer rents

(e) If Tenant shall require and request any of the foregoing services at times other than above provided, and if such request is made at least twenty-four (24) hours prior to the time when such additional services are required, Landlord will provide them and Tenant shall pay to Landlord promptly thereafter the charges therefor at the then Building standard rate charged to other tenants in the Building

Section 21 02      Holidays shall be deemed to mean all federal holidays, state holidays and Building Service Employees Union Contract holidays

Section 21 03      Landlord reserves the right to interrupt, curtail or suspend the services required to be furnished by Landlord under this Lease when necessary by reason of accident, emergency, mechanical breakdown or when required by any law, order or regulation of any Federal, State, County or Municipal authority, or for any other cause beyond the control of Landlord. Landlord shall use due diligence to complete all required repairs or other necessary work as quickly as possible so that Tenant's inconvenience resulting therefrom may be for as short a period of time as circumstances will reasonably permit. Tenant shall not be entitled to nor shall Tenant make claim for any diminution or

abatement of minimum rent or additional rent or other compensation, nor shall this Lease or any of the obligations of Tenant be affected or reduced by reason of such interruption, curtailment, suspension, work or inconvenience

Section 21 04      Tenant shall reimburse Landlord promptly for the actual out-of-pocket cost to Landlord of removal from the Demised Premises and the Building of any refuse and rubbish of Tenant not covered by the Cleaning Specifications (Schedule E) and Tenant shall pay all bills therefor within ten (10) days following receipt

Section 21 05      If Tenant shall request Landlord to furnish any services in addition to those hereinabove provided or perform any work not required under this Lease, and Landlord agrees to furnish and/or perform the same, Tenant shall pay to Landlord promptly thereafter the charges therefor, which charges are deemed to be additional rent and payable as such

## **ARTICLE 22**

### **Escalation**

Section 22 01      Taxes      Tenant shall pay to Landlord, as additional rent, tax escalation in accordance with this Section

(a) Definitions      For the purpose of this Section, the following definitions shall apply

(i)      The term "Tax Base Factor" shall mean the real estate taxes for the Building Project for the period from July 1, 1998 to June 30, 1999, as finally determined

(ii)      The term "The Building Project" shall mean the parcel of land described in Schedule C of this Lease with all the present improvements existing and erected thereon

(iii)      The term "comparative tax year" shall mean the New York City real estate tax year commencing on July 1, 1999 and each subsequent New York City real estate tax year      If the present

use of July 1-June 30 New York City real estate tax year shall hereafter be changed, then such changed tax year shall be used with appropriate adjustment for the transition

(iv) The term "Real Estate Taxes" shall mean the total of all taxes and special or other assessments levied, assessed or imposed at any time by any governmental authority (a) upon or against the Building Project, and (b) in connection with the receipt of income or rents from the Building Project to the extent that same shall be in lieu of all or a portion of any of the aforesaid taxes or assessments, or additions or increases thereof. Income, franchise, transfer, inheritance, corporate, mortgage recording or capital stock taxes of Landlord, or penalties or interest thereon or on any tax included within the definition of "Real Estate Taxes", shall be excluded from "Real Estate Taxes" for the purposes hereof. If, due to a future change in the method of taxation or in the taxing authority, or for any other reason, a franchise, income, transit, profit or other tax or governmental imposition, however designated, shall be levied against Landlord in substitution in whole or in part for the Real Estate Taxes, or in lieu of or addition to or increase of Real Estate Taxes, then such franchise, income, transit, profit or other tax or governmental imposition shall be included within "Real Estate Taxes". Tenant acknowledges that the Tax Escalation Payment (as hereinafter defined) constitutes a method by which Landlord is seeking to compensate for increases in expenses and that the Tax Escalation Payment shall be calculated and paid by Tenant to Landlord whether or not Real Estate Taxes have then been paid by Landlord.

(v) The term "the Percentage" for purposes of computing tax escalation, shall mean 3.727%, which Percentage shall be subject to adjustment on account of any change in the rentable area of the Demised Premises or the Building.

(b) (i) Commencing in 1999, in the event that the Real Estate Taxes payable for any comparative tax year shall exceed the Tax Base Factor, Tenant shall pay to Landlord, as additional rent for such comparative tax year, an amount for tax escalation ("Tax Escalation Payment") equal to the Percentage of the excess. Before or after the start of each Comparative Tax Year, Landlord shall furnish to Tenant a statement of the Tax Escalation Payment payable for such Comparative Tax Year, together with a copy of the tax bill. Tenant shall make its aforesaid Tax Escalation Payment to Landlord, in installments in the same manner and not later than thirty (30) days prior to the last date that Real Estate Taxes are payable by Landlord to the governmental authority. If a statement is furnished to Tenant after the commencement of the Comparative Tax Year in respect of which such statement is rendered, Tenant shall, within ten (10) days thereafter, pay to Landlord an amount equal to those installments of the total Tax Escalation Payment then due. If, during the term of this Lease, Real Estate Taxes are required to be paid, in full or in monthly or other installments, on any other date or dates than as presently required, or if Landlord shall be required to make monthly deposits of Real Estate Taxes to the holder of any mortgage, then Tenant's Tax Escalation Payment(s) shall be correspondingly adjusted so that the same are due to Landlord in corresponding installments not later than thirty (30) days prior to the last date on which the applicable installment of such Real Estate Taxes shall be due and payable to the governmental authority or such mortgagee.

(ii) If in any tax certiorari proceeding regarding Real Estate Taxes payable for any Comparative Tax Year or in otherwise establishing such taxes, Landlord has incurred expenses for legal and/or consulting services rendered in applying for, negotiating or obtaining a reduction of the assessment upon which the Real Estate Taxes are predicated, Tenant shall pay an amount equal to the Percentage of such expenses.

(iii) The statements of the Tax Escalation Payment to be furnished by Landlord as provided above shall constitute a final determination as between Landlord and Tenant of the Tax Escalation Payment for the periods represented thereby, except for mathematical error in computation

(iv) In no event shall the fixed minimum rent under this Lease be reduced by virtue of this Section 22 01

(v) Upon the date of any expiration or termination of this Lease, whether the same be the date hereinabove set forth for the expiration of the term or any prior or subsequent date, a proportionate share of the Tax Escalation Payment for the Comparative Tax Year during which such expiration or termination occurs shall immediately become due and payable by Tenant to Landlord, if it was not theretofore already billed and paid, or due and payable by Landlord to Tenant if the amount paid by Tenant exceeded such proportionate share. The said proportionate share shall be based upon the length of time that this Lease shall have been in existence during such Comparative Tax Year. Prior to or promptly after said expiration or termination, Landlord shall compute the Tax Escalation Payment due from or owed to Tenant, as aforesaid and Landlord or Tenant, as the case may be, shall promptly pay the other any amount due and owing. If Landlord shall receive a refund or a tax credit of any amount of Real Estate Taxes for any Comparative Tax Year for which Tenant has made a payment, Landlord shall pay to Tenant within fifteen (15) days of its receipt of such refund the Percentage of any such refund, less the Percentage of any legal fees and other expenses provided for in Section 22 01(b)(ii) to the extent the same have not theretofore been paid by Tenant.

(vi) Landlord's and Tenant's obligations to make the adjustments referred to in subdivision (v) above shall survive any expiration or termination of this Lease

(vii) Any delay or failure of Landlord in billing any Tax Escalation Payment hereinabove provided shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such Tax Escalation Payment hereunder

Section 22 02 Porter's Wage Rate Tenant shall pay to the Landlord, as additional rent, a porter's wage rate escalation in accordance with this Section

(a) For the purpose of this Section, the following definitions shall apply

(i) "Wage Rate" shall mean the minimum regular hourly rate of wages in effect as of January 1st of each year (whether paid by Landlord or any contractor employed by Landlord) computed as paid over a forty hour week to Porters in Class A office buildings pursuant to an Agreement between Realty Advisory Board on Labor Relations, Incorporated, or any successor thereto, and Local 32B-32J of the Building Service Employees International Union, AFL-CIO, or any successor thereto, and provided, however, that if there is no such agreement in effect prescribing a wage rate for Porters, computations and payments shall thereupon be made upon the basis of the regular hourly wage rate actually payable in effect as of January 1st of each year, and provided, however, that if in any year during the term, the regular employment of Porters shall occur on days or during the hours when overtime or other premium pay rates are in effect pursuant to such Agreement, then the term "hourly rate of wages" as used herein shall be deemed to mean the average hourly rate for the hours in a calendar week during which Porters are regularly employed (e g , if pursuant to an agreement between Realty Advisory Board and the Local the regular employment of Porters for forty hours during a calendar week is at a regular hourly wage rate of \$3 00 for the first thirty hours, and premium or overtime hourly wage rate of \$4 50 for the remaining ten hours, then the hourly rate of wages under this Article during such period shall be the total weekly

rate of \$135 00 divided by the total number of regular hours of employment, forty or \$3 375)

(ii) "Base Wage Rate" shall mean the Wage Rate in effect during the calendar year 1998

(iii) The term "Porters" shall mean that classification of non-supervisory employees employed in and about the Building who devote a major portion of their time to general cleaning, maintenance and miscellaneous services essentially of a non-technical and non-mechanical nature and are the type of employees who are presently included in the classification of "Class A-Others" in the Commercial Building Agreement between the Realty Advisory Board and the aforesaid Union

(iv) The term "minimum regular hourly rate of wages" shall not include any payments and fringe benefits and adjustments of any kind

(v) The term "fringe benefits" shall include, without limitation, holiday and vacation pay, sick pay, welfare and pension fund contributions, accident, health and welfare programs, pension plans, guaranteed pay plans and supplemental unemployment benefit plans, training fund contributions, pay for days allowed for clinics, birthdays and other days off, and other benefit plans, payments and programs of similar or dissimilar nature, whether or not required under any applicable law, regulation or otherwise

(vi) The term "Multiplication Factor" shall mean 19,475

(b) If the Wage Rate for any calendar year during the term shall be increased above the Base Wage Rate, then Tenant shall pay, as additional rent, an amount equal to the product obtained by multiplying the Multiplication Factor by 100% of the number of cents (including any fraction of a cent) by which the Wage Rate is greater than the Base Wage Rate, such payment to be made in equal one-twelfth (1/12th)



monthly installments commencing with the first monthly installment of minimum rent falling due on or after the effective date of such increase in Wage Rate (payable retroactive from said effective date) and continuing thereafter until a new adjustment shall have become effective in accordance with the provisions of this Article. Landlord shall give Tenant notice of each change in Wage Rate which will be effective to create or change Tenant's obligation to pay additional rent pursuant to the provisions of this Section 22.02 and such notice shall contain Landlord's calculation in reasonable detail and certified as true by an authorized partner of Landlord or of its managing agent, of the annual rate of additional rent payable resulting from such increase in Wage Rate. Such amounts shall be prorated for any partial calendar years during the term.

