

**Making Lease Work Letters Work!**

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## 1. Introduction

The function of the commercial lease is to set out the respective rights and responsibilities of the Landlord and Tenant relating to the leased property. As a part of a lease relationship, a tenant of commercial property will often need to have the lease address the manner in which the tenant will be allowed to make alterations to the real property.

The typical commercial lease will provide the tenant with rights to make alterations to the premises while reserving to the landlord certain rights to control the tenant's ability to carry out such alterations or modifications. The description of the contemplated modifications, the method for approval and carrying out the construction, and provisions for payment are usually contained in a document attached to the lease called a "**Work Letter**."

The work letter frequently contains critical terms, such as provisions that address the process for the description and approval of alterations and modifications to the Premises or the Building, important dates that may trigger the beginning of other duties of the parties under the terms of the lease (such as the commencement of the payment of rent), and terms and conditions for the landlord to provide a finish out allowance to be applied to the cost of the alterations to the premises required by the tenant.

In light of these important terms, the parties to a lease should carefully consider the take the time to review the work letter and negotiate the provisions, taking into consideration the responsibilities and relative sharing of risk by each of the parties in connection with carrying out the modifications to the premises.

The purpose of this paper is to outline the most significant provisions of a work letter and to discuss the issues that may arise in the process of reviewing and negotiating the terms of a work letter.

## 2. Work Letter Provisions

a. **Overview.** Work letters can be found in as many different forms and structures as there are forms of leases. The following delegations of responsibility between the landlord and the tenant are most common:

- i. Landlord creates the design deliverables for the work, with tenant input, and landlord carries out the work.
- ii. Tenant creates the design deliverables for the work, with landlord approval, and tenant carries out the work.
- iii. Tenant creates the design deliverables for the work with landlord approval, and landlord carries out the work.

There may also be circumstances where the work is to be split between the landlord and the tenant in phases. Phase one generally calls for the landlord to complete certain "base" or "core" building improvements, typically at Landlord's cost and expense. Phase two will include those modifications the premises to meet the tenant's particular requirements.

b. **Key Elements.** The typical work letter will address each of the following topics, in addition to any special circumstances relating to the carrying out of the alterations or modifications:

- i. *Parties.* The work letter is most often attached to the lease as an exhibit and, as such, the terms of the work letter are typically incorporated into the lease by reference. However, since the work letter sets out the guiding provisions for the design and construction of the tenant improvements, it may become detached from the lease at some point to be shared with architects, engineers, contractors and subcontractors. For this reason, consideration should be given to restating the parties to the lease and, possibly, setting out separate signature lines for the parties in the work letter.
- ii. *General Description of the location of the Work.* The work letter should include a general statement as to where the modifications are to be made and should also identify the work to be carried out (i) as within the leased premises, and (ii) within other portions of the project (ie. office building, shopping center). This description may also identify different categories of work to be carried, such as base or core building work, and tenant finish out that is dedicated to preparing the premises for occupancy by the tenant. These descriptions will necessarily be general in nature for the purpose of establishing the scope of each such phase of the finish out. The actual description of the work will be established by a procedure set out in the work letter for the development of space plans, preliminary plans and final plans and specifications or construction documents.
- iii. *Designation of Representatives.* The process of planning out construction within the leased premises will require a certain level of coordination and dialog between the landlord and tenant, as well as the architect and the contractor selected for the construction of the modifications. For this reason, the work letter should set out who the point person or persons will be for the landlord and tenant and provide their respective contact information. These provisions should include a process for changing or adding to these designated representatives from time to time and may establish a planned meeting schedule as well. The work letter might also include the appropriate contact information for the supervising architect and engineer, if they are known at that time, as well as a method for adding the contact information for other third parties involved in the construction process.
- iv. *Determination of Who Will Generate Deliverables.* One of the threshold issues to be determined between the parties is who will generate the deliverables called for under the terms of the work letter. The deliverables will typically include (i) initial programming for the use of the space and a related space plan, (ii) the architect's contract, (iii) preliminary plans, (iv) final constructions drawings, plans and specifications, (v) bids from contractors, and (vi) the construction contract(s). In most cases the generation of deliverables will be carried out by one party, while the other party retains certain rights to approve or comments on the deliverable work product. On occasion, the landlord and tenant may bi-furcate this process, which requires both the coordination of the nature of the work to be addressed by each of the parties, as well as the timing of the deliverables. This situation often arises in circumstances where the "base" or "core" building improvements are made by the landlord and finish out to the leased premises is carried out by the tenant. In such circumstances, the work letter will need to address the impact the work by each may have on the duties and responsibility of the other.
- v. *Programming and Space Plan.* The first step in the construction planning process is usually the tenant's "programing" of the leased premises. This process involves the

tenant determining its various needs for the different areas of the premises. Once the programing has been completed, a space plan for the use of the premises can be developed to determine how the space can be used to address these needs. The space plan may be little more than concept drawings based on the tenant's desired programing. The space plan will also be used as the starting point for the drafting of the preliminary plans for the construction of the tenant's improvements and the related building systems that will be necessary for the space.

Since the space plan is reflective of the tenant's desired use of the premises, it is usually developed by the tenant. However, who is responsible for the preparation of the space plan often depends on the sophistication of the tenant and the complexity of their planning needs.

- vi. *Preliminary Plans.* Once the programing is understood and reduced to a space plan, either the landlord or tenant will retain an architect, and possibly an engineer, to convert the space plan into preliminary plans. These plans are generally not used for the bidding process, nor do they act as the official construction drawings.

Preliminary plans set out design concepts, material selection and working construction documents, which may include architectural floor plans, preliminary finish schedules, preliminary mechanical and electrical data, and/or preliminary civil and structural details. If there is work that will be carried out by the landlord as a part of modifications to the core building components, it is possible that the preliminary plans for the tenant finish out cannot be completed until the core work is done, or at least until the preliminary plans for such core building work are completed.

The procedure set out in the work letter for creating the preliminary plans needs to (i) make clear what information is to be considered by the architect in preparing the preliminary plans and specify who is directing the architect, (ii) allow sufficient time for the party responsible for generating the plans to cause them to be created, (iii) establish a timeframe for any comments to be collected from the other party, (iv) establish a manner for working out any disagreements as to the preliminary plans, and (v) provide a mechanism for the expansion of the timeframe if the disagreements cause delay in the finalization of the preliminary plans beyond the established timeframe.

- vii. *Final Plans.* The final plans and specifications, or construction drawings, are the completed set of drawings developed for the purpose of obtaining bids from contractors.

In addition to the plans and specifications for the improvements, the final plans should also include (i) detail relating to integration with existing building systems, (ii) contain the engineering drawings and specifications for the work, (iii) list any special materials that may require special consideration in the construction process, and (iv) set out a proposed construction timeline.

The final plans, together with project specifications, cost estimates, and all of the calculations, comprise the final stages of the design process. As such, additional input from the parties becomes somewhat limited after final plans are completed. However, occasionally the contractors bidding on the work will raise minor modifications needed to the plans while preparing their bid. Allowance should be made in the work letter to

provide for this input and a method for incorporating into the final plans any such contractor driven modifications.

As in the case of the preliminary plans, if there is work that will be carried out by the landlord to the core building components, it is possible the final plans cannot be completed until the core work is done, or at least until final plans for such core building work is completed.

The work letter should (i) establish a timeframe for the delivery of the initial draft of the proposed final plans, as well as a timeframe for the other party to comment on those plans, (ii) establish a manner for working out any disagreements as to the final plans, and (iii) provide a mechanism for the expansion of the timeframe if the disagreements cause delay in the finalization of the final plans beyond the established timeframe.

The work letter often contains a provision stating that the landlord's approval of the final plans is not a representation or warranty by the landlord as to the adequacy of the plans or the improvements to be constructed in accordance therewith. This is particularly the case when the tenant has created the plans and the landlord's role is limited to an approval right. Through this process the landlord transfers the risk of the implementation of the work to the tenant, engineers and architects.

- viii. *Construction Contract.* Once the final plans have been created the parties will seek bids for the work described in the final plans to be carried out, typically using a competitive bidding procedure. Depending on the circumstances this process may be carried out by the landlord or the tenant.

The work letter should address (i) how the contractor will be selected (at the discretion of one party or the other, lowest bid, etc.), (ii) the minimum number of bids to be solicited, and (iii) the nature of the construction contract (guaranteed maximum price contract, cost plus contract or other contract parameters).

The party who is not carrying out the bid may seek to retain the right to review and approve the bid packages prior to delivery to the contractors and subcontractors, be present at the bid opening, participate in bid review and bid clarifications, and/or approve the winning bids. Additionally, the non-contracting party may want to have the ability to comment upon or approve the final form of the construction contract for the purpose of making certain the contract adequately addresses the concerns that party may have in connection with the duties and responsibilities of the contractor to meet the expectation of the parties under the terms of the work letter. For this reason, the work letter may need to be drafted to address the extent of the involvement in this process by the party who is not carrying out the bid. By way of example, because the construction work is taking place within its property, the landlord will often want control over who the contractor is and how they will carry out their work, the terms of the construction contract, and will want to determine the level of insurance required of the contractors. The tenant may need to know that the improvements will be timely completed because their existing lease is set to expire, or for any number of other business reasons. Additionally, if the improvements require special materials or construction techniques, the risk of performance might very well remain with the tenant given how complicated and problematic the construction process in that case may be.

Where the tenant takes responsibility for carrying out the construction, certain risks that will need to be addressed by the tenant include the risks relating to (i) the failure of the contractor to perform on time or in accordance with the plans, including possible payment of rent even though the finish out work is not substantially complete, (ii) the possible adverse impact on existing building systems, (iii) advancement of the tenant allowance by the landlord for completion of the work and the method for recovery of the tenant allowance upon completion of the work.

As the construction contract is negotiated the parties should pay careful attention as to how the terms and condition of the construction contract dovetail with their respective rights and responsibilities to each other under the terms of the work letter. In particular, the parties should pay special attention to whether the construction contract and the work letter mirror each other in the following areas: (i) delay in delivery of the work, (ii) definition of substantial completion, and (iii) force majeure provisions. The parties may want to include an order of precedence clause in the work letter identifying which document (and ultimately which completion clause) governs in the event of a conflict between the documents.

Additionally, the landlord and tenant should determine if the construction contract adequately provides: (A) a provision for the assignment of the contract to the other party, in whole or in part, in the event that the assignment is necessary for the purpose of enforcing the contract, (B) contractor's insurance and indemnities that sufficiently address the needs of both parties, (C) consideration for special finishes or products, and (D) assignability of warranties to the non-contracting party.

The process of handing off the duties for construction to a third party creates an interesting inflection point in the relationship between the landlord and the tenant. Under the terms of the work letter, the landlord and the tenant may have agreed to certain time frames and conditions for the work to be carried out, including something as fundamental as the commencement of rental payments by the tenant under the terms of the lease. It is not unusual for a lease to call for rent to commence when substantial completion of the tenant improvements has been achieved. In this case, if the landlord has taken responsibility for the delivery of these improvements, delays in completion of the construction equate to a delay in rentals to be paid under the terms of the lease. Given the possible detrimental implications of non-performance by a third party, this risk needs to be addressed in the work letter between the landlord and the tenant.

- ix. *Value Engineering.* After the bids are received the parties may desire to make adjustments to the Final Plans using a process known as "value engineering". Through this process the parties review the Final Plans and the received bids to determine if there are ways to provide the functions set out in the Final Plans at a lower cost. This is often achieved by substituting materials and methods with less expensive alternatives. This process is solely focused on the functions of various components and materials, rather than their physical attributes. If a value engineering step is to be included in the process the parties should speak to it in the work letter and make certain time is set aside for this process either before the final or after a bid is selected, as the parties may

determine appropriate.

