

## **PARTIAL ASSIGNMENT OF LEASE AND ASSIGNMENT OF SUBLEASES**

PARTIAL ASSIGNMENT OF LEASE AND ASSIGNMENT OF SUBLEASES (this "Partial Assignment") made as of August 1, 2004, by and between **RCN TELECOM SERVICES, INC.**, a Pennsylvania corporation, having an office at 105 Carnegie Center, Princeton, New Jersey 08540 ("Assignor") and **ADVANCE MAGAZINE PUBLISHERS INC.**, a Delaware corporation, having an office at Four Times Square, New York, New York 10036 ("Assignee").

### **WITNESSETH:**

**WHEREAS**, by Lease dated as of May 9, 2000 (the "Master Lease"), Assignee did demise and lease to Assignor's predecessor in interest and Assignor's predecessor in interest did lease from Assignee the entire 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors and a portion of each of the ground floor and basement as more particularly described in the Master Lease (such space being hereinafter referred to as the "Original Premises"), in the building known as 825 Third Avenue, New York, New York (the "Building"), upon terms and at a rental more particularly set forth in the Master Lease;

**WHEREAS**, Assignor is the current tenant under the Master Lease;

**WHEREAS**, pursuant to the terms of an Agreement of Sublease entered into between Assignor and CDC IXIS Financial Guaranty Services, Inc. ("CDC") dated as of March 22, 2001 (the "CDC Sublease"), Assignor subleased a portion of the Original Premises to CDC (the "CDC Premises");

**WHEREAS**, pursuant to the terms of an Agreement of Sublease entered into between Assignor and Morgan Stanley D.W. Inc. ("Morgan") dated as of October 4, 2001 (the

“Morgan Sublease”), Assignor subleased a portion of the Original Premises to Morgan (the “Morgan Premises”);

**WHEREAS**, pursuant to the terms of an Agreement of Sublease entered into between Assignor and Joke Vision, LLC (“Joke Vision”) dated as of July 24, 2003 (the “Joke Vision Sublease”), Assignor subleased a portion of the Original Premises to Joke Vision (the “Joke Vision Premises”);

**WHEREAS**, Assignor desires to assign to Assignee (i) all of Assignor’s right, title, interest and obligations, as tenant under the Master Lease, with respect to the Morgan Premises, the CDC Premises and the Joke Vision Premises (collectively, the “Assigned Premises”) and (ii) all of Assignor’s right, title, interest and obligations as sublessor in, to and under each of the Morgan Sublease, the CDC Sublease and the Joke Vision Sublease (collectively, the “Assigned Subleases”) together with the security deposits, if any, held pursuant to the CDC Sublease and the Joke Vision Sublease (Assignor’s rights, title, interests and obligations described in clauses (i) and (ii) above are referred to, collectively, as the “Assigned Interests”), upon and subject to the terms and conditions set forth in this Partial Assignment;

**WHEREAS**, Assignee is willing to (i) accept such assignment of the Assigned Interests, and (ii) assume Assignor’s obligations under and with respect to the Assigned Interests accruing from and after the Adjustment Date (as hereinafter defined), upon and subject to the terms and conditions set forth in this Partial Assignment;

**WHEREAS**, the portion of the Original Premises which does not comprise any portion of the Assigned Premises is hereinafter referred to as the “Retained Premises” and is shown on the plans annexed hereto as Exhibit A;

**WHEREAS**, Assignor desires to remain in possession of the Retained Premises for a limited period of time and Assignee is willing to allow Assignor to remain in possession of the Retained Premises for a limited period of time on the terms set forth herein;

**WHEREAS**, Assignor will realize significant benefits under this Partial Assignment, including, without limitation, the opportunity of being relieved of at least \$60 million of contingent liabilities under the Master Lease;

**WHEREAS**, RCN Corporation ("Guarantor"), the guarantor of Assignor's obligations under the Master Lease under a guaranty (the "Guaranty"), is a Debtor in a case pending under Chapter 11, title 11 of the United States Code, 11 U.S.C. §101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), Case No. 04-13638 (RDD) (the "Chapter 11 Case");

**WHEREAS**, Assignor has filed a claim against Guarantor, in Guarantor's Chapter 11 Case, based upon Guarantor's obligations under the Guaranty;

**WHEREAS**, Assignee requires, and Guarantor agrees, that Guarantor (a) consents to this Partial Assignment, and agrees that its Guaranty shall apply to all of Assignor's obligations under this Partial Assignment and its continuing obligations under the Master Lease from and after the Adjustment Date; and (b) shall promptly seek approval of this Partial Assignment from the Bankruptcy Court pursuant to a motion and order in substantially the form attached hereto as Exhibit D; and

**WHEREAS**, the Recitals set forth above are an integral part of this Agreement as if set forth in full in the body hereof.

**NOW THEREFORE**, in consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration paid by each party to the other, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree, effective upon the Effective Date (as hereinafter defined), as follows:

1. Assignor hereby assigns, transfers and conveys to Assignee without representation or warranty other than as expressly set forth herein, all of the Assigned Interests, to have and to hold the same unto Assignee, its successors and assigns, from and after August 1, 2004 (the "Adjustment Date"). Assignor will transfer the CDC security deposit to Assignee on the Effective Date but as of the Adjustment Date. The parties acknowledge that the Joke Vision security deposit has previously been assigned to Assignee.

2. A. Assignee hereby accepts the foregoing assignment, assumes Assignor's obligations under and with respect to the Assigned Interests accruing from and after the Adjustment Date and agrees to perform Assignor's obligations, as tenant under the Master Lease, with respect to the Assigned Premises and as sublessor under each of the Assigned Subleases, in each case arising from and after the Adjustment Date, and, except as otherwise set forth in this Partial Assignment, (i) Assignor hereby releases Assignee and its successors and assigns from any and all liabilities and obligations arising from or relating to the Assigned Interests which accrue from and after the Adjustment Date; and (ii) upon the occurrence of the Assignor Release Date (as hereinafter defined), Assignee hereby releases Assignor and its successors and assigns from any and all liabilities and obligations arising from or relating to the Assigned Interests which accrue from and after the Adjustment Date, except that nothing herein contained shall be deemed to constitute a release by Assignee of any obligation or liability of Assignor (a) accrued or incurred under the Assigned Interests and outstanding and unsatisfied on

the Adjustment Date (including, without limitation, any deficiency in Assignor's payment of Additional Rent under Article 2 of the Master Lease), (b) to a third party (under the insurance and indemnification provisions of the Master Lease, the Assigned Subleases or otherwise) arising prior to, on or after Adjustment Date as a result of an event occurring or condition existing prior to or on the Adjustment Date, or (c) resulting from a breach of any of Assignor's representations and warranties pursuant to Paragraph 8 below.

B. OMITTED

C. The Master Lease is hereby modified with respect to the Retained Premises only, to provide that Assignor shall have the right to continue in possession of the Retained Premises on all of the terms and provisions set forth in the Master Lease except that Assignor shall not be obligated to pay Fixed Rent in respect of the Retained Premises (but shall continue to be obligated to pay all components of Additional Rent, including, without limitation, Tax Payments and Operating Payments) after the Adjustment Date, unless Assignor shall remain in possession of the Retained Premises after December 31, 2004, in which event, Assignor shall pay Fixed Rent and Additional Rent, including, without limitation, Tax Payments and Operating Payments (appropriately prorated and apportioned so as to relate only to the Retained Premises after the Adjustment Date), solely in respect of the Retained Premises for the period from and after January 1, 2005 through and including the Retained Premises Termination Date (as hereinafter defined) calculated at the rate per rentable square foot which would then be in effect under the Master Lease with respect to the Retained Premises.

D. Notwithstanding the provisions of Paragraph 2C above, Assignor and Assignee shall each have the right to terminate Assignor's occupancy of the Retained Space as of any date on or after December 31, 2004, on not less than ninety (90) days' prior written

notice (the "Termination Notice") given to the non-terminating party. In the event that Assignor or Assignee, as applicable, gives a Termination Notice to the other, Assignor's right to occupy the Retained Premises shall terminate as of the 90<sup>th</sup> day (the "Retained Premises Termination Date") immediately following the date of the giving of the Termination Notice as if the Retained Premises Termination Date were the Expiration Date, and Assignor shall surrender possession of the Retained Premises to Assignee in the condition required by the Master Lease. If Assignor fails to surrender possession of the Retained Premises on the Retained Premises Termination Date, such failure shall be deemed to be a holding over in the Retained Premises within the meaning of Section 6.10 of the Master Lease and from and after the Retained Premises Termination Date, Tenant will pay as a holdover rental with respect to the Retained Premises the amount calculated in accordance with the provisions of Section 6.10 of the Master Lease, it being understood and agreed that all the provisions of said Section 6.10 are incorporated herein by reference with respect to any such holding over, proportionately reduced to reflect that only the Retained Premises are involved. Effective as of the Retained Premises Termination Date and delivery of possession of the Retained Premises to Landlord, the Retained Premises shall, subject to Paragraph 2E below, automatically become Assigned Premises without further action of the parties.

E. Notwithstanding anything to the contrary set forth herein or otherwise, Tenant shall have the right, following the Retained Premises Termination Date, to retain possession of the space shown hatched on Exhibit C annexed hereto (the "Second Retained Premises"). Until the Retained Premises Termination Date, the Retained Premises shall be inclusive of the Second Retained Premises. Such retention of the Second Retained Premises shall be subject to all the terms, covenants and conditions of the Master Lease except that (i) the

rent for the Second Retained Premises shall be \$6,000 per annum, payable in equal monthly installments of \$500, (ii) there shall be no Tax Payments or Operating Payments payable with respect to the Second Retained Premises, (iii) the term of the Master Lease for the Second Retained Premises shall expire on the fifth (5<sup>th</sup>) anniversary of the Retained Premises Termination Date and (iv) Assignor shall have the option to extend the term of the Master Lease for the Second Retained Premises for an additional five (5) years on the same terms and conditions provided it gives notice of extension to Assignee not later than the four (4) year six (6) month anniversary of the Retained Premises Termination Date (time is of the essence of the giving of such notice). Assignee shall have the right, one time during the term of the Master Lease, upon sixty (60) days notice to Assignor, to substitute for the Second Retained Premises any other comparably sized portion of the floor on which the Second Retained Premises is located and reasonably usable for its intended purposes (the "Substituted Space"). Such notice shall specify and designate the Substituted Space. Notwithstanding such substitution of space, the Master Lease and all the terms, provisions covenants and conditions contained in the Master Lease (except as modified hereby) shall remain and continue in full force and effect, except that from and after such substitution, the Substituted Space shall be deemed to be the Second Retained Premises. On or before the expiration of the sixty (60) day period following notice to Assignor of such substitution, Assignor shall, at its sole cost and expense, move all of its equipment to the Substituted Space and vacate the Second Retained Space, leaving it broom clean and in the condition required by the Master Lease. Upon failure of Assignor to so move, Assignee may, as Assignor's agent and at Assignor's expense, remove Assignor from the Second Retained Premises to the Substituted Space. Failure of Assignor to vacate the Second Retained

Premises and move to the Substituted Space as provided herein shall be deemed a substantial breach of the Master Lease.

F. The provisions of this Paragraph 2 shall survive the Effective Date and delivery of possession of the Assigned Premises to Assignee.

3. Except as otherwise expressly set forth herein, Assignor's indemnification obligations set forth in Section 6.12 of the Master Lease as they relate to the Assigned Interests shall survive with respect to any claims which accrue prior to the Adjustment Date. The provisions of this Paragraph 3 shall survive the Effective Date and delivery of possession of the Assigned Premises to Assignee.

4. A. The shareholders, partners, members, managers, directors and officers of Assignee (collectively, the "Assignee Parties") shall not be liable for the performance of Assignee's obligations under this Partial Assignment. Assignor shall look solely to Assignee to enforce Assignee's obligations hereunder and shall not seek any damages against any of the Assignee Parties. The liability of Assignee for Assignee's obligations under this Partial Assignment shall not exceed and shall be limited to the value of Assignee's leasehold interest in the Building (including the rents and proceeds therefrom) and Assignor shall not look to the property or assets of any of the Assignee Parties or any other assets of Assignee in seeking either to enforce Assignee's obligations under this Partial Assignment or to satisfy a judgment for Assignee's failure to perform such obligations.

B. Except as otherwise set forth herein with respect to the Guarantor, (a) the shareholders, partners, members, managers, directors and officers of Assignor (collectively the "Assignor Parties") shall not be liable for the performance of Assignor's obligations under this Partial Assignment, (b) Assignee shall look solely to Assignor to enforce



Assignor's obligations hereunder and shall not seek any damages against any of the Assignor Parties; and (c) Assignee shall not look to the property or assets of any of the Assignor Parties in seeking either to enforce Assignor's obligations under this Partial Assignment or to satisfy a judgment for Assignor's failure to perform such obligations. Assignee may, however, look to Assignor and Guarantor, and to all property and assets of Assignor and Guarantor, in connection with any action brought by Assignee against Assignor and/or Guarantor relating to the Master Lease.

5. Assignor hereby acknowledges and agrees that Assignee's agreement to (i) release Assignor from liabilities relating to the Assigned Interests, as set forth in Paragraph 2A above; and (ii) allow Assignor to remain in possession of the Retained Premises without further payment of Fixed Rent from the Adjustment Date to and including December 31, 2004, is of great value to Assignor, and in consideration of the agreements of Assignee herein set forth, Assignor hereby agrees that: (a) notwithstanding any contrary provision in the Master Lease, from and after the Effective Date, Assignee shall be entitled to retain as Assignee's sole property (and not as security under the Master Lease) and immediately, or at any time thereafter, present for payment, the letter of credit previously delivered by Assignor to Assignee as security for the performance of Assignor's obligations under the Master Lease (the "L/C Consideration"), and (b) Assignor shall pay to Assignee, on the Effective Date, by certified check, the sum of \$179,013 plus or minus any adjustment due to or from Assignee pursuant to Paragraph 11 hereof.

6. It is the intention of the parties hereto that the estates acquired hereunder by Assignee shall not merge with, or into, the fee interest or any other estate, whether lesser or greater, in the Assigned Premises now held or hereafter acquired by Assignee, its successors and

assigns, nor shall said estates be deemed surrendered on account of this Partial Assignment, and the estates acquired hereunder by Assignee shall be and remain separate and independent leasehold estates in the Assigned Premises until the date (the "Merger Date") Morgan, CDC and Joke Vision vacate and surrender possession of the Assigned Premises in accordance with the terms of the Assigned Subleases, as they may be amended from time to time. On the Merger Date, it is the intention of the parties hereto that the estates acquired hereunder by Assignee shall merge with and into the leasehold interest in the Building now held by Assignee and said estates shall be deemed surrendered on account of this Partial Assignment. Subject to the foregoing, from and after the Adjustment Date, the terms of the Master Lease shall continue to apply to each of the respective leasehold estates of Assignee hereunder in the Assigned Premises, and to Assignor with respect to the Retained Premises, as if such respective estates were the exclusive estates governed thereby.

7. OMITTED

8. Assignor hereby represents and warrants to Assignee that it has not, at any time, pledged, hypothecated, assigned or encumbered (a) the Master Lease or sublet the Assigned Premises (other than pursuant to the Assigned Subleases) or in any other manner encumbered or demised the Assigned Premises or (b) the Assigned Subleases. Assignor hereby further represents and warrants to Assignee that (i) attached hereto as Exhibit B are true and complete copies of the Assigned Subleases, (ii) to Assignor's knowledge, none of Morgan, CDC or Joke Vision is in default of any of the terms, covenants or conditions of the Morgan, CDC or Joke Vision Sublease, as applicable, to be observed or performed by Morgan, CDC or Joke Vision, as applicable, and no condition exists which, with the giving of notice or lapse of time or both, would constitute such a default, (iii) to Assignor's knowledge, Assignor is not in default of

any of the terms, covenants or conditions of any of the Assigned Subleases to be observed or performed by Assignor, (iv) Assignor is currently holding \$150,000 in cash as security under the CDC Sublease and no drawings have been made against the CDC security deposit, (v) all brokerage commissions and fees due in connection with the Assigned Subleases have been paid in full, (vi) there is no security deposit under the Morgan Sublease, and (vii) the Morgan Sublease expires on October 27, 2006, the CDC Sublease expires on March 21, 2006 and the Joke Vision Sublease expires on April 3, 2005. Assignor and Assignee further represent and warrant to each other that the Master Lease is in full force and effect and that to the best of each party's knowledge there are no defaults existing under the Master Lease and there exist no valid abatements, causes of action, counterclaims, disputes, defenses, offsets, credits, deductions or claims against the enforcement of any of the terms and conditions of the Master Lease. Assignor and Assignee further warrant and represent to each other that this Partial Assignment has been duly authorized, executed and delivered by each of them and constitutes the legal, valid and binding obligation of each of them, enforceable in accordance with its terms.

9. As of the Adjustment Date, the Assigned Premises shall be deemed delivered to and accepted by Assignee in their "as is" condition, and Assignor shall have no obligation to perform any work to prepare the Assigned Premises for Assignee. As of the Adjustment Date, Assignor shall be deemed to have abandoned and relinquished all of Assignor's right, title and interest with respect to all property owned by Assignor and remaining in the Assigned Premises. Notwithstanding the foregoing, Assignor may retain, as its sole property, the furniture, fixtures and equipment located in the third floor lobby of the Assigned Premises and shall also have the right to remove from the Assigned Premises its office equipment, computers, phone systems and televisions. Assignor shall repair any damage caused

by such removal. All such property retained by Assignor is presently located in the Retained Premises and shall be removed therefrom prior to the Retained Premises Termination Date. All work stations, aeron chairs (except Assignee may retain 75 of the aeron chairs) and security systems (the "Surrendered Property") shall be left in the Retained Premises and shall become the property of Assignee as of the Retained Premises Termination Date. Assignor represents and warrants that it owns all of the Surrendered Property free and clear of any liens, claims or other encumbrances. Assignee acknowledges that Assignor has made no other representations, warranties or promises with respect to the Assigned Premises or the Master Lease or the Surrendered Property except as expressly set forth herein. The provisions of this Paragraph 9 shall survive the Effective Date.

10. Assignor and Assignee each represents and warrants to the other that it has not dealt with any broker in connection with this Partial Assignment other than CB Richard Ellis, Inc. ("CBRE"). Assignee shall indemnify Assignor for, and hold Assignor harmless from and against, any and all claims for commission, fee or other compensation by any broker, finder or like person, including, without limitation, CBRE who shall claim to have dealt with Assignee in connection with this Partial Assignment and for any and all costs incurred by Assignor in connection with such claims, including, without limitation, reasonable attorneys' fees and disbursements. Assignor shall indemnify Assignee for, and hold Assignee harmless from and against, any and all claims for commission, fee or other compensation by any broker (other than CBRE), finder or like person who shall claim to have dealt with Assignor in connection with this Partial Assignment and for any and all costs incurred by Assignee in connection with such claims, including, without limitation, reasonable attorneys' fees and disbursements. The provisions of this Paragraph 10 shall survive the Effective Date.

11. Pending the Effective Date, notwithstanding any contrary provision of this Partial Assignment, Assignor shall continue to pay to Assignee all amounts due under the Master Lease in accordance with its terms. On the Effective Date, Assignor and Assignee shall apportion, as of the Adjustment Date, (i) the Fixed Rent and Additional Rent under the Master Lease payable with respect to the Assigned Premises (the "Rent") (ii) the fixed rent and additional rent charges payable under the Assigned Subleases (collectively, "Sublease Rent"); and (c) the Fixed Rent under the Master Lease payable with respect to the Retained Premises (the "Retained Premises Rent") to the extent that Assignor shall have paid, after the Adjustment Date, Retained Premises Rent in excess of amounts required under this Partial Assignment. The net amount of the apportionments described in the foregoing sentence shall be paid to Assignor or Assignee, as the case may be, on the Effective Date. The parties' obligation to adjust for Rent, Sublease Rent and Retained Premises Rent apportioned as of the Adjustment Date shall survive the Effective Date.

12. The "Assignor Release Date" shall occur on the ninety-first (91<sup>st</sup>) day following the Effective Date (the "Ninety-First Day"); provided, however, that in the event that a voluntary or involuntary petition commencing a case under the Bankruptcy Code or some other or similar state law affecting debtor/creditor rights shall have been filed by or against Assignor (an "Assignor Bankruptcy Case") on or before the Ninety-First Day, the Assignor Release Date shall not occur. During the period commencing on the Effective Date through the earlier of (i) the Assignor Release Date and (ii) the commencement of an Assignor Bankruptcy Case, Assignee shall forbear from seeking to recover from Assignor, and its successors and assigns, any and all liabilities and obligations relating to the Assigned Interests which accrue from and after the Adjustment Date.

13. Assignor agrees to pay within ten (10) business days after demand Assignee's reasonable attorneys' fees and expenses incurred in connection with this Partial Assignment not to exceed \$60,000.

14. This Partial Assignment shall be (i) binding upon the parties hereto and their successors and assigns and (ii) governed by the laws of the State of New York.

15. Any notice, demand or other communication which either party may give to the other hereunder shall be in writing and delivered personally against a signed receipt therefor or be sent by reputable overnight courier against a signed receipt addressed as follows:

If to Assignor:

RCN Telecom Services, Inc.  
105 Carnegie Center  
Princeton, New Jersey 08540-6215  
Attention: James Herring

with copies to:

Kramer, Levin, Naftalis & Frankel LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Larry Loeb, Esq.

and

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036  
Attention: Jay Goffman, Esq.

If to Assignee:

Advance Magazine Publishers, Inc.  
Four Times Square  
New York, New York 10036  
Attention: Robert Bennis

with a copy to:

Sabin, Bermant & Gould  
Four Times Square  
New York, New York 10036  
Attention: Andrew M. Levine, Esq.

16. In the event Assignor or Assignee is in default under the terms of this Partial Assignment (such party in default being the "Defaulting Party" and the party not in default hereunder being the "Non-Defaulting Party"), the Non-Defaulting Party shall be entitled to recover from the Defaulting Party, and the Defaulting Party shall pay to the Non-Defaulting Party, an amount equal to all reasonable costs and expenses (including all court costs and reasonable attorneys' fees and disbursements), incurred by the Non-Defaulting Party in enforcing its rights and remedies under this Partial Assignment, at law or in equity. In addition, in the event that any action is commenced against Assignee to avoid, or declare unenforceable, this Partial Assignment, or to seek to recover all or any portion of the consideration paid to Assignee hereunder, whether such action shall arise under the Bankruptcy Code or otherwise (an "Avoidance Action"), Assignee shall be entitled to recover from Assignor, and Assignor shall pay to Assignee, an amount equal to all reasonable costs and expenses (including all court costs and reasonable attorneys' fees and disbursements) incurred by Assignee in defending such Avoidance Action.