(c) Every notice given by Landlord pursuant to Section 22(b) hereof shall be conclusive and binding upon Tenant, except for error in computation.

(d) The "Wage Rate" is intended to be a substitute comparative index of economic costs and does not necessarily reflect the actual costs of wages or other expenses of operating the Building. The Wage Rate shall be used whether or not the Building is a Class A office building and whether or not Porters are employed in the Building and without regard to whether such employees are members of the Union referred to in subsection (a) hereof.

## **ARTICLE 23**

### **Electricity**

Section 23.01. Immediately following the execution of this Lease, Tenant shall make application to and arrangement with the public utility company servicing the Building for the supply of electricity for the entire 17<sup>th</sup> floor of which the Demised Premises are a part. Tenant shall pay for the cost of such electricity consumed on the entire 17<sup>th</sup> floor directly to the utility company. If the installation of a separate meter and electrical equipment is necessary in connection therewith, the cost thereof, if any, shall be paid by Tenant. Landlord

will permit its electric feeders, risers and wiring serving the Demised Premises to be used by Tenant to the extent available and safely capable of being used for such purpose

**Section 23 02** Any additional risers, feeders, electrical meters or other equipment or service proper or necessary to supply Tenant's electrical requirements, upon written request of Tenant, will be installed by Landlord, at the sole cost and expense of Tenant, if in Landlord's reasonable judgment, the same are necessary and will not cause permanent damage or injury to the Building or the Demised Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants Rigid conduit only will be allowed in those areas required by law

**Section 23 03** Landlord shall not in anyway be liable or responsible to Tenant for any loss or damage or expense which Tenant may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements, provided disruption of such services is not due to the negligence of Landlord, or its employees Landlord agrees not to disrupt or alter the amount or limit the amount of electricity available to the floor

**Section 23 04** Tenant agrees not to connect any electrical equipment of any type to the Building electric distribution system, beyond that on Tenant's approved plans for initial occupancy, other than lamps, typewriters, personal computers and other small office machines which consume comparable amounts of electricity, without the Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed In no event shall Tenant use or install any fixtures, equipment or machines the use of which in conjunction with other fixtures, equipment and machines in the Demised Premises would result in an overload of the electrical circuits servicing the Demised Premises

**Section 23 05** Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of the then existing feeders to the Building or the risers or wiring installation, such capacity being five (5) watts per usable square foot Tenant shall furnish, install and replace, as required, all lighting tubes, lamps, bulbs and ballasts required in the Demised Premises, at Tenant's sole cost and expense All lighting tubes, lamps, bulbs and ballasts so installed shall become Landlord's property upon the expiration or sooner termination of this Lease

**Section 23 06** Notwithstanding the foregoing, from and after the Commencement Date, and until the time when the said utility company

commences furnishing electricity to the entire 17<sup>th</sup> floor, including the Demised Premises, Landlord agrees to furnish electricity to the Demised Premises. Tenant shall pay to Landlord for its consumption of electricity the sum of \$4,868.75 per month (prorated for any period of less than a full month), commencing on the Commencement Date and on the first day of each month thereafter, until the date Tenant is furnished electricity from the utility company. The said sum is based upon the normal use of electricity between the hours of 9 00 A M to 5 30 P M on Mondays through Fridays, holidays excepted, for the type of equipment set forth in Section 23 04. Commencing from and after the date that the utility company begins supplying electricity to the entire 17<sup>th</sup> floor for the use of Tenant and any other occupant on said floor, the amount of the minimum rent set forth in Section 3 01(a) shall be reduced by the amount of \$11,068.75 per annum.

Section 23 07 Except for payments due from Tenant under Sections 22 01, 22 02 and 23 06 hereof, or as otherwise expressly provided in this Lease, Tenant shall have no obligation to pay for any other operating expenses hereunder.

#### **ARTICLE 24**

##### **Broker**

Landlord and Tenant covenant and represent that the sole brokers who negotiated and brought about this transaction were Edward Warren & Company, Inc. and Cohen Brothers Realty Corporation and Landlord agrees to pay a commission therefor as per separate agreements. Landlord and Tenant agree to hold the other harmless against any claims for a brokerage commission arising out of a breach by the other of the representations contained in this Article.

#### **ARTICLE 25**

##### **Subordination and Ground Lease**

Section 25 01 This Lease is subject and subordinate to (a) the ground and underlying lease, dated as of September 1, 1978 between The Durst Buildings Corporation, landlord, and 805 Third Avenue Corporation, tenant, a

memorandum of which was recorded in the Office of the City Register, New York County, in Reel 451, Page 1816 and to the rights of the landlord thereunder (the landlord under said ground and underlying lease being sometimes referred to in this Lease as the "Overlandlord"), (b) any other ground and underlying lease, and (c) to all mortgages which may now or hereafter affect any such ground and underlying lease on the Building, and to all renewals, modifications, amendments, consolidations, replacements or extensions of any of the foregoing. This clause shall be self-operative and no further instrument of subordination shall be required. However, in confirmation of such subordination, Tenant, at any time and from time to time, shall execute promptly, and within fifteen (15) days of such request, any certificate and document that Landlord may reasonably request which reasonably evidences such subordination.

Section 25 02 (a) The Tenant covenants and agrees that if by reason of a default under any underlying lease (including an underlying lease through which the Landlord derives its leasehold estate in the Demised Premises), or under any mortgage such underlying lease and the leasehold estate of the Landlord in the Premises demised hereby is terminated, the Tenant will attorn to the then holder of the reversionary interest in the premises demised by this Lease and will recognize such holder as the Tenant's Landlord under this Lease, unless the lessor under such underlying lease or the holder of any such mortgage shall, in any proceeding to terminate such underlying lease or foreclose such mortgage, elects to terminate this Lease and the rights of Tenant hereunder provided, however, the holder of the reversionary interest shall not be (i) liable for any act or omission or negligence of Landlord under this Lease, (ii) subject to any counterclaim, defense or offset, not expressly provided for in this Lease and asserted with reasonable promptness which theretofore shall have accrued to Tenant against Landlord, (iii) obligated to perform any work, (iv) bound by any previous modification or amendment of this Lease or by any previous prepayment of more than one (1) month's rent, unless such modification or prepayment shall have been approved in writing by the holder of such Mortgage, (v) obligated to repair the Demised Premises, or the Building, or any part thereof, in the event of any damage beyond such repair as can reasonably be accomplished from the net proceeds of insurance actually made available to the then holder of the reversionary interest, or (iv) obligated to repair the Demised Premises or the Building, or any part thereof, in the event of partial condemnation of the

**Demised Premises or the Building** Nothing contained in this subparagraph shall be construed to impair any right otherwise exercisable by any such holder. Tenant agrees to execute and deliver, at any time and from time to time, upon the request of the Landlord or the lessor under any such underlying lease or the holder of any such mortgage any instrument which may be necessary or appropriate to evidence such attornment. The Tenant further waives the provisions of any statute or rule or law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the premises demised hereby in the event any proceeding is brought by the lessor under any underlying lease or the holder of any such mortgage to terminate the same, and agrees that unless and until any such lessor, in connection with any such proceeding, shall elect to terminate this Lease and the rights of Tenant hereunder, this Lease shall not be affected in any way whatsoever by any such proceeding.

(b) Upon Tenant's receipt of a written notice from the lessor under any underlying lease or the holder of any such mortgage to the effect that (i) the lessor of said underlying lease or the holder of any such mortgage is entitled to send a notice to the Landlord, as tenant under said underlying lease, terminating said lease, and (ii) the Tenant should pay the minimum rent and additional rent thereafter due and payable under this Lease to said lessor or the holder of any such mortgage at a place designated in such notice, Tenant shall pay such minimum rent and additional rent to said lessor under said underlying lease or the holder of any such mortgage at such designated place until such time as said lessor or holder shall notify Tenant that Landlord is no longer in default under said underlying lease or such mortgage and that Tenant may resume paying all minimum rent and additional rent thereafter due and payable under this Lease to Landlord. Tenant shall have no liability to the Landlord for paying any minimum rent or additional rent to said lessor under the underlying lease or holder of any such mortgage or otherwise acting in accordance with the provisions of any notice sent to it under this paragraph and shall be relieved of its obligations to pay Landlord any minimum rent or additional rent under this Lease to the extent such payments are made to said lessor under the underlying lease.