- x. *Additional Adjustments Following Final Plans.* In certain cases the work letter may call for the premises to be re-measured, and the rent and additional rent factors adjusted accordingly, after the Final Plans are complete (in accordance with the BOMA Standard or the standard otherwise selected between the parties) to assure that the area of the Premises has not been affected by the Final Plans.
- xi. *Supervision of Work.* The work letter should speak to who is responsible for the oversight of the work described in the Final Plans. This is typically the party who has entered into the construction contract; however, in certain circumstances the other party may also want to be involved in the oversight of construction. If so, a procedure for allowing this oversight to take place will need to be addressed in the work letter. Additionally, the work letter should contain provisions addressing how to deal with any delays caused to the construction process attributable to the involvement of the other party in this process.
- xii. *Special Work.* The work letter should identify any special work to be conducted during construction, which is work that, by its nature, requires a longer period for construction and completion than do customary installations. This could be work that requires specially ordered or fabricated materials selected by tenant, or work that is especially intricate and/or time consuming to perform. The work letter should address who is responsible for any special fabrication and installation and should also provide a method for dealing with delays relating to the deliverability or timely completion of such work.
- xiii. *Change Orders.* Circumstances will often arise which call for the tenant or landlord to request a change order to the completed Final Plans. A change order has the potential for impacting the construction project in several ways. First, this is a change to plans that have been agreed upon. To the extent that the change is a material modification to the Final Plans, it should require the approval of any of the other party to the same extent they had approval rights over the original Final Plans. Second, the change has the potential to increase the cost of the construction. Since the increased cost had not been addressed in the bid process, provisions will need to be made to arrange for the funds to pay for the change order work. If the increase in cost will cause construction costs to exceed any construction allowance, and the party (usually the landlord) is advancing funds for the construction of the work, it is not uncommon for the landlord to require (i) the full cost of the change order be escrowed with the landlord (or within an escrow account) and, (ii) further assurance from the tenant to pay all additional costs relating thereto, to ensure that the funds are available for the purpose of paying all of the costs of the change order. There is also the potential that the change order will adversely affect the construction timeline, which will require the landlord and tenant to adjust the delivery date for the work and determine if the extension of time required is a Tenant Delay or Excusable Delay. In the case of larger projects, if the sums attributed to a large change order are involved, the landlord or tenant may want to consider a method for securing the advanced payment for the change order through the use of a third party escrow or some other means.

The parties generally require that the party requesting the change order submit the

request to the other party with a good faith estimate of the cost of the proposed change order and the length of any delay it may cause to the project, if any. This request will usually be followed by a short approval/comment process.

- xiv. *Delay Dates and Excusable Delays.* As with any construction process, there is always the possibility that the process will run into issues that will cause a delay in the delivery of the finished product. This is particularly problematic with tenant finish out arrangements since (i) the tenant is usually in the process of moving from one location to another with a need to synchronize the move in/ move out dates to avoid the payment of double rent, and (ii) the landlord's right to receive rentals may be tied to when the finish out is substantially complete.

The work letter will need to address who is taking the risk of loss for an unanticipated delay in the availability of the premises. To address this issue a work letter may include the concept of "delay days", which define the circumstances in which a delay has occurred, and "excused" and "non-excused" delay days, which speak to who may be responsible if delay days arise. In the case of a landlord preparing the space for the tenant, if a delay day is caused by the tenant, this may mean that rent is payable earlier than when it was otherwise to begin under the terms of the lease. If the delays are caused by the landlord, which delay cause the tenant to incur double rent, the landlord may become responsible for the excess rent required to be paid by the tenant. In each case, were the ultimate responsibility for the delay is attributable to a third party, the landlord or tenant may attempt to shift this risk to that third party in the third party contract (such as the construction contract).

- xv. *Early Access.* Tenant will often request access to the space prior to substantial completion in order to begin tenant installations, such as technology, equipment, furniture, filing systems or other similar installations. This early access is not intended to be considered "occupancy" under the terms of the lease. The work letter needs to describe the parameters for this early access, and responsibility for costs and expenses relating thereto. This will also, generally, include a covenant by the tenant to not interfere with any of the landlord's or contractor's construction obligations. Activities that rise to the level of interference may cause the tenant to be subject to the payment of a penalty, as well as generate delay days that will postpone the duty of the landlord or contractor to deliver the work by a specified date.

If the lease has been drafted so that the "term" of the lease does not begin before the delivery of the premises to the tenant under the terms of the lease, early access may also raise the issue of when the term has begun. If the term has not yet begun by during the time period of the early occupancy, the work letter or lease should address the rights and responsibilities of the landlord and the tenant during that period, including such issues as insurance requirements, use of utilities, adherence to the "rules and regulations" set out in the lease, the application of indemnification provisions, and remedies for the tenant's failure to operate in accordance with those parameters.

- xvi. *Permits.* The work letter should set out which party will be responsible for obtaining the permits and certificates required for the construction of the improvements. This responsibility comes with some level of risk, since the inability to obtain a required permit or certificate can delay the timely completion of the work. The landlord and

tenant may transfer this risk to the contractor by building penalties into the construction contract, but the issue of who is responsible for potential cost of delays (as between the landlord and tenant) will need to be addressed in the work letter.

- xvii. *Finish Out Allowance.* Many work letters will include a contribution by the landlord toward the cost of the improvements in the form of a tenant finish out allowance. Where the tenant is carrying out the work, this may be a sum of money from which the tenant may draw to carry out the construction of the improvements. Conversely, if the landlord is carrying out the finish out work, landlord will use those funds to carry out the work set forth in the Final Plans, with all excess costs being the responsibility of the tenant.

The method and manner in which allowance funds are provided by the landlord toward the cost of the work vary greatly, based upon the circumstances. By way of example, in some cases, where the landlord is doing the work, following the date the bid is approved, the tenant is required to escrow the estimated excess costs (with the landlord or a third party) and the landlord will proceed on that basis. In other circumstances, where the tenant is doing the work, the tenant will advance 100 percent of the funds for the construction of the improvements and will then seek reimbursement for these costs from the landlord. Where funds are advanced by the landlord as the work progresses and the costs are anticipated to exceed the sums available as an allowance, there is often a question as to which funds are applied first, the sums available as the allowance provided by the landlord, or the portion of the costs to be paid by the tenant.

If the advancement of the allowance will be made in installments as work progresses, the work letter will need to address the procedure for each such draw. This procedure typically looks like the draw provisions found in a construction loan. Typically, the draw request is certified by the supervising architect, accompanied by supporting documentation for the work completed, and each party approves the request. Each request may also require that the tenant is not then in default of the lease (or would be in default with the mere passage of time). The party who is not obligated on the construction contract is often provided a specified time frame to react to the request, so the party contracting can make payments in a timely manner under the terms of the construction contract. Objections to a draw request will need to be specific so that the issue can be addressed with the contractor. The work letter usually allows the non-contested portions of the work to be paid for while the disputes relating to the draw request are worked out between the parties.

The draw request process generally requires that the party seeking the draw follow customary and prudent practices in connection with the requisitioning and payment for the work, including lien waivers and, where applicable, retainage. Where an approval process for the use of or access to the allowance is built into the work letter, there is a delicate balancing act to consider as this procedure is negotiated. On one hand, the lease will provide parameters as to when the allowance can be accessed; however, on the other hand, the party may have contractual obligations to the contractor to make certain they are timely paid. It is imperative that the party contracting for the construction of the work carefully consider the terms and conditions for accessing the allowance as they negotiate the terms of the construction contract.

The work letter needs to make clear what the allowance funds can and cannot be used

for. Sometimes the allowance is only available for certain portions of the work. In these circumstances there is the challenge of how to silo these allowable costs as a part of a larger construction contract. If this is anticipated, it should be addressed in the process of developing the plans for the work, as well as addressed in the bidding process.

If the cost the work is less than the allowance, some work letters allow the excess to be used by the tenant to pay or be reimbursed for the costs of other tenant related expenses not otherwise covered in the Final Plans such as, data/telecommunication wiring and cabling, furniture, security systems and equipment, moving costs and consultants' fees, usually subject to a cap and/or an outside time limit for its use. Other work letters allow the excess available allowance to be carried forward and used for future "refreshing" of the premises, often subject to an outside time limit. In other cases the excess funds are retained by the landlord.

Additionally, there are often costs that will be incurred by the landlord, or its property manager, in the oversight of the construction. These costs will generally be called out in the work letter and are often addressed as additional costs for which the allowance will be used.

- xviii. *Substantial Completion.* Work letters are designed to set out a process and a procedure for carrying out a construction project by the landlord or tenant (or both) within the premises. This work will need to be completed within a defined timeframe. To determine if the work has been completed within the timeframe the work letter needs to define what the parties mean by the concept of 'completed'. For this reason, one of the key concepts to be included in a work letter is the construction concept of "substantial completion". Considering the implications substantial completion may have on the rights of the parties, the work letter should clearly set out the parties' expectations.

The AIA considers substantial completion to have occurred when the project is sufficiently complete, in accordance with the construction contract documents, so that the tenant may use or occupy the premises for its intended purpose. This language is occasionally stated as "when the tenant may **lawfully** use or occupy the premises for its intended purpose."

The parties may be tempted to focus on the issuance of the certificates of occupancy and/or completion, whether temporary or permanent to define substantial completion. It is important to consider that a certificate of occupancy may be issued, but there may be a second stage of work to be carried out by the tenant before actual occupancy of the premises is intended. Additionally, there are sometimes cases where the premises are not substantially complete (from one party's perspective) but the certificate of occupancy is issued anyway. Other options to consider may be (i) the date the work is certified by the architect as substantially complete, or (ii) when a list items required to be completed are complete, however this last approach is problematic since the parties must determine if each of those individual items are "complete."

- xix. *Punch Lists.* A corollary to the process of determining substantial completion is the creation of a "punch list." This list is generally the by-product of the determination of substantial completion and will set out those details of construction, decoration or mechanical adjustment which, while not yet complete, do not keep the space from

being considered to be substantially complete in accordance with the terms of the work letter.

Once the punch list is compiled, the work letter should set out how the punch list items should be completed and a timeframe for that work. The punch list work may occur when the tenant is occupying the space, possibly after they have commenced business operations. For this reason, some special attention to when and how this work will occur needs to be addressed in the work letter.

Since the punch list items are completed after substantial completion has occurred, the work letter and the construction contract often attach the final payments under any allowance to completion of the punch list items in an effort to ensure that the contractor is sufficiently motivated to complete the punch list items.

- xx. *Dispute Resolution.* The work letter may have been incorporated into the lease by reference and is therefore a part of the lease. The lease will undoubtedly contain provisions for when a default has occurred under the terms of the lease and will set forth the remedies available to the landlord and the tenant should a default occur. These rights and remedies are typically drafted in the context of an occupancy arrangement, and are not particularly well designed to address the nuances of a breach of a construction covenant. For this reason, it is not unusual for the work letter to set out its own discrete set of remedies that are in addition to those set out in the lease.

Disputes in the context of construction lends itself well to the use of alternative dispute resolution since it is usually in the best interest for both parties to resolve the dispute quickly and keep the construction process moving forward. It is also useful for the dispute resolution provisions to align with the dispute resolution provisions in the construction contract, since there is a high likelihood that the matter in dispute will, in some form or fashion, impact the contractor and its rights and responsibilities under the terms of the construction contract.

If an alternative dispute process is to be applied the parties will want to be as specific as possible as to who will act as the arbitrator and/or mediator, including the credentials that are required of such party. The work letter should also be specific as to how the costs relating to any such dispute will be addressed.

3. **Examples.** The following are examples of work letters that may provide some additional insight as to how provisions similar to those described above might be reflected in the actual lease agreement. It is important to emphasize that these agreements are always very deal specific. Accordingly the attached are intended to be nothing more than examples of the types of work letters you may encounter, and should not be considered as “forms”.

## **EXAMPLE OF WORK LETTER**

### **Base Building Work and TI Work**

EXHIBIT “\_\_”

#### WORK LETTER

This Work Letter (this “Work Letter”) is entered into between \_\_\_\_\_, as “Landlord” and \_\_\_\_\_ as “Tenant” and it attached to and made a part of that certain Lease Agreement (the “Lease”) dated as of \_\_\_\_\_ between Landlord and Tenant and incorporated therein by reference. To the extent the terms and conditions of the Lease conflict with the terms and conditions of this Work Letter as to the Work to be carried out in accordance with the terms of this Work Letter, the terms of this Work Letter will control.

#### **I. Definitions**

##### **1.01 Definitions**

For the purposes of this Work Letter, the following terms shall have the following meanings:

“*Additional Cost*” shall have the meaning set forth in Section 3.02.C hereof.

“*Approved Budget*” shall have the meaning set forth in Section 3.02.C of this Work Letter.

“*Base Building Plans*” shall have the meaning set out in Section 2.01A below.

“*Base Building Systems*” shall mean the heating, ventilating, air conditioning (“HVAC”), plumbing, mechanical, electrical, life safety and security systems serving the Building as set out in the Base Building Plans.

“*Base Building Work*” shall mean all work (inclusive of materials and labor) which is required to complete the renovations and improvements to the Building and Real Property which are shown in the Base Building Plans, and to deliver the Base Building Systems, as set forth in the Base Building Plans.

“*Construction Allowance*” shall mean an amount equal to (i) \$\_\_\_\_.00 per rentable square foot of the Premises, subject to adjustment in accordance with Section 3.01.H. of this Work Letter.