17. This Partial Assignment may be signed in counterparts which, taken together, shall constitute one and the same original instrument.

18. This Partial Agreement shall be binding upon Assignor, Assignee and Guarantor, and their successors and assigns (including, without limitation, any trustee appointed in Guarantor's Chapter 11 Case or in any proceeding or other case under the Bankruptcy Code).

19. This Partial Assignment shall become effective upon the date on which it shall have been approved by the Bankruptcy Court, by Final Order (as hereinafter defined) (the "Effective Date"). "Final Order" shall mean an order, judgment or other decree entered by the Bankruptcy Court which has not been reversed, vacated, stayed, modified or amended, and as to which (i) the time to appeal or petition for review, rehearing, certiorari, reargument or retrial (collectively, "Appeal") has expired, and no Appeal is pending; or (ii) any Appeal has been finally decided or dismissed and no further Appeal can be taken or granted. If the Effective Date shall not have occurred by November 15, 2004 (or such later date as may be agreed to by the parties), then this Partial Assignment shall be null and void and of no force or effect.

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IN WITNESS WHEREOF, this Partial Assignment has been executed and delivered by Assignor to Assignee and Landlord as of the day and year first above written.

**RCN TELECOM SERVICES, INC.**

By: 

Name: JOHN S. DUBEL

Title: Executive Vice President and  
Chief Restructuring Officer

**ADVANCE MAGAZINE PUBLISHERS INC.**

By: 

Name: ROBERT BENN

Title: EXEC. DIR.

The undersigned, Guarantor of the obligations of Assignor under the Master Lease, hereby (a) consents to the within Agreement and agrees that its Guaranty shall apply to all of the obligations of Assignor hereunder, including, without limitation, Assignor's obligation to (i) make the payment set forth in Paragraph 5 above, (ii) continue to pay Fixed Rent and Additional Rent for the Retained Premises and the Second Retained Premises, and (iii) indemnify Assignee pursuant to Paragraph 3 above; (b) acknowledges, adopts and agrees to be bound by the factual recitations and Assignor's representations herein; and (c) agrees to promptly seek approval of this Agreement from the Bankruptcy Court in Guarantor's Chapter 11 Case pursuant to a motion and order in substantially the form attached hereto as Exhibit D.

**RCN CORPORATION**

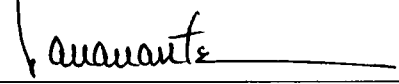
By: 

Name: JOHN S. DUBEL

Title: Executive Vice President and  
Chief Restructuring Officer


JERSEY  
STATE OF NEW ~~YORK~~ )  
MERCER ) ss:  
COUNTY OF ~~NEW YORK~~ )

On the 22nd day of September in the year 2004, before me, the undersigned, personally appeared John S. Dubel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ capacity(~~s~~), and that by his/~~her/their~~ signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
~~NOTARY PUBLIC~~  
PHILIP J. PASSANANTE  
An Attorney at Law of the State of New Jersey


JERSEY  
STATE OF NEW ~~YORK~~ )  
MERCER ) ss:  
COUNTY OF NEW ~~YORK~~ )

On the 22nd day of September in the year 2004, before me, the undersigned, personally appeared John S. Dubel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ capacity(~~s~~), and that by his/~~her/their~~ signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

  
~~NOTARY PUBLIC~~  
PHILIP J. PASSANANTE  
An Attorney at Law of the State of New Jersey

[illegible]

On the 24<sup>th</sup> day of September in the year 2004, before me, the undersigned, personally appeared Robert Bennis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

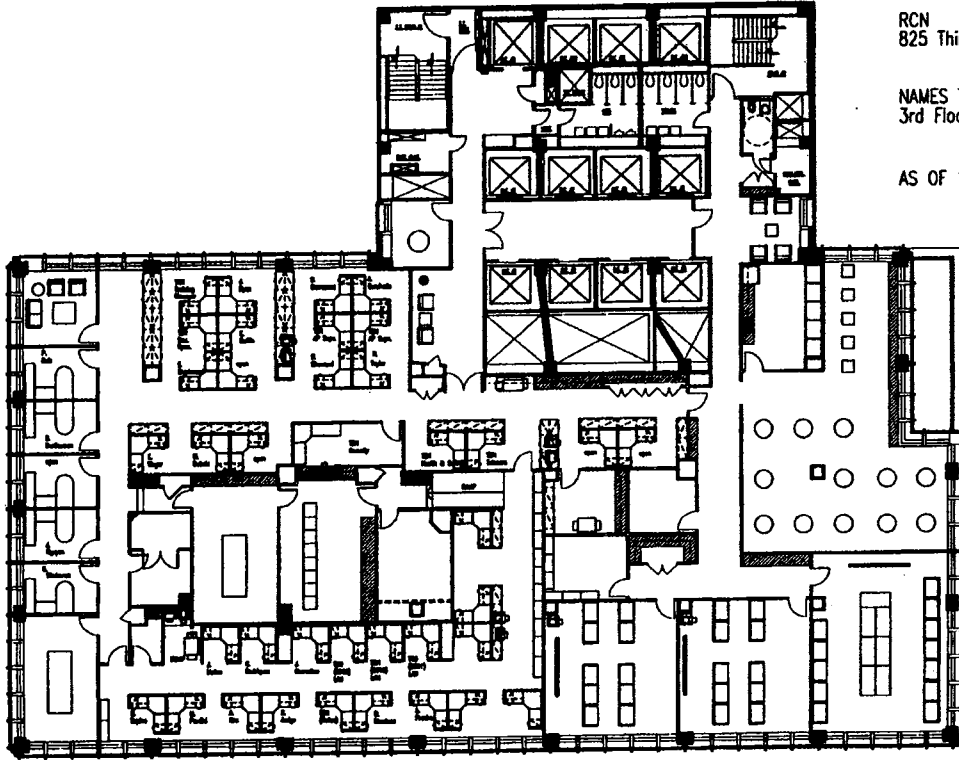
  
NOTARY PUBLIC

**KATHLEEN A. DRESSEL**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires 11/6/2007**

**EXHIBIT A**  
**RETAINED PREMISES FLOOR PLAN**

EAST 51st STREET

THIRD AVENUE



RCN  
825 Third Avenue

NAMES TO DESKS  
3rd Floor

AS OF 11/20/00

EAST 50th STREET

**EXHIBIT B**  
**ASSIGNED SUBLEASES**

### AGREEMENT OF SUBLEASE

**AGREEMENT OF SUBLEASE** made as of the 22nd day of March, 2001, between **RCN TELECOM SERVICES, INC.**, a Pennsylvania corporation, having an address at 105 Carnegie Center, Princeton, New Jersey 08540-6215 ("Landlord"), and **CDC IXIS FINANCIAL GUARANTY SERVICES, INC.**, a Delaware corporation having an office at 825 Third Avenue, New York, New York 10022 ("Tenant").

### WITNESSETH:

WHEREAS, pursuant to a certain Lease dated as of May 9, 2000 (the "Lease") between Advance Magazine Publishers Inc., as lessor ("Prime Lessor"), and RCN Telecom Services of New York, Inc., Landlord's predecessor-in-interest, as lessee, a copy of which Lease is annexed hereto as Exhibit A, which Landlord represents is a true, correct and complete copy thereof (except for certain redacted financial information) and which Tenant acknowledges having received and reviewed prior to the execution of this sublease, Landlord does presently lease and hire certain premises (the "Lease Premises") in the building (the "Building") known as 825 Third Avenue, New York, New York, for the term, at the rentals and upon the other terms, covenants and conditions more fully described in the Lease; and

WHEREAS, Tenant desires to sublet and hire from Landlord a portion of the Lease Premises consisting of the entire rentable portion of the sixth (6th) floor of the Building (the "Premises") and Landlord is willing to sublet the Premises to Tenant at the rental and additional rental and on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto hereby covenant and agree as follows:

1. Grant of Sublease. (a) Landlord hereby subleases to Tenant and Tenant hereby hires from Landlord the Premises, for a term to commence on the date (the "Commencement Date") that is the earlier to occur of the date that: (i) is five (5) days following the date on which a fully executed counterpart of this sublease is delivered to Tenant or its counsel and Prime Lessor has issued its Consent (as hereinafter defined); or (ii) Tenant takes possession of the Premises or any part thereof, and to expire on the day (the "Expiration Date") that is the day prior to the fifth (5th) anniversary of the Commencement Date, both dates inclusive, unless such term is sooner terminated pursuant to the provisions hereof.

(b) Tenant hereby acknowledges, confirms, covenants and agrees that Tenant does not have any right, option or privilege, pursuant to this sublease or otherwise, to hire, let or sublet from Landlord (i) any portion of the Lease Premises other than the Premises, and only for the term hereinabove set forth in this Article 1 and upon all of the other terms and conditions set forth in this sublease, or (ii) any other space which Landlord may from time to time hire from Prime Lessor, any other lessor, sublessor or otherwise.

(c) Landlord hereby represents that it has not received any notices of default from Prime Lessor, and, to the best of its knowledge, the Lease is in full force and effect, and that no consent hereof other than Prime Lessor's is required.

2. Base Rent. (a) Tenant shall pay rent at an annual rental rate (herein sometimes referred to as the "Base Rent") of \$1,105,896 per annum commencing one (1)

months after the Commencement Date and continuing through and including the Expiration Date, in equal monthly installments of \$92,158 in advance on the first day of each month during said term. Tenant agrees to pay the Base Rent to Landlord as provided in this paragraph (a) of Article 2 at the office of Landlord above stated or at such other place or to such other person or party as Landlord may designate in writing, without notice or demand and without any abatement, set-off or reduction whatsoever except as otherwise expressly provided herein. The first installment of Base Rent shall be paid on the execution by Tenant hereof.

3. Immediately after request by Landlord, Tenant shall execute and deliver to Landlord a certificate confirming the Commencement Date. In no event shall Landlord's failure to request any such certificate or Tenant's failure or refusal to execute any such certificate in any way affect this sublease, the term hereof or any of Tenant's obligations hereunder including, without limitation, Tenant's obligation to pay the rent herein reserved and to perform all of the other covenants and agreements herein set forth.

(a) If the Commencement Date is not the first day of a calendar month, an installment of Base Rent shall be due on the Commencement Date prorated to the end of the calendar month next following the month in which the Commencement Date occurred, so that subsequent monthly installments of Base Rent will be due on the first day of the second calendar month following the month in which the Commencement Date occurred and on the first day of each subsequent calendar month throughout the term of this sublease. The installment of Base Rent paid upon execution of this sublease shall be applied in payment of the first installment of Base Rent due hereunder or, if the first installment of Base Rent is for a period in excess of one month, in partial payment of the first installment of Base Rent due hereunder.

4. Additional Rent, Late Charges, etc. (a) In addition to the Base Rent, Tenant covenants and agrees to pay to Landlord, as additional rent an amount equal to all charges and payments, other than Fixed Rent (as defined in the Lease), at any time due in respect of the Premises under the Lease or otherwise.

(b) Tenant shall pay Landlord, as additional rent, amounts equal to: (i) 11.11% of the Operating Payments; (ii) 11.02% of Tax Payments, in each case payable by Landlord as lessee under the Lease. In the event that the size of the Lease Premises increases or decreases because Landlord leases additional space from, or surrenders a portion of the Lease Premises to Prime Lessor, then the aforesaid percentages shall be equitably adjusted.

(c) All additional rent shall be paid within ten (10) days following the date upon which a request or demand therefor is made.

(d) Any installment of Base Rent, additional rent or other charges not paid within three (3) days after it is due and payable shall bear interest from the date it becomes due until it is paid at an annual rate equal to three (3%) percent over the prime lending rate then being charged by The Chase Manhattan Bank, but not in excess of the highest rate permitted by law, and such amount(s) shall be deemed to be additional rent hereunder. Nothing contained in this paragraph is intended to grant Tenant any extension of time in respect of the due dates for any payments under this sublease, nor shall same be construed to be a limitation of or a substitution for any other rights, remedies and privileges of Landlord under this sublease or otherwise.



(e) Tenant's obligation to pay Base Rent, additional rent and any other charges hereunder shall survive the expiration or sooner termination of this sublease. Any charges payable in addition to the Base Rent and/or additional rent specified above shall be deemed additional rent hereunder.

(f) The Base Rent and additional rent payable hereunder shall abate to the extent that Fixed Rent and additional rent payable under the Lease with respect to the Premises abates.

5. Use. The Premises shall be used for general and executive offices by Tenant or any permitted assignee or subtenant of Tenant and for no other purpose.

6. Subordination. (a) This sublease is subject and subordinate to the Lease, all ground and underlying leases and to all mortgages which may now or hereafter affect such leases, the Premises or the property of which the Premises are a part, and to all modifications, extensions, consolidations, replacements, or amendments of any such leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the property of which the Premises are a part. However, in confirmation of such subordination, Tenant shall promptly execute any certificate that Landlord may request and Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such certificate or instrument for or on behalf of Tenant.

(b) In the event of termination, reentry or dispossession by Prime Lessor under the Lease, Prime Lessor may, at its option, take over all of the right, title and interest of Landlord under this sublease, and Tenant shall, at Prime Lessor's option, attorn to Prime Lessor pursuant to the then executory provisions of this sublease, except that Prime Lessor shall not be liable for, subject to or bound by any item of the type that a Successor Landlord (as defined in the Lease) is not so liable for, subject to or bound by in the case of attornment by Landlord to a Successor Landlord under Section 6.01(a) of the Lease.

7. Lease Performance. (a) Tenant hereby assumes performance of and agrees to perform all of the terms, obligations, covenants and conditions on the part of Landlord, as lessee, to be kept, observed and performed under the Lease during the term of this sublease, in respect of the Premises (and areas ancillary thereto), except that Tenant shall not be obligated to pay to Prime Lessor the Fixed Rent, the Tax Payment or Operating Payments, or payments on account of electricity, and Tenant agrees to indemnify and hold Landlord harmless from and against all liabilities, claims, costs and expenses (including reasonable attorneys' fees) relating to or arising out of Tenant's performance of (or failure to perform) all of such terms, obligations, covenants and conditions. Tenant hereby waives each and every right waived by Landlord, as lessee, under the Lease. In addition to the foregoing and except as otherwise herein expressly set forth, Tenant covenants and agrees that Tenant will keep, observe and perform any act, obligation, condition or covenant to be kept, observed and performed by Landlord, as lessee under the Lease, within a time period which (i) in the event the time period set forth in the Lease to do the same is less than or equal to fifteen (15) days, then within a time period which is three (3) days' shorter than the time period set forth in the Lease, and (ii) otherwise, within a time period which is ten (10) days' shorter than the time period set forth in the Lease for Landlord, as lessee thereunder, to perform, keep and observe such act, obligation, condition or covenant; provided, however, that in no event shall Tenant permit a default to occur under the Lease.

(b) It is expressly noted, acknowledged and confirmed by Tenant that a breach, default or failure to observe, perform or otherwise comply with all or any of the obligations, covenants, conditions, rules and regulations in this sublease or the Lease on Tenant's part to be observed, performed or complied with shall be and be deemed to be a violation by Tenant of a substantial obligation of the tenancy created by this sublease entitling Landlord to pursue any and all rights, remedies and privileges provided under this sublease and the Lease or at law, in equity, or otherwise, including, without limitation, the right to terminate said tenancy and recover possession of the Premises.

(c) If there is any inconsistency between the provisions of the Lease and the express provisions of this sublease, the provisions of this sublease shall govern unless the provisions of this sublease (i) could, if implemented, create a default under the Lease or (ii) give or create in Tenant a right not permitted under the Lease, in which case the provisions of the Lease shall control.

8. Services. (a) Tenant shall be entitled to receive with respect to the Premises the services, including, without limitation, cleaning services, repairs and utilities, to be supplied under the Lease by Prime Lessor. The foregoing notwithstanding, Landlord shall have no obligation to supply any such services, repairs and utilities, and Tenant shall not look to Landlord to provide same. Landlord shall, at no expense to Landlord, reasonably cooperate with Tenant to obtain additional services and any required consents from Prime Lessor. If Prime Lessor fails or refuses to comply with any of the provisions of the Lease insofar as they affect Tenant's occupancy of the Premises during the term hereof, Landlord, upon request of Tenant, shall exercise reasonable efforts (without thereby being required to commence any action or proceeding, expend any monies or incur any expenses) to cause Prime Lessor to so comply. However, Landlord shall not be liable to Tenant, and Tenant's obligations hereunder shall not be impaired nor the performance thereof be excused, because of any failure or delay by Prime Lessor in performing its obligations under the Lease (or because of Landlord in any way failing to enforce such obligations) as affecting Tenant's occupancy of the Premises unless due to an act or omission of Landlord in breach of this sublease or the Lease. If Prime Lessor so defaults, Tenant may, at Tenant's sole expense, attempt to enforce Prime Lessor's performance of such obligations. Landlord agrees to forward to Prime Lessor each notice which Tenant delivers to Landlord advising of any default by Prime Lessor under the Lease relating to Tenant's occupancy of the Premises and shall cooperate with Tenant, at Tenant's sole cost and expense, in the prosecution of any action or proceeding against Prime Lessor commenced by Tenant under this Article. Tenant agrees to indemnify and hold Landlord harmless from and against any claim, liability, cost and expense (including reasonable attorneys' fees) incurred in connection with or resulting from any action of Tenant pursuant to this Article.

(b) Other than the right to obtain such services, repairs and utilities (if any) to be supplied by Prime Lessor under the Lease, Tenant shall not be entitled to the benefits of any other rights granted to Landlord as lessee under the Lease notwithstanding any implication to the contrary contained in this Article, this sublease or otherwise.

9. Rights and Remedies. Landlord shall have all of the same rights, privileges and remedies with respect to a default under this sublease by Tenant as Prime Lessor has with respect to a default by Landlord, as lessee, under the Lease, with the same force and effect as if such rights, privileges and remedies were fully set forth herein at length, and Landlord shall have, with respect to Tenant, this sublease and the Premises, all of the rights, powers, privileges, immunities and remedies as are reserved by or granted to Prime Lessor under

the Lease as if the same were fully set forth herein at length; such rights, powers, privileges, immunities and remedies shall be in addition to all of those available to Landlord at law, in equity or otherwise. Landlord shall not be responsible for any breach of the Lease by Prime Lessor or any nonperformance or noncompliance with any provision thereof by Prime Lessor regardless of the alleged cause thereof unless due to an act or omission of Landlord in breach of this sublease or the Lease. For purposes of the exercise of Landlord's rights and remedies under this sublease Section 6.03(a) of the Lease shall be deemed to read "if Tenant defaults in the payment of Base Rent hereunder and such default continues for five (5) days after Landlord gives Tenant a notice specifying such default."

10. Acceptance of Premises. (a) Landlord shall deliver to Tenant on the Commencement Date vacant and broom clean possession of the Premises. Tenant confirms, represents and agrees that Tenant has thoroughly inspected the Premises, is fully acquainted and satisfied with their condition and agrees to accept the Premises on the Commencement Date "as is," subject to any and all defects therein, latent or otherwise. Tenant acknowledges that no representations with respect to the physical condition or state of repair thereof, or with respect to any fixtures or personal property therein contained, have been made to it. It is agreed that in no event shall Landlord have any obligation or be required to do any work or make any installation, repair or alteration of any kind in, to or at the Premises in order to prepare same for occupancy by Tenant or otherwise. The taking of possession of the Premises or any portion thereof by Tenant shall be conclusive evidence that same are in satisfactory condition at the time such possession is so taken.

(b) Tenant shall have the right, at no additional cost to Tenant, to use the existing furniture in the Premises (the "Furniture") as more particularly identified in Exhibit B annexed hereto and made a part hereof. Tenant shall maintain insurance coverage on the Furniture in accordance with Article 7.02(a) of the Lease.

(c) Tenant shall have the right to utilize any LAN, cabling and fiber installed in the Premises.

11. Delivery of Possession. If Landlord is unable to deliver possession of the Premises to Tenant on the Commencement Date, for any reason whatsoever, Landlord shall not be subject to any liability for failure to give possession on said date and the validity of this sublease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this sublease, but the Commencement Date shall be extended and the rent payable hereunder shall be abated (provided Tenant is not responsible for Landlord's inability to deliver possession). The provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law. If Landlord has not delivered possession of the Premises within sixty (60) days after the execution and delivery hereof and the issuance of Prime Lessor's signed consent hereto, Tenant may, at Tenant's option, by notice to Landlord received not later than ten (10) days after the end of the aforesaid sixty (60) day period, time being of the essence, cancel this Sublease. If this Sublease is cancelled pursuant to this provision, Landlord shall immediately return all funds previously paid or delivered by Tenant to Landlord and the parties shall have no further obligations hereunder.

12. Lease Termination. If for any reason whatsoever the Lease is terminated, whether by operation of law or otherwise, Landlord shall not be responsible for such termination; provided, however, that Landlord agrees, as long as Tenant is not in default hereunder beyond

any applicable notice and cure period, not to voluntarily surrender or cancel the Lease (except by reason of condemnation or casualty in accordance with the terms of the Lease) or agree to amend or modify the Lease in a way that would, other than to a de minimis extent, reduce, interfere with or otherwise impair any rights, powers or remedies of Tenant, decrease the obligations of Prime Lessor or Landlord which, under the terms of this sublease, run to the benefit of Tenant or increase the monetary or other obligations of Landlord for which Tenant is responsible hereunder without the prior written consent of Tenant, unless such surrender, cancellation or modification is subordinate to or preserves Tenant's rights under this sublease. Landlord agrees not to do or permit to be done any act or thing or neglect to take any action which act or neglect causes the rights of Tenant, under this sublease, to be cancelled, forfeited or surrendered. Landlord agrees to indemnify Tenant and hold Tenant harmless from and against all loss, liability, obligation, damage, penalty, cost, charge and expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees), whensoever asserted or occurring, which Tenant may incur or pay out, or which may be asserted against Tenant (a) by reason of any failure of or by Landlord to perform or comply with any and all of the terms, covenants, conditions and provisions of this sublease, (b) by reason of any breach or violation by (or caused by) Landlord of the terms, covenants, conditions and provisions of the Lease which are the obligations of Landlord to perform or comply with, or (c) by reason of any negligence or willful act or omission of Landlord or Landlord's employees, contractors, agents, or licensees. If any action or proceeding shall be brought against Tenant by reason of any such claim, Landlord, upon notice from Tenant, agrees to resist or defend such action or proceeding and to employ counsel therefor reasonably satisfactory to Tenant. This sublease shall terminate without notice to Tenant in the event of any termination of the Lease.