**Section 25 03** In the event of any act or omission by Landlord which would give Tenant the right to terminate this Lease or to claim a partial or total eviction, pursuant to the terms of this Lease, if any, Tenant will not exercise any such right until

(a) it has given written notice to cure (whether concurrently with or subsequent to any notice given to Landlord), regarding such act or omission to the holder of any leasehold mortgage and to the landlord of any ground or underlying lease, whose names and addresses shall previously have been furnished to Tenant, addressed to such holder and landlord at the last addresses so furnished, and

(b) a reasonable period of time (not to exceed the period in this Lease or the ground lease or the mortgage, as the case may be) for remedying such act or omission shall have elapsed following such giving of notice during which such parties, or any of them, with reasonable diligence, following the giving of such notice, shall not have commenced and is or are not continuing to remedy such act or omission or to cause the same to be remedied

**Section 25 04** If, in connection with obtaining financing for the Building, or of Landlord's interest in any ground or underlying lease, a banking, insurance or other recognized institutional lender shall request modifications in this Lease as a condition to such financing, Tenant will not withhold, delay or defer its consent thereto and its execution and delivery of such modification agreement, provided that such modifications do not increase the obligations of Tenant hereunder or adversely affect the leasehold interest hereby created or Tenant's use and enjoyment of the Demised Premises

## **ARTICLE 26**

### **Estoppel Certificate**

Each party shall at any time, and from time to time, within ten (10) business days after so requested by the other execute, acknowledge and deliver to the other, a statement addressed to the other (a) certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b)

stating the dates to which the minimum rent and additional rent have been paid, (c) stating whether or not, to the knowledge of such party, there exists any default by the other under this Lease, and, if so, specifying each such default, and (d) such other information as may be reasonably required by Landlord or any mortgagee, it being intended that any such statement may be relied upon by the other, by any mortgagee or prospective mortgagee of any mortgage affecting the Building or the leasehold estate under any ground or underlying lease affecting the land described in Schedule C and/or Building and improvements thereon, or may be relied upon by the landlord under any such ground or underlying lease or a purchaser of Lessee's estate under any such ground or underlying lease or any interest therein

## **ARTICLE 27**

### **Waiver of Jury Trial**

Tenant hereby waives the right to trial by jury in any summary proceeding that may hereafter be instituted against it or in any action or proceeding that may be brought by Landlord on matters which are connected with this Lease, or any of its provisions or Tenant's use or occupancy of the Demised Premises, including any claims for injury or damage, or any emergency or other statutory remedy with respect thereto

## **ARTICLE 28**

### **Surrender of Premises**

Section 28 01      Upon the expiration or other termination of the term of this Lease, Tenant shall quit and surrender the Demised Premises in good order and condition, ordinary wear and tear, damage by fire or other casualty and damage occasioned by Landlord, its agents, contractors or employees, excepted, and shall remove all its property therefrom, except as otherwise provided in this Lease. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease

Section 28 02      In the event Tenant shall remain in possession of the Demised Premises after the expiration or other termination of the term of this Lease, such holding over shall not constitute a renewal or extension of this Lease. Landlord, may, at its option, elect to treat Tenant as one who is not

removed at the end of the term, and thereupon be entitled to all of the remedies against Tenant provided by law in that situation or Landlord may elect to construe such holding over as a tenancy from month-to-month, subject to all of the terms and conditions of this Lease, except as to the duration thereof, and the minimum rent shall be due, in either of such events, at a monthly rental rate equal to two (2) times the monthly installment of minimum rent which would otherwise be payable for such month, together with any and all additional rent. In addition to the foregoing, if the Demised Premises is not surrendered as and when aforesaid, Tenant shall indemnify Landlord against actual loss or liability resulting from the delay by Tenant in so surrendering the Demised Premises.

## **ARTICLE 29**

### **Rules and Regulations**

Section 29 01 Tenant, its servants, employees, agents, visitors and licensees shall observe faithfully and comply with the rules and regulations set forth in Schedule "D" attached hereto and made a part hereof. Landlord shall have the right from time to time during the term of this Lease to make reasonable changes in and additions to the rules thus set forth provided such changes and additions are applicable to all other office tenants in the Building and do not unreasonably interfere with Tenant's use and occupancy of the Demised Premises. All rules and regulations shall be enforced in a non-discriminatory manner.

Section 29 02 Any failure by Landlord to enforce any rules and regulations now or hereafter in effect, either against Tenant or any other tenant in the Building, shall not constitute a breach hereunder or waiver of any such rules and regulations.

## **ARTICLE 30**

### **Successors and Assigns and Definitions**

Section 30 01 The covenants, conditions and agreements contained in this Lease shall bind and enure to the benefit of Landlord and Tenant.



and their respective distributees, legal representatives, successors and, except as otherwise provided herein, their assigns

**Section 30 02** The term "Landlord" as used in this Lease, so far as the covenants and agreements on the part of Landlord are concerned shall be limited to mean and include only the owner or owners at the time in question of the tenant's estate under any ground or underlying lease covering the land described in Schedule C hereto annexed and/or the Building and improvements thereon. In the event of any assignment or assignments of such tenant's estate, Landlord herein named (and in case of any subsequent assignment, the then assignor) shall be automatically freed and relieved from and after the date of such assignment of all personal liability as respects to performance of any of Landlord's covenants and agreements thereafter to be performed, and such assignee shall be bound by all of such covenants and agreements, it being intended that Landlord's covenants and agreements shall be binding on Landlord, its successors and assigns only during and in respect of their respective periods of ownership

However, in any event, the partners in Landlord shall not have any personal liability or obligation by reason of any default by Landlord under any of Landlord's covenants and agreements in this Lease. In case of such default, Tenant will look only to Landlord's estate, as tenant, under such ground or underlying lease and its interest in the Building, to recover any loss or damage resulting therefrom, and Tenant shall have no right to nor shall Tenant assert any claim against nor have recourse to Landlord's other property or assets to recover such loss or damage

**Section 30 03** All pronouns or any variation thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural as the identity of the person or persons may require, and if Tenant shall consist of more than one (1) person, the obligations of such persons, as Tenant, under this Lease, shall be joint and several

**Section 30 04** The definitions contained in Schedule F annexed hereto are hereby made a part of this Lease

## **ARTICLE 31**

### **Notices**

Any notice, statement, certificate, request, approval, consent or demand required or permitted to be given under this Lease shall be in writing sent

by registered or certified mail (or reputable, commercial overnight courier service) return receipt requested, addressed, as the case may be, to Landlord, at 750 Lexington Avenue, New York, New York 10022, and to Tenant prior to the Commencement Date at 4 Westbrook Corporate Center, Suite 400, Westchester, Illinois 60154, Attention Patricia E Koide, and after the Commencement Date at the Demised Premises, or to such other addresses as Landlord or Tenant respectively shall designate in the manner herein provided Such notice, statement, certificate, request, approval, consent or demand shall be deemed to have been given on the date when mailed, as aforesaid, or on the date of delivery by overnight courier

## **ARTICLE 32**

### **No Waiver, Entire Agreement**

Section 32 01 The specific remedies to which Landlord may resort under the provisions of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may be lawfully entitled in case of any breach by Tenant of any of the terms, covenants and conditions of this Lease The failure of Landlord to insist upon the strict performance of any of the terms, covenants and conditions of this Lease, or to exercise any right or remedy herein contained, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition, right or remedy A receipt by Landlord of minimum rent or additional rent with knowledge of the breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such breach This Lease may not be changed or terminated orally In addition to the other remedies in this Lease provided, Landlord shall be entitled to seek to restrain by injunction, the violation or attempted or threatened violation of any of the terms, covenants and conditions of this Lease or to a decree, any court having jurisdiction in the matter, compelling performance of any such terms, covenants and conditions

Section 32 02 No receipt of monies by Landlord from Tenant, after any re-entry or after the cancellation or termination of this Lease in any lawful manner, shall reinstate the Lease, and after the service of notice to terminate this Lease, or after commencement of any action, proceeding or other remedy, Landlord may demand, receive and collect any monies due, and apply them on account of Tenant's obligations under this Lease but without in any respect affecting such notice, action proceeding or remedy, except that if a

money judgment is being sought in any such action or proceeding, the amount of such judgment shall be reduced by such payment

**Section 32 03** If Tenant is in arrears in the payment of minimum rent or additional rent, Tenant waives its right, if any, to designate the items in arrears against which any payments made by Tenant are to be credited and Landlord may apply any of such payments to any such items in arrears as Landlord, in its sole discretion, shall determine, irrespective of any designation or request by Tenant as to the items against which any such payments shall be credited

**Section 32 04** No payment by Tenant nor receipt by Landlord of a lesser amount than may be required to be paid hereunder shall be deemed to be other than on account of any such payment, nor shall any endorsement or statement on any check or any letter accompanying any check tendered as payment be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such payment due or pursue any other remedy in this Lease provided

**Section 32 05** This Lease and the Schedules annexed hereto constitute the entire agreement between Landlord and Tenant referable to the Demised Premises, and all prior negotiations and agreements are merged herein

**Section 32 06** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law

### **ARTICLE 33**

#### **Captions**

The captions of Articles in this Lease are inserted only as a matter of convenience and for reference and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof

## **ARTICLE 34**

### **Inability to Perform**

If the performance or observance by Landlord or Tenant of any of the terms, covenants and conditions of this Lease on the part of Landlord or Tenant to be performed shall be delayed by reason of unavoidable delays (as hereinafter defined), then the time for the performance or observance thereof shall be extended for the period of time as Landlord or Tenant shall have been so delayed, provided Tenant shall continue, notwithstanding unavoidable delays, to be obligated to pay minimum rent and additional rent without abatement, except as otherwise expressly provided herein

The words "unavoidable delays", as used in this Lease shall mean (a) the enactment of any law or issuance of any governmental order, rule or regulation (i) prohibiting or restricting performance of work of the character required to be performed by Landlord under this Lease, or (ii) establishing rationing or priorities in the use of materials, or (iii) restricting the use of labor, and (b) strikes, lockouts, acts of God, inability to obtain labor or materials, enemy action, civil commotion, fire, unavoidable casualty or other similar types of causes beyond the reasonable control of Landlord or Tenant, as the case may be, other than financial inability

## **ARTICLE 35**

### **No Representations by Landlord**

Neither Landlord nor any agent or employee of Landlord has made any representation whatsoever with respect to the Demised Premises except as expressly set forth in this Lease

## **ARTICLE 36**

### **Security Deposit**

Section 36 01 Concurrently with the execution of this Lease, Tenant shall deposit with Landlord the sum of \$511,218 75, by Letter of Credit

as provided in Section 36 02, as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease Tenant agrees that, in the event that Tenant defaults in respect of any of the terms, provisions and conditions of this Lease (including the payment of minimum rent and additional rent), after any applicable notice and expiration of any applicable cure period, Landlord may notify the "Issuing Bank" (as such term is defined in Section 36 02) and thereupon draw upon said Letter of Credit and use, apply, or retain the whole or any part of such proceeds, as the case may be, to the extent required for the payment of any rent, additional rent, or any other sum as to which Tenant is in default, or for any sum that Landlord may expend or may be required to expend by reason of Tenant's default, in respect of any of the terms, covenants and conditions of this Lease (including any damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord) In the event that Landlord applies or retains any portion or all of the proceeds of such Letter of Credit Tenant shall, within ten (10) days after demand by Landlord, restore the amount so applied or retained so that, at all times, the amount deposited shall be \$511,218 75 If Tenant shall fail or refuse to make such additional deposit, Landlord shall have the same rights in law and in equity and under this Lease as it has with respect to a default by Tenant in the payment of minimum rent In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the cash security or Letter of Credit, as the case may be, shall be returned to Tenant within twenty (20) days after the expiration date and after delivery of possession of the entire Demised Premises to Landlord in the condition provided in this Lease for such delivery of possession

Section 36 02 Such letter of credit (the "Letter of Credit") shall be a clean, irrevocable and unconditional Letter of Credit issued by and drawn upon any commercial bank (the "Issuing Bank") with offices for banking purposes in the City of New York and having a net worth of not less than \$500,000,000 00, which Letter of Credit shall have an initial term of not less than one year or thereafter having a term expiring not less than ninety (90) days following the expiration of the term of this Lease, shall permit multiple drawings, shall be transferable by the beneficiary at one or more occasions at no charge to the beneficiary and otherwise be in form and content satisfactory to Landlord, be for the account of Landlord and be in the amount of \$511,218 75 Notwithstanding the foregoing, if at any time the net worth of the Issuing Bank is less than \$500,000,000 00 or its rating is downgraded from its current rating, and provided Tenant does not replace the existing Letter of Credit with a Letter of Credit meeting the criteria of Section 36 02 within the sooner of thirty (30) days following Tenant's receipt of Landlord's notice to Tenant of either of the foregoing events or the number of days remaining until the expiration date of the existing Letter of Credit, Landlord shall have the right, at any time thereafter, to

draw down the entire proceeds pursuant to the terms of Section 36 01 as cash security pending the replacement of such Letter of Credit The Letter of Credit shall provide that

(a) the Issuing Bank shall pay to Landlord or its duly authorized representative an amount up to the face amount of the Letter of Credit upon presentation of the Letter of Credit and a sight draft, in the amount to be drawn,

(b) it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each thereafter during the term of this Lease, unless Issuing Bank sends written notice (hereinafter referred to as the Non-Renewal Notice) to Landlord by certified or registered mail, return receipt requested, not less than sixty (60) days next preceding the expiration date of the Letter of Credit that it elects not to have the Letter of Credit renewed, and it being agreed that the giving of such Non-Renewal Notice shall for the purpose of this Article 37 be deemed a default under this Lease, unless Tenant replaces the Letter of Credit with a substitute Letter of Credit meeting the criteria of this Section 36 02 or with a cash deposit at least thirty (30) days prior to the expiration date of the Letter of Credit

(c) Landlord, subsequent to its receipt of a Non-Renewal Notice, and prior to the expiration date of the Letter of Credit, shall have the right, exercisable by means of sight draft, to receive the monies represented by the Letter of Credit and hold such proceeds pursuant to the terms of Section 36 01 as cash security pending the replacement of such Letter of Credit, and

(d) upon Landlord's sale or assignment of its estate as Tenant under any ground or underlying lease, the Letter of Credit shall be transferable by Landlord, as provided in Section 36 03

Section 36 03 In the event Landlord's estate as tenant under any ground or underlying Lease is sold or assigned, Landlord shall have the right to transfer the Letter of Credit or the cash proceeds thereof then held by Landlord to the vendee or assignee, and Landlord shall thereupon be released by Tenant from all liability for the return of such Letter of Credit or such cash proceeds In such event, Tenant agrees to look solely to the new Landlord for the return of

said Letter of Credit or cash proceeds It is agreed that the provisions hereof shall apply to every transfer or assignment made of the Letter of Credit or such cash proceeds to a new Landlord

Section 36 04 Tenant covenants that it will not assign or encumber, or attempt to assign or encumber, the Letter of Credit deposited hereunder as security, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance

Section 36 05 The use of the security, as provided in this Article, shall not be deemed or construed as a waiver of Tenant's default or as a waiver of any other rights and remedies to which Landlord may be entitled under the provisions of this Lease by reason of such default, it being intended that Landlord's rights to use the whole or any part of the security shall be in addition to but not in limitation of any such other rights and remedies, and Landlord may exercise any of such other rights and remedies independent of or in conjunction with its rights under this Article

Section 36 06 Provided Tenant is not then in default under any of the terms, covenants and conditions of this Lease on its part to be performed, after the actual payment by Tenant of twenty-four (24) monthly installments of minimum rent, the amount of the security deposit hereunder shall be reduced to \$340,812 50 In such event, Tenant shall either deliver to Landlord a replacement Letter of Credit in the reduced amount and Landlord will then return to Tenant the existing Letter of Credit, or Tenant will deliver to Landlord an amendment to the existing Letter of Credit reducing the amount thereof to \$340,812 50

## **ARTICLE 37**

### **Rent Control**

In the event the minimum rent and/or additional rent or any part thereof provided to be paid by Tenant under the provisions of this Lease during the demised term shall become uncollectible or shall be reduced or required to be reduced or refunded by virtue of any federal, state, county or city law, order or regulation, or by any direction of a public officer or body pursuant to law, or the orders, rules, code or regulations of any organization or entity formed pursuant to law, Tenant shall enter into such agreement(s) and take such other steps (without additional expense or liability to Tenant) as Landlord may reasonably

request and as may be legally permissible to permit Landlord to collect the maximum rents which from time to time during the continuance of such legal rent restriction may be legally permissible (and not in excess of the amounts reserved therefor under this Lease) Upon the termination of such legal rent restriction, (a) the minimum rent and/or additional rent shall become and thereafter be payable in accordance with the amounts reserved herein for the periods following such termination, and (b) Tenant shall pay to Landlord promptly upon being billed, to the maximum extent legally permissible, an amount equal to (i) minimum rent and/or additional rent which would have been paid pursuant to this Lease but for such legal rent restriction less (ii) the rents paid by Tenant during the period such legal rent restriction was in effect

## **ARTICLE 38**

### **Additional Space**

Section 38 01 So long as this Lease is then in full force and effect and Tenant is not then in default in performing any of the conditions of this Lease on its part to be performed, both at the time of Landlord's Availability Notice (as hereinafter defined) and on the Effective Date (as hereinafter defined) for the Additional Space (as hereinafter defined), at any time during the term of this Lease that Landlord becomes aware of the potential availability of the remaining space on the 17<sup>th</sup> floor occupied by High View Capital Corp (the "Additional Space"), which Landlord anticipates will become available for lease and future occupancy by Tenant during the term of this Lease, Landlord shall then give Tenant notice thereof (the "Availability Notice"). Landlord's Availability Notice shall not be given to Tenant sooner than two hundred ten (210) days before the space will be available for occupancy Such notice shall also state the rentable square feet of the Additional Space, which for the purpose of this Article is agreed to be 4,025 rentable square feet and Landlord's reasonable estimation of the date when such Additional Space will be available for Tenant's occupancy (the "Occupancy Date") Tenant may exercise its option to lease such Additional Space by giving Landlord notice of its election to do so not later than one hundred fifty (150) days prior to the Occupancy Date (the "Exercise Notice"), with TIME OF THE ESSENCE If Landlord does not receive the Exercise Notice within the time set forth above, then Tenant shall have no further rights with respect to the Additional Space under this Article 38, and Landlord may lease such Additional Space to any other party upon such terms and conditions as Landlord may deem desirable