“*Construction Schedule*” shall mean the schedule for construction of the Base Building Work and Tenant Work attached hereto as Exhibit D-1.

“*Contractor*” shall mean the general contractor or construction manager, all subcontractors, materialmen, vendors, suppliers or other persons or entities contracting to perform or actually performing any part of the work or services in connection with the construction of the Base Building Work or the Tenant Work, Special Work or Tenant Installations.

“*Cost of Tenant Work*” shall have the meaning ascribed to such term in Section 3.04.A.

“*Excusable Delay*” shall mean a delay in Substantial Completion of Landlord’s Work beyond the Target Date actually resulting from: delays in obtaining those approvals, permits, consents or waivers required to be granted or issued by any federal, state, county, municipal, other governmental, or quasi-governmental authority, agency, official or officer thereof required in connection with Landlord’s Work (provided the Landlord has submitted all filings, paid all fees and performed all other actions reasonably necessary to obtain the approvals, permits, consents or waivers, and provided the time period for obtaining the approvals, permits, consents or waivers exceeds the time period customarily associated with obtaining the same, or the time period set forth in the Construction Schedule), the imposition of a moratorium, the passage or adoption of any new Requirement or change in any Requirement after the date hereof, shortages or unavailability of materials and/or supplies, any litigation, arbitration or appeal or similar action related to this Lease, the Property or Landlord’s Work not resulting from the default or wrongful act of Landlord, industry-wide labor disputes, any acts of terrorism, strikes, slow-downs, job actions, picketing, or secondary boycotts, fire or other casualty, acts of God, acts or requests of any Governmental Authority, court or administrative orders or regulations, layoffs, furloughs or other acts by any Governmental Authority that cause delays in scheduling inspections, review of plans or other governmental permits and approvals beyond the time periods customarily associated with such inspections, reviews, permits or approvals or set forth in the Construction Schedule, acts of declared or undeclared war, public disorder, riot or civil commotion, or casualty loss. Landlord shall notify Tenant promptly following the occurrence of any event of which it has knowledge will cause an Excusable Delay in the Substantial Completion within five (5) business days after Landlord obtains actual knowledge of the occurrence of any such event or condition, and if it fails to do so, shall be deemed to have waived the benefit of the Excusable Delay for the period prior to delivery to Tenant of the notice of the Excusable Delay. Any dispute as to whether an Excusable Delay actually exists or the length of any Excusable Delay may be referred by either party for resolution to binding arbitration pursuant to Section 5.05 of this Work Letter.

“*Final Plans*” shall mean the Base Building Plans and T.I. Plans.

“*Landlord’s Architect*” shall mean \_\_\_\_\_ whose telephone number is \_\_\_\_\_, and email address is \_\_\_\_\_. Landlord may amend the designation of its architect at any time upon delivery of written notice to Tenant.

“*Landlord’s Construction Representative*” shall mean \_\_\_\_\_ whose telephone number is \_\_\_\_\_, and email address is \_\_\_\_\_, as its representative for the purpose of receiving notices, approving submittals and issuing requests to Landlord, and Tenant shall be entitled to rely on authorizations and directives of such person(s) as if given directly by Landlord. Landlord may amend the designation of its construction representative(s) at any time upon delivery of written notice to Tenant.

“*Landlord’s Contractors*” shall mean any Contractor engaged by Landlord for the performance of the Base Building Work or Tenant Work.

“*Landlord’s Work*” shall mean the Base Building Work and Tenant Work.

“*Lease*” shall mean that certain Lease Agreement dated as of \_\_\_\_\_ between Landlord and Tenant for the Premises.

“*Preliminary Base Building Plans*” shall mean the preliminary plans and specifications required for the construction of the Base Building Work approved by Landlord and Tenant, which plans and specifications

are described on Exhibit D-2 attached hereto, and which have been prepared at Landlord's sole cost and expense.

"Requirements" means all laws, ordinances, requirements, judgments, verdicts, decrees, orders, directives, rules and regulations of all state, federal, municipal and other agencies or bodies applicable to or having jurisdiction over Tenant, Landlord or the Building or Premises, as the case may be.

"Special Work" shall mean those portions of the Tenant Improvements which, by their nature, require a longer period for construction and completion than do customary office installations in office buildings in the \_\_\_\_\_ market area, whether by reason of delays in Landlord's receipt of specially ordered or fabricated materials selected by Tenant (provided Landlord diligently orders the materials) or the intricacies and/or time consuming nature of actually performing the work or otherwise, which are identified by Landlord to Tenant in writing on or before \_\_\_\_\_. If any Special Work is identified by Landlord, the Construction Schedule shall be revised to reflect and track the Special Work. Any disputes between Landlord and Tenant as to whether an item constitutes Special Work shall be subject to resolution under Section 5.05 of this Work Letter.

"Substantial Completion Date" shall mean the date on which Substantial Completion is achieved. Any dispute between Landlord and Tenant as to whether Substantial Completion (or the Commencement Date) has occurred shall be resolved pursuant to the provisions of Section 5.05 of this Work Letter. Notwithstanding the foregoing, pending resolution of any such dispute, Tenant shall commence paying Base Rent and Additional Rent based on Landlord's Architect's determination of Substantial Completion (and the Commencement Date) and upon the resolution of such dispute, the Base Rent and Additional Rent shall be appropriately adjusted between Landlord and Tenant.

"Substantially Completed"/"Substantial Completion" shall mean (i) the Base Building Work has been substantially completed in accordance with the Base Building Plans, in a good and workmanlike manner, and in compliance with all applicable Requirements and all Base Building Systems are in good working order and condition, (ii) Tenant's Work has been substantially completed in the Premises in accordance with the T.I. Plans in a good and workmanlike manner, and in compliance with all applicable Requirements (except where the non-compliance results from a failure of the T.I. Plans to comply with applicable Requirements, and except for minor insubstantial details of construction, decoration or mechanical adjustment (i.e., "punch list items")) which do not interfere (other than to a de minimis extent) with Tenant's access to the Premises or its ability to use or occupy the Premises or conduct its business therein; (iii) all required governmental inspections, permits and/or approvals for Landlord's Work, which are necessary for Tenant to legally occupy the Premises (which may, if sufficient to allow Tenant to lawfully occupy the Premises, be evidenced by a temporary certificate of occupancy, provided Landlord thereafter diligently obtains the final certificate of occupancy), have been issued (and copies hereof have been provided to Tenant), unless the failure to obtain any of the foregoing is due solely to a failure of the T.I. Plans to comply with all Requirements; and (iv) Landlord's architect, \_\_\_\_\_ ("Landlord's Architect") shall have certified to Landlord and Tenant that the requirements of clauses (i), (ii) and (iii) above have been satisfied.

"Target Date" shall have the meaning set forth in the Lease.

"Tenant's Consulting Architect" shall mean \_\_\_\_\_.

"Tenant's Construction Representative" shall mean \_\_\_\_\_, whose telephone number is \_\_\_\_\_, as its representative for the purpose of receiving notices, approving submittals

and issuing requests for to Tenant, and Landlord shall be entitled to rely upon authorizations and directives of such person(s) as if given directly by Tenant. Tenant may amend the designation of its construction representative(s) at any time upon delivery of written notice to Landlord.

“*Tenant’s Contractors*” shall mean any Contractor engaged by Tenant for the performance of the Tenant Installations.

“*Tenant Delay*” shall mean a delay in Substantial Completion of the Landlord’s Work beyond the Target Date caused by or directly attributable to: (i) a delay by Tenant in the submission of information, plans or comments required to be submitted by Tenant under this Work Letter beyond the time periods set forth herein and/or in the Construction Schedule; (ii) any changes requested by Tenant to the Final Plans (to the extent the Change Order evidencing the change specifies that a Tenant Delay will result from the change and contains Landlord’s good faith, but non-binding estimate of the length of the delay); (iii) delays by Tenant in giving authorizations or approvals beyond the specific time periods applicable thereto set forth in this Work Letter and/or in the Construction Schedule; (iv) any delay caused by Tenant and/or Tenant’s Contractors in performing the Tenant Installations in a manner which interferes with the Landlord’s Work and/or at times not contemplated in the Construction Schedule; (v) Tenant failing to pay any sum within ten (10) business days after written notice from Landlord that the same is due and unpaid hereunder, (vi) Tenant furnishing inaccurate or erroneous specifications or other inaccurate information, (vii) any default by Tenant in the performance of its obligations under the Existing Lease and/or this Lease; or (viii) any other act or omission of Tenant or its employees in violation of the provisions of this Work Letter or Lease that actually delays the completion of the Landlord’s Work beyond the Target Date. As to events described in subparagraphs (ii), (iv), (vi), (vii) and/or (viii) above, Landlord shall promptly notify Tenant in writing of any event or condition Landlord or Landlord’s Contractor obtains actual knowledge of that would give rise to a claim of potential Tenant Delay under this Work Letter, and if Landlord fails to notify Tenant within five (5) business days following the date Landlord or Landlord’s Contractor obtains actual knowledge that a delay in Substantial Completion due to any such event shall occur, Landlord shall be precluded from asserting a claim for Tenant Delay for any period of time prior to the date Landlord notifies Tenant of such event or condition constituting potential Tenant Delay. Any dispute between Landlord and Tenant regarding the existence of any Tenant Delay shall be resolved pursuant to Section 5.05 of this Work Letter.

“*Tenant Improvements*” mean the improvements, equipment and facilities (including Special Work) to be set forth on the T.I. Plans (exclusive of any Base Building Work and Tenant Installations indicated thereon) which Landlord shall cause to be constructed for Tenant upon or installed within the Premises in order to prepare the Premises for Tenant’s intended use and occupancy.

“*Tenant Work*” shall mean all of the work (inclusive of materials and labor) which is required to construct and install the Tenant Improvements.

“*Tenant Installations*” shall have the meaning set forth in Section 4.03.A hereof.

“*T.I. Plans*” shall mean the final T.I. Plans as approved by Tenant and Landlord pursuant to Section 3.0.1.B and adjusted by Value Engineering Changes, if any, made by Tenant pursuant to Sections 3.02.A and 3.02.C, and approved by the applicable governmental authorities.

“*Value Engineering Changes*” means changes to the T.I. Plans requested by Tenant in order to reduce the costs of the Tenant’s Work pursuant to Sections 3.02.A and 3.02.C.

All capitalized terms used in this Work Letter not otherwise defined herein shall have the meaning ascribed thereto in the Lease.

## II. Base Building Work

### 2.01 Base Building Plans

- A. Landlord and Tenant have approved the Preliminary Base Building Plans described on Exhibit D-2, attached hereto. Landlord shall use commercially reasonable efforts to provide Tenant with final architectural and engineering construction drawings and specifications for the Base Building Work conforming to the Preliminary Base Building Plans by \_\_\_\_\_ (the "Proposed Base Building Plans"), for Tenant's review and approval. Tenant shall not unreasonably withhold, condition or delay its approval of the Proposed Base Building Plans and shall provide to Landlord any comments to the Proposed Base Building Plans, which comments shall be limited to: addressing variations or changes in the Proposed Base Building Plans from the Preliminary Base Building Plans described on Exhibit D-2 that, if implemented, (i) will materially and adversely affect Tenant's use, enjoyment or operation of the Premises or materially increase Tenant's costs of operations in the Premises and/or under the Lease, or materially and adversely affect access to the Premises, or access to the Parking Areas, including Tenant's Designated Parking Spaces (in each case except to a de minimis extent), (ii) will materially and adversely affect the appearance of the exterior façade of the Building and/or do not conform to the Preliminary Base Building Plans, (iii) will materially and adversely affect the size or layout of the Premises (other than to a de minimis extent), or (iv) that are inconsistent with Landlord's obligations with respect to the provisions of services under the Lease (each an "Objectionable Change"). Any such comments to the Proposed Base Building Plans must be delivered by written notice to both Landlord and Landlord's Architect within ten (10) business days following receipt thereof, specify the reasons for any comments in reasonable detail to allow Landlord to respond to such comments. Upon receipt of any comments from Tenant to the Proposed Base Building Plans, Landlord shall consider Tenant's proposed changes and shall make all or any portion of such changes as may be necessary to cause the Proposed Base Building Plans to conform to the Preliminary Base Building Plans described on Exhibit D-2, and to eliminate the Objectionable Change (or as may be otherwise reasonably acceptable to Tenant), and shall thereafter submit the revised Proposed Base Building Plans to Tenant. Following Landlord's redelivery of the revised Proposed Base Building Plans to Tenant for approval, Tenant shall respond to Landlord and Landlord's Architect's revised Proposed Base Building Plans within five (5) business days following receipt thereof, with the process to be repeated until the Proposed Base Building Plans are approved by Tenant and Landlord. In each instance, Tenant's approval shall not be unreasonably withheld, conditioned or delayed. The Proposed Base Building Plans, as approved by Landlord and Tenant (or that are not timely objected to by Tenant), shall be referred to herein as the "Base Building Plans". In the event the timeframe for the purpose of confirming the Base Building Plans extends to a date which is more than thirty (30) days from the date the Proposed Base Building Plans are presented to the Tenant, the time period beyond such thirty (30) day period shall be deemed an Excusable Delay for the purpose of determining the Target Date under the terms of this Lease. The Base Building Plans, when approved in the manner set out above, shall be attached hereto as Exhibit D-2 in place of the Preliminary Base Building Plans and constitute the "Base Building Plans" for purposes of this Work Letter.
- B. If, following the process set out in Section 2.01 A, above, the Base Landlord desires to change the Base Building Plans in any material manner, Landlord shall promptly notify Tenant in writing and submit the modifications (with the changes highlighted) to Tenant for Tenant's review and approval, which Tenant may withhold if the modification results in any Objectionable Change; otherwise, Tenant's approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall provide Landlord with any comments to the

Base Building Plans in writing, which comments shall be limited to addressing Objectionable Changes, to both Landlord and Landlord's Architect within five (5) business days of receipt of Landlord's notice of the change to the Base Building Plans. If Tenant comments on any Objectionable Change, it shall specify the reasons for such comments in reasonable detail to allow Landlord to respond to such comments. Tenant shall review any revised plans submitted by Landlord to address Tenant's comments within five (5) business days of re-submission by Landlord. The foregoing resubmission process shall be repeated until Tenant has no further comments on the proposed changes to the Base Building Plans and approves the same.