13. Alterations. Tenant shall not perform and/or make any alterations, additions, improvements or installations of any kind or nature in or to the Premises without in each instance obtaining the prior written consent of Landlord and of Prime Lessor (where, in the case of the latter, such consent is required under the Lease).

14. Assignment/Subletting. (a) Landlord hereby grants to Tenant the same rights to assign this sublease or sublet the Premises as are granted to Landlord as tenant under the Lease. Tenant hereby acknowledges, however, that Landlord cannot and does not give Tenant any rights beyond those set forth in the Lease and further acknowledges that, if required pursuant to the Lease, the consent of Prime Lessor must be obtained prior to any assignment, other transfer or subletting by Tenant. Except as expressly specified in the two immediately preceding sentences, Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, and permitted successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this sublease, nor underlet, or suffer or permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord and Prime Lessor and without complying with all of the terms and conditions of Article 5, including, without limitation, Section 5.04, of the Lease in each instance. If this sublease is assigned, or if the Premises or any part thereof are 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 such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of any of the covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or underletting shall not in any wise be construed to

relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or underletting.

(b) Any transaction involving Tenant that would be deemed to be an assignment under Section 5.01(a) of the Lease were Tenant the tenant thereunder (e.g. a dissolution, merger, consolidation or reorganization of a corporation, or any sale or other transfer of a controlling interest of the stock of Tenant, or, if Tenant is a partnership or a limited liability partnership, any transfer of a controlling partnership interest), shall be deemed an assignment hereunder requiring Landlord and Prime Lessor's consent.

(c) Except with respect to transfers that comply with Sections 5.01(b) and 5.01(c) of the Lease (and, therefore, as to which Prime Lessor does not seek payment), Tenant shall pay to Landlord fifty (50%) percent of any assignment or sublease profits, in each case calculated: (i) after Prime Lessor's share of such profits have been determined; and (ii) based on the parameters (other than the percentages) set forth in Section 5.05 of the Lease.

(d) In the event of an assignment of this sublease that is either permitted hereunder or consented to by Landlord and Prime Lessor, Landlord may, in Landlord's sole discretion, accept, in lieu of the guaranty provided by CDC IXIS in connection with the execution hereof, a guaranty of Tenant's obligations hereunder from an entity related to such assignee, such new guaranty to be identical in form to the Original Guaranty and, if Landlord, in Landlord's sole discretion, accepts such new guaranty and guarantor, CDC IXIS shall be released from its obligations under the Original Guaranty first arising after the date of such assignment.

15. Lease Charges. If Landlord shall be charged, by reason of Tenant's acts or omissions, for any sums pursuant to the provisions of the Lease, Tenant shall be liable for such sums, such sums shall be deemed additional rent and shall be collectible as such, and be payable by Tenant within ten (10) days following demand by Landlord therefor.

16. Additional Services. If Tenant procures any additional services with respect to the Premises or otherwise, Tenant shall pay all charges for such services, as and when due, directly to the party entitled thereto (or as otherwise directed by Landlord). No such services shall be obtained in violation of the Lease. If the charges for such services includes services provided to other portions of the Lease Premises such charges shall be equitably allocated among the occupants of the Lease Premises that requested such additional services.

17. Insurance. Without in any way limiting any of Tenant's covenants, obligations and agreements contained in this sublease (including, but not limited to, Article 19(b) hereof), Tenant hereby releases Landlord (which term as used in this Article shall include Landlord's employees, agents, partners, officers, shareholders and directors) from all liability, whether for negligence or otherwise, in connection with all losses covered by any insurance policies which Tenant carries with respect to the Premises, or any interest or property therein or thereon (whether or not such insurance is required to be carried under this sublease), to the extent that such loss is collectible under such insurance policies. Nothing contained in this sublease shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty, but each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty. To the extent that such insurance is in force and collectible and to the extent permitted by law, Landlord and Tenant each hereby releases and waives all right of recovery against the other or anyone

claiming through or under the other by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if the insurance policies of Landlord and Tenant provide that such release or waiver does not invalidate the insurance. Each party agrees to use its best efforts to include in its applicable insurance policies such a provision. If the inclusion of said provision would involve an additional expense, either party may require such provisions to be inserted in the other's policy at the requesting party's expense.

Tenant hereby covenants and agrees to indemnify and hold Landlord harmless from and against any and all claims, actions, judgments, damages, liabilities, or expenses, including reasonable attorneys' fees, in connection with damage to property or injury or death to persons, or any other matters, arising from or out of the use or occupation of the Premises. In case Landlord shall be made a party to any litigation commenced against Tenant, Tenant shall protect and hold Landlord forever harmless and shall pay all costs and expenses, including reasonable attorneys' fees, incurred or paid by Landlord in connection with such litigation. In furtherance of Tenant's obligations under this Article and this sublease (but not in limitation thereof) Tenant covenants and agrees, at its sole cost and expense, to carry and maintain in force from and after the Commencement Date and throughout the term hereof (i) worker's compensation and other required statutory forms of insurance, in statutory limits, and (ii) comprehensive general public liability insurance, which shall be written on an occurrence basis, naming Landlord, Prime Lessor, its managing agent, each Superior Lessor and Superior Mortgagee (as such terms are defined in the Lease) as additional insureds, in limits of not less than \$5,000,000.00 combined single limit for bodily injury and property damage liability in any one occurrence, protecting the aforementioned parties from all such claims for bodily or personal injury or death or property damage occurring in or about the Premises and its appurtenances. All insurance required to be maintained by Tenant shall be carried with a company or companies acceptable to Landlord and rated "A/VIII" by Best Insurance Guide, licensed to do business in the State of New York, shall be written for terms of not less than one year, and Tenant shall furnish Landlord (and any other parties required to be designated as insureds or additional insureds under any such policies) with certificates evidencing the maintenance of such insurance and the payment of the premiums therefor, and with renewals thereof at least thirty (30) days prior to the expiration of any such policy. Such policy or policies shall also provide that it or they shall not be cancelled or materially altered without giving Landlord and any other additional insureds at least thirty (30) days prior written notice thereof, sent to Landlord by registered mail at Landlord's address to which notices are required to be sent to Landlord hereunder. Upon Tenant's default in obtaining or delivering any such policy or policies or failure to pay the premiums therefor, Landlord may (but shall not be obligated to) secure or pay the premium for any such policy or policies and charge Tenant as additional rent therefor the cost of such premiums.

The provisions of this Article 17 are in addition to and not in limitation of the insurance requirements set forth in Section 7.02 of the Lease.

18. Electricity. (a) Tenant shall pay Landlord, as additional rent, for the cost of electricity consumption at the Premises as measured by the submeter installed by Prime Lessor, within ten (10) days after rendition of bills therefor by Landlord to Tenant, at the rate of 105% of the actual amount billed to Landlord therefor by Prime Lessor.

(b) Landlord shall not in any wise be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of electric service to the Premises is changed or is no longer available or suitable for

Tenant's requirements except to the extent caused by the negligence or willful misconduct of Landlord in which case Landlord's sole liability shall be to promptly restore or repair such electrical service. Tenant covenants and agrees that at no time shall its use of electric current exceed the capacity of existing feeders to the building of which the Premises form a part or the risers or wiring installations therein. Tenant shall make no alterations or additions to the electric equipment and/or appliances without the prior written consent of Landlord and of Prime Lessor (where, in the case of the latter, such consent is required under the Lease) in each instance. The provisions of this paragraph (b) are in addition to and not in limitation of the electricity requirements set forth in Section 3.01 of the Lease.

19. Indemnification, etc. (a) Tenant shall neither do, permit nor suffer anything to be done which would cause the Lease to be terminated or forfeited or which would give rise to any right of termination or forfeiture provided by law or reserved or vested in Prime Lessor under the Lease.

(b) In furtherance of all of Tenant's obligations under this sublease, Tenant shall indemnify and hold Landlord harmless from and against any and all claims of any nature whatsoever arising out of or resulting from (i) any death or injuries to person or property occurring in, on or about the Premises, (ii) any breach or default on the part of Tenant by reason of which Landlord shall suffer any loss whatsoever, (iii) any work done in or to the Premises, (iv) any act, omission or negligence on the part of Tenant or its employees, agents, representatives or invitees, or (v) any other matter or thing arising out of Tenant's use or occupancy of the Premises, provided, however, that notwithstanding anything herein to the contrary, Tenant shall not be required to indemnify any person (an "Indemnitee") against the Indemnitee's own negligence or willful misconduct.

(c) The forfeiture of the Lease by reason of the default of Tenant hereunder shall not subject Landlord to any liability to or claim by Tenant.

(d) Landlord and Tenant each represents and warrants to the other that it has the full right, power and authority to execute and deliver this sublease and to perform the terms and conditions hereof.

(e) Tenant represents that it has read and is familiar with the terms of the Lease.

20. Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying the Base Rent, additional rent and other charges payable hereunder and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed hereunder, Tenant may peaceably and quietly enjoy the Premises during the term hereof without molestation or disturbance by or from Landlord, subject nevertheless to this sublease, the Lease, and any ground leases, underlying leases, mortgages and other matters to which the Lease Premises are subject.

21. Broker. Tenant and Landlord each represents, warrants and confirms to the other that Insignia/ESG, Inc. and Jones Lang LaSalle (collectively, the "Broker") are the sole and only brokers with whom it has dealt in respect of this sublease or the Premises, and agrees to indemnify and hold the other harmless of, from and against any and all costs, expenses and liability (including legal expenses) arising from any claim for brokerage commission made by any party, other than the Broker, claiming to act for or on behalf of the other party or to have

dealt with the other party or its employees, agents or representatives in connection with this transaction. As, if and when this sublease shall be mutually executed and delivered by Landlord and Tenant and Landlord has obtained the Consent of Prime Lessor to this sublease, Landlord agrees to pay any commission that may be due the Broker in connection with this sublease in accordance with a separate agreement(s) between Landlord and the Broker.

22. Security Deposit. (a) Upon the execution hereof, Tenant shall deposit with Landlord the sum of \$150,000.00 as security for the full, faithful and punctual performance, observance and satisfaction by Tenant of all its covenants and obligations hereunder. Landlord may use any part of such security to cure any default by Tenant beyond applicable notice and cure periods and any expenses arising therefrom, including, but not limited to any damages or rent deficiency before or after reentry by Landlord. Tenant shall, within ten (10) days after demand, deposit with Landlord the full amount so used, in order that Landlord shall have the full security on hand at all times during the term of this sublease. If Tenant shall comply fully with the terms of this sublease, the security shall be returned to Tenant promptly after the date fixed as the end of the term or sooner termination hereof and the payment by Tenant of all sums due and payable under this sublease.

(b) The security referred to in paragraph (a) of this Article shall be deposited by Landlord in an interest bearing account at any commercial bank having an office in New York State and the interest that accrues thereon, except for an annual service charge of one (1%) percent which may be withdrawn by Landlord at such times as it may elect, shall accrue as and be additional security under the terms of paragraph (a) of this Article.

(c) In lieu of the cash security deposit referred to in paragraph (a) above, to secure the full and faithful performance by Tenant of all the terms, provisions, conditions, covenants and obligations (including, without limitation, the payment of rent) on Tenant's part to be performed hereunder, simultaneously with the execution of this sublease, Tenant may deliver to Landlord an unconditional, clean, irrevocable "evergreen" letter of credit, payable on sight upon presentation for payment in New York City, in form and substance satisfactory to Landlord, in the amount of \$150,000.00 issued by a bank which is a member of the New York Clearing House Association. Landlord may present such letter of credit for payment upon the occurrence of any default by Tenant hereunder beyond applicable notice and cure periods or upon Tenant holding over in possession of the Premises beyond the expiration or termination of this sublease and the proceeds thereof shall be held by Landlord and applied in accordance with this Article 21. Such letter of credit shall have an expiration date that is no earlier than thirty (30) days after the expiration of this sublease (as same may be extended or renewed). If, notwithstanding that the letter of credit on deposit with Landlord is to be an "evergreen" letter of credit, same shall for any reason whatsoever expire or have an expiration date earlier than thirty (30) days after the expiration date of this sublease (as same may be extended or renewed) then a subsequent or extension letter of credit in the amount of the then expiring letter of credit and otherwise acceptable to Landlord shall be delivered by Tenant to Landlord at least thirty (30) days prior to the expiration date of the letter of credit it is replacing (time being of the essence). The failure to deliver any subsequent or extension letter of credit shall constitute a material default hereunder for which no notice need be given, and for which no grace or cure period need be allowed (notwithstanding anything herein set forth to the contrary) and the letter of credit, then in effect, may be presented for payment and negotiated notwithstanding that no other default may then exist under this sublease. The proceeds of the letter of credit that is so negotiated shall be held by Landlord and applied in accordance with this Article.



(d) In the event Tenant defaults beyond applicable notice and cure periods in respect of any of the terms, provisions, conditions, covenants and obligations of this sublease, including, but not limited to, the payment of Base Rent and/or additional rent, Landlord may, without first applying any other security, use, apply or retain the whole or any part of the proceeds of the letter of credit delivered as security hereunder to the extent required for the payment of any Base Rent or additional rent or any other sum as to which Tenant is in default or for any sum which Landlord may incur or may be required to incur by reason of Tenant's default in respect of any of the terms, provisions, conditions, covenants and obligations on Tenant's part to be performed hereunder, including but not limited to, any damages or deficiencies which accrued before or after the commencement of summary proceedings or other re-entry by Landlord.

(e) Every letter of credit deposited with Landlord hereunder shall be transferable by its terms without charge to Landlord or the transferee and shall name Landlord or any assignee of Landlord as the beneficiary thereunder. Upon any transfer of such security to an assignee of Landlord, Landlord shall be relieved of all further responsibility and liability with respect to such security and Tenant agrees to look solely to such assignee of Landlord for the return of the letter of credit or the proceeds thereof. The provisions of the preceding sentence are self-operative without the need for further documentation. Tenant shall not assign or encumber or attempt to assign or encumber any letter of credit or any of the proceeds thereof.

23. Surrender of Possession. Upon the expiration or sooner termination of the term of this sublease, Tenant shall quit and surrender the Premises and the Furniture to Landlord, in the same order and condition (reasonable wear and tear excepted) as exists on the Commencement Date, but Tenant shall only be required to remove and restore such alterations that Tenant may have made that Landlord, in its reasonable discretion, determines are not customary for such premises, and Tenant shall not hold-over in possession, or make any application to so hold-over, for any reason whatsoever. If the Premises are not surrendered and vacated as and at the time required by this sublease (time being of the essence), Tenant shall be liable to Landlord for (a) all losses and damages which Landlord may incur or sustain by reason thereof, including, without limitation, reasonable attorneys' fees, and Tenant shall indemnify Landlord against all claims made by any succeeding tenants or by Prime Lessor against Landlord or otherwise arising out of or resulting from the failure of Tenant timely to surrender and vacate the Premises in accordance with the provisions of this sublease, and (b) per diem use and occupancy in respect of the Premises at a rate equal to one and one-half (1 1/2) times the Base Rent and additional rent payable hereunder for the last month of the term of this sublease during the first thirty (30) days Tenant remains in possession and thereafter at a rate of two times the Base Rent and additional rent payable hereunder for the last month of the term of this sublease (which amount Landlord and Tenant presently agree is the minimum to which Landlord would be entitled and is presently contemplated by them as being fair and reasonable under such circumstances and not a penalty). In no event shall any provision hereof or otherwise be construed as permitting Tenant to hold over in possession of the Premises after expiration or termination of the term hereof.

24. Prime Lessor Consent. This sublease is executed and delivered by the parties hereto subject to obtaining the written consent of Prime Lessor as required under the Lease. Landlord shall use reasonable efforts to obtain Prime Lessor's consent and pay such fees as are required pursuant to the Lease, but Landlord shall not be obligated to incur any other expense or commence any action in connection therewith. This sublease shall be of no force and effect if the consent (the "Consent") of Prime Lessor is not received by Landlord within forty-

five (45) days following the date of execution and delivery of this sublease by Landlord (the "Consent Period"). Tenant and Landlord agree to supply such information as Prime Lessor may reasonably require in connection with the Consent and in order to induce Prime Lessor to execute the Consent. If the Consent shall not be obtained, all sums paid by Tenant to Landlord hereunder shall be returned. Nothing herein contained or otherwise shall be deemed to be a waiver of any of Landlord's rights under Article 23 hereof in the event that there occurs a hold-over in possession by Tenant beyond the expiration of the Consent Period.

25. Notices. Any notice, demand or other communication which either party may give to the other hereunder shall be in writing and delivered personally against a signed receipt therefor or sent by registered or certified mail, return receipt requested, addressed as follows:

If to the Landlord:

RCN Telecom Services, Inc.  
105 Carnegie Center  
Princeton, New Jersey 08540-6215  
Attn: James Herring

If to the Tenant:

CDC IXIS FINANCIAL GUARANTY SERVICES, INC.  
825 Third Avenue  
New York, New York 10022  
Attn: General Counsel

with a copy of any default notice sent to:

Bingham Dana, LLP  
399 Park Avenue  
New York, New York 10022  
Attention: Andrew L. Horz, Esq.

Each such notice, demand or other communication shall be deemed given on the date of mailing of same if mailed as aforesaid, or when actually received if delivered by hand. Either party may, by notice in writing, direct that further notices, demands or other communications be sent to a different address.

26. Estoppel. At any time and from time to time within seven (7) days after written demand therefor, Tenant and Landlord each agrees to execute, acknowledge and deliver to the other, without charge, a written instrument addressed to the other party (and/or such other persons or parties as the requesting party shall require), (a) certifying that this sublease has not been modified and is in full force and effect or, if there has been a modification of this sublease, that this sublease is in full force and effect as modified, stating such modifications, (b) specifying the dates to which Base Rent, additional rent and other charges payable hereunder have been paid, and (c) stating whether or not, to the knowledge of the party providing such statement, the other party is in default and, if the other party is in default, stating each particular in which the writer alleges that the other party is in default.

27. **Miscellaneous.** (a) The failure of Landlord or Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this sublease or the Lease or to exercise any right or remedy herein contained in any one or more instance shall not be construed as a waiver or relinquishment for the future of any such terms, covenants, conditions or remedies, but the same shall be and remain in full force and effect.

(b) All prior understandings and agreements between the parties are merged within this sublease, which alone fully and completely sets forth the understanding of the parties with respect to the subject matter hereof; and this sublease may not be changed or modified orally or in any manner other than by an agreement in writing and signed by the party against whom enforcement of the change or modification is sought, or by appropriate legal proceedings.

(c) Except as otherwise herein specifically set forth, the covenants and agreements herein contained shall bind and inure to the benefit of Landlord, Tenant, and their respective permitted successors and assigns.

(d) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other relating to or arising out of this sublease or Tenant's occupancy of the Premises. It is further agreed that if Landlord commences any summary proceeding for possession of the Premises, Tenant will not interpose any counterclaim of whatever nature or description (other than a compulsory counterclaim which under law cannot be raised in a separate action) in any such proceeding.

(e) The term "Landlord" as used in this sublease means only the tenant under the Lease for the time being so that in the event of any sale or sales or assignment or assignments of tenant's interest in the Lease Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the landlord hereunder and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the transferee, at any such sale, assignment or transfer of tenant's interest in the Lease, that the transferee has assumed and agreed to carry out any and all covenants and obligations of the landlord hereunder.

(f) Notwithstanding anything herein or in any rule of law or statute to the contrary, it is expressly understood and agreed that to the extent that Landlord shall at any time have any liability under, pursuant to or in connection with this sublease, neither Tenant nor any officer, director, partner, associate, employee, agent, guest, licensee, or invitee of Tenant (or any other party claiming through or on behalf of Tenant) shall seek to enforce any personal or money judgment against Landlord, but shall only pursue any such rights or remedies against Landlord's interest in the Lease. In addition to and not in limitation of the foregoing provision of this paragraph, it is agreed that, in no event and under no circumstances, shall Landlord nor any officer, director, partner, employee, agent, guest, licensee, invitee or principal (disclosed or undisclosed) of Landlord have any personal liability or monetary or other obligation of any kind under or pursuant to this sublease. Any attempt by Tenant or any officer, director, partner, associate, employee, agent, guest, licensee, or invitee of Tenant (or any other party claiming through or on behalf of Tenant) to seek to enforce any such personal liability or monetary or other obligation shall, in addition to and not in limitation of Landlord's other rights, powers, privileges and remedies under the terms and provisions of this sublease or otherwise afforded by law in respect thereof, immediately vest Landlord with the unconditional right and option to cancel this sublease on five (5) days' notice to Tenant.

(g) Neither the submission of this sublease form to Tenant nor the execution of this sublease by Tenant shall constitute an offer by Landlord to Tenant to lease the space herein described as the Premises or otherwise. This sublease shall not be or become binding upon Landlord to any extent or for any purpose unless and until it is executed by Landlord and a fully executed copy thereof is delivered to Tenant or Tenant's counsel.

(h) If any of the provisions of this sublease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this sublease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this sublease shall be valid and enforceable to the fullest extent permitted by law.

(i) This sublease shall be governed in all respects by the internal laws of the State of New York.

(j) Without incurring any liability to Tenant, Landlord may permit access to the Premises and open same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to, or reasonably purporting to be entitled to, such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Landlord hereunder shall not be deemed a recognition by Landlord that the person or official making such demand has any right or interest in or to this sublease, or in or to the Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.

(k) Tenant agrees that its sole remedies in cases where it disputes Landlord's reasonableness in exercising its judgment or withholding or conditioning its consent or approval (as applicable) pursuant to a specific provision of this sublease, or any rider or separate agreement relating to this sublease, if any, shall be those in the nature of an injunction, declaratory judgment, or specific performance, the rights to money damages or other remedies being hereby specifically waived. Landlord's approval will in no event be deemed unreasonably withheld, conditioned or delayed if Prime Lessor fails to approve or conditions or delays approval of any matter required to be approved by Prime Lessor under the Lease.

(l) The Article headings of this sublease are for convenience only and are not to be given any effect whatsoever in construing this sublease.

(m) All bills, invoices or statement rendered to Tenant pursuant to the terms of this sublease shall be deemed binding upon Tenant and determined by Tenant to be correct in all respects if, within ninety (90) days after its receipt of same, Tenant fails to notify Landlord, in writing, that it disputes such bill, invoice or statement.