**Section 38 02** Tenant shall take possession of the Additional Space and Landlord shall deliver possession thereof to Tenant on the later of the Occupancy Date and the actual date on which Landlord shall have delivered such Additional Space to Tenant vacant (the "Effective Date"), and from and after the Effective Date such Additional Space shall automatically be deemed added to and made part of the Demised Premises upon all of the terms, covenants and conditions as are contained in this Lease (except those which by their terms are no longer applicable), except as follows

(a) Tenant agrees to accept possession of the Additional Space in its then "As Is" condition and Landlord shall not be required to do any work therein to prepare the same for Tenant's occupancy

(b) The amount of the minimum rent provided in Section 3 01 (a) shall be increased by the amount of \$140,875 00 per annum (or \$11,739 58 per month) if the Effective Date occurs during the first five (5) years of the term hereof, or by the amount of \$152,950 00 per annum (or \$12,745 83 per month) if the Effective Date occurs during the last five (5) years of the term hereof

(c) In Section 22 01(a), in subdivision (i) the "Tax Base Factor" shall be as therein provided, in subdivision (iii) the "comparative tax year" shall be as therein provided, and in subdivision (v) the "Percentage" shall be increased to 4 4973%

(d) In Section 22 02(a), in subdivision (ii), the "Base Wage Rate" shall be as therein provided, and in subdivision (v) the "Multiplication Factor" shall be increased to 23,500

**Section 38 03** Notwithstanding the provisions of Section 38 02, if Landlord is unable to give possession of the Additional Space on the Effective Date because of the holding-over of the tenant thereof, Landlord shall not be subject to any liability for failure to give possession on the Effective Date, but the Effective Date shall not be deemed to have occurred for any purpose whatsoever until the date that Landlord shall actually deliver possession of the Additional Space to Tenant. In any event, Landlord shall promptly commence and diligently prosecute holdover proceedings or such other legal proceedings as may be required in order to obtain possession of the Additional Space as promptly thereafter as may be practical

**Section 38 04** Following the determination of the Effective Date, the minimum rent and the escalation rents of the Additional Space, Landlord and Tenant shall execute an agreement amending this Lease to reflect the foregoing, but the provisions of this Article 38 shall be effective with respect

to the Additional Space effective from and after the Effective Date whether or not such an amendment is executed

Section 38 05 Except as specifically amended in this Article 38, all of the terms, covenants and conditions of this Lease shall continue in full force and effect and unchanged

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

805 THIRD AVE CO

By   
Landlord  


ALLEGIANCE TELECOM, INC

By   
Tenant

STATE OF NEW YORK )

**\$\$**

COUNTY OF NEW YORK )

On the 18 day of April, 1998, before me personally came Charles Steven Cohen, to me known and known to me to be a partner in the firm of 805 THIRD AVE CO, the partnership described in and which executed the foregoing instrument, and acknowledged that he executed the same for and on behalf of and with the authority of the said firm of 805 THIRD AVE CO, for the uses and purposes therein mentioned

Heir Barter  
Notary Public

**Notary Public**

**HARRIS BORNSTEIN**  
**Notary Public State of New York**  
**No 31-4950835**  
**Qualified in New York County**  
**Commission Expires May 8, 1991**

STATE OF NEW YORK )

**SS**

COUNTY OF NEW YORK)

~~On the      day of    , 1998, before me personally came Patricia E Koide, to me known, who, being by me duly sworn, did depose and say that she resides at    , that she is the Senior Vice-President of Allegiance Telecom, Inc , the corporation described in and which executed the foregoing instrument, and that she signed her name thereto by order of the board of directors of said corporation.~~

**Notary Public**

STATE OF ILLINOIS     )  
                                      ) ss  
COUNTY OF COOK     )

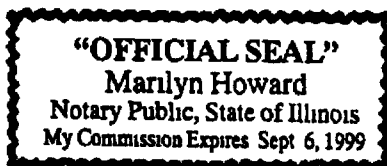
On the 14<sup>th</sup> day of April, 1998, before me personally came Charles Steven Cohen, to me known and known to me to be a partner in the firm of 805 THIRD AVE CO, the partnership described in and which executed the foregoing instrument, and acknowledged that he executed the same for and on behalf of and with the authority of the said firm of 805 THIRD AVE CO, for the uses and purposes therein mentioned



Marilyn Howard  
Notary Public

STATE OF ILLINOIS     )  
                                      ) ss  
COUNTY OF COOK     )

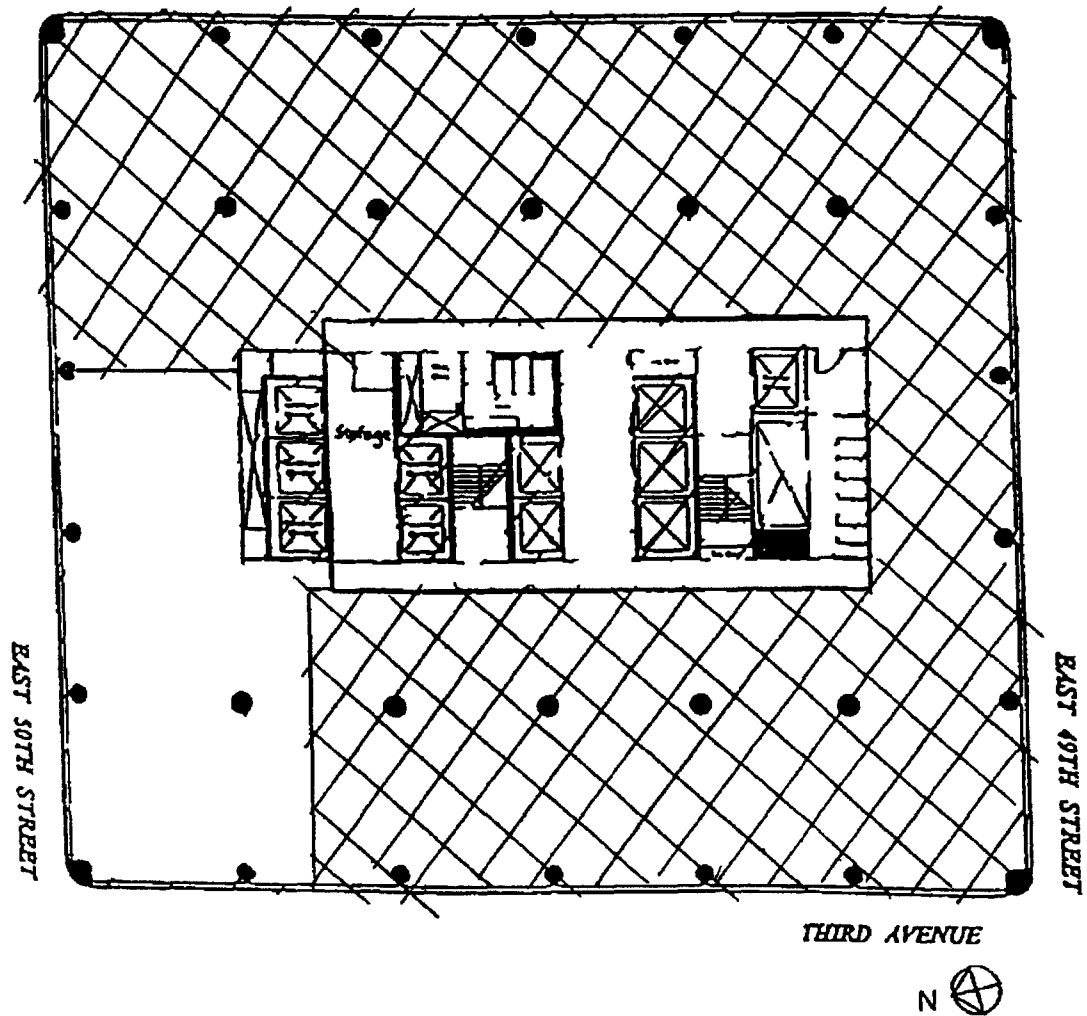
On the 14<sup>th</sup> day of April, 1998, before me personally came Patricia E Koide, to me known, who, being by me duly sworn, did depose and say that she resides at Westbrook Center, Westchester, Illinois that she is the Senior Vice-President of Allegiance Telecom, Inc, the corporation described in and which executed the foregoing instrument, and that she signed her name thereto by order of the board of directors of said corporation



Marilyn Howard  
Notary Public

**SCHEDULE A**

**FLOOR PLAN**



**SCHEDULE B**

**Work**

**Lease**

**Between**

**805 THIRD AVE CO**

**As Landlord**


**and**

**ALLEGIANCE TELECOM, INC**

**As Tenant**

**Relating to part of the 17th floor in Building  
805 Third Ave , New York, New York**

*and included preliminary space study for Space  
Banned. Refer to as Schedule B-1,*

  
1 Tenant, at Tenant's expense, has caused to be prepared a preliminary space study by DPM Consultants, Inc , Tenant's architect, No SK 2 received March 16, 1998, which has been initialed and approved by the parties. Tenant, at Tenant's expense, shall cause to be prepared and delivered to Landlord by Tenant's architect the final following architectural plans and specifications and by Jack Sotnikow, Tenant's engineer the final following mechanical drawings and specifications, for the work to be performed by Landlord under Article 2 of this Schedule B

(a) One sepiu plus twelve (12) prints of complete, finished, detailed architectural drawings and specifications, and subsequent revisions, for Tenant's partition layout, reflected ceiling and other installations

(b) One sepiu plus twelve (12) prints of complete mechanical plans and specifications where necessary for installation of air conditioning system and duct work, electrical, plumbing, sprinkler and other mechanical plans if

required by reason of other mechanical work by Tenant, and subsequent revisions

All such final plans and specifications are subject to Landlord's written approval, which approval shall not be unreasonably withheld provided the same are substantially similar to said preliminary plans and specifications. All such plans and specifications shall be prepared in a manner so that, upon Landlord's completion of its work, the same shall be in compliance with applicable Governmental Requirements, including but not limited to the Americans With Disabilities Act.