## 2.02 Performance of Base Building Work

Subject to the terms and provisions of this Work Letter, Landlord, at its sole cost and expense shall diligently obtain all permits and approvals required for the Base Building Work, and shall use diligent efforts to Substantially Complete the Base Building Work on or before the Target Date. Landlord shall cause the Base Building Work to be carried out in a good and workmanlike manner, free from defects of a material nature in design, materials and workmanship, in accordance with all applicable Requirements and substantially in accordance with the Base Building Plans.

## III. Tenant Work

### 3.01 Tenant Improvement Plans

- A. Tenant shall separately contract with Landlord's Architect and cause Landlord's Architect to provide Landlord with detailed plans containing all of the architectural and engineering elements for the Tenant Improvements on or before \_\_\_\_\_ (the "T.I. Plans"). Landlord and Tenant shall cooperate to coordinate the T.I. Plans with the Base Building Plans. The T.I. Plans shall be approved by Tenant and contain sufficient detail for the obtaining of necessary permits for the Tenant Work.
- B. The T.I. Plans shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord's disapproval of T.I. Plans shall be deemed reasonable for any Tenant Improvements which materially and adversely affect the structural integrity of the Building or materially and adversely affect the exterior of the Building, or materially and adversely affect any area outside of the Premises, are not consistent with the Base Building Plans, will cause a delay in the Substantial Completion of the Landlord's Work beyond the Target Date, or otherwise materially and adversely affect the proper operations of the Base Building Systems, jeopardize the security of the Building, materially increase the required maintenance of the Building, or do not comply with applicable Requirements. Landlord shall provide Tenant with any comments or objections to the T.I. Plans in writing within ten (10) business days of receipt thereof. A failure to respond in writing within the ten (10) business day period shall be deemed an approval of the T.I. Plans by Landlord. If Landlord objects to any of the Tenant Improvements set forth in the T.I. Plans, Landlord shall specify the reasons for such objections in reasonable detail to allow Tenant to respond to such objections. Landlord shall review any revised plans submitted by Tenant to address Landlord's objections within five (5) business days of re-submission by Tenant (with a failure to respond within the five (5) business day period deemed an approval thereof). The foregoing resubmission process shall be repeated until Landlord, where applicable, reasonably approves or is deemed to have approved the T.I. Plans or any change thereto and the T.I. Plans, as so approved by Landlord are hereinafter the "T.I. Plans". The T.I. Plans, when approved in the manner set out above shall be attached hereto as Exhibit D-3 and constitute the final "T.I. Plans" for purposes of this Work Letter.

- C. Changes to the T.I. Plans after approval thereof by Landlord and Tenant, as applicable, may be made by Tenant, subject to Landlord's prior approval, not to be unreasonably withheld, conditioned or delayed, such review to be limited to and to be in accordance with the same procedure as the review by Landlord of the initial T.I. Plans (except that the ten (10) business day period shall be reduced to five (5) business days). All changes to the T.I. Plans made after approval by Tenant of the Approved Budget (as defined in and pursuant to Section 3.02.C) shall be constructed and implemented by Landlord as a Tenant Work Change (as hereinafter defined) pursuant to a Change Order approved by Landlord and executed by Tenant. In the event of any dispute concerning the approval or disapproval of Tenant's request for changes, the same shall be resolved in accordance with Section 5.05 of this Work Letter.
- D. Landlord shall, by notice to Tenant given on or before \_\_\_\_\_, specify in writing any items of work shown on the T.I. Plans which in Landlord's judgment constitute Special Work, but which are not identified as Special Work on the T.I. Plans, and such notice must specify any alternatives available which, in Landlord's opinion, would eliminate the need for Special Work, and Landlord's good faith estimate of the length of any Tenant Delay which would arise from the Special Work. Tenant shall have the right, within five (5) business days after being notified of any Special Work in accordance with the preceding sentence, to issue a Change Order to Landlord which provides that Tenant intends to: (i) perform such work itself as Tenant Installations (as defined herein); (ii) substitute other work or finishes for the Special Work; or (iii) delete the Special Work from the Tenant Improvements. If such notice is not given within such five (5) business day period, Landlord shall proceed with the Special Work, and to the extent the Special Work causes delays in Substantial Completion beyond the Target Date, the same shall be considered Tenant Delay.
- E. In order to reduce or minimize Tenant Delays for or resulting from Special Work, Tenant may notify Landlord in writing, prior to the delivery and/or approval of the T.I. Plans, of specified items which Tenant wants to purchase but which will be included in Tenant Work. In such event, provided that such items of equipment, furniture or materials, or the installation thereof, would not require any changes in the Base Building Plans, Landlord shall, provided Tenant has approved the costs of such items, promptly purchase such equipment or materials for incorporation into the Landlord's Work, and the cost thereof, as approved by Tenant, shall be included in the Costs of Tenant Work in the Approved Budget.
- F. Following approval by Tenant of the Approved Budget, Tenant may from time to time make changes to the T.I. Plans and the Tenant Work (but not the Base Building Work) consisting of additions, deletions or other modifications ("Tenant Work Change"), subject to approval by Landlord in accordance with and to the extent required by Section 3.01.B. Tenant shall submit each Tenant Work Change to Landlord and Landlord shall within five (5) business days following receipt of the proposed Tenant Work Change, provide Tenant with a written change order ("Change Order") specifying Landlord's good faith estimate of the cost of the proposed Tenant Work Change and Landlord's good faith estimate of the length of the Tenant Delay, if any, which may be caused by the Tenant Work Change. If Landlord fails to provide a written Change Order within the five (5) business day period, or to disapprove the Tenant Work, the Tenant Work Change shall be deemed to be approved and it will be deemed to involve no increased cost or Tenant Delay. If Landlord provides a Change Order, Tenant shall have two (2) business days following receipt of the Change Order to (i) approve same in writing, (ii) to disapprove the Change Order in writing (in which case the Tenant Work Change shall not be implemented) or (iii) if Tenant disputes the amount of the charge or the length of the delay as set forth in the Change Order, Tenant shall provide Landlord a notice indicating the charge and the delay Tenant believes is appropriate (in which case the Tenant Work Change shall be implemented). If no approval or objection is provided by Tenant in a timely manner, as set out above, Tenant will be deemed to have withdrawn its request for such Tenant Work Change. Any dispute concerning the cost of a Tenant Work Change or length of Tenant Delay resulting therefrom as set forth in a Change Order or as to

Landlord's approval or disapproval thereof, shall be resolved in accordance with Section 5.05 of this Work Letter and the cost of the Tenant Work Change as determined by Landlord, pending resolution of the dispute, will be included in the Costs of Tenant Work in the Approved Budget, and Tenant shall pay the same as hereinafter provided, to the extent the increase in cost would result in the Cost of Tenant Work exceeding the Construction Allowance.

- G. Promptly following approval by Landlord and Tenant of the T.I. Plans, Landlord shall apply for and obtain all permits, approvals and consents required in order to commence and complete the Tenant Work.
- H. Within ten (10) business days following the date of the Lease, Landlord shall cause Landlord's Architect to re-measure and recalculate the Rentable Area of the Premises based on the Final Plans, in accordance with the BOMA Standard, and shall submit such calculation, and appropriate back-up documentation needed to verify such calculation, to Tenant and Tenant's Consulting Architect. Within five (5) business days following receipt of the calculation from Landlord's Architect, Tenant or Tenant's Consulting Architect shall notify Landlord in writing whether Tenant disputes such calculation of the Rentable Area or accepts such calculation. A failure to respond by Tenant within the five (5) business day period shall be deemed an acceptance of Landlord's calculation. If Tenant disputes Landlord's calculation, Landlord's Architect and Tenant's Consulting Architect shall meet to attempt to resolve the dispute, and if they are unable to resolve the dispute within five (5) business days of Landlord's receipt of Tenant's dispute notice, either party may submit the dispute to binding arbitration pursuant to Section 5.05 of this Work Letter. Upon resolution of the dispute pursuant to Section 5.05 hereof, or agreement on the Rentable Area of the Premises, the parties shall enter into an amendment to the Lease and this Work Letter, reflecting the Rentable Area of the Premises and adjustments to the Base Rent, Tenant's Share and Construction Allowance based on the final Rentable Area of the Premises so determined. In the event of any changes to the Base Building Work by Landlord which have been approved by Tenant (or do not require Tenant's approval pursuant to the terms of this Work Letter) and will affect the Rentable Area following the date of this initial determination, the Rentable Area will be re-determined, at Landlord's cost and expense, in the same manner as set out above, taking into consideration the changes to the Base Building Work by the Landlord; provided further, however, that in all events any change in the Base Building Work which would result in an increase or decrease in the Rentable Area of the Premises by one percent (1 percent) or more, which would adversely affect access to or Tenant's use or occupancy of the Premises, or are inconsistent in any material respect with the Base Building Plans, shall in all events require Tenant's prior written approval, not to be unreasonably withheld, conditioned or delayed. In the event of any changes to the Landlord's Work due to a Tenant Work Change that will affect the Rentable Area following the date of the initial determination, the Rentable Area will be re-determined by Landlord at Tenant's sole cost and expense, in the same manner as set out above, taking into consideration the changes to the Landlord's Work by the Tenant Work Change.

### 3.02 Bids for Tenant Work

- A. The Landlord has selected Koontz Construction ("General Contractor"), as its general contractor for the Base Building Work as well as the Tenant Work. Landlord has negotiated the form of the contract, for completion of the Tenant Work and the Base Building Work (the "General Contract") with General Contractor (but has not yet completed all schedules and exhibits thereto) and has provided Tenant with a copy of the negotiated form of the General Contract on \_\_\_\_\_, which form Tenant has approved. Upon completion of the bidding for the Tenant Work and approval of the Approved Budget by Tenant, as hereinafter provided Landlord shall enter into the General Contract with General Contractor on the form previously provided to Tenant (with all exhibits and schedules completed) and provide a copy thereof to Tenant; provided, however, that, before executing the General Contract, Landlord shall obtain Tenant's

written approval of all exhibits and schedules pertaining to the Tenant's Work, including the guaranteed maximum price schedule, to be attached thereto. Landlord has provided a true complete and correct copy of the General Contract to Tenant and the General Contract is hereby deemed approved by Tenant. General Contractor shall cause to be competitively bid, on an open book basis, all of the work shown in the T.I. Plans, to no less than three (3) licensed, reputable subcontractors per trade, except where, due to the nature of the subcontractor work, it is impractical to obtain three (3) bids. Each subcontractor shall be instructed to provide a fixed price bid (with unit pricing, where available and applicable) along with all value engineering options where the subcontractor reasonably determines such options to be available. Tenant shall be entitled to review and approve the bid packages prior to delivery to the subcontractors (which shall include the form of subcontract), be present at the bid opening, participate in bid review and leveling, request bid clarifications, and approve the winning bids (and if necessary, to have the opportunity to make Value Engineering Changes within a reasonable period of time, not to exceed five (5) business days following opening of the bids).