(n) Tenant shall not record this sublease or any memorandum thereof and any attempt to do so shall be and be deemed a material default by Tenant hereunder.

(o) In addition to Base Rent, all other payments required to be made by Tenant hereunder shall be deemed to be additional rent, whether or not the same shall be designated as such, and in the event of the non-payment thereof, Landlord (in addition to and not in limitation of its other rights and remedies, whether herein reserved or as may be provided by

law or in equity) shall have all of the rights and remedies in respect thereof as are herein or otherwise provided in the case of the non-payment of Base Rent.

(p) Notwithstanding anything in this sublease to the contrary, the following provisions of the Lease shall not be deemed to be incorporated into this sublease: Sections 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 2.02, 2.07 (except for clause (d)), 2.08, 2.09, 3.03, 4.01, 4.02(d), 4.06(b), 6.01, 6.02, 6.10, 8.01, 8.04(a), 8.05, 8.06, 8.13, 8.20, 8.21, 8.22 and Article 9.

(q) Subject to and to the extent permitted by Section 3.01(b) of the Lease, Tenant may, upon the prior approval of Landlord, list Tenant's name and those of its officers and employees in the Building's directory, but in no event shall Tenant's listings exceed one-tenth of the number of listings in the Building's directory permitted to Landlord under the Lease.

(r) Landlord agrees that in the event that the consent of Prime Lessor is required in respect of any thing or act done or to be done by Tenant, and the consent is secured by Tenant, Landlord will not unreasonably withhold or delay its consent to same.

(s) Landlord shall deliver to Tenant copies of all notices Landlord receives from Prime Lessor with respect to the Premises.

IN WITNESS WHEREOF, the parties hereto have duly executed this sublease as of the date first above written.

LANDLORD:

RCN TELECOM SERVICES, INC.

By: 

Name: White

Title: Pres

TENANT:

CDC IXIS FINANCIAL GUARANTY  
SERVICES, INC.

By: 

Name: JACQUES

Title: CFO

ROLFO

EXHIBIT A

LEASE

[See Attached]

**EXHIBIT B**

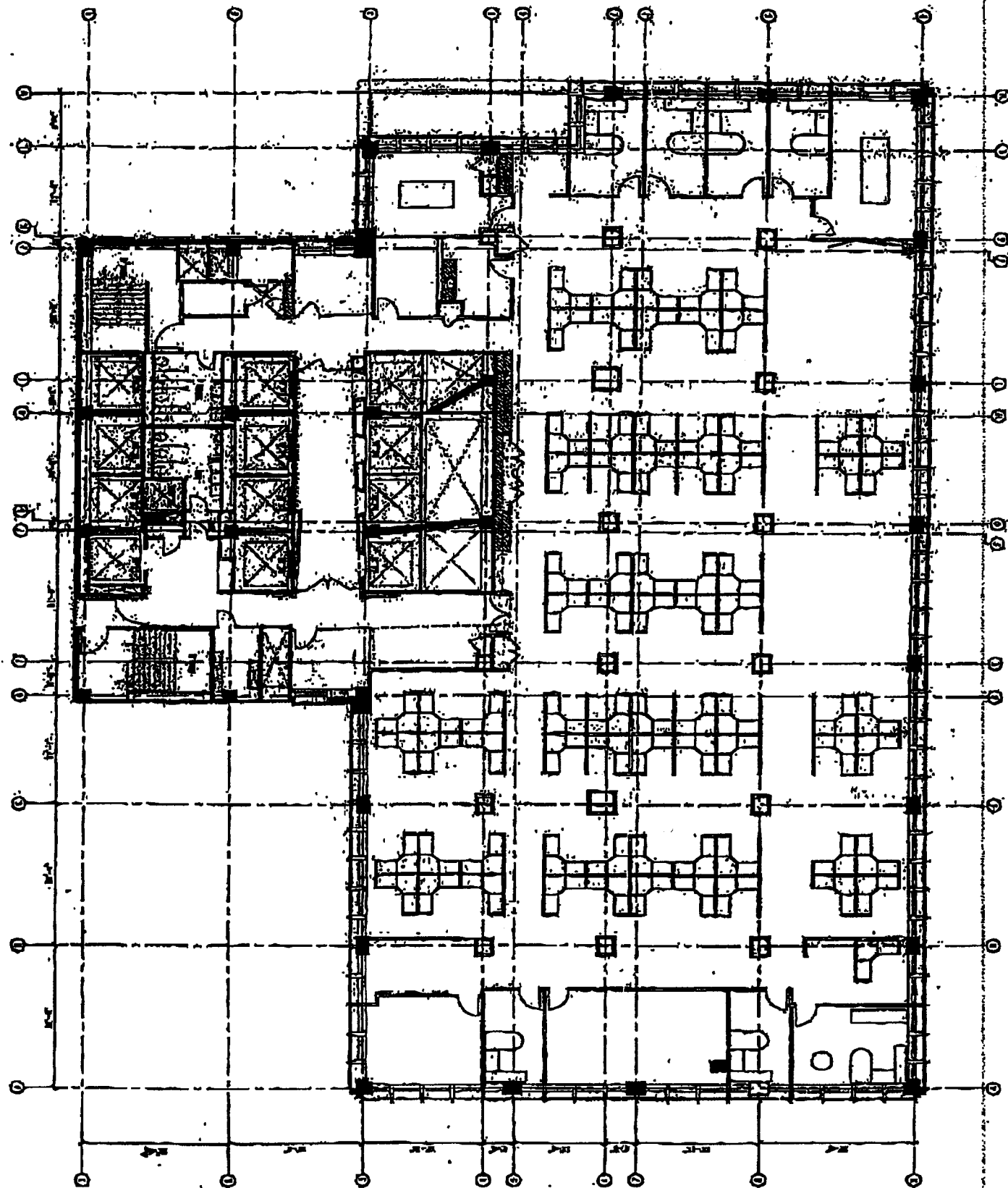
**6<sup>th</sup> Floor Furniture Inventory**

Seventy-four (74) Meridian Passage model workstations

Seven (7) sets Meridian Passage model office furniture

Two (2) EOC Conference Tables

Ten (10) Conference Room chairs





**AGREEMENT OF SUBLEASE**

**AGREEMENT OF SUBLEASE** (this "sublease") made as of the \_\_\_\_ day of July 2003, between **RCN TELECOM SERVICES, INC.**, a Pennsylvania corporation and the successor by merger to RCN Telecom Services of New York, Inc., having an office at 105 Carnegie Center, Princeton, New Jersey 08540-6215 ("Landlord"), and **JOKE VISION, LLC**, a Delaware limited liability company, having an office at 825 Third Avenue, 2nd Floor, New York, New York 10019 ("Tenant").

**WITNESSETH:**

**WHEREAS**, pursuant to a certain lease dated as of May 9, 2000 (the "Lease") between Advance Magazine Publishers Inc., as lessor ("Prime Lessor"), and RCN Telecom Services of New York, Inc., as lessee, a true copy of which (save for certain redactions) Landlord represents is annexed hereto and made a part hereof as Exhibit A and which Tenant acknowledges having received and reviewed prior to the execution of this sublease, Landlord does presently lease and hire certain premises (the "Lease Premises") in the building (the "Building") known as 825 Third Avenue, New York, New York, for the term, at the rentals and upon the other terms, covenants and conditions more fully described in the Lease; and

**WHEREAS**, Tenant desires to sublet and hire from Landlord a portion of the Lease Premises, to wit, the entire rentable portion of the second (2nd) floor constituting part of the Lease Premises in the Building substantially as shown hatched on the plan annexed as Exhibit B-1 to the Lease (the "Premises") and Landlord is willing to sublet the Premises to Tenant at the rental and additional rental and on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, the parties hereto hereby covenant and agree as follows:

1. **Grant of Sublease.** (a) Landlord hereby subleases to Tenant and Tenant hereby hires from Landlord the Premises, for a term to commence on the earlier of the date (the "Commencement Date") that: (i) Prime Lessor has issued its Consent (as hereinafter defined); or (ii) the date Tenant takes possession of the Premises or any part thereof, and to expire on the last day of the calendar month in which shall occur the one (1) year, eight (8) month anniversary of the Commencement Date (the "Expiration Date"), both dates inclusive, unless such term is sooner terminated or extended pursuant to the provisions hereof.

(b) Tenant hereby acknowledges, confirms, covenants and agrees that, as of the date hereof, Tenant does not have any right, option or privilege, pursuant to this sublease or otherwise, to hire, let or sublet from Landlord: (i) any portion of the Lease Premises other than the Premises, and only for the term hereinabove set forth in this Article 1 and upon all of the other terms and conditions set forth in this sublease; or (ii) any other space which Landlord may from time to time hire from Prime Lessor, any other lessor, sublessor or otherwise.

2. **Base Rent.** (a) Tenant shall pay rent at the rental rate (herein sometimes referred to as the "Base Rent") of \$387,996.00 per annum during the term of this sublease, it being agreed that, in lieu of paying monthly installments of Base Rent to Landlord, Tenant shall, on Tenant's execution hereof, deliver to Prime Lessor a letter of credit in accordance with the provisions set forth in this paragraph (a) below. In furtherance of the previous sentence, Tenant

shall, on Tenant's execution hereof, deliver to Prime Lessor an unconditional, irrevocable letter of credit in the amount of \$646,668.00, in favor of Prime Lessor, issued by a bank (a "New York Bank") which is a member of the New York Clearing House Association, having an expiration date no earlier than the Expiration Date, in the form of the letter of credit annexed hereto as Exhibit B and made a part hereof, it being understood and agreed that: (i) such letter of credit shall provide for the automatic payment of twenty (20) monthly installments of \$32,333.40 each directly to Prime Lessor on the first day of each month, with the first such installment to be paid to Prime Lessor on the first day of the month following the month in which the Commencement Date shall occur (unless the Commencement Date shall be the first day of a calendar month, in which event such first monthly installment shall be paid to Prime Lessor on the Commencement Date) and all subsequent monthly installments shall be paid to Prime Lessor on the first day of each succeeding calendar month, all without notice, demand, presentation or any other action on the part of Landlord or Prime Lessor; and (ii) such monthly installments shall be credited and applied, as and when received by Prime Lessor, on account of the Fixed Rent (as defined in the Lease) then next becoming due and payable by Landlord, as tenant, under the Lease. If the Commencement Date shall occur on a day other than the first day of a calendar month, Tenant shall pay Prime Lessor, within five (5) days after the Commencement Date, a sum equal to \$1,077.78 multiplied by the number of days in the period commencing on the Commencement Date through and including the last day of the calendar month in which the Commencement Date shall occur. Every letter of credit deposited with Prime Lessor hereunder shall be transferable by its terms without charge to Landlord, Prime Lessor or the transferee and shall name Prime Lessor or any assignee of Prime Lessor as the beneficiary thereunder. Tenant shall not assign or encumber or attempt to assign or encumber the letter of credit or any of the proceeds thereof.

(b) Within ten (10) days after Landlord's request, Tenant shall execute and deliver to Landlord a certificate confirming the Commencement Date and the Expiration Date. In no event shall Landlord's failure to request any such certificate or Tenant's failure or refusal to execute any such certificate in any way affect this sublease, the term hereof or any of Tenant's obligations hereunder including, without limitation, Tenant's obligation to pay the rent herein reserved and to perform all of the other covenants and agreements herein set forth.

3. Late Charges, etc. (a) Any charges payable in addition to the Base Rent and/or any additional rent payable hereunder shall be deemed additional rent hereunder and all additional rent shall be paid within twenty (20) days following the date upon which a request or demand therefor is made.

(b) Any Base Rent, additional rent or other charges not paid within three (3) days after it is due and payable shall bear interest from the date it becomes due until it is paid at an annual rate equal to three (3%) percent over the prime lending rate then being charged by J.P. Morgan Chase & Co. (or any successor thereto), but not in excess of the highest rate permitted by law, and such amount(s) shall be deemed to be additional rent hereunder. Nothing contained in this paragraph is intended to grant Tenant any extension of time in respect of the due dates for any payments under this sublease, nor shall same be construed to be a limitation of or a substitution for any other rights, remedies and privileges of Landlord under this sublease or otherwise.

4. Use. The Premises shall be used for general and executive offices by Tenant in the conduct of its business and for no other purpose.

5. Subordination. This sublease is subject and subordinate to the Lease, all ground and underlying leases and to all mortgages which may now or hereafter affect such leases, the Premises or the property of which the Premises are a part, and to all modifications, extensions, consolidations, replacements, or amendments of any such leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the property of which the Premises are a part. However, in confirmation of such subordination, Tenant shall promptly execute any certificate that Landlord may reasonably request.

(b) In the event of termination, reentry or dispossession by Prime Lessor under the Lease, Prime Lessor may, at its option, take over all of the right, title and interest of Landlord under this sublease, and Tenant shall, at Prime Lessor's option, attorn to Prime Lessor pursuant to the then executory provisions of this sublease, except that Prime Lessor shall not be liable for, subject to or bound by any item of the type that a Successor Landlord (as defined in the Lease) is not so liable for, subject to or bound by in the case of attornment by Landlord to a Successor Landlord under Section 6.01(a) of the Lease.

6. Lease Performance. (a) Tenant hereby assumes performance of and agrees to perform all of the terms, obligations, covenants and conditions on the part of Landlord, as lessee, to be kept, observed and performed under the Lease during the term of this sublease, in respect of the Premises (and areas ancillary thereto), except that Tenant shall not be obligated to pay to Prime Lessor the Fixed Rent, the Tax Payment or the Operating Payments (each as defined in the Lease), and Tenant agrees to indemnify and hold Landlord harmless from and against all liabilities, claims, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or arising out of Tenant's performance of (or failure to perform) all of such terms, obligations, covenants and conditions. Tenant hereby waives each and every right waived by Landlord, as lessee, under the Lease. In addition to the foregoing and except as otherwise herein expressly set forth, Tenant covenants and agrees that Tenant will keep, observe and perform any act, obligation, condition or covenant to be kept, observed and performed by Landlord, as lessee under the Lease, within a time period which (i) in the event the time period set forth in the Lease to do the same is less than or equal to fifteen (15) days, then within a time period which is three (3) days' shorter than the time period set forth in the Lease, and (ii) otherwise, within a time period which is ten (10) days' shorter than the time period set forth in the Lease for Landlord, as lessee thereunder, to perform, keep and observe such act, obligation, condition or covenant; provided, however, that in no event shall Tenant permit a default (within the meaning of Section 6.03 of the Lease, as incorporated herein) to occur under the Lease.

(b) It is expressly noted, acknowledged and confirmed by Tenant that a breach, default or failure to observe, perform or otherwise comply with all or any of the obligations, covenants, conditions, rules and regulations in this sublease or the Lease on Tenant's part to be observed, performed or complied with shall be and be deemed to be a violation by Tenant of a substantial obligation of the tenancy created by this sublease entitling Landlord to pursue any and all rights, remedies and privileges provided under this sublease and the Lease or

at law, in equity, or otherwise, including, without limitation, the right to terminate said tenancy and recover possession of the Premises, subject in all events to the applicable notice and cure periods set forth in Section 6.03(a) hereof and in the Lease, as applicable.

(c) Landlord agrees to indemnify and hold Tenant harmless from and against all liabilities, claims, costs and expenses arising out of Landlord's default under the Lease provided that such default: (i) results in the termination of this sublease; and (ii) is not due to any act, omission or default on the part of Tenant hereunder.

(d) If there is any inconsistency between the provisions of the Lease and the express provisions of this sublease, the provisions of this sublease shall govern unless the provisions of this sublease (i) could, if implemented, create a default under the Lease or (ii) give or create in Tenant a right not permitted under the Lease, in which case the provisions of the Lease shall control.

7. Services. (a) Tenant shall be entitled to receive with respect to the Premises the services, including, without limitation, air conditioning, cleaning services, repairs, utilities and Landlord Services (as defined in the Lease), to be supplied under the Lease by Prime Lessor. The foregoing notwithstanding, Landlord shall have no obligation to supply any such services, repairs and utilities, and Tenant shall not look to Landlord to provide same. If Prime Lessor fails or refuses to comply with any of the provisions of the Lease insofar as they affect Tenant's occupancy of the Premises during the term hereof, Landlord, upon request of Tenant, shall exercise reasonable efforts (without thereby being required to commence any action or proceeding, expend any monies or incur any expenses) to cause Prime Lessor to so comply. However, Landlord shall not be liable to Tenant, and Tenant's obligations hereunder shall not be impaired nor the performance thereof be excused, because of any failure or delay by Prime Lessor in performing its obligations under the Lease (or because of Landlord in any way failing to enforce such obligations) as affecting Tenant's occupancy of the Premises. If Prime Lessor so defaults, Tenant may, at Tenant's sole expense, attempt to enforce Prime Lessor's performance of such obligations. Landlord agrees to forward to Prime Lessor each notice which Tenant delivers to Landlord advising of any default by Prime Lessor under the Lease relating to Tenant's occupancy of the Premises and shall cooperate with Tenant, at Tenant's sole cost and expense, in the prosecution of any action or proceeding against Prime Lessor commenced by Tenant under this Article. Tenant agrees to indemnify and hold Landlord harmless from and against any claim, liability, cost and expense (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection with or resulting from any action of Tenant pursuant to this Article.

(b) Provided that Tenant is not in default under this sublease, Tenant shall have the right to utilize the supplemental HVAC units connected to the glycol cooling tower located on the roof of the Building (collectively, the "Supplemental HVAC Units"), which units are presently located, respectively, within the two (2) conference rooms and the southwest corner office of the Premises. Tenant shall: (i) accept the Supplemental HVAC Units in their "as is" condition on the Commencement Date; and (ii) at Tenant's sole cost and expense, operate and maintain the Supplemental HVAC Units at all times in good working order and repair and in compliance with applicable laws. Within ten (10) days after the Commencement Date, Tenant shall, at Tenant's sole cost, enter into service/maintenance agreements for the

service and maintenance of the Supplemental HVAC Units with a contractor approved by Landlord in writing, which approval shall not be unreasonably withheld. Tenant shall, during the term hereof, cause periodic service and maintenance to be performed on the Supplemental HVAC Units and shall provide Landlord with copies of all service and maintenance records within a reasonable period of time (but in no event more than twenty (20) days) after Landlord's request therefor.

(c) Other than the right to obtain such services, repairs and utilities (if any) to be supplied by Prime Lessor under the Lease, Tenant shall not be entitled to the benefits of any other rights granted to Landlord as lessee under the Lease notwithstanding any implication to the contrary contained in this Article, this sublease or otherwise.

8. Rights and Remedies. Landlord shall have all of the same rights, privileges and remedies with respect to a default under this sublease by Tenant as Prime Lessor has with respect to a default by Landlord, as lessee, under the Lease, with the same force and effect as if such rights, privileges and remedies were fully set forth herein at length, and Landlord shall have, with respect to Tenant, this sublease and the Premises, all of the rights, powers, privileges, immunities and remedies as are reserved by or granted to Prime Lessor under the Lease as if the same were fully set forth herein at length; such rights, powers, privileges, immunities and remedies shall be in addition to all of those available to Landlord at law, in equity or otherwise. Landlord shall not be responsible for any breach of the Lease by Prime Lessor or any nonperformance or noncompliance with any provision thereof by Prime Lessor regardless of the alleged cause thereof. For purposes of the exercise of Landlord's rights and remedies under this sublease Section 6.03(a) of the Lease shall be deemed to read "if Tenant defaults in the payment of Base Rent hereunder and such default continues for five (5) days after Landlord gives Tenant a notice specifying such default."

9. Acceptance of Premises. (a) Tenant confirms, represents and agrees that it has inspected the Premises, is acquainted and satisfied with their condition and agrees to accept the Premises, together with any and all fixtures, furniture, equipment and personal property therein or attached thereto and listed on Exhibit C annexed hereto and made a part hereof (collectively, the "FF&E"), "as is" and "where is", subject to any and all defects therein, latent or otherwise. Tenant acknowledges that no representations with respect to the physical condition or state of repair of the Premises and/or the FF&E have been made to it. It is expressly agreed that in no event shall Landlord have any obligation or be required to do any work, supply any materials or equipment, or make any installation, repair or alteration of any kind in, to or at the Premises and/or to the FF&E in order to prepare same for use and occupancy by Tenant or otherwise. Further, the taking of possession of the Premises or any portion thereof by Tenant shall be conclusive evidence that the Premises and the FF&E are in satisfactory condition at the time such possession is so taken.

(b) Tenant agrees to give consideration in good faith to utilizing Landlord's telecommunications services in connection with Tenant's business operations at the Premises. Tenant shall, with the prior written consent of Landlord, have the right to utilize any LAN, cabling and fiber currently installed in the Premises on a competitive bid basis, it being understood that Landlord shall not unreasonably withhold or delay its consent to Tenant's utilization of such LAN, cabling or fiber that is horizontally installed in the Premises. Tenant

shall not alter, modify, remove or disturb such LAN, cabling and fiber, it being agreed that (i) Tenant shall permit Landlord and Landlord's agents and contractors to maintain, modify, repair and replace such LAN, cabling and fiber and to install additional LAN, cabling and fiber within and through the Premises; and (ii) in furtherance of the provisions of subclause (i), Landlord and Landlord's agents and contractors shall have the right, on prior notice to Tenant (which may be oral) except in an emergency when no notice shall be required, to enter the Premises at all times for such purposes.

(c) Notwithstanding the foregoing or anything herein contained to the contrary, in the event it is determined at any time during the term of this sublease, as the same may be renewed or extended pursuant to Article 25 hereof, that any asbestos or asbestos-containing material that may exist in the Premises must be removed, encapsulated or treated in order to comply with the Lease and/or any law, ordinance or regulation governing asbestos, Landlord, at its expense, shall remove, encapsulate or treat any such asbestos or asbestos containing material in accordance with such laws, ordinances and regulations.

(d) Landlord acknowledges and agrees that Tenant shall have no responsibility or liability for: (i) liens affecting the Premises prior to the date hereof; or (ii) Landlord's failure to keep, observe or perform any term, obligation, covenant and/or condition under the Lease prior to the date hereof.