Tenant covenants and agrees to cause said plans and specifications to be delivered to Landlord on or before May 1, 1998. Upon approval by Landlord, Tenant shall cause said plans to be filed promptly, at Tenant's expense, with the appropriate governmental agencies in such form (building notice, alteration or other form) as Landlord may direct, including filing of Building Department Form TR-1. Tenant, at Tenant's expense, shall obtain a building permit for such work.

Landlord shall not be obligated to commence work until such permits are obtained. Tenant shall be responsible for the coordination of all architectural and engineering design drawings including applicable code and local law compliance, project dimensions and existing field conditions.

2 In accordance with and as indicated on said final plans and specifications, Landlord, at Landlord's expense, except as otherwise specified in this Schedule B and the Lease, will perform and install the work and installations, all of which shall be of material, manufacture, design, capacity, finish and color of the building standard adopted by Landlord for the Building.

3 If Tenant shall request Landlord to perform any additional or non-standard work, Tenant shall submit to Landlord the necessary plans and specifications therefor. Landlord, at its sole option, may perform such work, at Tenant's expense, as a Tenant's extra, together with twenty-one (21%) percent of such price for Landlord's overhead. Prior to commencing any such work requested by Tenant, Landlord will submit to Tenant written itemization of the price of any such work. If Tenant shall fail to approve any such price(s) within seven (7) days, they shall be deemed disapproved in all respects by Tenant and Landlord shall not be authorized to proceed thereon, and Tenant shall then have the work performed by other contractors subject to the provisions of Section 5.01 of the Lease. Concurrently with Tenant's approval, Tenant shall pay Landlord as additional rent, fifty (50%) percent of the price of such work or one hundred (100%) of the price of the work if the price is less than \$10,000,

together with 21% of the aggregate price of all work for Landlord's overhead, and thereafter, within seven (7) days after being billed therefor, Tenant shall pay Landlord as additional rent the pro rata portion of the price of such work for which Tenant is obligated to pay or toward which Tenant is obligated to contribute, which has been previously completed. If Tenant shall default in making such payment within seven (7) days after being billed, Landlord shall have the same rights as in the event of default by Tenant in the payment of minimum rent and additional rent, and Landlord shall have the further right to discontinue performing any additional work without the same affecting the date of substantial completion as provided in Paragraph 4 below. Upon Landlord advising Tenant that Landlord has substantially completed its work, Tenant shall pay to Landlord the entire price of such work remaining unpaid, notwithstanding that minor details or adjustments which shall not materially interfere with Tenant's use of the Demised Premises may not then have been completed, as provided in Section 2.01, all of which, as set forth in Tenant's punch list, shall be promptly completed or repaired by Landlord at Landlord's expense.

4. Tenant acknowledges that Landlord will be delayed in substantially completing the work to be performed by Landlord under Article 1 of this Schedule B, as a result of

(i) Tenant's delay in furnishing the final plans and specifications, or

(ii) Tenant's request for materials, finishes or installations other than Landlord's building standard, or

(iii) Tenant's changes in said final plans following the initial approval thereof, or

(iv) Delays in the completion of work performed on behalf of Tenant by a person, firm or corporation employed by Tenant,

therefore the Commencement Date of the Lease, and the payment of minimum rent thereunder shall be accelerated by the number of days of such delay.

Tenant shall approve mechanical shop drawings within three (3) business days after receipt thereof and shall approve all other shop drawings within five (5) days after receipt.



5 Following Landlord's installation of any ceiling materials, if by reason of any work performed by or on behalf of Tenant any of the ceiling materials are damaged and/or removed by Tenant's contractor, such damaged ceiling materials shall be replaced by Landlord at the expense of Tenant


6 Landlord will permit Tenant and its agents to enter the Demised Premises prior to the Commencement Date of the Lease in order that Tenant may perform through its own contractors, to be first approved by Landlord, such other work and decorations as Tenant may desire, at the same time that Landlord's contractors are working in the space as well as to inspect the progress of the work being performed by Landlord. The foregoing license to enter prior to the Commencement Date is conditioned upon Tenant's workmen and mechanics working in harmony and not interfering with the labor employed by Landlord, Landlord's mechanics or contractors or by any other tenants or their contractors. If at any time such entry shall cause disharmony or interference therewith, this license may be withdrawn by Landlord upon 24 hours notice to Tenant

Workers' Compensation and public liability insurance and property damage insurance, all in amounts and with companies and on forms reasonably satisfactory to Landlord, shall be provided and at all times maintained by Tenant's contractors engaged in the performance of the work, and before proceeding with the work, certificates of such insurance shall be furnished to Landlord

Such entry shall be deemed to be under all of the terms, covenants, and conditions of the Lease except as to the covenant to pay fixed rent. Landlord shall not be liable in any way for any injury, loss or damage which may occur to any of Tenant's decorations or installations so made prior to the Commencement Date, the same being solely at Tenant's risk, except to the extent caused by the gross negligence or willful misconduct of Landlord, its agents, contractors or employees

805 THIRD AVE CO

By

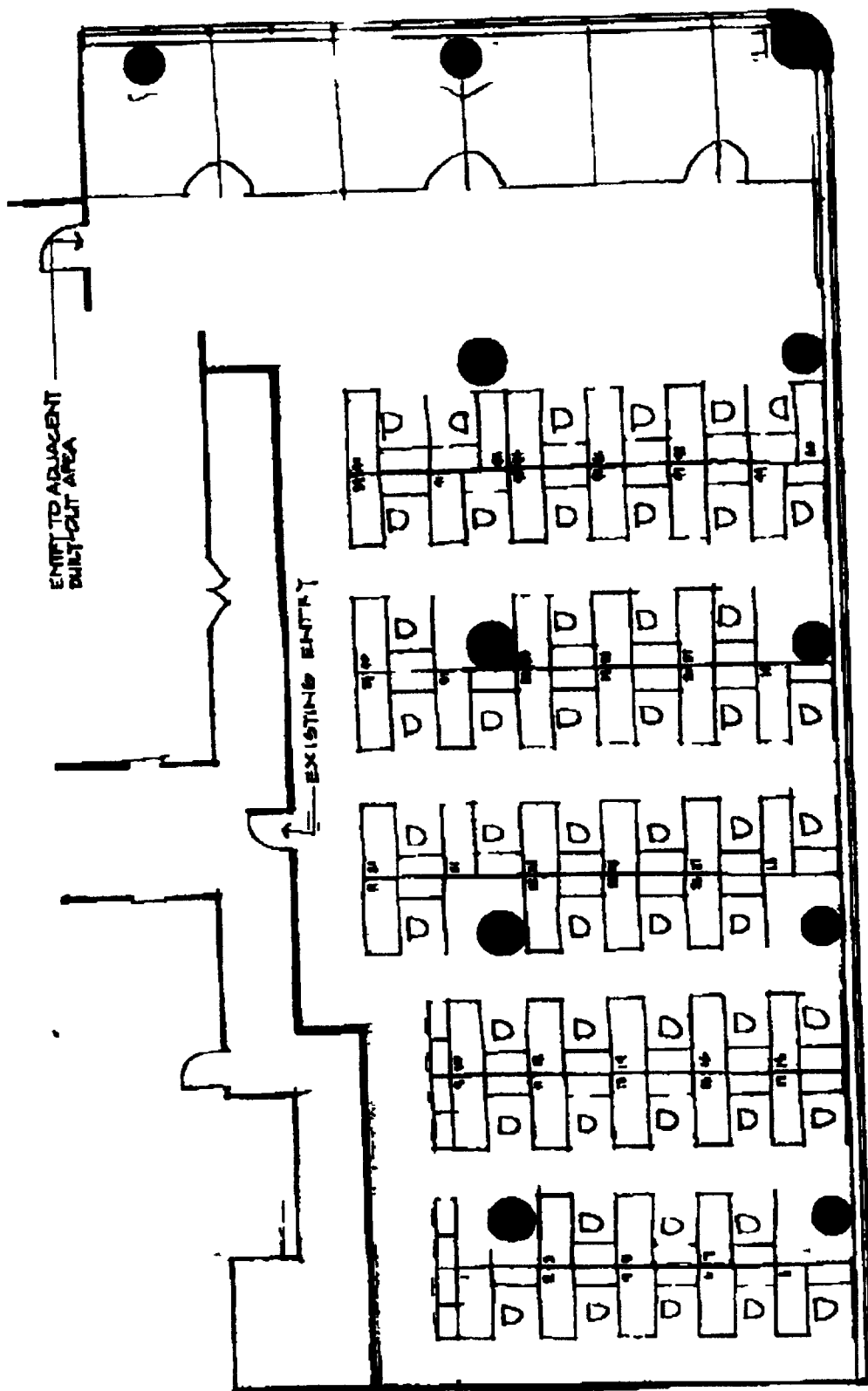
  
\_\_\_\_\_  
Landlord

Accepted by

ALLEGIANCE TELECOM, INC

By

  
\_\_\_\_\_  
Tenant



SCHEDULE B - 1

SPACE B

## **SCHEDULE C**

### **Description of Land**

All that lot, piece and parcel of land situate in the Borough of Manhattan, City, County and State of New York, bounded and described as follows