- B. As a part of the General Contract the Landlord shall insure that the pricing (including, without limitation, contractor fees, general conditions and insurance) provided by the General Contractor is identical in all material respects for both the Tenant Work and for the Base Building Work.
- C. Within five (5) business days following the award of the bids, Landlord shall prepare a construction budget showing the Cost of Tenant Work (as hereinafter defined), including any Additional Cost (as hereinafter defined), and shall submit the same to Tenant for Tenant's approval not to be unreasonably withheld, conditioned or delayed. Tenant shall have five (5) business days (subject to extension for up to an additional three (3) business days, to the extent required to enable Landlord's Architect to make the requisite changes to the T.I. Plans) following receipt of Landlord's proposed construction budget to approve or request clarifications to the same and/or to perform Value Engineering Changes and make changes to the T.I. Plans. If Tenant makes Value Engineering Changes to the T.I. Plans, Landlord shall submit the changes to the General Contractor and to the subcontractors who have been awarded the bids, to revise their bids based on the changes, and shall, upon receipt of the pricing, submit an updated construction budget to Tenant for Tenant's approval, and Tenant shall approve or request clarifications to the revised construction budget in writing within three (3) business days following receipt, with such process to be repeated until the construction budget is approved by Landlord and Tenant (the "Approved Budget"). Any Additional Cost shall be paid in accordance with Section 3.04. If the actual Cost of Tenant Work exceeds the Cost of Tenant Work in the Approved Budget (as increased by the net increased costs of construction due to Change Orders approved by Tenant, the net increased costs due to Tenant Delay and the net increased costs resulting from unforeseen field conditions; collectively, "Additional Cost"), Landlord shall be responsible for paying any Cost of Tenant Work in excess of the Approved Budget, as adjusted to reflect the amount of the Additional Costs. Any dispute as to whether an increase in costs is considered an "Additional Cost" shall be resolved pursuant to Section 5.05.

### 3.03 Performance of Tenant Work

- A. Landlord shall supervise and direct the Tenant Work. Landlord shall be solely responsible for, and shall have sole authority with respect to, all construction means, safety, methods, techniques, sequences and procedures and shall coordinate all portions of the Landlord's Work. Landlord's Construction Representative shall represent Landlord. Tenant hereby agrees to reasonably cooperate, without additional third party cost to Tenant other than de minimus administrative costs, with Landlord's Construction Representative, the Architect and any of Landlord's contractors, as well as any substitutes for any of them as may be designated by Landlord, from time to time, by written notice to Tenant, and to furnish such information as may be within

Tenant's possession or control within the scope of the construction to be carried out hereunder as such persons may reasonably request from time to time. Subject to the terms and provisions of this Work Letter, Landlord, at its sole cost and expense shall diligently obtain all permits and approvals required for the Tenant Work, and shall use diligent efforts to Substantially Complete the Tenant Work on or before the Target Date.

- B. All materials and equipment furnished by Landlord in connection with Tenant Work will be new unless otherwise specified in the T.I. Plans and all such work will be of good quality. All work performed by Landlord in connection with the construction of the Tenant Work shall be performed in a good and workmanlike manner completed substantially in accordance with the T.I. Plans, all Requirements (except to the extent the noncompliance results from a failure of the T.I. Plans to comply with applicable Requirements), and upon completion and delivery to Tenant shall be free from hazardous materials and mold.
- C. Landlord has been advised that Tenant has retained Jim Hunley as Tenant's Construction Representative with respect to the design and construction of Tenant Work. Landlord hereby agrees to reasonably cooperate with Tenant's Consulting Architect, Tenant's Construction Representative, and any substitutes for any of them as may be designated by Tenant from time to time by written notice to Landlord, and to furnish such information within the scope of Landlord's services hereunder as such persons may reasonably request from time to time.

#### 3.04 Construction Allowance; Payment

- A. The term "Cost of Tenant Work" shall mean the costs of completing the Tenant Work as set forth in the Approved Budget, and consisting of: (i) costs of constructing the Tenant Work pursuant to the T.I. Plans, including, without limitation, the Tenant Improvement HVAC Work, the cost of Electrical Sub-Metering, the cost of all labor of third party contractors performing the Tenant Work, (as reflected in the approved bids for the Tenant Work) materials, subcontracts, insurance and other reimbursable expenses set forth in the approved bids for the Tenant Work, (but excluding the costs of installing the Tenant Installations (as hereinafter defined)), (ii) cost of preparing the T.I. Plans, and any other plans required to complete the work, including all engineering and architectural fees incurred by Tenant (including the fees of Tenant's Consulting Architect), (iii) any fees payable to governmental authorities in connection with obtaining the necessary permits for the construction of the Tenant Improvements, (iv) the fees of the General Contractor, as reflected in the approved General Contract, (v) general conditions as set forth in the approved General Contract; and (vi) such other costs as Landlord and Tenant shall reasonably agree are appropriately included in the Cost of Tenant Work). The Cost of Tenant Work as set forth in the Approved Budget which are in excess of the Construction Allowance are hereinafter referred to as the "Tenant's Budgeted Cost Contribution". The Cost of Tenant Work as set forth in the Approved Budget, along with Tenant's Budgeted Cost Contribution, shall be increased from time to time to reflect the Additional Costs.
- B. No fees shall be payable to Landlord or any affiliate of Landlord in connection with the Tenant Work.
- C. Tenant's Budgeted Cost Contributions (as increased to reflect Additional Costs) shall be paid by the Tenant to Landlord in monthly progress payments, as such payments are due by Landlord for Costs of the Tenant Work to the general contractor, in the manner hereinafter set forth, based on the ratio of Tenant's Budgeted Cost Contribution (as increased to reflect Additional Costs, if any), to the Costs of the Tenant Work as set forth in the Approved Budget (as increased to reflect the Additional Costs, if any) (such ratio being referred to as "Tenant's Percentage Share of Construction Costs"). By way of example if the Approved Budget

equals \$3,500,000.00, there are no Additional Costs, and the Construction Allowance is \$2,341,260 [117,063 square feet x \$20.00], Tenant's Percentage Share of Construction Costs would be 33.11 percent of the Costs of Tenant's Work set forth in the Approved Budget. Tenant will pay to Landlord Tenant's Percentage Share of Construction Costs, in monthly progress payments as the construction of the Tenant Work progresses, within thirty (30) days of receiving a requisition pursuant to Section 3.04.D from Landlord (provided that the aggregate amount funded by Tenant shall be up to, but shall not exceed, Tenant's Budgeted Cost Contribution, as set forth in the Approved Budget, as adjusted by the Additional Costs). If, after a progress payment is made, Additional Costs are incurred, and as a result Tenant's Percentage Share of Construction Costs is increased, then, at such time as the next progress payment is required to be made, the amount required to be funded by Tenant shall also be increased, so that the amount funded by Tenant in such progress payment, when added to all prior progress payments by Tenant equals, in the aggregate, Tenant Percentage Share of Construction Costs multiplied by the Costs of Tenant Work funded out of all progress payments to date (but not to exceed Tenant's Budgeted Cost Contribution, as increased by Additional Costs).

- D. From time to time during the performance of the Tenant Work, Landlord shall deliver to Tenant a requisition for payment of the cost of the Tenant Work incurred up to the date of each such requisition (but no more often than monthly) specifying the amount to be funded by Tenant, based upon Tenant's Percentage Share of Construction Costs. Tenant shall have the right to approve each requisition, which approval shall not be unreasonably withheld, delayed, or conditioned, and which approval shall be deemed given unless, within three (3) business days after delivery of the requisition to Tenant, Tenant objects in writing thereto specifying the amount of such requisition disputed by Tenant and, in reasonable detail, the grounds for Tenant's objection (including, without limitation, if the requisition is inconsistent with the Approved Budget or Landlord requests funding from Tenant that exceeds Tenant's Budgeted Cost Contribution as adjusted by Additional Costs). Within thirty (30) days of receipt of the requisition, Tenant shall fund to Landlord (a "Tenant's Progress Payment") an amount equal to Tenant's Percentage Share of Construction Costs multiplied by the total undisputed amount of the requisition (but reduced by any required retainage). Landlord shall not disburse any portion of the Construction Allowance and/or the Tenant's Budgeted Cost Contribution or Additional Costs, if applicable, without first obtaining Tenant's written approval (not to be unreasonably withheld, conditioned or delayed), or deemed approval, of the requisition for the disbursement. Landlord shall disburse from the Construction Allowance and from Tenant's Progress Payment, if applicable, the amount of each such requisition approved or deemed approved by Tenant (or, if Tenant has objected thereto, the undisputed portion thereof). For the purposes of this Work Letter, a "requisition" shall mean written documentation showing in reasonable detail the costs of the work or other improvements contracted for by Landlord, and percentage of completion, issued on AIA Form G702 (or such other form as may be reasonably acceptable to both Landlord and Tenant). Landlord shall follow customary and prudent practices in connection with the requisitioning and payment for the Tenant Work, including, without limitation, lien waivers and retainage. Tenant shall have the right, upon reasonable advance notice to Landlord, to inspect Landlord's books and records relating to each requisition. If any requisition requests funding of Tenant's Percentage Share of Construction Costs and Tenant is not disputing the amount thereof as provided above, Tenant shall fund the Tenant's Percentage Share of Construction Costs in the requisition (or undisputed portion thereof up to the amount of Tenant's Budgeted Construction Cost Contribution, as increased by Additional Costs), within thirty (30) days following receipt of the requisition.
- E. If the Cost of Tenant Work, as set forth in the Approved Budget, is less than the Construction Allowance, Tenant may use the remaining balance to pay or be reimbursed for the costs of Tenant Installations, data/telecommunication wiring and cabling, furniture, security systems and equipment, moving costs and consultants' fees (collectively the "Other Costs"); provided that the amount of the Construction Allowance used to pay those Other Costs consisting of moving related costs shall not exceed Two Dollars (\$2.00) per

square foot of Rentable Area of the Premises (the "Surplus Allowance") and must be used by the Tenant within two hundred seventy (270) days after the date Tenant takes possession of the Premises. With respect to the Surplus Allowance that may be used for work contracted for by Tenant (including, without limitation, architectural and engineering costs as set forth in the Approved Budget), for Tenant Installations and/or for Other Costs (which portion shall only be up to the amount of the Surplus Allowance), Tenant shall pay the cost for such work and Landlord shall reimburse to Tenant that portion of the cost of the work shown on each requisition submitted by Tenant to Landlord (or if requested by Tenant, Landlord shall fund the amount directly to the party performing the work), on or before that date which is thirty (30) days after submission thereof by Tenant to Landlord. For the purposes of this Section 3.04.E, a "requisition" shall mean written documentation showing in reasonable detail the costs of the work or other improvements contracted for by Tenant, issued on AIA Form G702 (or such other form as may be reasonably acceptable to both Landlord and Tenant), or in the case of architectural and/or engineering costs or Other Costs where an AIA G702 is not appropriate, written documentation, consisting of invoices evidencing the costs incurred by Tenant. Each requisition shall be accompanied by evidence reasonably satisfactory to Landlord that all work covered by previous requisitions submitted by Tenant and funded by Landlord out of the Surplus Allowance as provided herein has been fully paid by Tenant (including delivery to Landlord of written waivers of liens from all contractors, laborers and suppliers of materials for such work).

Landlord shall have the right to approve each requisition, which approval shall not be unreasonably withheld, delayed, or conditioned, and which approval shall be deemed given unless, within three (3) business days after delivery of the requisition to Landlord, Landlord objects in writing thereto specifying the amount of such requisition disputed by Landlord and, in reasonable detail, the grounds for Landlord's objection (including, without limitation, if the requisition is inconsistent with the Approved Budget). Tenant shall follow customary and prudent practices in connection with the requisitioning and payment for such work, including, without limitation, lien waivers and retainage, if appropriate, given the nature of the work or service.

### **3.05 Construction Permit/Inspections**

Landlord shall obtain and maintain in full force and effect all required construction permits for the construction of the Tenant Improvements, the cost of which are to be included in the Costs of

Tenant Work, as set forth in the Approved Budget and shall obtain any certificate of occupancy or other permit required for Tenant's occupancy of the Premises. Landlord shall, at Landlord's cost, obtain and, to the extent required to carry out Tenant Work, maintain in full force and effect all required construction permits and inspections for the construction of the Tenant Work. If any Tenant Work or Base Building Work is required to be inspected or approved by any Governmental Authority, Landlord shall cause such inspection or approval to be performed. The above notwithstanding, Landlord will not be in violation of this provisions of the Work Letter if its failure to obtain such certificate by the Target Date is attributable solely to (i) Landlord's inability to obtain the necessary permits, consents or approvals to commence the Base Building Work after using diligent, good faith efforts to obtain the same, (ii) Tenant Installations, (iii) Other Work or (iv) a failure of the T.I. Plans to comply with Requirements, and any such inability to obtain such permits due solely to the foregoing causes in clauses (ii), (iii) and (iv) shall be deemed a potential Tenant Delay.