10. Delivery of Possession. Tenant hereby acknowledges that Landlord is: (i) currently in possession of the Premises; and (ii) endeavoring to relocate from the Premises to another part of the Lease Premises that is suitable for the conduct of Landlord's business. Notwithstanding anything to the contrary herein contained, if Landlord fails for any reason to deliver vacant and exclusive actual possession of the entire Premises to Tenant within thirty (30) days after the later of the date of: (a) the mutual execution and unconditional delivery of this sublease by Landlord and Tenant; or (b) Landlord's receipt of the Consent from Prime Lessor, Tenant, as its sole and exclusive remedy therefor, may cancel this sublease by written notice (the "Termination Notice") given to Landlord on or before the tenth (10th) day following the end of such thirty (30) day period (the "Notice Period"), time being of the essence as to Tenant's giving of the Termination Notice. In the event Tenant gives Landlord the Termination Notice within the Notice Period: (x) the term of this sublease and the estate hereby granted to Tenant in the Premises shall terminate as of the date of the giving of the Termination Notice; (y) Landlord shall return to Tenant the letter of credit delivered to Landlord pursuant to Article 2 hereof; and (z) Tenant shall thereafter have no further rights or obligations under this sublease with respect to the Premises. In the event that Tenant fails to give Landlord the Termination Notice within the Notice Period, time being of the essence, Tenant shall be conclusively deemed to have waived the right to give the same and Tenant shall have no further right to terminate this sublease pursuant to this Article. The provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

11. Lease Termination. If for any reason whatsoever the Lease is terminated, whether by operation of law or otherwise, Landlord shall not be responsible for such termination; provided, however, that Landlord agrees, as long as Tenant is not in default hereunder beyond any applicable notice and cure period, not to: (i) knowingly do or fail to do

anything which would constitute a default under the Lease or the Underlying Lease (as defined in the Lease); or (ii) voluntarily: (a) surrender or cancel the Lease (except by reason of condemnation or casualty in accordance with the terms of the Lease) without the prior written consent of Tenant, unless such surrender or cancellation is subordinate to or preserves Tenant's rights under this sublease; or (b) amend or modify the Lease so as to adversely affect Tenant. This sublease shall terminate without notice to Tenant in the event of any termination of the Lease and, in the event that the Lease is terminated, Landlord shall provide Tenant with a copy of any notice received by Landlord notifying Landlord that the Lease has been terminated. In the event that this sublease is terminated due to a termination of the Lease or the Underlying Lease where such termination is not due to any act, omission or default on the part of Tenant, Landlord shall: (x) notify the issuer of the letter of credit delivered under Article 2 or Article 25 hereof, as applicable, that this sublease has been terminated and direct such issuer to cease all payments to be made under such letter of credit as of the effective date of such termination; (y) direct Prime Lessor in writing to immediately return such letter of credit to Tenant; and (z) promptly refund to Tenant on a pro rata basis any rent paid hereunder with respect to the portion of any month subsequent to the effective date of such termination.

12. Alterations. Tenant shall not perform and/or make any alterations, additions, changes, improvements or installations of any kind or nature in or to the Premises without in each instance obtaining the prior written consent of Landlord and of Prime Lessor (where, in the case of the latter, such consent is required under the Lease). Landlord agrees that in the event that: (i) the consent of Prime Lessor is not required in respect of such alterations, additions, changes, improvements or installations; or (ii) the consent of Prime Lessor is required in respect of such alterations, additions, changes, improvements or installations and the consent is secured by Tenant, Landlord will not unreasonably withhold or delay its consent to same. Notwithstanding the foregoing, Tenant may, without Landlord's consent but provided Tenant notifies Landlord at least ten (10) business days prior to the commencement of such alterations (such notice to include the identity of the contractors performing such alterations together with certificates of insurance required to be maintained by such contractors hereunder and any available plans for said alterations), perform alterations to the Premises of a purely cosmetic or decorative nature (i.e., painting, carpeting and wall covering) provided that said alterations are performed in a good and workerlike manner and in accordance with all Laws (as defined in the Lease), do not require any applications, plans or other documentation to be filed with or approved by any governmental agency or authority and all other provisions of this sublease and Article 4.02 of the Lease, as incorporated herein, regarding alterations to the Premises are fully complied with by Tenant.

13. Assignment/Subletting. (a) Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, and permitted successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this sublease, nor underlet, or suffer or permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord (which, provided Tenant complies with all of the terms and conditions of Article 5 of the Lease, Landlord agrees not to unreasonably withhold or delay except that Landlord shall in no event be required to grant such consent in the event Prime Lessor fails or refuses to grant its consent to any such assignment, mortgage, encumbrance, subletting, use or occupancy) and Prime Lessor and without complying with all of the terms and conditions of Article 5, including, without limitation, Section 5.04, of the Lease in each instance.

In the event Landlord and Prime Lessor shall consent to any proposed subletting of all or any part of the Premises or to an assignment of this sublease (subject to Prime Lessor's right to be paid: (i) the applicable percentages of the excess, if any, of the amounts payable as fixed rent and as additional rent on account of Taxes, Operating Expenses (each as defined in the Lease) and electricity by the subtenant pursuant to such subletting plus any Other Sublease Consideration (as defined in the Lease) payable to Tenant by such subtenant over Tenant's Basic Cost (as defined in the Lease and as applied to this sublease) pursuant to the provisions of Section 5.05(a) of the Lease (collectively, the "Sublet Profit"); and (ii) the applicable percentage of the Assignment Consideration (as defined in the Lease) pursuant to the provisions of Section 5.05(b) of the Lease (the "Assignment Profit"). Tenant agrees, in the case of any such subletting, upon Landlord's request, to execute an agreement in form and substance satisfactory to Landlord, to pay monthly to Landlord as, if and when received by Tenant, as additional rent hereunder, fifty (50%) percent of any remaining Sublet Profit and, in the case of any such assignment, Tenant also agrees to pay Landlord as, if and when received by Tenant, as additional rent hereunder, fifty (50%) of any remaining Assignment Profit as of the effective date of such assignment. If this sublease be assigned, or if the 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 such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of any of the covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or underletting.

(b) If Tenant is a corporation, any dissolution, merger, consolidation or reorganization of Tenant, or any sale or other transfer of a controlling interest of the corporate stock of Tenant (other than a merger of Tenant with an entity wholly owned and controlled by Tenant or wholly owning and controlling Tenant), or, if Tenant is a limited liability company, partnership or a limited liability partnership, any transfer of a controlling interest, shall constitute an assignment of this sublease for all purposes of this Article 13.

(c) Notwithstanding anything to the contrary set forth herein and provided Tenant is not then in default hereunder, Tenant may, to the extent and upon the terms and conditions that Landlord may be permitted to do so with respect to the Lease and the Lease Premises under the applicable provisions of the Lease, on not less than ten (10) business days prior written notice to Landlord and delivery to Landlord of an executed original counterpart of either an assignment of this sublease (which assignment shall provide that the assignee assumes directly for the benefit of Landlord all of Tenant's obligations under this sublease from and after the effective date of such assignment and is otherwise in form and substance reasonably satisfactory to Landlord, or in connection with a merger or consolidation by operation of law or by effective provisions contained in the instrument of merger or consolidation which meets the requirements of subclause (b) below), or the sublease (which provides that said sublease is subject and subordinate to this sublease in all respects), as the case may be, assign this sublease or sublet all or a portion of the Premises to an entity into which Tenant is merged or consolidated or to an entity which shall be an "affiliate", "subsidiary" or "successor" (each as hereinafter defined) of Tenant. For purposes of this Paragraph: (i) an "affiliate" of Tenant shall mean any



entity which controls, is directly controlled by or is under common control with Tenant ("control" being interpreted as the ownership of more than fifty (50%) percent of the stock or the interests in such entity, as applicable, and possession of the power to direct the management and policies of such entity and the distribution of its profits); (ii) a "subsidiary" of Tenant shall mean an entity not less than fifty-one (51%) percent of which is owned and controlled by Tenant; and (iii) a "successor" of Tenant shall mean an entity: (a) which acquires all or substantially all of the stock, in the case of a corporation, or interests, in the case of any other type of entity, or all or substantially all of the property and assets of Tenant, in a bona fide transaction (which, among other things, shall mean that the value of this sublease does not exceed ten (10%) percent of the consideration payable in such transaction and the transaction is not being done to circumvent the prohibitions and provisions of this Article) and, in the case of a transaction involving assets, assumes all or substantially all of the obligations and liabilities of Tenant (including, without limitation, this sublease); or (b) in which or with which Tenant is merged or consolidated, which entity is subject to the jurisdiction of the courts of the State of New York and which succeeds Tenant in accordance with applicable statutory provisions for merger or consolidation of entities, provided that, by operation of law or by effective provisions contained in the instruments of merger or consolidation, such entity fully assumes the liability of the entities participating in such merger or consolidation; provided further that, on the completion of every acquisition, merger, consolidation, assumption or other transaction in this Paragraph described, the successor shall have a net worth equal to or greater than the greater of Tenant's net worth: (x) on the date hereof; or (y) immediately prior to such acquisition, merger, consolidation, assumption or other transaction.

14. Lease Charges. If Landlord shall be charged, by reason of Tenant's acts or omissions, for any sums pursuant to the provisions of the Lease, Tenant shall be liable for such sums, such sums shall be deemed additional rent and shall be collectible as such, and be payable by Tenant within twenty (20) days following demand by Landlord therefor.

15. Additional Services. If Tenant procures any additional services with respect to the Premises or otherwise, Tenant shall pay all charges for such services, as and when due, directly to the party entitled thereto (or as otherwise directed by Landlord). No such services shall be obtained in violation of the Lease.

16. Insurance. Without in any way limiting any of Tenant's covenants, obligations and agreements contained in this sublease (including, but not limited to, Article 18(b) hereof), Tenant hereby releases Landlord (which term as used in this Article shall include Landlord's employees, agents, partners, officers, shareholders and directors) from all liability, whether for negligence or otherwise, in connection with all losses covered by any insurance policies which Tenant carries with respect to the Premises, or any interest or property therein or thereon (whether or not such insurance is required to be carried under this sublease), to the extent that such loss is collectible under such insurance policies, it being agreed that such policy or policies of insurance shall contain provisions as to: (i) waiver of the insurer's right of subrogation; and (ii) release of the insured party, as set forth, respectively, in the first and the second sentences of Section 7.03 of the Lease, as incorporated herein.

Tenant hereby covenants and agrees to indemnify and hold Landlord harmless from and against any and all claims, actions, judgments, damages, liabilities, or expenses,

including reasonable attorneys' fees, in connection with damage to property or injury or death to persons, or any other matters, arising from or out of the use or occupation of the Premises. In case Landlord shall be made a party to any litigation commenced against Tenant, Tenant shall protect and hold Landlord forever harmless and shall pay all costs and expenses, including reasonable attorneys' fees, incurred or paid by Landlord in connection with such litigation. In furtherance of Tenant's obligations under this Article and this sublease (but not in limitation thereof) Tenant covenants and agrees, at its sole cost and expense, to carry and maintain in force from and after the date of this sublease and throughout the term hereof: (i) worker's compensation and other required statutory forms of insurance, in statutory limits; (ii) comprehensive general public liability insurance, which shall be written on an occurrence basis, naming Landlord, Prime Lessor, its managing agent, each Superior Lessee and Superior Mortgagee (as such terms are defined in the Lease) as additional insureds, in limits of not less than \$5,000,000.00 combined single limit for bodily injury and property damage liability in any one occurrence, protecting the aforementioned parties from all such claims for bodily or personal injury or death or property damage occurring in or about the Premises and its appurtenances; (iii) "All Risk" property insurance covering all present and future Tenant's Property, Fixtures (including, without limitation, the FF&E) and Tenant's Improvements and Betterments (each as defined in the Lease) to a limit of not less than the full replacement cost thereof; (iv) Boiler and Machinery, if there is a boiler, supplemental air conditioning unit or pressure object or similar equipment in the Premises; and (v) when Alterations (as defined in the Lease) are in process, the insurance specified in Section 4.02(f) of the Lease. All insurance required to be maintained by Tenant shall be carried with a company or companies acceptable to Landlord and rated "A/VIII" by Best Insurance Guide, licensed to do business in the State of New York, shall be written for terms of not less than one year, and Tenant shall furnish Landlord (and any other parties required to be designated as insureds or additional insureds under any such policies) with certificates evidencing the maintenance of such insurance and the payment of the premiums therefor, and with renewals thereof at least thirty (30) days prior to the expiration of any such policy. Such policy or policies shall also provide that it or they shall not be cancelled or materially altered without giving Landlord and any other additional insureds at least thirty (30) days prior written notice thereof, sent to Landlord by registered mail at Landlord's address to which notices are required to be sent to Landlord hereunder. Upon Tenant's default in obtaining or delivering any such policy or policies or failure to pay the premiums therefor, Landlord may (but shall not be obligated to) secure or pay the premium for any such policy or policies and charge Tenant as additional rent therefor 105% of such premiums.

17. Electricity. (a) Tenant shall pay Landlord, as additional rent, for the cost of electricity consumption at the Premises, within five (5) days after rendition of bills therefor by Landlord to Tenant, at the rate of 107% of the actual amount billed to Landlord therefor by Prime Lessor.

(b) Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of electric service to the Premises is changed or is no longer available or suitable for Tenant's requirements. Tenant covenants and agrees that at no time shall its use of electric current exceed the capacity of existing feeders to the Building or the risers or wiring installations therein. Tenant shall make no alterations or additions to the electric equipment and/or appliances without the prior written consent of Landlord and of Prime Lessor (where, in the case of the latter, such

consent is required under the Lease) in each instance. Landlord agrees that in the event that: (i) the consent of Prime Lessor is not required in respect of such alterations or additions; or (ii) the consent of Prime Lessor is required in respect of such alterations or additions and such consent is secured by Tenant, Landlord will not unreasonably withhold or delay its consent to same. The provisions of this Paragraph (b) are in addition to and not in limitation of the electricity requirements set forth in Section 3.01 of the Lease.

18. Indemnification, etc. (a) Tenant shall not do, permit or suffer anything to be done, and Landlord shall not do, permit or suffer anything to be done, which would cause the Lease to be terminated (except for a termination of the Lease by Landlord by reason of condemnation or casualty in accordance with the terms of the Lease) or forfeited or which would give rise to any right of termination or forfeiture provided by law or reserved or vested in Prime Lessor under the Lease.

(b) In furtherance of all of Tenant's obligations under this sublease, Tenant shall indemnify and hold Landlord harmless from and against any and all claims of any nature (other than for consequential damages except as provided in Article 21 hereof) whatsoever arising out of or resulting from any of the following except and to the extent caused by Landlord's negligence or willful misconduct (i) any death or injuries to person or property occurring in, on or about the Premises, (ii) any breach or default on the part of Tenant by reason of which Landlord shall suffer any loss whatsoever, (iii) any work done in or to the Premises, (iv) any act, omission or negligence on the part of Tenant or its employees, agents, representatives or invitees, or (v) any other matter or thing arising out of Tenant's use or occupancy of the Premises.

(c) The forfeiture of the Lease by reason of the default of Tenant hereunder shall not subject Landlord to any liability to or claim by Tenant.

(d) Tenant represents and warrants that it has the full right, power and authority to execute and deliver this sublease and to perform the terms and conditions hereof.

(e) Landlord represents and warrants that it has the full right, power and authority to execute and deliver this sublease and to perform the terms and conditions hereof.

(f) Tenant represents that it has read and is familiar with the terms of the Lease.

19. Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying the Base Rent, additional rent and other charges payable hereunder and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed hereunder, Tenant may peaceably and quietly enjoy the Premises during the term hereof without molestation or disturbance by or from Landlord, subject nevertheless to this sublease, the Lease, and all Superior Leases and Superior Mortgages (each as defined in the Lease) and other matters to which the Lease Premises are subject.

20. Broker. Tenant covenants, represents, warrants and confirms to Landlord that: (i) Insignia/ESG, Inc. ("Tenant's Broker") and Jones Lang LaSalle Americas, Inc. ("Landlord's Broker"; and together with Tenant's Broker, the "Broker") are the sole and only

brokers with whom it has dealt in connection with this sublease and/or the Premises; and (ii) Tenant was not represented by any broker or agent other than Tenant's Broker in respect of this sublease and/or the Premises. Landlord covenants, represents, warrants and confirms to Tenant that: (i) Landlord's Broker and Tenant's Broker are the sole and only brokers with whom it has dealt in connection with this sublease and/or the Premises; and (ii) Landlord was not represented by any broker or agent other than Landlord's Broker in respect of this sublease and/or the Premises. Tenant agrees to indemnify and hold Landlord harmless of, from and against any and all costs, expenses, loss and liability (including, without limitation, reasonable legal fees and disbursements) arising from or in connection with any claim for brokerage commission made by any broker, agent or entity (including, without limitation, Tenant's Broker) claiming to act for or on behalf of Tenant or to have dealt with Tenant and/or its employees, agents or representatives in connection with this sublease and/or the matters contemplated hereby. Landlord agrees to indemnify and hold Tenant harmless of, from and against any and all costs, expenses, loss and liability (including, without limitation, reasonable legal fees and disbursements) arising from or in connection with any claim for brokerage commission made by any broker, agent or entity other than Tenant's Broker claiming to act for or on behalf of Landlord or to have dealt with Landlord and/or its employees, agents or representatives in connection with this sublease and/or the matters contemplated hereby. As, if and when this sublease shall be mutually executed and unconditionally delivered by Landlord and Tenant and Landlord has obtained the Consent of Prime Lessor to this sublease and, provided that this sublease is in full force and effect and has not been terminated, Landlord agrees to pay the commission that may be due to Landlord's Broker in connection with this sublease in accordance with a separate agreement between Landlord and Landlord's Broker. The provisions of this Article shall expressly survive the expiration or any earlier termination of this sublease.

21. Surrender of Possession. Upon the expiration or sooner termination of the term of this sublease, Tenant shall quit and surrender to Landlord: the Premises, in the manner and condition prescribed therefor in the Lease; and (ii) the FF&E, in substantially the same condition as on the date hereof, and Tenant shall not hold-over in possession, or make any application to so hold-over, for any reason whatsoever. If the Premises are not surrendered and vacated as and at the time required by this sublease (time being of the essence), Tenant shall be liable to Landlord for (a) all losses and damages which Landlord may incur or sustain by reason thereof, including, without limitation, reasonable attorneys' fees, and Tenant shall indemnify Landlord against all claims made by any succeeding tenants or by Prime Lessor against Landlord or otherwise arising out of or resulting from the failure of Tenant timely to surrender and vacate the Premises in accordance with the provisions of this sublease, and (b) per diem use and occupancy in respect of the Premises in an amount equal to two times the monthly rate of Base Rent then payable hereunder (which amount Landlord and Tenant presently agree is the minimum to which Landlord would be entitled and is presently contemplated by them as being fair and reasonable under such circumstances and not a penalty). In no event shall any provision hereof or otherwise be construed as permitting Tenant to hold over in possession of the Premises after expiration or termination of the term hereof.

22. Prime Lessor Consent. This sublease is executed and delivered by the parties hereto subject to obtaining the written consent of Prime Lessor as required under the Lease. This sublease shall be of no force and effect if the written consent (the "Consent") of Prime Lessor is not received by Landlord within thirty (30) days following the date of the mutual

execution and unconditional delivery of this sublease by Landlord and Tenant, as such date may be extended in writing by mutual agreement between Landlord and Tenant (the "Consent Period"). Tenant agrees to supply such information, consistent with the provisions of Section 5.03 of the Lease, as Prime Lessor may reasonably require in connection with the Consent in order to induce Prime Lessor to execute the Consent. If the Consent shall not be obtained within the Consent Period through no fault of Tenant, the letter of credit delivered by Tenant to Landlord pursuant to Article 2 hereof shall be promptly returned to Tenant. Nothing herein contained or otherwise shall be deemed to be a waiver of any of Landlord's rights under Article 21 hereof in the event that there occurs a hold-over in possession by Tenant beyond the expiration of the Consent Period.

23. Notices. Any notice, demand or other communication which either party may or be required to give to the other hereunder shall be in writing and delivered personally against a signed receipt therefor or sent by registered or certified U.S. mail, return receipt requested, or by nationally-recognized overnight courier service that provides for receipted delivery, addressed as follows:

If to Landlord:

RCN Telecom Services, Inc.  
105 Carnegie Center  
Princeton, New Jersey 08540-6215  
Attn: Mr. James P. Herring

If to Tenant:

Joke Vision, LLC  
825 Third Avenue, 2nd Floor  
New York, New York 10019  
Attn: Mr. Stephen Cunningham, President and Chief Executive Officer

Each such notice, demand or other communication shall be deemed given on the date of mailing of same if mailed as aforesaid, or when actually received if delivered by hand. Either party may, by notice in writing, direct that further notices, demands or other communications be sent to a different address.

24. Estoppel. At any time and from time to time within fifteen (15) days after written demand therefor, Tenant agrees to execute, acknowledge and deliver to Landlord, without charge, a written instrument addressed to Landlord (and/or such other persons or parties as Landlord shall require): (a) certifying that this sublease has not been modified and is in full force and effect or, if there has been a modification of this sublease, that this sublease is in full force and effect as modified, stating such modifications; (b) specifying the dates to which Base Rent, additional rent and other charges payable hereunder have been paid; and (c) stating whether or not, to the knowledge of Tenant, Landlord is in default and, if Landlord is in default, stating each particular in which Tenant alleges that Landlord is in default. At any time and from time to time within fifteen (15) days after written demand therefor by Tenant but not more than three times during any twelve (12) month period, Landlord agrees to execute, acknowledge and

deliver to Tenant, without charge, a written instrument addressed to Tenant (and/or such other persons or parties as Tenant shall require): (i) certifying that this sublease has not been modified and is in full force and effect or, if there has been a modification of this sublease, that this sublease is in full force and effect as modified, stating such modifications; (ii) specifying the dates to which Base Rent, additional rent and other charges payable hereunder have been paid; and (iii) stating whether or not, to the knowledge of Landlord, Tenant is in default and, if Tenant is in default, stating each particular in which Landlord alleges that Tenant is in default.