BEGINNING at the corner formed by the intersection of the southerly side of East 50th Street and the easterly side of Third Avenue, running

THENCE southerly along the easterly side of Third Avenue 150 feet 5 inches,

THENCE easterly, parallel with East 49th Street 115 feet 2-1/2 inches,

THENCE southerly parallel with Third Avenue 50 feet 5 inches to the northerly side of East 49th Street,

THENCE easterly along the northerly side of East 49th Street 40 feet 11-1/2 inches,

THENCE northerly parallel with Third Avenue 14 feet,

THENCE northwesterly 37 feet 3 inches to a point distant 149 feet 2-1/2 inches easterly of the easterly side of Third Avenue,

THENCE westerly parallel with East 49th Street 3 feet to the center line of Old Post Road,

THENCE northerly along the center line of Old Post Road 74 feet 2-3/8 inches to a point distant 481 feet 3 inches west of the westerly side of Second Avenue, and 78 feet 1-1/2 inches south of the southerly side of West 50th Street along a line drawn at right angles thereto,

THENCE easterly parallel with East 50th Street 31 feet 3 inches,

THENCE still easterly 6 feet 3 inches to a point distant 78 feet 1 inch from the southerly side of East 50th Street measured along a line drawn at right angles thereto,

THENCE northerly parallel with Third Avenue and part of the distance through a party wall, 78 feet 1 inch to the southerly side of East 50th Street,

THENCE westerly along the southerly side of East 50th Street 166 feet 3 inches to the corner aforesaid, the point or place of BEGINNING

## **SCHEDULE D**

### **Rules and Regulations**

1 The rights of tenants in the entrances, corridors, elevators and escalators of the Building are limited to ingress to and egress from the tenants' premises for the tenants and their employees, licensees, guests, customers and invitees, and no tenant shall use, or permit the use of, the entrances, corridors, escalators or elevators for any other purpose. No tenant shall invite to the tenant's premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the plazas, entrances, corridors, escalators, elevators and other facilities of the Building by other tenants. Fire exits and stairways are for emergency use only, and they shall not be used for any other purposes by the tenants, their employees, licensees or invitees. No tenant shall encumber or obstruct, or permit the encumbrance or obstruction of any of the sidewalks, plazas, entrances, corridors, escalators, elevators, fire exits or stairways of the Building. The Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities, furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.

2 The reasonable cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other tenants, caused by a tenant or the employees, licensees or invitees of the tenant, shall be paid by such tenant.

3 The Landlord may refuse admission to the Building outside of ordinary business hours to any person not known to the watchman in charge or not having a pass issued by the Landlord or not properly identified, and may require all persons admitted to or leaving the Building outside of ordinary business hours to register. Tenant's employees, agents and visitors shall be permitted to enter and leave the building after ordinary business hours, subject to appropriate verification. Each tenant shall be responsible for all persons for whom he requests such permission and shall be liable to the Landlord for all acts of such persons. Any person whose presence in the Building at any time shall, in the reasonable judgment of the Landlord, be prejudicial to the safety, character, reputation and interests of the Building or its tenants may be denied access to the Building or may be rejected therefrom. In case of invasion, riot, public excitement or other commotion the Landlord may prevent all access to the Building during the continuance of the same, by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building. The Landlord may require any person leaving the Building with any package or other object to exhibit a pass.

from the tenant from whose premises the package or object is being removed, but the establishment and enforcement of such requirement shall not impose any responsibility on the Landlord for the protection of any tenant against the removal of property from the premises of the tenant. The Landlord shall, in no way, be liable to any tenant for damages or loss arising from the admission, exclusion or ejection of any person to or from the tenant's premises or the Building under the provisions of this rule.

4 No tenant shall obtain or accept for use in its premises towel, barbering, boot blacking, floor polishing, lighting maintenance, cleaning or other similar services from any persons not authorized by the Landlord in writing to furnish such services, provided always that the charges for such services by persons authorized by the Landlord are comparable to the industry charge. Such services shall be furnished only at such hours, in such places within the tenant's premises and under such reasonable regulations as may be fixed by the Landlord.

5 No awnings or other projections over or around the windows shall be installed by any tenant, and only such window blinds as are supplied or permitted by the Landlord shall be used in a tenant's premises.

6 There shall not be used in any space, or in the public halls of the Building, either by the Tenant or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards.

7 All entrance doors in each tenant's premises shall be left locked when the tenant's premises are not in use. Entrance doors shall not be left open at any time. All windows in each tenant's premises shall be kept closed at all times and all blinds therein above the ground floor shall be lowered when and as reasonably required because of the position of the sun, during the operation of the Building air conditioning system to cool or ventilate the tenant's premises.

8 No noise, including the playing of any musical instruments, radio or television, which, in the judgment of the Landlord, might disturb other tenants in the Building shall be made or permitted by any tenant. Nothing shall be done or permitted in any tenant's premises, and nothing shall be brought into or kept in any tenant's premises, which would impair or interfere with any of the Building services or the proper and economic heating, cleaning or other servicing of the Building or the premises, or the use or enjoyment by any other tenant of any other premises, nor shall there be installed by any tenant any ventilating, air conditioning, electrical or other equipment of any kind which, in the judgment of the Landlord, might cause any such impairment or interference. No dangerous,

flammable, combustible or explosive object or material shall be brought into the Building by any tenant or with the permission of any tenant

9 Tenant shall not permit any cooking or food odors emanating within the Demised Premises to seep into other portions of the Building

10 No acids, vapor or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building which may damage them the water and wash closets and other plumbing fixtures in or serving any tenant's premises shall not be used for any purpose other than the purpose for which they were designed or constructed, and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same

11 No signs, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any tenant on any part of the outside or inside the premises or the Building without the prior written consent of the Landlord In the event of the violation of the foregoing by any tenant, Landlord may remove the same without any liability, and may charge the expense incurred by such removal to the tenant or tenants violating this rule Interior signs and lettering on doors and elevators shall be inscribed, painted, or affixed for each tenant by Landlord at the expense of such tenant, (the charge not to exceed that which a reputable outside contractor would charge), and shall be of a size, color and style reasonably acceptable to Landlord Landlord shall have the right to prohibit any advertising by any tenant which impairs the reputation of the building or its desirability as a building for offices, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising

12 No additional locks or belts of any kind shall be placed upon any of the doors or windows in any tenant's premises and no lock on any door therein shall be changed or altered in any respect Upon the termination of a tenant's lease, all keys of the tenant's premises and toilet rooms shall be delivered to the Landlord

13 No tenant shall mark, paint, drill into or in any way deface any part of the Building or the premises demised to such tenant No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, which will not be unreasonably withheld or delayed, and as Landlord may reasonably direct No tenant shall install any resilient tile or similar floor covering in the premises demised to such tenant except in a manner approved by Landlord

14 No tenant shall use or occupy, or permit any portion of the premises demised to such tenant to be used or occupied, as an office for a public stenographer or typist, or as a barber or manicure shop, or as an employment bureau. No tenant or occupant shall engage or pay any employees in the Building, except those actually working for such tenant or occupant in the Building, nor advertise for laborers giving an address at the Building.

15 No premises shall be used, or permitted to be used, at any time, as a store for the sale or display of goods, wares or merchandise of any kind, or as a restaurant, shop, booth, bootblack or other stand, or for the conduct of any business or occupation which predominantly involves direct patronage of the general public in the premises demised to such tenant, or for manufacturing or for other similar purposes.

16 The requirements of tenants will be attended only upon application at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of the regular duties, unless under special instructions from the office of the Landlord.

17 Each tenant shall, at its expense, provide artificial light in the premises demised to such tenant for Landlord's agents, contractors and employees while performing janitorial or other cleaning services and making repairs or alterations in said premises.

18 The tenant's employees shall not loiter around the hallways, stairways, elevators, front, roof or any other part of the Building used in common by the occupants thereof.

19 If the premises demised to any tenant become infested with vermin caused by the act or failure to act of the tenant, such tenant, at its sole cost and expense, shall cause its premises to be exterminated, from time to time, to the satisfaction of Landlord and shall employ such exterminators therefor as shall be approved by Landlord.