## **IV. Completion of Landlord's Work and Tenant Installations**

### **4.01 Permits for Landlord's Work**

Subject to the terms and provisions of this Work Letter and upon Substantial Completion of the Base Building Work and the Tenant Work, Landlord shall promptly obtain and shall provide Tenant with a copy of the temporary or final certificate of occupancy for the Premises and all other permits necessary for Tenant to occupy the Premises. Tenant will cooperate with Landlord to cause the permits necessary for Tenant to occupy the Premises to be obtained. Landlord shall not be required to obtain such Permits for the Tenant if, however, Landlord's inability to obtain the Permits is the result of the failure of the T.I. Plans (but not the construction) to comply with applicable Requirements or if the Tenant Installations are the cause of the Landlord's inability to obtain such Permits. If Landlord obtains a temporary certificate of occupancy for the Premises, Landlord shall maintain such temporary certificate of occupancy in effect, and diligently proceed to obtain a final certificate of occupancy for the Premises.

#### 4.02 Extension of Target Date

Notwithstanding the foregoing, the Target Date shall be extended by (a) one (1) day for each day that Substantial Completion of Landlord's Work actually is delayed beyond \_\_\_\_\_ due to Tenant Delay or defaults by Tenant under the terms of the Existing Lease which actually cause a delay in Landlord's ability to complete the Landlord's Work by such date, and by one-half (½) day for each day that Substantial Completion of Landlord's Work is actually delayed beyond \_\_\_\_\_ as a result of Excusable Delay.

#### 4.03 Tenant's Installations

- A. Tenant, at its own cost and expense (subject to reimbursement from the Construction Allowance, to the extent provided above), shall perform all work related to installation of furniture, moveable furnishings, telephone systems, computer systems, office equipment, security system and audio visual equipment ("Tenant Installations"). Subject to the applicable terms and conditions of the Lease and this Work Letter, Tenant and its Contractors shall have the right to enter the Premises, for the construction and installation of Tenant Installations prior to Substantial Completion, it being understood that Landlord's Contractors shall have priority access to the Premises for the performance of Base Building Work and Tenant Work, except as hereinafter provided or as contemplated in the Construction Schedule. Landlord's Construction Representative and Tenant and Tenant's Contractors shall reasonably coordinate all such access, which shall be reflected in the Construction Schedule. Tenant's Contractors shall in all events use reasonable efforts to minimize any interference with the Base Building Work and Tenant Work. Landlord's Construction Representative shall coordinate any scheduling conflicts in a reasonable manner. Any delay to the Tenant Work caused by Tenant's or its agent's performance of the Tenant Installations shall be considered a potential Tenant Delay.
- B. All Tenant Installations shall be subject to Landlord's approval to the extent such approval is required under Article \_\_\_\_ of the Lease. All Tenant Installations shall be accomplished in a good and workmanlike manner so as not to damage the Real Property, the Premises or the Buildings including but not limited to the plumbing, electrical lines or other utilities, and will be carried out in such a manner so as not to unreasonably disturb other tenants of Landlord.
- C. Prior to any entry to perform any Tenant Installations, Tenant shall notify Landlord in writing of the names of its agents, contractors or subcontractors who are to work in said Premises, and to furnish Landlord with such other information as Landlord may reasonably require. All work done by Tenant, its agents, contractors, subcontractors or employees shall be scheduled and performed so as not to conflict, interfere with, or delay any work undertaken by Landlord in the Building or Landlord's completion of the Premises; provided, that if the work is so scheduled or is otherwise contemplated in the Construction Schedule, Tenant

may commence portions of the Tenant Installations at the appropriate stage of Landlord's construction of the Tenant Improvements (including for purposes of voice, data, security and audio visual wiring and cabling, while walls and ceilings are open). Landlord shall cause the hub rooms in the Premises shown on the T.I. Plans to be delivered to Tenant in "room ready" condition no less than twenty-five (25) days prior to the date of Substantial Completion, to enable Tenant and its contractors to install its, wiring, cabling, racks and network equipment therein, which work shall be coordinated with Landlord to reduce any interference with the Tenant Work. As used herein, "room ready" condition means that with respect to each such space, all walls have been constructed, the interior painted, flooring and base installed, door/frame lockset (either permanent or temporary) installed so that the rooms can be secured, all electrical equipment and connections shall be installed and operational in the manner required for the delivery of electric services under the terms of the Lease, the ceiling grid (but not tiles) shall be in place and all HVAC ductwork shall be installed (but HVAC need not be fully operational, without interruption in service by Landlord or its contractors, until two (2) weeks prior to Substantial Completion). In the event that Tenant, its agents, contractors, subcontractors or employees do not work in harmony with, or unreasonably interfere with, labor employed by Landlord, its agents, contractors, subcontractors or employees, or in the event that any work stoppage, jurisdictional labor dispute or other unreasonable interference with Landlord, its agents, contractors, subcontractors or employees occurs such activity shall be deemed a Tenant Delay for the time period of such interruption and Landlord shall have the right to require Tenant, upon written demand, to remove or cause the removal forthwith of all of Tenant's agents, contractors and employees from the Premises and Tenant agrees to comply with such demand immediately. Any and all of the Tenant Installations and decorations shall be installed solely at Tenant's risk, except to the extent of damage caused by the negligence or willful misconduct of Landlord, its agents, employees and/or contractors. Tenant shall be liable to Landlord in the event Tenant, its employees, agents, contractors or subcontractors damage Landlord's installations, or mechanical equipment, or other property, except to the extent covered by, or required to be caused by Landlord's insurance, unless otherwise addressed under the provisions of Section \_\_\_\_\_ of the Lease. Tenant shall perform the Tenant Installations in a time frame so as not to delay Substantial Completion of the Base Building and Tenant Improvements as contemplated in the Construction Schedule.

- D. In the event that Tenant performs any Tenant Installations pursuant to this Work Letter, Tenant agrees promptly to notify Landlord in writing of the names of Tenant's Contractors who are to work in the Premises and to furnish Landlord with such other reasonable information Landlord may require.
- E. At all times during Tenant's installation of the Tenant Installations, Tenant shall maintain the insurance required in the Lease and shall cause Tenant's Contractors and all other agents of Tenant to maintain the insurance required in the Lease related to contractors performing Alterations.
- F. All of Tenant's activities and the activities of its agents on the Real Property will be subject to Landlord's construction rules and regulations for the Real Property, which are attached hereto as Exhibit D-4.
- G. Within twenty-four (24) hours of Tenant's knowledge of all accidents or occurrences resulting in injury to Tenant, its employees, or third parties or damage to property of another, Tenant shall submit a written report in a form reasonably acceptable to Landlord.
- H. Tenant shall follow customary and prudent practices in connection with Tenant's installation of the Tenant Installations, including, without limitation, lien waivers and retainage, if appropriate.

## V. Miscellaneous

**5.01 Tenant Installations Rules and Regulations.**

- A. Any injuries or damages occurring on the job site in connection with the Tenant Installations must be included in an accident report, a copy of which is to be provided to Landlord's Construction Representative promptly after the occurrence.
- B. Tenant shall cause all of Tenant's Contractors to take the necessary and proper precautions, which must be to the reasonable satisfaction of the Landlord's Construction Representative, to protect all Base Building Work and Tenant Work with which the Tenant Installations come into contact, or over which Tenant's Contractor may transport, hoist or move materials, equipment, debris, etc., including, without limitation, all public areas, elevator cabs, restrooms, doors, floors, corners, walls, etc., and Tenant's Contractor shall repair to the reasonable satisfaction of Landlord's Construction Representative all damages caused by Tenant's Contractor during the construction of Tenant's Installations at Tenant's expense. All damage caused to the Buildings by Tenant or by Tenant's Contractor's must be repaired by Tenant prior to occupancy of such portion of the Premises, except to the extent covered by, or required to be covered by Landlord's insurance (unless otherwise addressed under the provisions of Section \_\_\_\_ of the Lease). If Tenant fails to repair such damage within ten (10) days after receipt of notice from Landlord or if such damage may not be repaired within such ten (10) day period, then if Tenant fails to commence its repair within such ten (10) day period and diligently proceed to complete such repair, Landlord may perform such repair itself at Tenant's expense. Tenant's Contractor shall touch up mullions and window frames with matching paint, if scratched. In no event shall any of Tenant's Contractors be permitted to enter any space in the Buildings leased or available for lease to another tenant, any elevator machine room and pump room on roof, or any mechanical equipment room, without the prior approval of Landlord's Construction Representative, which approval shall not be unreasonably withheld, conditioned or delayed.
- C. During the course of the Tenant Installations and during its move-in to the Premises after completion of the Tenant Installations, Tenant shall be entitled to use, at no additional cost to Tenant, in coordination with Landlord, the freight elevator for the purpose of constructing the Tenant Installations and moving Tenant's Contractors, materials, furniture, etc. into the Premises, it being understood that Landlord will also be entitled to use said facilities for the completion of the Base Building Work and the Tenant Work. Access to these areas will be coordinated by Landlord's Construction Representative in good faith, taking into account the construction scheduling and sequencing of the Base Building Work, Tenant Work and Tenant's request for use of the elevator. Landlord's Construction Representative will use reasonable efforts to accommodate the scheduling needs of Tenant, but in doing so, shall not be required to delay the Base Building Work. All deliveries shall be made at the Building and brought to the elevators. Tenant shall cause the Tenant's Contractors to take adequate protection to prevent the Base Building from being damaged during deliveries to the Premises. Tenant shall cause all of Tenant's Contractors to enter the Premises through the loading dock at the Building or through the designated construction entrance.

**5.02 Initial Occupancy by Tenant**

Landlord shall cooperate with Tenant in the scheduling of and providing Tenant with elevator access in connection with, Tenant's "move-in" to the Premises. Tenant shall not be responsible for any costs of Landlord or Landlord's personnel in connection with Tenant's "move-in."

**5.03 Punch List**

Once the Tenant Improvements have been Substantially Completed and prior to Tenant's possession and occupancy of the Premises, a list of Punch List Items (the "Punch List") shall be prepared by Landlord and Tenant to identify the minor details of construction yet to be completed by Landlord. Landlord will complete the items on the Punch List within thirty (30) days after the Punch List is completed and agreed to by Landlord and Tenant; provided that the 30 day period shall be extended to the extent reasonably required to enable Landlord to complete any Punch List Items which are not reasonably susceptible of being completed with the initial thirty (30) day period because there are parts that need to be ordered and those parts cannot be obtained within such period, so long as Landlord has diligently ordered the parts. In addition, if Landlord does not complete the Punch List items within the time period provided in the preceding sentence, Tenant may elect, in addition to its other remedies, to complete the Punch List Items at Landlord's expense, and Landlord shall reimburse Tenant for the cost thereof within ten (10) business days following Tenant's request accompanied by invoices evidencing the costs incurred.

#### 5.04 Possession by Tenant

The taking of possession of the Premises by Tenant shall constitute an acknowledgment by Tenant that, to the best of Tenant's knowledge, the Premises are in good condition and that all work and materials provided by Landlord are satisfactory, except as to any defects or incomplete work which were of a nature so that they were not readily apparent for inclusion on the Punch List. It is agreed that Tenant shall deliver the Punch List to Landlord prior to its taking occupancy.

#### 5.05 Disputes

- A. In any circumstance where the Landlord or Tenant feels the other party hereto is not in compliance with the terms of this Letter Agreement, that party may provide a notice of an allegation of dispute with the other party hereto (the "Dispute Notice"). Within \_\_\_\_\_ (\_\_\_\_) days of the delivery of the Dispute Notice the Landlord shall designate an arbitrator ("Landlord's Arbitrator") and shall promptly notify Tenant of such designation and Tenant shall designate an arbitrator ("Tenant's Arbitrator") and shall promptly notify Landlord of such designation. Landlord's Arbitrator and Tenant's Arbitrator shall meet within thirty (30) days of their designation to select three independent architects or engineers or other person, having at least ten (10) years' experience in their field including the design or construction of office buildings or office interiors in \_\_\_\_\_ who shall serve as the arbitrators to settle any disputes arising under this Work Letter (the "Arbitrators"), one of whom shall be designated as the Arbitrator to determine Approval Disputes (as defined below). If Landlord's Arbitrator and Tenant's Arbitrator are unable to select the Arbitrators, either party may petition the AAA for the appointment of three independent architects or engineers or other persons, having at least ten (10) years' experience in their field including the design or construction of office buildings or office interiors in \_\_\_\_\_ to serve as the Arbitrators. If, at any time, any of the Arbitrators shall resign or be unable to fulfill its obligations under this Work Letter, the parties will select an arbitrator in accordance with the terms of this Section 5.05 to replace such Arbitrator.
- B. Any dispute between Landlord and Tenant under this Work Letter (whether or not a specific Section of this Work Letter specifies the particular dispute will be resolved pursuant to this Section 5.05), or whenever Landlord's or Tenant's approval or consent is required hereunder, and same is withheld or disputed ("Approval Disputes"), shall be determined in accordance with this Section 5.05. A concurring vote by at least two (2) out of three (3) Arbitrators shall resolve any dispute under this Section 5.05, except that any Approval Dispute shall be determined by the Arbitrator designated to determine Approval Disputes pursuant to Section 5.05(A).