25. Renewal Options. (a) Provided that on the date Tenant exercises the First Renewal Right and on the First Renewal Commencement Date: (i) this sublease is in full force and effect; (ii) Tenant is not in default hereunder beyond notice and the expiration of any applicable cure period; (iii) Tenant is in possession of the entire Premises; and (iv) Tenant shall, pursuant to the last sentence of this paragraph (a), timely deliver to Landlord the required letter of credit, Tenant shall have the right ("Tenant's First Renewal Right"), on one (1) occasion only, exercisable by delivery of a written notice (the "First Renewal Notice") received by Landlord no later than six (6) months prior to the Expiration Date, time being of the essence, to extend the Expiration Date for a single twelve (12) month period (the "First Renewal Period") which shall commence on the day immediately following the Expiration Date (the "First Renewal Commencement Date") and end on the day immediately preceding the first anniversary of the First Renewal Commencement Date (the "First Renewal Expiration Date"). Upon Tenant's exercise of Tenant's First Renewal Right as aforesaid, this sublease shall be deemed extended through the First Renewal Expiration Date upon the terms and conditions herein set forth except that: (a) the Base Rent for the First Renewal Period shall be \$407,041.58 and shall be payable by Tenant in a single payment in accordance with the provisions set forth in this paragraph (a) below; and (b) Tenant shall have no further right to renew this sublease or extend the term hereof except as set forth in paragraph (b) of this Article. In furtherance of subclause (a) of the previous sentence, Tenant shall, as a condition precedent to Tenant's First Renewal Right, simultaneously with the giving of the First Renewal Notice, deliver to Landlord a letter of credit in the amount of \$407,041.58, issued by a New York Bank, in the form of Exhibit B and otherwise reasonably acceptable to Landlord and Prime Lessor except that such letter of credit by its terms shall provide for the automatic payment of twelve (12) monthly installments of \$33,920.13, each of which is to be paid to Prime Lessor on the first day of each month during the First Renewal Period, commencing on the First Renewal Commencement Date and continuing through and including the first day of the calendar month in which the First Renewal Expiration Date shall occur, it being understood and agreed that each such installment shall be applied and credited as and when received by Prime Lessor on account of the Fixed Rent then next becoming due and payable by Landlord, as tenant, under the Lease.

(b) Provided that on the date Tenant exercises Tenant's Second Renewal Right and on the Second Renewal Commencement Date: (i) this sublease is in full force and effect; (ii) Tenant is not in default hereunder beyond notice and the expiration of any applicable cure period; (iii) Tenant is in possession of the entire Premises; (iv) Tenant shall, pursuant to the last sentence of this paragraph (b), timely deliver to Landlord the required letter of credit; and (v) Tenant properly exercised Tenant's First Renewal Right, Tenant shall have the right ("Tenant's Second Renewal Right"), on one (1) occasion only, exercisable by delivery of a written notice (the "Second Renewal Notice") received by Landlord no later than six (6) months prior to the First Renewal Expiration Date, time being of the essence, to extend the First

Renewal Expiration Date for a single twelve (12) month period (the "Second Renewal Period") which shall commence on the day immediately following the First Renewal Expiration Date (the "Second Renewal Commencement Date") and end on the day immediately preceding the first anniversary of the Second Renewal Commencement Date (the "Second Renewal Expiration Date"). Upon Tenant's exercise of Tenant's Second Renewal Right as aforesaid, this sublease shall be deemed extended through the Second Renewal Expiration Date upon the terms and conditions herein set forth except that: (a) the Base Rent for the Second Renewal Period shall be \$419,252.82 and shall be payable by Tenant in a single payment in accordance with the provisions set forth in this paragraph (b) below; and (b) Tenant shall have no further right to renew this sublease or extend the term hereof. In furtherance of subclause (a) of the previous sentence, Tenant shall, as a condition precedent to Tenant's Second Renewal Right, simultaneously with the giving of the Second Renewal Notice, deliver to Landlord a letter of credit in the amount of \$419,252.82, issued by a New York Bank in the form of Exhibit B and otherwise reasonably acceptable to Landlord and Prime Lessor except that such letter of credit by its terms shall provide for the automatic payment of twelve (12) monthly installments of \$34,937.74, each of which is to be paid to Prime Lessor on the first day of each month during the Second Renewal Period, commencing on the Second Renewal Commencement Date and continuing through and including the first day of the calendar month in which the Second Renewal Expiration Date shall occur, it being understood and agreed that each such installment shall be applied and credited as and when received by Prime Lessor on account of the Fixed Rent then next becoming due and payable by Landlord, as tenant, under the Lease.

26. Miscellaneous. (a) The failure of Landlord or Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this sublease or the Lease or to exercise any right or remedy herein contained in any one or more instance shall not be construed as a waiver or relinquishment for the future of any such terms, covenants, conditions or remedies, but the same shall be and remain in full force and effect.

(b) All prior understandings and agreements between the parties are merged within this sublease, which alone fully and completely sets forth the understanding of the parties with respect to the subject matter hereof; and this sublease may not be changed or modified orally or in any manner other than by an agreement in writing and signed by the party against whom enforcement of the change or modification is sought, or by appropriate legal proceedings.

(c) Except as otherwise herein specifically set forth, the covenants and agreements herein contained shall bind and inure to the benefit of Landlord, Tenant, Prime Lessor and their respective permitted successors and assigns.

(d) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other relating to or arising out of this sublease or Tenant's occupancy of the Premises. It is further agreed that if Landlord commences any summary proceeding for possession of the Premises, Tenant will not interpose any counterclaim of whatever nature or description (other than a compulsory counterclaim which under law cannot be raised in a separate action) in any such proceeding.

(c) The term "Landlord" as used in this sublease means only the tenant under the Lease for the time being so that in the event of any sale or sales or assignment or assignments of tenant's interest in the Lease Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the landlord hereunder and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the transferee, at any such sale, assignment or transfer of tenant's interest in the Lease, that the transferee has assumed and agreed to carry out any and all covenants and obligations of the landlord hereunder.

(f) Notwithstanding anything herein or in any rule of law or statute to the contrary, it is expressly understood and agreed that to the extent that Landlord shall at any time have any liability under, pursuant to or in connection with this sublease, neither Tenant nor any officer, director, partner, associate, employee, agent, guest, licensee, or invitee of Tenant (or any other party claiming through or on behalf of Tenant) shall seek to enforce any personal or money judgment against Landlord, but shall only pursue any such rights or remedies against Landlord's interest in the Premises. In addition to and not in limitation of the foregoing provision of this paragraph, it is agreed that, in no event and under no circumstances, shall Landlord nor any officer, director, partner, employee, agent, guest, licensee, invitee or principal (disclosed or undisclosed) of Landlord have any personal liability or monetary or other obligation of any kind under or pursuant to this sublease.

(g) Neither the submission of this sublease form to Tenant nor the execution of this sublease by Tenant shall constitute an offer by Landlord to Tenant to lease the space herein described as the Premises or otherwise. This sublease shall not be or become binding upon Landlord or Tenant to any extent or for any purpose unless and until it is mutually executed by Landlord and Tenant and a fully executed copy thereof is delivered to each of Landlord or Landlord's counsel and Tenant or Tenant's counsel.

(h) If any of the provisions of this sublease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this sublease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this sublease shall be valid and enforceable to the fullest extent permitted by law.

(i) This sublease shall be governed in all respects solely by the internal laws of the State of New York without regard to principles of conflicts of laws.

(j) Without incurring any liability to Tenant, Landlord may permit access to the Premises and open same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to, or reasonably purporting to be entitled to, such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Landlord hereunder shall not be deemed a recognition by Landlord that the person or official making such demand has any right or interest in or to this sublease, or in or to the Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.



(k) Tenant agrees that its sole remedies in cases where it disputes Landlord's reasonableness in exercising its judgment or withholding or conditioning its consent or approval (as applicable) pursuant to a specific provision of this sublease, or any rider or separate agreement relating to this sublease, if any, shall be those in the nature of an injunction, declaratory judgment, or specific performance, the rights to money damages or other remedies being hereby specifically waived. Landlord's approval will in no event be deemed unreasonably withheld, conditioned or delayed if Prime Lessor fails to approve or conditions or delays approval of any matter required to be approved by Prime Lessor under the Lease.

(l) The Article headings of this sublease are for convenience only and are not to be given any effect whatsoever in construing this sublease.

(m) All bills, invoices or statement rendered to Tenant pursuant to the terms of this sublease shall be deemed binding upon Tenant and determined by Tenant to be correct in all respects if, within sixty (60) days after its receipt of same, Tenant fails to notify Landlord, in writing, that it disputes such bill, invoice or statement.

(n) Tenant shall not record this sublease or any memorandum thereof and any attempt to do so shall be and be deemed a material default by Tenant hereunder.

(o) In addition to Base Rent, all other payments required to be made by Tenant hereunder shall be deemed to be additional rent, whether or not the same shall be designated as such, and in the event of the non-payment thereof, Landlord (in addition to and not in limitation of its other rights and remedies, whether herein reserved or as may be provided by law or in equity) shall have all of the rights and remedies in respect thereof as are herein or otherwise provided in the case of the non-payment of Base Rent.

(p) Notwithstanding anything in this sublease to the contrary, the following provisions of the Lease shall not be deemed to be incorporated into this sublease: Sections 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 2.02, 2.04, 2.05, 2.06, 2.07 (except for clause (d)), 2.08, 2.09, the first four sentences of subclause (ii) of Section 3.01(a) and all references in Section 3.01(a) to "Tenant's initial Alterations", 3.03, 4.01, the last two sentences of Section 4.02(a), all references in Sections 4.02(b) and 4.02(c) to "Tenant's initial Alterations", the fourth and fifth sentences of Section 4.02(b), Section 4.02(d); Article 5 (except as expressly provided in Article 13 hereof); Sections 6.01, 6.02, 6.10, 7.02, 8.01, 8.05, 8.13, 8.20, 8.21 and 8.22; Article 9 and Exhibits B, B-2, B-3, B-4, E, J, M, N and O.

(q) Subject to and to the extent permitted by Section 3.01(b) of the Lease, Tenant may, upon the prior approval of Landlord, list Tenant's name and those of its officers and employees in the Building's directory, but in no event shall Tenant's listings exceed eleven (11.00%) percent of the total number of listings in the Building's directory permitted to Landlord under the Lease.

(r) Landlord represents that, as of the date hereof: (i) Landlord has not received written notice from Prime Lessor that Landlord is in default under the Lease, which default remains uncured; (ii) the Lease is unmodified and in full force and effect; (iii) to the best of Landlord's knowledge Prime Lessor is not in default under the Lease; and (iv) to the best of

Landlord's knowledge, Landlord has not introduced or permitted any third party to introduce or maintain in, on or about any portion of the Premises any Hazardous Materials (as defined in the Prime Lease) in violation of Article 38 of the Underlying Lease or Section 4.06(c) of the Lease.

(s) Subject to Tenant's: (i) submission of complete plans and specifications for such work (which plans and specifications were prepared by an architect licensed as such in the State of New York who is reasonably acceptable to Landlord ) to Landlord and Prime Lessor for approval by Landlord and Prime Lessor; and (ii) observance and compliance, respectively, with all Laws and with all of the terms and provisions of this sublease, including, without limitation, Article 12 thereof as well as Section 4.02 of the Lease, as incorporated herein, Landlord hereby approves in concept Tenant's performance, at Tenant's sole cost and expense, of the following work: (a) the removal of the glass walls of the office next to the elevators on the second floor of the Building and the reconfiguring of the existing reception area of the Premises; (b) the creation of an "IT" closet by expanding and joining the series of small closets located on the opposite side of the elevator landing from the proposed reception area of the Premises; and (c) the enclosure of an existing open area within the Premises so as to create therein three (3) enclosed offices.

IN WITNESS WHEREOF, the parties hereto have duly executed this sublease as of the date first above written.

LANDLORD:

RCN TELECOM SERVICES, INC.

By: Michael J. Angi  
Name: Michael J. Angi  
Title: Gen & Asst. Manager Officer

TENANT:

JOKE VISION, LLC

By: [Signature]  
Name: Michael K. Vlah  
Title: Manager

PRIME LESSOR:

(For the purpose of consenting to and agreeing to be bound by the provisions of Articles 2(a), 11 and 25 of this sublease)

ADVANCE MAGAZINE PUBLISHERS  
INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

07/31/2003 THU 11:25 FAX 212 842 7952

RCN

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**EXHIBIT A**

**LEASE**

**[See Attached]**

## AGREEMENT OF SUBLEASE

AGREEMENT OF SUBLEASE made as of the 4th day of October, 2001, between RCN TELECOM SERVICES, INC., a Pennsylvania corporation, having an address at 105 Carnegie Center, Princeton, New Jersey 08540-6215 ("Landlord"), and MORGAN STANLEY D.W. INC., a Delaware corporation, having an office at 1585 Broadway, New York, New York 10019 ("Tenant").

### WITNESSETH:

WHEREAS, pursuant to a certain Lease dated as of May 9, 2000 (the "Lease") between Advance Magazine Publishers Inc., as lessor ("Prime Lessor"), and Landlord, as lessee, a true copy of which (save for certain redactions therein) Landlord represents is annexed hereto as Exhibit A and made a part hereof and which Tenant represents having received and reviewed prior to the execution of this sublease, Landlord does presently lease and hire certain premises (the "Lease Premises") in the building (the "Building") known as 825 Third Avenue, New York, New York, for the term, at the rentals and upon the other terms, covenants and conditions more fully described in the Lease;

WHEREAS, Landlord represents that to the best of its knowledge: (a) the Lease is a sublease that is subject and subordinate to the Prime Lease (as defined in the Lease) between The Durst Buildings Corporation, as lessor ("Durst"), and Random House, Inc., as lessee ("Assignor"); (b) the Prime Lease was assigned by Assignor to Prime Lessor pursuant to that certain Assignment and Assumption of Lease dated as of April 27, 1998; (c) the Prime Lease is unmodified (except for that certain First Modification to Lease dated as of February 6, 1999) and is in full force and effect; and (d) a true copy of the Prime Lease (from which certain provisions were redacted) was delivered by Landlord to Tenant prior to the execution hereof;

WHEREAS, Tenant desires to sublet and hire from Landlord a portion of the Lease Premises, to wit: (a) the entire rentable portion of each of the fifth (5th), seventh (7th), eighth (8th) and tenth (10th) floors and the entire portion of the ground floor being leased by Landlord pursuant to the Lease, all of which constitute part of the Lease Premises (collectively, the "Initial Premises"); and (b) the entire rentable portion of each of the fourth (4th) and the ninth (9th) floors, all of which also constitute part of the Lease Premises (collectively, the "Additional Premises") and Landlord is willing to sublet the Initial Premises and the Additional Premises to Tenant at the rental and additional rental and on the terms and conditions hereinafter set forth (it being understood that, effective as of the date hereof but prior to the Additional Premises Commencement Date (as hereinafter defined), the term "Premises" as used herein shall be and shall mean for all purposes the Initial Premises only and that, effective as of the Additional Premises Commencement Date, the term "Premises" shall be and shall mean for all purposes, collectively, the Initial Premises and the Additional Premises); and

WHEREAS, Tenant acknowledges that a third party sublessee ("Sublessee") is currently in possession of the Additional Premises pursuant to an existing sublease (the "Sublease") with Landlord, which is scheduled to expire on December 31, 2001 subject to Sublessee's right (the "Sublease Extension Option") to extend the term of the Sublease through and including April 30, 2002 (it being understood and agreed that Landlord shall only permit Sublessee to extend the Sublease by exercising the Sublease Extension Option subject to and in accordance with the express terms and provisions thereof).

**NOW, THEREFORE**, the parties hereto hereby covenant and agree as follows:

1. **Grant of Sublease.** (a) Landlord hereby subleases to Tenant and Tenant hereby hires from Landlord the Premises, for a term which shall commence as to the Initial Premises on the latest of the date (the "**Initial Premises Commencement Date**") that: (i) Prime Lessor has issued the Consent (as hereinafter defined); (ii) the date of the mutual execution and delivery of this sublease by Landlord and Tenant; and (iii) the date Landlord delivers possession of the Initial Premises to Tenant, it being agreed that, provided Prime Lessor has issued the Consent and the Initial Premises Commencement Date has occurred, the term of this sublease as to the Additional Premises shall commence on the day that Landlord delivers possession of the Additional Premises to Tenant (the "**Additional Premises Commencement Date**") and such term shall expire on June 30, 2006 (the "**Expiration Date**"), all such dates to be inclusive, unless such term is sooner terminated pursuant to the provisions hereof.

(b) Tenant hereby acknowledges, confirms, covenants and agrees that Tenant does not have any right, option or privilege, pursuant to this sublease or otherwise, to hire, let or sublet from Landlord: (i) any portion of the Lease Premises other than the Premises, and only for the term hereinabove set forth in this Article and upon all of the other terms and conditions set forth in this sublease; or (ii) any other space which Landlord may from time to time hire from Prime Lessor, any other lessor, sublessor or otherwise.

2. **Base Rent.** (a) Tenant shall pay rent at an annual rental rate (herein sometimes referred to as the "**Base Rent**") as follows: (i) \$4,171,272 per annum for the period commencing on the date (the "**Rent Commencement Date**") that is thirty (30) days after the Initial Premises Commencement Date and continuing through and including the day immediately preceding the Additional Premises Commencement Date; and (ii) \$6,219,617 per annum for the period commencing on the Additional Premises Commencement Date and continuing through and including the Expiration Date, it being agreed that such rent shall be paid in equal monthly installments in advance on the first day of each month during said term commencing on the Rent Commencement Date. Tenant agrees to pay the Base Rent to Landlord as provided in this paragraph (a) of this Article at the office of Landlord above stated or at such other place or to such other person or party as Landlord may designate in writing, without notice or demand and without any abatement (except, to the extent and upon the terms and conditions that Landlord is entitled to an abatement of Rent (as defined in the Lease) under the express provisions of the Lease), set-off or reduction of any kind whatsoever.

(b) Immediately after request by Landlord or Tenant, the other shall execute and deliver to the requesting party a certificate confirming the Initial Premises Commencement Date, the Rent Commencement Date and/or the Additional Premises Commencement Date, if and to the extent same has theretofore occurred. In no event shall either party's failure to request any such certificate or the other party's failure or refusal to execute any such certificate in any way affect this sublease, the term hereof or any obligations hereunder including, without limitation, Tenant's obligation to pay the rent herein reserved and to perform all of the other covenants and agreements herein set forth.

(c) If the Rent Commencement Date is not the first day of a calendar month, a partial installment of Base Rent, prorated from the Rent Commencement Date to the end of the calendar month in which the Rent Commencement Date occurred, will be due together with the installment of Base Rent due on the first day of the calendar month following the month in which the Rent Commencement Date occurred and subsequent monthly installments of Base

Rent will be due on the first day of each subsequent calendar month throughout the term of this sublease.

3. Additional Rent, Late Charges, etc. (a) In addition to the Base Rent, Tenant covenants and agrees to pay to Landlord, as additional rent, all other charges and payments specified herein and an amount equal to all amounts at any time due to Prime Lessor by Landlord in respect of Tenant's acts, omissions, negligence or consumption of services under the Lease or otherwise.

(b) From and after the Rent Commencement Date and continuing through the day prior to the Additional Premises Commencement Date, Tenant shall pay Landlord, as additional rent: (i) 44.44% of the Operating Payments (as defined in the Lease) allocable to such period to the extent, if any, that same exceed, on an annual basis, the Operating Payments due under the Lease for the calendar year 2001 (appropriately prorated for any period of less than a full year); and (ii) 44.89% of the Tax Payments (as defined in the Lease) due under the Lease that are allocable to such period. From and after the Additional Premises Commencement Date and continuing through the Expiration Date, Tenant shall pay Landlord, as additional rent: (x) 66.67% of the Operating Payments allocable to such portion of the term hereof to the extent, if any, that same exceed, on an annual basis, the Operating Payments due under the Lease for the calendar year 2001 (appropriately prorated for any period of less than a full year); and (y) 66.93% of the Tax Payments due under the Lease that are allocable to such period.

(c) Landlord shall furnish Tenant with a copy of any statements for Tax Payments and Operating Payments with respect to the Premises received by Landlord from Prime Lessor. All additional rent shall be paid within ten (10) business days following the date upon which a written request therefor is made, such request to include Landlord's calculation of the amount due from Tenant. Notwithstanding anything to the contrary herein contained: (i) Tenant shall be entitled to a refund of any overpayments made pursuant to Section 3(b) hereof in the manner, to the extent and upon the terms and conditions that Landlord receives a refund of any overpayments of Tax Payments and/or Operating Payments made to Prime Lessor under the Lease; and (ii) Tenant shall have the right to dispute the amount of payments made by Tenant pursuant to Section 3(b) hereof in the manner, to the extent and upon the terms and conditions that Landlord is permitted under the Lease to dispute Tax Payments and Operating Payments made by Landlord to Prime Lessor whether the dispute relates to Landlord's calculations and/or Prime Lessor's calculations. Landlord shall cooperate with Tenant at no cost, expense or risk to Landlord to secure from Prime Lessor any refund to which Tenant is entitled or to dispute any of Prime Lessor's calculations that are erroneous.

(d) Any installment of Base Rent, additional rent or other charges not paid within three (3) days after it is due and payable shall bear interest from the date it becomes due until it is paid at an annual rate equal to three (3%) percent over the prime lending rate then being charged by J.P. Morgan Chase & Co. or its successor, but not in excess of the highest rate permitted by law, and such amount(s) shall be deemed to be additional rent hereunder. Nothing contained in this paragraph (d) is intended to grant Tenant any extension of time in respect of the due dates for any payments under this sublease, nor shall same be construed to be a limitation of or a substitution for any other rights, remedies and privileges of Landlord under this sublease or otherwise.

(e) Tenant's obligation to pay Base Rent, additional rent and any other charges hereunder shall survive the expiration or sooner termination of this sublease. Any charges payable in addition to Base Rent and/or additional rent specified above shall be deemed to be additional rent hereunder.

4. Use. The Premises shall be used only for general and executive offices by Tenant in the conduct of its business (including such ancillary uses in connection therewith as shall be reasonably required by Tenant which may include use of the ground floor space leased by Tenant hereunder for a mailroom and messenger center) and for no other purpose.

5. Subordination. (a) This sublease is subject and subordinate to the Lease, all ground and underlying leases and to all mortgages which may now or hereafter affect such leases, the Premises or the property of which the Premises are a part, and to all modifications, extensions, consolidations, replacements or amendments of any such leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee holding a mortgage affecting any lease or the property of which the Premises are a part. However, in confirmation of such subordination, Tenant shall promptly execute any certificate that Landlord may reasonably request.

(b) In the event of termination, reentry or dispossession by Prime Lessor under the Lease, Prime Lessor may, at its option, take over all of the right, title and interest of Landlord under this sublease, and Tenant shall, at Prime Lessor's option, attorn to Prime Lessor pursuant to the then executory provisions of this sublease, except that Prime Lessor shall not be liable for, subject to or bound by any item of the type that a Successor Landlord (as defined in the Lease) is not so liable for, subject to or bound by in the case of attornment by Landlord to a Successor Landlord under Section 6.01(a) of the Lease.