**SCHEDULE E**

**Cleaning Specifications**

**for**

**805 Third Avenue**

**Landlord will perform cleaning services in the Demised Premises and related areas as follows**

**NIGHTLY**

**Empty and wipe clean all ash trays**

**Empty and wipe clean all waste receptacles**

**Wipe clean all areas within hand high reach, including but not limited to window sills, wall ledgers, chairs, desks, tables, baseboards, file cabinets, convactor enclosures, pictures and all manner of office furniture**

**Wipe clean all glass top desks and tables**

**Sweep with treated cloths all composition tile flooring**

**Carpet sweep all carpeted areas, and vacuum clean weekly**

**PUBLIC LAVATORIES (Nightly or as otherwise designated)**

**Wash and dry all bowls, seats urinals, washbasins and mirrors**

**Wash and wipe dry all metal work**

**Supply and insert toilet tissue, toweling and soap in dispensers**

**Empty paper towel and sanitary napkin disposal receptacles and remove to designated area**

**Sweep and wash floors**

**Wipe clean all sills, partitions and ledges**

**Wipe clean exterior of waste cans and dispensing units**

**Wash both partitions monthly**

**Wash tile walls monthly**

**Wash and dry interior of waste cans and sanitary disposal containers weekly Machine scrub flooring monthly**

**Dust exterior of light fixtures monthly**

#### **FLOOR MAINTENANCE**

##### **A Public Corridors in Multi-Tenanted Floors only**

**Damp mop and buff all composition flooring monthly**

##### **B High Dusting Public Areas**

**High dust all walls, ledges, pictures, anemostats, registers, grilles, etc , not reached in normal nightly cleaning quarterly**

#### **WINDOW CLEANING SERVICES**

**Clean all exterior windows, inside and out periodically during the year, as Landlord deems necessary**

#### **RUBBISH REMOVAL SERVICES**

**Remove all ordinary dry rubbish and paper only from the office premises of the Demised Premises daily, Monday through Friday, holidays excepted**

## **SCHEDULE F**

### **Definitions**

(a) The term mortgage shall include an indenture of mortgage and deed of trust to a trustee to secure an issue of bonds, and the term mortgagee shall include such a trustee

(b) The terms include, including and such as shall each be construed as if followed by phrase "without being limited to"

(c) The term obligations of this lease, and words of like import, shall mean the covenants to pay rent and additional rent under this lease and all of the other covenants and conditions contained in this lease Any provision in this lease that one party or the other or both shall do or not do or shall cause or permit or not cause or permit a particular act, condition, or circumstance shall be deemed to mean that such party so covenants or both parties so covenant, as the case may be

(d) The term Tenant's obligations hereunder, and words of like import, and the term Landlord's obligations hereunder, and words of like import, shall mean the obligations of this lease which are to be performed or observed by Tenant, or by Landlord, as the case may be Reference to performance of either party's obligations under this lease shall be construed as "performance and observance"

(e) Reference to Tenant being or not being in default hereunder, or words of like import, shall mean that Tenant is in default, after any applicable notice and expiration of any applicable cure period, in the performance of one or more of Tenant's obligations hereunder, or that Tenant is not in default, after any applicable notice and expiration of any applicable cure period, in the performance of any of Tenant's obligations hereunder, or that a condition of the character described in Section 25 01 has occurred and continues or has not occurred or does not continue, as the case may be

(f) References to Landlord as having no liability to Tenant or being without liability to Tenant, shall mean, unless expressly provided to the contrary in the Lease, that Tenant is not entitled to terminate this lease, or to claim actual or constructive eviction, partial or total, or to receive any abatement or diminution of rent, or to be relieved in any manner of any of its other obligations hereunder, or to be compensated for loss or injury suffered or to enforce any other kind of

liability whatsoever against Landlord under or with respect to this lease or with respect to Tenant's use or occupancy of the Demised Premises

(g) The term laws and/or requirements of public authorities and words of like import shall mean laws and ordinances of any or all of the Federal, state, city, county and borough governments and rules, regulations, orders and/or directives of any or all departments, subdivisions, bureaus, agencies or offices thereof, or of any other governmental, public or quasi-public authorities, having jurisdiction in the premises, and/or the direction of any public officer pursuant to law

(h) The term requirements of insurance bodies and words of like import shall mean rules, regulations, orders and other requirements of the New York Board of Fire Underwriters and/or the New York Fire Insurance Rating Organization and/or any other similar body performing the same or similar functions and having jurisdiction or cognizance of the Building and/or the Demised Premises

(i) The term repair shall be deemed to include restoration and replacement as may be necessary to achieve and/or maintain good working order and condition

(j) Reference to termination of this lease includes expiration or earlier termination of the term of this lease or cancellation of this lease pursuant to any of provisions of this lease or to law. Upon a termination of this lease, the term and estate granted by this lease shall end at noon of the date of termination as if such date were the date of expiration of the term of this lease and neither party shall have any further obligation or liability to the other after such termination (i) except as shall be expressly provided for in this lease, or (ii) except for such obligation as by its nature or under the circumstances can only be, or by the provisions of this lease, may be, performed after such termination, and, in any event, unless expressly otherwise provided in this lease, any liability for a payment which shall have accrued to or with respect to any period ending at the time of termination shall survive the termination of this lease

(k) The term Tenant shall mean Tenant herein named or any assignee or other successor in interest (immediate or remote) of Tenant herein named, while such Tenant or such assignee or other successor in interest, as the case may be, is in possession of the Demised Premises as owner of the Tenant's estate and interest granted by this lease and also, if Tenant is not an individual or a corporation, all of the persons, firms and corporations then comprising Tenant

(l) Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender

(m) The rule of eiusdem generis shall not be applicable to limit a general statement following or referable to an enumeration of specific matters to matters similar to the matters specifically mentioned

## *Madison Third Building Companies, LLC*

*805 Third Avenue, New York NY 10022*

*Phone 212-688-5509*

*Fax 212-688-1977*

## **MEMORANDUM**

TO Craig Nottie  
FROM Paul Belec  
DATE July 8, 2004  
Re Allegience Telecom

Dear Craig

Allegience Telecom leased 19,475 rentable square feet. Allegience by default left their space unoccupied without any effort to follow existing rules and regulations in compliance with their lease. As a result, the building would follow standard operating procedures for cleaning up a space to the standards and conditions specified in the lease, (broom clean condition)

The following methods, services and rates would apply  
Calculation  $19,475 \text{ sq ft} / 90 \text{ sq ft (30 YD Container)} = 216$   
 $216 / 2 = 108, 30 \text{ YD Containers}$

Note We divide by 2 or half because the items are only half way to the ceiling. All the floor area is covered with items.

Calculation Standard work crew 3 handy/porters for 8 hrs a day, 5 days a week,  
3 weeks=360

Total estimate	(108) 30 yd Containers at a rate of \$1300 a container =	\$140,400
	(3) handyman/porters at a rate of \$80 hr X 360 hrs =	\$ 28,800
Grand Total		\$169,200

Note We would not consider using any of the items left. We have a Class A Building. Our marketing program does not include using left over items. We consider these items rubbish and a delay in removing these items causes us valuable prospective rental time and rent.

Paul Belec  
Building Manager

**FedEx** USA Airbill  
Express

FedEx  
Tracking  
Number

841202370119

Form  
ID No.

0200

1 From  
Date  
Sender's Name  
Company  
Address  
City  
State  
ZIP

LISA RUPPNER  
BMC CORP  
1330 E FRANKLIN AVE  
EL SEGUNDO, CA 90245

2 Your Internal Billing Reference

3 To  
Recipient's Name  
Company  
Address  
City  
State  
ZIP

LISA RUPPNER  
BMC Corp  
1330 E Franklin Ave  
El Segundo, CA 90245



4a Express Package Service

☐ FedEx Priority Overnight  
Next business morning  
☐ FedEx Standard Overnight  
Next business afternoon  
☐ FedEx Express Saver  
Third business day  
☐ FedEx 2Day  
Second business day  
FedEx Envelope rate not available Minimum charge One pound rate

Packages up to 150 lbs

Delivery commitment may be later in some areas.

☐ FedEx First Overnight  
Earliest next business morning  
delivery to select locations

4b Express Freight Service

☐ FedEx 1Day Freight\*  
Next business day  
☐ FedEx 2Day Freight  
Second business day  
☐ FedEx 3Day Freight  
Third business day

Packages over 150 lbs

Delivery commitment may be later in some areas.

5 Packaging

☐ FedEx Envelope\*  
☒ FedEx Pak\*  
Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak  
☐ Other

6 Special Handling

☐ SATURDAY Delivery  
Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes  
☐ HOLD Weekday  
at FedEx Location  
Not available for FedEx First Overnight  
☐ HOLD Saturday  
at FedEx Location  
Available only for FedEx Priority Overnight and FedEx 2Day to select locations  
Does this shipment contain dangerous goods?  
☒ No  
☐ Yes  
As per attached Shipper's Declaration  
☐ Yes  
Shipper's Declaration not required  
Dry Ice  
Dry Ice, UN 1845  
Cargo Aircraft Only

7 Payment Bill to

☒ Sender  
FedEx Account No. in Section 1 will be billed  
☐ Recipient  
☐ Third Party  
☐ Credit Card  
☐ Cash/Check

Total Packages  
Total Weight  
Total Declared Value  
Total Charges

8 Release Signature

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.  
Questions? Visit our Web site at [fedex.com](http://fedex.com)  
or call 1 800 Go FedEx 483-6266  
Rev Date 10/01 Part #151211 ©1999 FedEx PRINTED IN U.S.A. WCSL 03

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\* Also Admitted in Mass.

January 21, 2005

## BY MAIL

Allegiance Claims Docketing Center  
U.S. Bankruptcy Court, S.D.N.Y.  
One Bowling Green  
Room 534  
New York, NY 10004

Re: In re Allegiance Telecom  
Consolidated Case No. 03-13057  
Our File No. 11026

Dear Madam or Sir:

We have recently learned that two, identical proofs of claim (#2904 and #2942) have been inadvertently filed with the Court. Because it is our understanding that these proofs of claim are duplicates, we hereby withdraw proof of claim 2942.

We have been instructed by Jeff Anapolsky, Esq., attorney for the Allegiance Telecom Liquidating Trust, that we could resolve the duplicate claim by sending a letter to you.

If anything further is required, please do not hesitate to contact me.

Very truly yours,

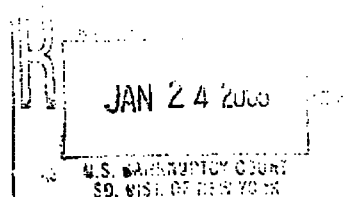
Craig M. Notte  
Craig M. Notte

CMN:cmn

cc: Jeff Anapolsky, Esq.

J:\1\_s\11026\allegiance claims ltr 1/21/05

2942



Docket # 2039 eod 1/25/05