- C. Except to the extent provided herein to the contrary, and pending the final resolution of a dispute submitted to arbitration pursuant to this Section 5.05, Landlord shall proceed with the performance of the Base Building Work and the Tenant Work and Tenant shall continue to make payments in accordance with this Work Letter of any amount due and payable with respect to the Tenant Work.
- D. In the event that either Landlord's or Tenant's approval or consent is required hereunder and either does not give such approval or consent then (a) such party shall give to the other a written notice specifying in detail the reasons for such disapproval or non-consent and such notice will also state what modifications, if any, would make same acceptable to it and (b) said party shall be deemed to have given its approval or consent unless it notifies the other of such disapproval or non-consent, together with the notice in the preceding clause (a), within such periods of time as shall be specifically provided in the applicable section, or if no time period shall have been provided, within fifteen (15) business days after delivery to it of the item(s), request(s) or notification(s) as to which its approval or consent is required.
- E. In the event of any such dispute hereunder between Landlord and Tenant, the parties shall meet within two (2) business days after notice by either party to the other requesting a meeting to resolve the dispute by agreement. If the parties are unable to so agree and resolve the dispute, they shall refer the matter to the Arbitrators and the determination of the Arbitrators shall be binding upon the parties hereto. The arbitration shall commence two (2) business days thereafter and shall be limited to a total of seven (7) hours on the date of commencement until completion, with each party having no more than a total of two (2) hours to present its case and to cross-examine or interrogate persons supplying information or documentation on behalf of the other party. The arbitrator shall make a determination within three (3) business days after the conclusion of the presentation of Landlord's and Tenant's cases, which determination shall be limited to a decision upon (a) whether Landlord or Tenant acted reasonably in withholding its consent or approval, or (b) the specific dispute presented to the arbitrator, as applicable. The Arbitrator's determination shall be final and binding upon the parties, whether or not a judgment shall be entered in any court. All actions necessary to implement or begin to implement such decision shall be undertaken as soon as possible, but in no event later than ten (10) business days after the rendering of such decision and thereafter the obligated party will diligently proceed with such action until completion. Any monetary award shall be paid to the prevailing party within thirty (30) days of the resolution of the dispute with interest from the date incurred by the prevailing party until paid by the other party. The Arbitrator's determination may be entered in any court having jurisdiction thereof.
- F. All fees payable to the AAA for services rendered in connection with the resolution of the dispute shall be borne equally by Landlord and Tenant. All costs and expenses of resolving any dispute pursuant to this Section 5.05 will be borne equally by Landlord and Tenant, except that each party shall bear the expense of its own counsel, experts, and presentations of proof. The performance of the work shall continue as scheduled during the pendency of such dispute.
- G. The provisions of this Section 5.05 shall survive the expiration or earlier termination of this Work Letter.

#### 5.06 Repairs and Corrections

For a period of one (1) year following the date that Base Building and Tenant Improvements are Substantially Completed, Landlord shall guarantee, at Landlord's cost, that all Base Building Work and the Tenant Work is free from defects in design, materials and workmanship. Landlord shall promptly following Tenant's request (given at any time prior to the date which is one (1) year following Substantial Completion of the Base Building Work and Tenant Work) cure any fault or defect in such work guaranteed by Landlord.

In addition, Landlord shall at all times correct any latent defect in the Base Building Work at Landlord's sole cost. The provisions of this Section 5.06 shall survive the expiration or earlier termination of this Work Letter.

**5.07 Assignment**

Landlord shall obtain customary warranties of a duration of no less than one (1) year (or such longer period as may be specified in the bid documents) from each of the Contractors performing Tenant Work, all of which shall be expressly assignable to Tenant. Upon the expiration of the warranty period described in Section 5.06, Landlord shall assign all such warranties then in effect to Tenant. Landlord shall also provide Tenant with copies of all operations and maintenance manuals for the systems and equipment which are included in Tenant Work.

**5.08 Integration**

The Schedules and Exhibits annexed hereto are hereby incorporated in and made a part of this Work Letter.

## WORK LETTER

### LANDLORD'S WORK

- 1. Preparation of Landlord's Plans.** Landlord has deliver to Tenant a complete sets of the architectural, mechanical, electrical, and plumbing plans and specifications for construction work to be carried out to the Building which Tenant does hereby approve (the "Landlord's Plans"). Landlord shall be entitled to modify the Landlord's Plans as it determines to be necessary or useful, provided it does not materially and adversely impact the Premises.
- 2. Landlord's Work.** Landlord shall commence or has commenced constructing improvements upon the Building in accordance with the Landlord's Plans, and will construct such the improvements to Substantial Completion ("Landlords Work"). The date of Substantial Completion of the Landlord's Work shall be the "Completion Date"). Subject to the other provision set out in this Work Letter which may extend the delivery date of the Landlord's Work, Substantial Completion of Landlord's Work shall be no later than \_\_\_\_\_ (the "Outside Completion Date").
- 3. Delays.** Tenant's obligation for payment of Rent and any other sums pursuant to this Lease commence on the Lease Date, but are subject to the partial abatement of Rent granted in Section \_\_\_\_ of the Lease if Landlord's Work does not achieve Substantial Completion by \_\_\_\_\_ ("Landlord Delays"). Tenant shall not be entitled to the partial abatement of Rent provided in Section \_\_\_\_ of the Lease to the extent such delay in the Substantial Completion of Landlord's Work is attributable to Tenant's Delay. "Tenant's Delay" means a delay in the construction of Landlord's Work to the extent caused by: (i) Tenant's failure to comply with any time periods set forth herein, (ii) Tenant's approved change orders that reflect an increase in time for the completion of Landlord's Work, or (iii) an actual delay caused by the act or omission of Tenant, its agents, employees, or contractors
- 4. Tenant's Entry.** In the event the Tenant occupies all or any portion of the Premises before the Completion Date, Tenant shall not unreasonably and materially interfere with Landlord's Work. All of the terms, covenants, and conditions set forth in the Lease apply upon the Lease Date. Tenant shall indemnify, defend and hold Landlord and the Landlord Parties harmless against any loss or damage resulting from Tenant's use or occupancy of the Premises (and any actions or omissions of any contractor of Tenant) prior to the Completion Date. Tenant's use and occupancy of the Premises prior to the Completion Date does not constitute acceptance of the Premises or approval of Landlord's Work.

### TENANT'S WORK

- 1. Preparation of Tenant's Plans.** Within fifteen (15) days after the complete execution of this Lease, Tenant shall submit to Landlord, for Landlord's approval, the name of Tenant's architect who will prepare Tenant's Plans (as defined below), which architect shall be qualified and licensed in the State where the Premises are located (the "Architect"). Tenant shall be responsible for all costs, fees and expenses of the Architect. Within thirty (30) days after the complete execution of this Lease, Tenant shall, at Tenant's sole cost and expense, cause the Architect to prepare and deliver to Landlord, for Landlord's approval, two (2) full and complete sets of the architectural, mechanical, electrical and plumbing plans and specifications for Tenant's Work (collectively, the "Tenant's Plans"). Tenant's Work and Tenant's Plans shall include (i) all of the requirements set forth on Schedule 1 attached hereto and incorporated herein, including, but not limited to, any matters necessary to ensure that the Premises are compatible with the existing Building structure and systems (Tenant and the Architect shall consult with Landlord's architect or engineer for information

regarding the Building structure and systems) and any restrictions and covenants affecting the Premises; and (ii) the Site Plan attached hereto as Schedule 2.

2. **Approval of Tenant's Plans.** Within \_\_\_\_ (\_\_) days after receipt by Landlord of Tenant's Plans, Landlord shall deliver to Tenant its comments on Tenant's Plans. Based upon Landlord's comments, Tenant shall redraft and resubmit Tenant's Plans to Landlord within fourteen (14) days of receipt of Landlord's comments. Landlord shall have ten (10) days after receipt of the redrafted Tenant's Plans to provide Tenant with comments on the redrafted Tenant's Plans. Such commenting and redrafting shall continue until Tenant and Landlord approve Tenant's Plans. Once Landlord approves all or any portion of Tenant's Plans, Tenant's Plans shall not be changed or modified without Landlord's prior written approval. Notwithstanding that Landlord or its agents have reviewed and approved Tenant's Plans, it is acknowledged and agreed that such review and approval shall not constitute Landlord's representation or warranty that Tenant's Plans are suitable for their intended purposes or that Tenant's Plans comply with all applicable laws, ordinances, rules and regulations, Tenant hereby assuming all such responsibility. It is further acknowledged and agreed that Landlord shall not have any responsibility for construction means, methods, techniques or safety precautions in connection with Tenant's Work. Landlord's review and approval of Tenant's Plans shall not relieve Tenant or Tenant's architects (including the Architect), engineers, general contractors (including the Contractor (as defined below)) or subcontractors, or any other person or entity involved in the preparation of Tenant's Plans or the construction of Tenant's Work of their obligation and responsibility: (i) to comply with all applicable laws, ordinances, rules and regulations in preparing and reviewing Tenant's Plans and in constructing Tenant's Work; (ii) to correct errors or omissions in Tenant's Plans; and (iii) to follow accepted industry standards in preparing Tenant's Plans and constructing Tenant's Work and using only those materials which will result in construction of first class quality. Nothing in this section shall be deemed to constitute Landlord as the agent of Tenant in connection with the construction of Tenant's Work.
3. **Cost of Tenant's Work and Landlord's Contribution.** Except for Landlord's Contribution as set forth below, Tenant shall construct Tenant's Work at its sole cost and expense. Subject to the terms and conditions set forth below, Landlord shall contribute (the "Landlord's Contribution") up to \$\_\_\_\_\_ (the "Landlord's Cap") as a reimbursement to Tenant for its hard and soft costs and expenses actually incurred in the construction of Tenant's Work. If the budget for the Tenant's Work exceeds the Landlord's Cap, Tenant agrees to pay the cost of all of the Tenant's Work in excess of the Landlord's Cap (the "Tenant's Contribution") prior to submitting for or requesting reimbursement for the cost of Tenant's Work to be reimbursed by the Landlord's Contribution. Tenant shall provide Landlord with detailed, itemized and written invoices, canceled checks and other documentation reasonably requested by Landlord supporting Tenant's payment of Tenant's Contribution. After Tenant's payment of Tenant's Contribution and provided Tenant is not in default under this Lease and has complied with all the terms and provisions of this Lease, Tenant shall have the right, not more than once in any thirty (30) day period, to draw upon Landlord's Contribution up to 90 percent of such Landlord's Contribution, provided that Tenant satisfies all of the following conditions (collectively, the "Contribution Conditions") at least ten (10) days prior to, and as a condition of, any such draw by Tenant and Tenant submits to Landlord for Landlord's review and approval the Contribution Conditions:
  - a. Tenant's Contribution has been fully paid to out to the contractor for the Tenant's Work subject to proper retainage being made by the Tenant to protect the Premises and Center from claims of subcontractors.
  - b. Detailed, itemized and written invoices for the portion of Tenant's Work that is completed and for which Tenant is seeking such draw.