(c) Notwithstanding the foregoing or anything herein contained to the contrary, concurrently with Landlord's request for the Consent from Prime Lessor, Landlord shall also request: (i) and use commercially reasonable efforts in good faith to obtain from Prime Lessor, on behalf of Tenant, a non-disturbance agreement substantially in the form of Exhibit J to the Lease; and (ii) that Prime Lessor ask Durst to grant non-disturbance protection to Tenant; Tenant hereby acknowledging that neither the validity or effectiveness of this sublease, nor any of Tenant's obligations (nor any of Landlord's rights or privileges) hereunder shall be altered or affected in any way whatsoever in the event Landlord is unable notwithstanding Landlord's use of such commercially reasonable efforts to obtain such non-disturbance agreement from Prime Lessor or, if having requested Prime Lessor to ask Durst to grant non-disturbance protection to Tenant, Prime Lessor fails to do so or Durst fails to grant such protection. Further, in no event shall Landlord be required to expend any sums, incur any expenses or commence any action or proceeding in order to obtain any such non-disturbance agreement or protection.

6. Lease Performance. (a) Tenant hereby assumes performance of and agrees to perform all of the terms, obligations, covenants and conditions on the part of Landlord, as lessee, to be kept, observed and performed under the Lease during the term of this sublease, in respect of the Premises (and areas ancillary thereto), except that Tenant shall not be obligated to pay to Prime Lessor the Fixed Rent, any Tax Payments or Operating Payments, and Tenant agrees to indemnify and hold Landlord harmless from and against all liabilities, claims, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or arising out of Tenant's performance of (or failure to perform) all of such terms, obligations, covenants and conditions. Tenant hereby waives each and every right waived by Landlord, as



lessee, under the Lease if and to the extent such waiver is set forth in the Lease. In addition to the foregoing and except as otherwise herein expressly set forth, Tenant covenants and agrees that Tenant will keep, observe and perform any act, obligation, condition or covenant to be kept, observed and performed by Landlord, as lessee under the Lease, within a time period which is two (2) business days' shorter than the time period set forth in the Lease for Landlord, as lessee thereunder, to perform, keep and observe such act, obligation, condition or covenant; provided, however, that in no event shall Tenant do anything that constitutes a default under the Lease.

(b) It is expressly noted, acknowledged and confirmed by Tenant that a breach, default or failure to observe, perform or otherwise comply with all or any of the obligations, covenants, conditions, rules and regulations in this sublease or the Lease on Tenant's part to be observed, performed or complied with shall be and be deemed to be a violation by Tenant of a substantial obligation of the tenancy created by this sublease entitling Landlord to pursue any and all rights, remedies and privileges provided under this sublease and the Lease or at law, in equity or otherwise, including, without limitation, the right to terminate said tenancy and recover possession of the Premises, subject in all events to the notice, grace and cure periods set forth herein or in the Lease; provided, however, that except as expressly specified in Article 21 hereof, Tenant shall not be liable for any consequential (including lost profits), special or punitive damages.

(c) If there is any inconsistency between the provisions of the Lease and the express provisions of this sublease, the provisions of this sublease shall govern unless the provisions of this sublease: (i) could, if implemented, create a default under the Lease; or (ii) give or create in Tenant a right not permitted under the Lease, in which case the provisions of the Lease shall control.

7. Services. (a) Tenant shall be entitled to receive with respect to the Premises the services, including, without limitation, cleaning services, repairs and utilities, to be supplied under the Lease by Prime Lessor. The foregoing notwithstanding, Landlord shall have no obligation to supply any such services, repairs and utilities, and Tenant shall not look to Landlord to provide same. If Prime Lessor fails or refuses to comply with any of the provisions of the Lease insofar as they affect Tenant's occupancy of the Premises during the term hereof, Landlord, upon request of Tenant, shall exercise reasonable efforts (without thereby being required to commence any action or proceeding, expend any monies or incur any expenses) to cause Prime Lessor to so comply. However, Landlord shall not be liable to Tenant, and Tenant's obligations hereunder shall not be impaired nor the performance thereof be excused, because of any failure or delay by Prime Lessor in performing its obligations under the Lease (or because of Landlord in any way failing to enforce such obligations). If Prime Lessor so defaults, Tenant may, at Tenant's sole expense, attempt to enforce Prime Lessor's performance of such obligations in the name of Landlord, provided that: (i) Landlord elects not to do so or fails to proceed diligently to do so; (ii) Landlord is not prejudiced thereby; (iii) Tenant employs counsel reasonably acceptable to Landlord to do so; and (iv) Tenant agrees to indemnify and hold Landlord harmless from and against any claim, liability, cost and expense (including but not limited to reasonable attorneys' fees) incurred in connection with or resulting from any action of Tenant pursuant to this Article. Landlord shall cooperate with Tenant, at Tenant's sole cost and expense, in the prosecution of any action or proceeding against Prime Lessor properly commenced by Tenant pursuant to this Article.

(b) To the extent Tenant shall require condenser water for the provision of supplemental air conditioning to the Premises, Tenant shall have the right to utilize,

without charge therefor, the 150-ton supplemental HVAC dry cooler and the related glycol loop (collectively, the "Supplemental HVAC Equipment") presently existing within the Premises, which Supplemental HVAC Equipment Tenant agrees to accept in its present "as is" condition and state of repair. Tenant further agrees, at Tenant's sole cost and expense, to operate and maintain at all times in good order, condition and repair and in compliance with all applicable laws the Supplemental HVAC Equipment and to make all modifications to the Supplemental HVAC Equipment required to enable the same to be run on a continuous, or near continuous, basis. Tenant shall enter into service/maintenance agreements for the service and maintenance of the Supplemental HVAC Equipment with a contractor approved by Landlord in writing, which approval shall not be unreasonably withheld or delayed and Tenant shall, during the term hereof, cause periodic service and maintenance to be performed on the Supplemental HVAC Equipment and shall, upon Landlord's request, provide Landlord with copies of all service and maintenance records. Landlord, upon request made to Tenant, shall have the right from time to time and at all times during the term hereof to obtain for the portion of the Lease Premises that is not subject to this sublease up to fifty (50) tons of condenser water from the Supplemental HVAC Equipment at no charge to Landlord.

8. Rights and Remedies. Landlord shall have all of the same rights, privileges and remedies with respect to a default under this sublease by Tenant as Prime Lessor has with respect to a default by Landlord, as lessee, under the Lease, with the same force and effect as if such rights, privileges and remedies were fully set forth herein at length, and Landlord shall have, with respect to Tenant, this sublease and the Premises, all of the rights, powers, privileges, immunities and remedies as are reserved by or granted to Prime Lessor under the Lease as if the same were fully set forth herein at length; such rights, powers, privileges, immunities and remedies shall be in addition to all of those available to Landlord at law, in equity or otherwise. Tenant shall be entitled to the same grace and cure periods and the same notices with respect to a default under this sublease by Tenant as Landlord has with respect to a default by it under the Lease. Landlord shall not be responsible for any breach of the Lease by Prime Lessor or any nonperformance or noncompliance with any provision thereof by Prime Lessor regardless of the alleged cause thereof (except if and to the extent caused by Landlord). Notwithstanding anything herein contained to the contrary, provided this sublease is in full force and effect and Tenant is not in default hereunder as to which notice has been given, in the event Landlord shall default in the performance of any obligation on the part of Landlord to be performed under the Lease following Landlord's receipt of notice of such default, Tenant, upon no less than ten (10) days' notice to Landlord, shall have the right to cure said default and deduct the reasonable, actual out-of-pocket cost thereof from the rent next due hereunder unless Landlord shall cure said default within such ten (10) day period or commence curing such default within such ten (10) day period and thereafter proceed diligently to cure same. Landlord hereby confirms that Tenant shall not be obligated to deliver to Landlord any security for the performance of Tenant's obligations hereunder whether in the form of a cash deposit, letter of credit or otherwise. If Tenant obtains a final, unappealable judgment against Landlord relating to a default by Landlord hereunder and same remains unsatisfied for ninety (90) days after service of same on Landlord with a demand for payment, Tenant may recoup the amount thereof against the next rents coming due hereunder.

9. Acceptance of Premises. (a) Tenant confirms, represents and agrees that it has thoroughly inspected each of the Initial Premises and the Additional Premises, is fully acquainted and satisfied with their respective conditions and agrees to accept the Initial Premises on the Initial Premises Commencement Date and the Additional Premises on the Additional

Premises Commencement Date, in each instance, "as is", in the condition same are in on the date hereof, subject to reasonable wear and tear, any and all defects therein, latent or otherwise, except as expressly specified herein, together with any and all fixtures, furniture, equipment and personal property (collectively, the "FF&E"), now existing therein or attached thereto, "as is" and "where is", subject to reasonable wear and tear, any and all defects therein, latent or otherwise, except as otherwise expressly specified herein. Tenant acknowledges that, except as expressly specified herein, no representations with respect to the physical condition or state of repair of the Initial Premises and the Additional Premises or with respect to any FF&E, have been made to it. It is agreed that in no event shall Landlord have any obligation or be required to do any work or make any installation, repair or alteration of any kind in, to or at the Initial Premises or the Additional Premises in order to prepare same for occupancy by Tenant or otherwise. The taking of possession of the Initial Premises and the Additional Premises (or any portions thereof) by Tenant shall be conclusive evidence that same are in satisfactory condition at the time such possession is so taken. Landlord covenants and agrees that: (i) on the Initial Premises Commencement Date the Initial Premises will contain the FF&E that is identified on Exhibit C annexed hereto and made a part hereof; and (ii) Tenant will have the exclusive right to use the FF&E during the term of this sublease without charge and without disturbance from any third party. Upon the expiration or any earlier termination of the term hereof the FF&E will be returned to Landlord in substantially the same condition as on the Initial Premises Commencement Date, reasonable wear and tear excepted. Landlord hereby agrees that Tenant may remove from the portion of the Initial Premises comprised of the seventh (7th) floor of the Building (and discard if Tenant so desires) all of the personal property located on such floor on or after the Initial Premises Commencement Date.

(b) Tenant shall, with the prior written consent of Landlord, have the right to utilize any LAN, cabling and fiber installed in the Premises, it being understood that Landlord shall not unreasonably withhold or delay its consent to Tenant's utilization of such LAN, cabling or fiber that is horizontally installed in the Premises. Tenant shall not alter, modify, remove or disturb such LAN, cabling and fiber, it being agreed that Tenant shall permit Landlord and Landlord's agents to maintain, modify, repair and replace such LAN, cabling and fiber and to install additional LAN, cabling and fiber within and through the Premises and Landlord and Landlord's agents shall have the right to enter the Premises at all reasonable times and on reasonable notice for such purposes without unreasonably interfering with Tenant's use of the Premises.

(c) Landlord represents that to the best of Landlord's knowledge (but without independent investigation or inquiry): (i) Landlord has not received notice of any violations affecting the Premises (or any portion thereof) which violations remain outstanding on the date hereof; (ii) the initial buildout of the Premises by Landlord was performed substantially in accordance with the Lease and all applicable laws; (iii) all work to be done by Prime Lessor in the Premises pursuant to the Lease as a condition to the commencement of the term of the Lease has been substantially completed; (iv) no claims have been made against Landlord based on any environmental condition in the Premises; (v) the FF&E and Landlord's interest in the Lease are free of all liens other than such liens as may attach to all of Landlord's property generally; and (vi) except for the Consent, no other consents are required to make this sublease binding and enforceable.

(d) Landlord acknowledges that Tenant shall have no responsibility or liability for environmental matters or conditions existing in: (i) the Initial Premises on the Initial

Premises Commencement Date; or (ii) the Additional Premises on the Additional Premises Commencement Date.

10. Delivery of Possession. (a) If Landlord fails to deliver possession of the Initial Premises to Tenant within thirty (30) days after the Consent is obtained (subject to force majeure), Tenant as its sole and exclusive remedy therefor, may cancel this sublease by notice given to Landlord on or before the date that is forty-five (45) days after the Consent is received, time being of the essence as to the giving of such notice by Tenant.

(b) Landlord shall in good faith use commercially reasonable efforts to cause possession of the Additional Premises to be delivered to Tenant, free and clear of any furniture and other moveable personal property, within ten (10) business days after the expiration of the Sublease (which commercially reasonable efforts shall include the commencement and prosecution by Landlord of an appropriate dispossession proceeding and the enforcement of all applicable holdover provisions contained in the Sublease against Sublessee or other occupant holding over in the Additional Premises after the expiration of the term of the Sublease); provided, however, that if Landlord is unable, despite Landlord's use of such commercially reasonable efforts, to deliver possession of the Additional Premises to Tenant by July 31, 2002, Tenant, as Tenant's sole remedy for such failure to deliver possession of the Additional Premises, shall have the right to elect not to lease the Additional Premises by written notice (the "Termination Notice") given to Landlord on or before August 15, 2002 (time being of the essence as to the delivery of such notice). In the event Tenant timely gives Landlord the Termination Notice: (i) the term of this sublease with respect to the Additional Premises and the estate hereby granted therein shall terminate as of the date of the giving of the Termination Notice; (ii) the Base Rent payable hereunder shall be as set forth in Section 2(a)(i) hereof and shall be payable through and including the Expiration Date; (iii) the respective percentages for Operating Payments and for Tax Payments shall be as set forth in subclauses (i) and (ii) of Section 3(b) hereof and shall continue in effect through and including the Expiration Date; (iv) the term "Premises" shall be and shall mean for all purposes the Initial Premises only; and (v) Tenant shall thereafter have no further rights or obligations under this sublease with respect to the Additional Premises. In the event that Tenant fails to give Landlord the Termination Notice on or before August 15, 2002, time being of the essence, Tenant shall be deemed to have waived the right to give the same. If Landlord is unable to deliver possession of the Additional Premises to Tenant in the condition required hereunder within ten (10) business days after the expiration of the Sublease for any reason whatsoever, including but not limited to the holding-over or retention of possession by any tenant, subtenant or other occupant, Landlord shall not be subject to any liability for such failure to give possession of the Additional Premises to Tenant and the validity of this sublease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this sublease but the rent payable hereunder for the Additional Premises shall be abated (provided Tenant is not responsible for Landlord's inability to deliver possession of the Initial Premises and/or the Additional Premises, as the case may be) until Landlord shall deliver possession of the Additional Premises to Tenant. The provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

11. Lease Termination, Casualty, Condemnation. (a) If for any reason whatsoever the Lease is terminated, whether by operation of law or otherwise, Landlord shall not be responsible for such termination; provided, however, that Landlord agrees, as long as Tenant is not in default hereunder beyond any applicable notice and cure period, not to: (i) knowingly do anything which would constitute a default under the Lease or any instrument to

which the Lease is subordinate; or (ii) voluntarily: (x) surrender or cancel the Lease (except by reason of condemnation or casualty in accordance with the terms of this sublease) without the prior written consent of Tenant, unless such surrender or cancellation is subordinate to or preserves Tenant's rights under this sublease; or (y) amend or modify the Lease so as to adversely affect Tenant to more than a de minimis extent. This sublease shall terminate without notice to Tenant in the event of any termination of the Lease.

(b) If at any time during the term hereof there is a casualty that destroys or renders untenable 60% or more of the Lease Premises, Landlord shall have the right to terminate this sublease. Landlord shall also have the right to terminate this sublease if 45% or more of the Lease Premises is destroyed or rendered untenable during the last three years of the term hereof or if 30% or more of the Lease Premises is destroyed or rendered untenable during the last two years of the term hereof.

(c) Tenant shall have the right to terminate this sublease if 60% or more of the Premises is rendered untenable and cannot be repaired within one year after the event that destroys or renders the same untenable. Tenant shall also have the right to terminate this sublease in respect of any portion of the Premises containing one full floor or more of the Building if such portion of the Premises cannot be repaired within one year after the event that destroys same or renders same untenable. In the event of any partial cancellation of this sublease by Tenant, the Base Rent and additional rent shall be adjusted equitably.

(d) Any right of termination in this Section set forth shall be exercised, if at all, within 60 days after the event that destroys or renders the affected portion of the Building untenable. Except as herein expressly specified, the provisions of the Lease shall govern with respect to a casualty or condemnation of all or any part of the Lease Premises.

12. Alterations. Tenant shall not perform and/or make any alterations, additions, improvements or installations of any kind or nature in or to the Premises without in each instance obtaining the prior written consent of Landlord and of Prime Lessor (where, in the case of the latter, such consent is required under the Lease). Landlord agrees that in the event that: (a) the consent of Prime Lessor is not required in respect of such alterations, additions, improvements or installations; or (b) the consent of Prime Lessor is required in respect of such alterations, additions, improvements or installations and the consent is secured by Tenant, Landlord will not unreasonably withhold or delay its consent to same. Notwithstanding the foregoing, Tenant may, without Landlord's consent, but provided Tenant notifies Landlord at least ten (10) days prior to the commencement of such alterations (such notice to include any available plans for said alterations) perform alterations of a purely cosmetic or decorative nature, including, without limitation, painting or carpeting of the Premises, provided that said alterations do not require any application, plans or other documentation to be filed with or approved by any governmental agency or authority. Notwithstanding anything to the contrary contained herein or in the Lease, Landlord may, by written notice given to Tenant at the time Landlord consents to the installation of any Fixtures (as defined in Lease), require that all Fixtures installed by or at the request of Tenant in the Premises which do not constitute a standard office installation, including without limitation, customized installations, which would in Landlord's reasonable opinion, be difficult or expensive to remove or which would not likely be used by a normal office tenant, including without limitation, Landlord, be removed from the Premises by Tenant prior to the Expiration Date. If Landlord shall give Tenant such notice, then, Tenant at Tenant's sole expense prior to the Expiration Date, or in the event of any earlier termination of this sublease, prior to the effective date of such termination, remove such Fixtures from the Premises,

repair and restore the Premises to the condition existing immediately prior to the installation thereof and repair any damage to the Premises or to the Building caused by such removal. Subject to the written approval of Prime Lessor and/or Durst, if and to the extent required under the Lease and/or the Prime Lease, Landlord hereby approves the contractors identified on Exhibit B annexed hereto and made a part hereof for the performance of Alterations by Tenant in or to the Premises.

13. Assignment/Subletting. (a) Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, and permitted successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this sublease, nor sublet, or suffer or permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord (which, provided Tenant complies with all of the terms and conditions of Article 5 of the Lease, Landlord agrees not to unreasonably withhold or delay except that Landlord shall in no event be required to grant such consent in the event Prime Lessor fails to grant its consent to any such assignment, mortgage, encumbrance, subletting, use or occupancy when Prime Lessor's consent is required under the Lease) and Prime Lessor (when Prime Lessor's consent is required under the Lease) and without complying with all of the terms and conditions of Article 5, including, without limitation, Section 5.04, of the Lease in each instance. In the event Landlord and Prime Lessor shall consent to any proposed subletting of all or any part of the Premises or to an assignment of this sublease (subject to Prime Lessor's right to be paid: (i) the applicable percentages of the excess, if any, of the amounts payable as fixed rent and as additional rent on account of Taxes (as defined in the Lease), Operating Expenses (as defined in the Lease) and electricity by the subtenant pursuant to such subletting plus any Other Sublease Consideration (as defined in the Lease) payable to Tenant by such subtenant over Tenant's Basic Cost (as defined in the Lease and as applied to this sublease) pursuant to the provisions of Section 5.05(a) of the Lease (collectively, the "Sublet Profit"); and (ii) the applicable percentage of the Assignment Consideration (as defined in the Lease) pursuant to the provisions of Section 5.05(b) of the Lease (the "Assignment Profit")), Tenant agrees, in the case of any such subletting, upon Landlord's request, to execute an agreement reasonably satisfactory to Landlord to pay monthly to Landlord as, if and when received by Tenant, as additional rent hereunder, fifty (50%) percent of any remaining Sublet Profit and, in the case of any such assignment, Tenant also agrees to pay Landlord as, if and when received by Tenant, as additional rent hereunder, fifty (50%) of any remaining Assignment Profit as of the effective date of such assignment. If this sublease be assigned, or if the Premises or any part thereof be sublet or occupied by any person or entity other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of any of the covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or subletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or subletting.

(b) If Tenant is a corporation, any dissolution, merger, consolidation or reorganization of Tenant, or any sale or other transfer of a controlling interest of the corporate stock of Tenant (other than a merger of Tenant with an entity wholly owned and controlled by Tenant or wholly owning and controlling Tenant), or, if Tenant is a limited liability company, a partnership or a limited liability partnership, any transfer of a controlling interest, shall constitute an assignment of this sublease for all purposes of this Article.