- c. Such contractors' affidavits, sworn statements, partial and final lien waivers of the contractor and subcontractors, architect's certificates and any other documentation as is requested by Landlord or Landlord's lender.
  - d. A written certification to Landlord from Tenant, the Architect and the Contractor that the portion of Tenant's Work for which payment is being sought has been completed in accordance with Tenant's Plans and is located in or at the Premises.
4. **Final Reimbursement Request.** After Landlord has paid Tenant 90 percent Landlord's Contribution, Tenant shall have the right to make a final, one-time draw request upon the remaining 10 percent of the Landlord's Contribution (subject to Landlord's Cap), provided that Tenant is not in default under this Lease and satisfies all of the following conditions at least thirty (30) days prior to, and as a condition of, the final draw upon Landlord's Contribution:
- e. Tenant satisfies all of the Contribution Conditions with respect to such final draw.
  - f. Tenant is open for business to the public in the Premises for at least ten (10) days.
  - g. Tenant submits to Landlord a permanent certificate of occupancy for the Premises issued by the appropriate governmental authority allowing Tenant to use and occupy the Premises.
  - h. Tenant submits to Landlord the as-built plans for all of Tenant's Work.
  - i. The completion and approval by Landlord of all of Tenant's Work in accordance with Tenant's Plans.
5. **General Contractor; Subcontractors.** Tenant shall submit to Landlord, for Landlord's prior written approval, the name of Tenant's proposed general contractor which will perform Tenant's Work, which contractor shall be qualified and licensed in the State where the Premises are located, along with information on at least three (3) comparable projects completed by such contractor. Landlord shall have the right to approve the final contractor (the "Contractor"), and Tenant shall enter into a general construction contract with the Contractor reasonably acceptable to Landlord, and Tenant shall provide a full and complete executed copy of such construction contract to Landlord. The Contractor shall submit to Landlord a list of all subcontractors which the Contractor proposes to use in the construction of Tenant's Work and Landlord shall have the right to approve such subcontractors, all of whom shall be qualified contractors and licensed in the State where the Premises are located. The Contractor shall construct and supervise all the construction of Tenant's Work.
6. **Budget Approval.** Within thirty (30) days after the complete execution of this Lease, Tenant shall, at Tenant's sole cost and expense, submit to Landlord for Landlord's review and approval a detailed and itemized budget for all the costs and expenses (both hard and soft) which will be incurred in connection with the construction of Tenant's Work (the "Budget"). Landlord shall have the right to approve, disapprove and comment on the Budget as deemed necessary by Landlord, and Tenant shall promptly provide Landlord with all documentation and information requested by Landlord in connection with Landlord's review and approval of the Budget. Tenant shall not commence any of Tenant's Work until Landlord has approved in writing the Budget. After the Budget has been approved by Landlord, Tenant shall not make any change or modification to the Budget unless and until Landlord has approved such change or modification in advance and in writing.

7. **Construction Guidelines.** To minimize the potential for labor conflict, Landlord has established the following guidelines to govern employment practices by Tenant's contractors and subcontractors (including the Contractor) during the performance and construction of Tenant's Work, which Tenant agrees that its contractors and subcontractors (including the Contractor) will abide by at all times.
- a. Tenant's Work shall be done in such a manner as to be coordinated with all other work being performed (or to be performed) by Landlord and other tenants of Landlord in the Building to such an extent that Tenant's Work shall not interfere with nor delay the completion of any work in the Building or the business operations of any other tenants of the Building.
  - b. Tenant agrees that Tenant and Tenant's contractors and subcontractors (including the Contractor) shall use only labor which is compatible with the labor force of Landlord's contractor for the Building and shall conduct its labor relations in such a manner as to avoid all strikes, picketing or boycotts from taking place on or about the Premises or the Building.
  - c. The parking for Tenant's contractors and subcontractors (including the Contractor) and their respective employees and agents shall not be the responsibility of Landlord.
  - d. Landlord shall have the right to establish additional reasonable rules and regulations governing Tenant and Tenant's contractors and subcontractors (including the Contractor) in order that the construction of the Building and Tenant's Work may proceed in a safe and orderly manner in accordance with all of the provisions of this Lease and this Work Letter and all governing building and safety codes.
8. **Commencement Requirements.** Tenant and Tenant's contractors and subcontractors (including the Contractor) shall not be permitted to commence any work in or on the Premises until all of the following conditions have been satisfied by Tenant:
- a. Landlord has approved Tenant's Plans, the Contractor and all subcontractors performing any portion of Tenant's Work.
  - b. Copies of all necessary building permits and licenses for the construction of Tenant's Work have been obtained and have been posted on the wall in the Premises.
  - c. Landlord has received evidence satisfactory to Landlord that all insurance policies required under this Lease and this Work Letter are in full force and effect.
  - d. Landlord has received from Tenant a written acknowledgement acknowledging possession of the keys to service door of the Premises (if any) and the proper installation and operation of said service door.
  - e. Landlord has received the names and phone numbers (office and home) of the Contractor's supervisory personnel.
  - f. Tenant maintains a set of Tenant's Plans approved by Landlord in the Premises at all times.
  - g. Tenant has acknowledged in writing receipt of a copy of the rules and regulations governing the construction of Tenant's Work.

- h. Landlord has received evidence satisfactory to Landlord that all fees and/or deposits required to commence Tenant's Work have been fully paid.
9. **Deliveries to Building.** All deliveries of supplies and materials delivered in connection with the **construction** of Tenant's Work must include Tenant's name and the Premises location to facilitate delivery. Deliveries will be made only at times and through entrances and routes designated by Landlord. All of Tenant's contractors and subcontractors (including the Contractor) should verify delivery routes daily since delivery routes may have to be changed from time to time by Landlord without notice. Roadways, loading docks, common area and curb front deliveries are at the sole discretion of Landlord. Landlord's contractor will not accept or unload supplies or materials for any Tenant's Work.
10. **Material Storage and Trash Removal.** All materials used by Tenant must be stored at all times on or in the Premises. Under no circumstances will any other portion of /Building be used as a work area or construction office or to store materials or construction equipment used in connection with Tenant's Work. Tenant shall be responsible for the prompt and daily removal of all trash and debris during the construction of Tenant's Work.
11. **As-builts.** Upon completion of Tenant's Work, Tenant shall deliver to Landlord one (1) complete set of as-built plans for Tenant's Work.
12. **Tenant's Work.** After Landlord's approval of Tenant's Plans and the satisfaction of all the terms, requirements and conditions of this Work Letter, Tenant shall commence and diligently proceed with all of the work described in Tenant's Plans, in addition to the installation of any and all equipment, fixtures and personal property Tenant requires in the operation of its business for the Permitted Use in accordance with the terms of this Lease and this Work Letter, at Tenant's sole cost and expense (collectively, "Tenant's Work"). Tenant's Work shall be completed on or before \_\_\_\_ (\_\_) days after the complete execution of this Lease. Tenant shall proceed only with such Tenant's Work as it is permitted to perform by the applicable governmental authorities. In the event that any such authority shall order a stoppage of Tenant's Work, any delay in the completion of Tenant's Work caused thereby shall not affect the validity of this Lease and shall not defer the Commencement Date as set out in Section \_\_\_\_ of the Lease. Tenant shall perform, or cause the performance of, Tenant's Work in a good and workmanlike manner, free from any mechanics' and materialmen's liens, and in compliance with all laws, statutes, codes, ordinances, requirements, rules and regulations applicable to the Premises, including, without limitation, the Americans With Disabilities Act. In addition, Tenant and all contractors and subcontractors (including the Contractor) engaged by Tenant shall (i) comply with the terms and provisions of this Lease, this Work Letter and the rules and regulations established by Landlord to promote safety and quality of the construction of Tenant's Work; (ii) coordinate their efforts to ensure timely completion of Tenant's Work; and (iii) ensure that Tenant's Work complies with the requirements of the National Board of Fire Underwriters and all applicable codes and permits. If Tenant or any of Tenant's contractors or subcontractors (including the Contractor) causes damage to the Premises or the property of Landlord or any other tenant or occupant of the Center/Building, Tenant shall promptly pay Landlord upon demand for all costs and expenses incurred to restore and repair such damage.
13. **Utilities.** The cost of utilities consumed in the Premises during the construction of Tenant's Work shall be paid for, or promptly reimbursed to Landlord, by Tenant.
14. **Commencement Date.** Except as expressly set out in Section 3, above and in the Lease for delays in Substantial Completion caused by Landlord Delays, notwithstanding anything to the contrary in this Lease, if for any reason whatsoever Tenant's Work is not complete by the Commencement Date and if

Tenant is not open for business within the Premises by \_\_\_\_\_, this Lease shall nevertheless continue in full force and effect, no liability shall arise against Landlord because of any such delay, there shall be no abatement of Rent and no deferral of the Commencement Date.

15. **Tenant's Entry.** Landlord hereby grants Tenant a license to enter the Premises from and after the delivery of possession of the Premises by Landlord to Tenant through the Commencement Date to enable Tenant to commence and complete the construction of Tenant's Work; provided, however, the foregoing license to enter is conditioned upon Tenant complying with all the terms and provisions of this Work Letter and Tenant's labor and the performance of Tenant's Work not unreasonably interfering with Landlord's contractors or with any other tenants or occupants of the Building. If, at any time, such entry shall cause disharmony, interference or union disputes of any nature whatsoever, or if Tenant has failed to comply with all of the terms and provisions of this Work Letter, Landlord may withdraw this license immediately upon written notice to Tenant. Such entry shall be deemed to be under and subject to all of the terms, covenants and conditions of this Lease, and Tenant shall comply with all of the provisions of this Lease which are the obligations or covenants of Tenant, except that the obligations to pay Rent shall not commence until the Commencement Date.
16. **Warranty Of Construction.** Tenant represents and warrants to Landlord that Tenant's Work shall be: (i) undertaken promptly and diligently performed in a good and workmanlike manner; (ii) constructed in accordance with all the applicable laws, regulations, ordinances, statutes and insurance requirements and in accordance with the requirements of all regulating authorities and any rating or inspection organization, bureau, association or office having jurisdiction over the Premises and/or Tenant's Work; (iii) free from any mechanics' or materialmen's liens; (iv) constructed using all new materials and shall not contain asbestos or other Hazardous Substances; and (v) undertaken and completed by skilled laborers in a professional and workmanlike manner. **Tenant shall indemnify, defend and hold landlord and landlord's members, managers, agents, representatives, affiliates, successors and assigns harmless from and against all suits, actions, damages, liabilities, claims, costs and expenses (including reasonable attorneys' fees and court costs) arising from: (a) defects in material or workmanship in the construction of tenant's work; or (b) the negligence of tenant or tenant's agents, employees, representatives, contractor and subcontractors (including the contractor) or their respective agents and employees in connection with the performance of tenant's work.** On the Commencement Date, Tenant shall assign to Landlord all warranties it has received from contractors, workmen, suppliers and vendors in connection with Tenant's Work and shall deliver all operating manuals to Landlord, for those materials, improvements or equipment which Landlord is obligated to maintain, if any, under this Lease. If Tenant is unable to assign any such warranty, it shall use its best efforts to enforce such warranty on Landlord's behalf.
17. **Drop Dead Dates.** If (i) Tenant has not commenced Tenant's Work, including obtaining required building permits and installation of all required footers, by \_\_\_\_\_ days following the Substantial Completion of Landlord's Work; (ii) Tenant fails to diligently perform Tenant's Work; or (iii) Tenant's Work is not completed by \_\_\_\_\_ days following Substantial Completion of Landlord's Work, then Landlord, without prejudice to Landlord's other rights and remedies hereunder or at law or in equity, may terminate this Lease by written notice to Tenant.
18. **Insurance.** During the construction of Tenant's Work, Tenant and Tenant's contractor (including the Contractor), at their sole cost and expense, shall obtain and maintain in full force and effect the following types of insurance:

- a. A builder's all risk policy of insurance in form and content reasonably acceptable to Landlord, which policy shall be on an "all risk" basis (including collapse) based on a completed value and covering the interest of Landlord and Landlord's lenders and all work incorporated in the land and improvements on or about the Premises and/or the Center/Building.
- b. Worker's compensation, including occupational disease and employer's liability insurance, in statutory amounts and coverages as required by State in which the Premises are located, including provisions for voluntary benefits as required in labor agreements, if any.
- c. Employer's liability insurance in statutory amounts and coverages as required by State in which the Premises are located.
- d. Commercial general public liability insurance covering death, personal injury and property damage, with respect to the performance and construction of Tenant's Work and the use and occupancy of the Premises, with limits of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence.

Any other policy of insurance required by Landlord or Landlord's lender.

Such policies shall (i) name Landlord and Landlord's lender as additional insureds; (ii) provide that such policies shall not be canceled or reduced without at least thirty (30) days' prior written notice to Landlord; (iii) provide that the coverage maintained by such policies shall be primary and not in excess of any insurance maintained by Landlord; and (iv) contain commercially reasonable deductibles, but in any event not more than Five Thousand and No/100 Dollars (\$5,000.00). Tenant shall be responsible for the prompt payment of all premiums and deductibles attributable to such insurance required to be maintained by Tenant. Prior to, and as a condition of, the commencement of construction of any of Tenant's Work, Tenant shall provide Landlord with a copy of the policies of insurance required to be maintained hereunder for Landlord's review and approval.