(c) Notwithstanding anything to the contrary set forth herein, and provided Tenant is not then in monetary default or other material default hereunder as to which notice has been given, Tenant may, to the extent and upon the terms and conditions that Landlord may be permitted to do so with respect to the Lease and the Lease Premises under the applicable provisions of the Lease, on not less than ten (10) business days prior written notice to Landlord: (i) (except that no such notice shall be required to be given to Landlord in the event that the proposed acquisition, merger or consolidation is not then public information) and delivery to Landlord of an executed original counterpart of either an assignment of this sublease (which assignment shall provide that the assignee assumes directly for the benefit of Landlord all of Tenant's obligations under this sublease from and after the effective date of such assignment and is otherwise in form and substance reasonably satisfactory to Landlord, or in connection with a merger or consolidation by operation of law or by effective provisions contained in the instrument of merger or consolidation which meets the requirements of clause (B) below), or the sublease (which provides that said sublease is subject and subordinate to this sublease in all respects), as the case may be, assign this sublease or sublet all or a portion of the Premises to an entity into which Tenant is merged or consolidated or to an entity which shall be an "affiliate", "subsidiary" or "successor" (each as hereinafter defined) of Tenant. For purposes of this paragraph: (x) an "affiliate" of Tenant shall mean any entity which is directly controlled by or is under common control with Tenant ("control" being interpreted as the ownership of more than fifty (50%) percent of the stock or the interests in such entity, as applicable, and possession of the power to direct the management and policies of such entity and the distribution of its profits); (y) a "subsidiary" of Tenant shall mean an entity not less than fifty-one (51%) percent of which is owned and controlled by Tenant; and (z) a "successor" of Tenant shall mean an entity: (A) which acquires all or substantially all of the stock, in the case of a corporation, or interests, in the case of another type of entity, or all or substantially all of the property and assets of Tenant, in a bona fide transaction (which, among other things, shall mean that the value of this sublease does not exceed ten (10%) percent of the consideration payable in such transaction and the transaction is not being done to circumvent the prohibitions and provisions of this Article) and, in the case of a transaction involving assets, assumes all or substantially all of the obligations and liabilities of Tenant (including, without limitation, this sublease); or (B) in which or with which Tenant is merged or consolidated, which entity is subject to the jurisdiction of the courts of the State of New York and which succeeds Tenant in accordance with applicable statutory provisions for merger or consolidation of entities, provided that, by operation of law or by effective provisions contained in the instruments of merger or consolidation, such entity fully assumes the liability of Tenant; provided further that, on the completion of every acquisition, merger, consolidation, assumption or other transaction in this Paragraph described, the successor shall have a net worth of at least \$1,000,000,000; and (ii) grant a license or licenses to third parties to use specific offices and/or desk space in the Premises, provided that: (u) Tenant shall not alter the Premises to facilitate such license(s), separately demise any space within the Premises or otherwise act in any way to cause the Premises to appear other than as a single tenant space; (v) at least ten (10) business days prior to any such licensee taking possession of any portion of the Premises, Tenant delivers to Landlord a copy of the license agreement respecting such license, which shall specifically provide that any such license is subject and subordinate to this sublease, and one or more certificates of insurance evidencing that such licensee(s) have procured the insurance coverages required hereunder; (w) Tenant advises Landlord in writing, upon request, of the status of all licensee(s) occupying any portion of the Premises; (x) signage for the licensee(s) shall be tasteful and in keeping with the standards of the Building, and in any event shall not be larger than one-quarter of the size of Tenant's signage; (y) such licensee's intended use of such space is compatible with the use of the Building as a first

class office building, is solely for the use permitted hereunder and will not violate the prohibitions set forth in Section 1.07 of the Lease; and (z) the granting of such license shall not create unusual amounts of traffic in the Building. In no event shall anything contained in this Paragraph: (A) operate as a consent to or approval by Landlord of any of the provisions, covenants or conditions of the license agreement between Tenant and any licensee and Landlord shall not be bound thereby; (B) be construed to modify, waive or affect: (1) any of the provisions, covenants or conditions in this sublease; (2) any of Tenant's obligations under this sublease, or to waive any breach thereof; or (3) any rights of Landlord under this sublease (except insofar as they are increased in connection with such license agreement and/or the Premises during the term of any license agreement); or (C) be construed to enlarge or increase Landlord's obligations under this sublease, to establish any licensee as a party entitled to the performance or benefit of any of such obligations, or to confer upon any licensee any benefits or legal rights under this sublease.

14. Lease Charges. If Landlord shall be charged, by reason of Tenant's acts or omissions, for any sums pursuant to the provisions of the Lease, Tenant shall be liable for such sums, such sums shall be deemed additional rent and shall be collectible as such, and same shall be payable by Tenant within ten (10) days following demand by Landlord therefor.

15. Additional Services. If Tenant procures any additional services with respect to the Premises or otherwise, Tenant shall pay all charges for such services, as and when due, directly to the party entitled thereto (or as otherwise directed by Landlord). No such services shall be obtained in violation of the Lease.

16. Insurance. Without in any way limiting any of Tenant's covenants, obligations and agreements contained in this sublease (including, but not limited to, Article 18(b) hereof), Tenant hereby releases Landlord (which term as used in this Article shall include Landlord's employees, agents, partners, officers, shareholders and directors) from all liability, whether for negligence or otherwise, in connection with all losses covered by any insurance policies which Tenant carries with respect to the Premises, or any interest or property therein or thereon (whether or not such insurance is required to be carried under this sublease), to the extent that such loss is collectible under such insurance policies.

Tenant hereby covenants and agrees to indemnify and hold Landlord harmless from and against any and all claims, actions, judgments, damages, liabilities, or expenses, including without limitation reasonable attorneys' fees, in connection with damage to property or injury or death to persons, or any other matters, arising from or out of the use or occupation of the Premises. In case Landlord shall be made a party to any litigation commenced against Tenant, Tenant shall protect and hold Landlord forever harmless and shall pay all costs and expenses, including reasonable attorneys' fees, incurred or paid by Landlord in connection with such litigation. In furtherance of Tenant's obligations under this Article and this sublease (but not in limitation thereof) Tenant covenants and agrees, at its sole cost and expense, to carry and maintain in force from and after the date of this sublease and throughout the term hereof: (a) worker's compensation and other required statutory forms of insurance, in statutory limits, and (b) comprehensive general public liability insurance, which shall be written on an occurrence basis, naming Landlord, Prime Lessor, its managing agent, each Superior Lessee and Superior Mortgagee (as such terms are defined in the Lease) as additional insureds, in limits of not less than \$5,000,000 combined single limit for bodily injury and property damage liability in any one occurrence, protecting the aforementioned parties from all such claims for bodily or personal injury or death or property damage occurring in or about the Premises and its appurtenances. All



insurance required to be maintained by Tenant shall be carried with a company or companies reasonably acceptable to Landlord and rated "A/VIII" by Best Insurance Guide, licensed to do business in the State of New York, shall be written for terms of not less than one year, and Tenant shall furnish Landlord (and any other parties required to be designated as insureds or additional insureds under any such policies) with certificates evidencing the maintenance of such insurance and the payment of the premiums therefor, and with renewals thereof at least thirty (30) days prior to the expiration of any such policy. Such policy or policies shall also provide that it or they shall not be cancelled or materially altered without giving Landlord and any other additional insureds at least thirty (30) days prior written notice thereof, sent to Landlord by registered mail at Landlord's address to which notices are required to be sent to Landlord hereunder. Upon Tenant's default in obtaining or delivering any such policy or policies or failure to pay the premiums therefor, Landlord may (but shall not be obligated to) secure or pay the premium for any such policy or policies and charge Tenant as additional rent therefor 115% of such premiums. The provisions of this Article are in addition to and not in limitation of the insurance requirements set forth in Section 7.02 of the Lease.

17. Electricity. (a) Tenant shall pay Landlord, as additional rent, for the cost of electricity consumption at the Premises, within ten (10) business days after rendition of bills therefor by Landlord to Tenant, 100% of the amount billed to Landlord therefor by Prime Lessor under the Lease, Landlord and Tenant acknowledging that the consumption of electricity in the Premises is measured by submeters.

(b) Landlord shall not in any wise be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if either the quantity or character of electric service to the Premises is changed or is no longer available or suitable for Tenant's requirements. Tenant covenants and agrees that at no time shall its use of electric current exceed the capacity of existing feeders to the building of which the Premises form a part or the risers or wiring installations therein. Tenant shall make no alterations or additions to the electric equipment and/or appliances without the prior written consent of Landlord and of Prime Lessor (where, in the case of the latter, such consent is required under the Lease) in each instance.

18. Indemnification, etc. (a) Tenant shall not do anything which would cause the Lease to be terminated or forfeited or which would give rise to any right of termination or forfeiture provided by law or reserved or vested in Prime Lessor under the Lease.

(b) In furtherance of all of Tenant's obligations under this sublease, Tenant shall indemnify and hold Landlord harmless from and against any and all claims of any nature whatsoever arising out of or resulting from any of the following unless caused by Landlord: (i) any death or injuries to person or property occurring in, on or about the Premises; (ii) any breach or default on the part of Tenant by reason of which Landlord shall suffer any loss whatsoever; (iii) any work done in or to the Premises; (iv) any act, omission or negligence on the part of Tenant or its employees, agents, representatives or invitees; or (v) any other matter or thing arising out of Tenant's use or occupancy of the Premises.

(c) Landlord shall indemnify and hold Tenant harmless from and against any and all claims of any nature whatsoever arising out of or resulting from any of the following unless caused by Tenant: (i) any death or injuries to person or property occurring in the Lease Premises but outside of the Premises; (ii) any breach or default on the part of Landlord hereunder by reason of which Tenant shall suffer any loss whatsoever; (iii) any work done by

Landlord in or to the Premises; or (iv) any entry into the Premises by a creditor of Landlord and repossession of the FF&E depriving Tenant of the use thereof.

(d) The forfeiture of the Lease by reason of the default of Tenant hereunder shall not subject Landlord to any liability to or claim by Tenant.

(e) Tenant represents and warrants that it has the full right, power and authority to execute and deliver this sublease and to perform the terms and conditions hereof. Subject to its obtaining the Consent, Landlord represents and warrants that it has the full right, power and authority to execute and deliver this sublease and to perform the terms and conditions hereof.

(f) Tenant represents that it has read and is familiar with the terms of the Lease.

19. Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying the Base Rent, additional rent and other charges payable hereunder and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed hereunder, Tenant may peaceably and quietly enjoy the Premises during the term hereof without molestation or disturbance by or from Landlord, subject nevertheless to this sublease, the Lease, the Prime Lease, and any ground leases, underlying leases, mortgages and other matters to which the Lease Premises are subject.

20. Broker. Tenant represents, warrants and confirms to Landlord that: (a) CB Richard Ellis, Inc. ("Tenant's Broker") and Jones Lang LaSalle Americas, Inc. ("Landlord's Broker"; and together with Tenant's Broker, the "Broker") are the sole and only brokers with whom it has dealt in respect of this sublease or the Premises; and (b) Tenant was not represented by any broker or agent other than Tenant's Broker in respect of this sublease or the Premises. Tenant agrees to indemnify and hold Landlord harmless of, from and against any and all cost, expense, loss and liability (including, without limitation, reasonable attorneys' fees and disbursements) arising from any claim for any brokerage commission or fee made by any person or entity, including without limitation, the Broker, claiming to act for or on behalf of Tenant or to have dealt with Tenant or its employees, agents or representatives in connection with this sublease or the Premises. Landlord agrees to indemnify and hold Tenant harmless of, from and against any and all cost, expense, loss and liability (including, without limitation, reasonable attorneys' fees and disbursements) arising from any claim for any brokerage commission or fee made by any person or entity other than the Broker claiming to act for or on behalf of Landlord or to have dealt with Landlord or its employees, agents or representatives in connection with this sublease. Upon Landlord's and Tenant's receipt of the Consent as provided in Article 22 hereof, Tenant shall pay to Landlord's Broker the sum of \$1,783,694 by unendorsed certified or bank check drawn directly to the order of Landlord's Broker representing the brokerage commission due in connection with this sublease.

21. Surrender of Possession. Upon the expiration or sooner termination of the term of this sublease, Tenant shall quit and surrender the Premises to Landlord, in the manner prescribed therefor in Sections 4.03(a), (b) and (c) of the Lease and Section 12 hereof, and otherwise in substantially the same condition as on the date hereof (except for reasonable wear and tear, it being understood and agreed that Tenant shall have no obligation to remove any improvements existing in either the Initial Premises on the Initial Premises Commencement Date or in the Additional Premises on the Additional Premises Commencement Date), and Tenant

shall not hold-over in possession, or make any application to so hold-over, for any reason whatsoever. If the Premises are not surrendered and vacated as and at the time required by this sublease (time being of the essence), Tenant shall: (a) pay as use and occupancy for each month of the holdover period an amount equal to: (i) 150% for the first ninety (90) days of such holdover; and (ii) 200% thereafter, multiplied by the Base Rent and additional rent which Tenant was obligated to pay for the month immediately preceding the end of the term of this sublease; (b) be liable to Landlord for and indemnify Landlord against any payment or rent concession which Landlord may be required to make to any tenant obtained by Landlord for all or any part of the Premises (a "New Tenant") by reason of: (x) the late delivery of space to the New Tenant as a result of Tenant's holding over or in order to induce such New Tenant not to terminate its lease by reason of the holding over by Tenant; (y) the loss of the benefit of the bargain if any New Tenant shall terminate its lease by reason of the holding over by Tenant; and (z) any claim for damages by any New Tenant; and (c) be liable to Landlord for and indemnify Landlord against any payment which Landlord may be required to make to Prime Lessor pursuant to the Lease by reason of: (A) Landlord's late delivery of the Premises, or any part thereof, to Prime Lessor pursuant to the Lease as a result of Tenant's holding over; and (B) any claim for damages made by Prime Lessor as a result of Tenant's holding over. In no event shall any provision hereof or otherwise be construed as permitting Tenant to hold over in possession of the Premises after expiration or termination of the term hereof.

22. Prime Lessor Consent. This sublease is executed and delivered by the parties hereto subject to obtaining the written consent of Prime Lessor as required under the Lease. This sublease shall be of no force and effect if the consent (the "Consent") of Prime Lessor is not received by Landlord within forty-five (45) days following the date of execution and delivery of this sublease by Landlord, as such date may be extended from time to time by mutual agreement between Landlord and Tenant (the "Consent Period"). Landlord agrees to: (i) request the Consent from Prime Lessor upon the mutual execution and delivery of this sublease by Landlord and Tenant; and (ii) use commercially reasonable efforts in good faith during the Consent Period to obtain the Consent provided that in no event shall such commercially reasonable efforts obligate Landlord to expend any sums, incur any expenses or commence any action or proceeding in connection with Landlord's request for the Consent from Prime Lessor. Tenant agrees to supply such information as Prime Lessor may reasonably require in connection with the Consent and in order to induce Prime Lessor to execute the Consent. If the Consent shall not be obtained through no fault of Tenant, any sums paid by Tenant to Landlord hereunder shall be returned.

23. Notices. Any notice, demand or other communication which either party may give to the other hereunder shall be in writing and delivered personally against a signed receipt therefor or sent by registered or certified mail, return receipt requested, or by reputable overnight courier service, addressed as follows:

If to Landlord:

RCN Telecom Services, Inc.  
105 Carnegie Center  
Princeton, New Jersey 08540-6215  
Attn: Mr. James P. Herring

**If to Tenant:**

**Morgan Stanley D.W. Inc.  
830 Eighth Avenue  
9th Floor  
New York, New York 10019  
Attn: Director of Real Estate**

**with a copy of any notice of default to:**

**Morgan Stanley D. W. Inc.  
1221 Avenue of the Americas  
27th Floor  
New York, New York 10019  
Attn: Senior Real Estate Attorney**

Each such notice, demand or other communication shall be deemed given three (3) business days after the date of mailing of same if mailed as aforesaid, on the next business day if sent by overnight courier service or when actually received if delivered by hand. Either party may, by notice in writing, direct that further notices, demands or other communications be sent to a different address.

24. Estoppel. (a) At any time and from time to time within fifteen (15) days after written demand therefor by Landlord, Tenant agrees to execute, acknowledge and deliver to Landlord, without charge, a written instrument addressed to Landlord (and/or such other persons or parties as Landlord shall require): (i) certifying that this sublease has not been modified and is in full force and effect or, if there has been a modification of this sublease, that this sublease is in full force and effect as modified, stating such modifications; (ii) specifying the dates to which Base Rent, additional rent and other charges payable hereunder have been paid; and (iii) stating whether or not, to the knowledge of Tenant, Landlord is in default and, if Landlord is in default, stating each particular in which Tenant alleges that Landlord is in default. At any time and from time to time within fifteen (15) days after written demand therefor by Tenant, Landlord agrees to execute, acknowledge and deliver to Tenant, without charge, a written instrument addressed to Tenant (and/or such other persons or parties as Tenant shall require): (x) certifying that this sublease has not been modified and is in full force and effect or, if there has been a modification of this sublease, that this sublease is in full force and effect as modified, stating such modifications; (y) specifying the dates to which Base Rent, additional rent and other charges payable hereunder have been paid; and (z) stating whether or not, to the knowledge of Landlord, Tenant is in default and, if Tenant is in default, stating each particular in which Landlord alleges that Tenant is in default.

(b) Landlord agrees at the time Landlord requests the Consent pursuant to Article 22 hereof to: (i) request a statement from Prime Lessor containing the certifications set forth in Section 6.02 of the Lease; and (ii) use commercially reasonable efforts in good faith during the Consent Period to obtain such statement, provided that in no event shall such commercially reasonable efforts obligate Landlord to expend any sums, incur any expenses or commence any action or proceeding in connection with Landlord's request for such statement from Prime Lessor; Tenant hereby acknowledges that neither the validity or effectiveness of this sublease, none of Tenant's obligations (nor any of Landlord's rights or privileges) hereunder shall be altered or affected in any way whatsoever in the event that Landlord is unable,

notwithstanding Landlord's use of such commercially reasonable efforts, to obtain said statement from Prime Lessor.

25. Miscellaneous. (a) The failure of Landlord or Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this sublease or the Lease or to exercise any right or remedy herein contained in any one or more instance shall not be construed as a waiver or relinquishment for the future of any such terms, covenants, conditions or remedies, but the same shall be and remain in full force and effect.

(b) All prior understandings and agreements between the parties are merged within this sublease, which alone fully and completely sets forth the understanding of the parties with respect to the subject matter hereof; and this sublease may not be changed or modified orally or in any manner other than by an agreement in writing and signed by the party against whom enforcement of the change or modification is sought, or by appropriate legal proceedings.

(c) Except as otherwise herein specifically set forth, the covenants and agreements herein contained shall bind and inure to the benefit of Landlord, Tenant, and their respective permitted successors and assigns.

(d) Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other relating to or arising out of this sublease or Tenant's occupancy of the Premises. It is further agreed that if Landlord commences any summary proceeding for possession of the Premises, Tenant will not interpose any counterclaim of whatever nature or description (other than a compulsory counterclaim which under law cannot be raised in a separate action) in any such proceeding.

(e) The term "Landlord" as used in this sublease means only the tenant under the Lease for the time being so that in the event of any sale or sales or assignment or assignments of tenant's interest in the Lease Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the landlord hereunder and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the transferee, at any such sale, assignment or transfer of tenant's interest in the Lease, that the transferee has assumed and agreed to carry out any and all covenants and obligations of the landlord hereunder.

(f) Notwithstanding anything herein or in any rule of law or statute to the contrary, it is expressly understood and agreed that to the extent that Landlord shall at any time have any liability under, pursuant to or in connection with this sublease, neither Tenant nor any officer, director, partner, associate, employee, agent, guest, licensee, or invitee of Tenant (or any other party claiming through or on behalf of Tenant) shall seek to enforce any personal or money judgment against Landlord, but shall only pursue any such rights or remedies against Landlord's interest in the Premises. In addition to and not in limitation of the foregoing provision of this paragraph, it is agreed that, in no event and under no circumstances, shall any officer, director, partner, employee, agent, guest, licensee, invitee or principal (disclosed or undisclosed) of Landlord have any personal liability or monetary or other obligation of any kind under or pursuant to this sublease.

(g) Neither the submission of this sublease form to Tenant nor the execution of this sublease by Tenant shall constitute an offer by Landlord to Tenant to lease the

space herein described as the Premises or otherwise. This sublease shall not be or become binding upon Landlord to any extent or for any purpose unless and until it is executed by Landlord and a fully executed copy thereof is delivered to Tenant or Tenant's counsel.

(h) If any of the provisions of this sublease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this sublease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this sublease shall be valid and enforceable to the fullest extent permitted by law.

(i) This sublease shall be governed in all respects solely by the internal laws of the State of New York without regard to principles of conflicts of laws.

(j) Without incurring any liability to Tenant, Landlord may permit access to the Premises and open same, whether or not Tenant shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to, or reasonably purporting to be entitled to, such access for: (i) the purpose of taking possession of, or removing, Tenant's property; or (ii) for any other lawful purpose (but this provision and any action by Landlord hereunder shall not be deemed a recognition by Landlord that the person or official making such demand has any right or interest in or to this sublease, or in or to the Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.

(k) Tenant agrees that its sole remedies in cases where it disputes Landlord's reasonableness in exercising its judgment or withholding or conditioning its consent or approval (as applicable) pursuant to a specific provision of this sublease, or any rider or separate agreement relating to this sublease, if any, shall be those in the nature of an injunction, declaratory judgment, or specific performance, the rights to money damages or other remedies being hereby specifically waived. Landlord's approval will in no event be deemed unreasonably withheld, conditioned or delayed if Prime Lessor fails to approve or conditions or delays approval of any matter required to be approved by Prime Lessor under the Lease.

(l) The Article headings of this sublease are for convenience only and are not to be given any effect whatsoever in construing this sublease.

(m) All bills, invoices or statements rendered to Tenant pursuant to the terms of this sublease shall be deemed binding upon Tenant and determined by Tenant to be correct in all respects if, within 365 days after its receipt of same, Tenant fails to notify Landlord, in writing, that it disputes such bill, invoice or statement.

(n) Tenant shall not record this sublease or any memorandum thereof and any attempt to do so shall be and be deemed a material default by Tenant hereunder.

(o) In addition to Base Rent, all other payments required to be made by Tenant hereunder shall be deemed to be additional rent, whether or not the same shall be designated as such, and in the event of the non-payment thereof when due, Landlord (in addition to and not in limitation of its other rights and remedies, whether herein reserved or as may be provided by law or in equity) shall have all of the rights and remedies in respect thereof as are herein or otherwise provided in the case of the non-payment of Base Rent.

(p) Notwithstanding anything in this sublease to the contrary, the following provisions and exhibits to the Lease shall not be deemed to be incorporated into this sublease: Sections 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 2.02, 2.07, 2.08, 2.09, the first four (4) sentences of subclause (ii) of Section 3.01(a) and all references therein to "Tenant's initial Alterations", 3.03, 4.01, 4.02, Article 5 (except as expressly provided in Article 13 hereof), 6.01, 6.02, 6.10, 8.01, 8.05, 8.13, 8.20, 8.21, 8.22, Article 9 and Exhibits B-3, B-4, E, M, N and O.

(q) Subject to and to the extent permitted by Section 3.01(b) of the Lease, Tenant may, upon the prior approval of Landlord, list Tenant's name and those of its officers and employees in the Building's directory, but in no event shall Tenant's listings exceed sixty-six and two thirds percent (66 2/3%) of the total number of listings in the Building's directory permitted to Landlord under the Lease.

(r) Landlord represents that, as of the date hereof: (i) Landlord has not received notice from Prime Lessor that Landlord is in default under the Lease, which default remains uncured; (ii) the Lease is unmodified and, to the best of Landlord's knowledge, in full force and effect; and (iii) to the best of Landlord's knowledge (but without independent investigation or inquiry) Prime Lessor is not in default under the Lease and Durst is not in default under the Prime Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this sublease as of the date first above written.

LANDLORD:

RCN TELECOM SERVICES, INC.

By: 

Name: James Houlton  
Title: VP & Gen. Mgr.

TENANT:

MORGAN STANLEY D.W. INC.

By: 

Name: Edward L. Cifone  
Title: Exec. Director



**EXHIBIT C**  
**SECOND RETAINED PREMISES FLOOR PLAN**



**EXHIBIT D**  
**FORM OF MOTION AND ORDER**

**OMITTED**