

## LEASE AGREEMENT

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ **BETWEEN** \_\_\_\_\_ c/o Abele Builders, Inc., 14 Corporate Drive, Clifton Park, New York 12065 as Landlord and \_\_\_\_\_, \_\_\_\_\_ as Tenant.

**WITNESSETH:** The Landlord hereby leases to the Tenant the following premises: \_\_\_\_\_ ± square feet of the \_\_\_\_\_ building located at \_\_\_\_\_, Town of \_\_\_\_\_, \_\_\_\_\_ County, New York (the "Premises" or "Demised Premises"), as shown on the floor plan annexed hereto as Exhibit B, inclusive of Tenant's proportionate share of common area, for the term of \_\_\_\_\_ (\_\_\_\_) years to commence from the 1st day of \_\_\_\_\_, 201\_\_\_\_ or such earlier date, if any, as Landlord delivers the Premises to Tenant (the earlier of such dates, the "Rent Commencement Date") and to end on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ to be used and occupied only for office space upon the conditions and covenants following:

**1st.** That the Tenant shall pay the annual rent of \_\_\_\_\_ and \_\_\_/100 (\$\_\_\_\_\_) Dollars, said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows: \_\_\_\_\_ and \_\_\_/100 (\$\_\_\_\_\_) Dollars per month commencing on the first day of the first month and each and every month thereafter. Furthermore, if said rent is not received by the Landlord on or before the 10th day of the month, a 4% late charge will be added to rent and shall be paid with rent. If the Rent Commencement Date occurs other than on the first day of the month, the annual rent for such month shall be prorated based on the number of days beginning with the Rent Commencement Date.

[Provided that Tenant is not then in default of this Lease and commits no default between the date of the notice and the date of expiration of the term without regard to the extension option as to which Tenant gives notice as described in this grammatical paragraph, Tenant shall have the option to extend this Lease for \_\_\_\_\_ (\_\_\_\_) additional terms of \_\_\_\_\_ (\_\_\_\_) years each (each, an "Extension Option"). In order to exercise either extension option, Tenant shall notify Landlord in writing of its intention to exercise the applicable Extension Option on or before six (6) months prior to the end of the then current term (the "Exercise Date"), time being of the essence, said extension to be upon the same terms and conditions set forth in this Lease, except for annual base rent which shall be fixed for the renewal term at the CPI Adjusted Rent (hereinafter defined). The CPI Adjusted Rent shall be calculated by multiplying the annual rent during the then current term by a fraction, the numerator of which is the CPI (hereinafter defined) for (i) the month prior to the month the Extension Option is exercised and the denominator of which is the CPI for (ii) the month which is sixty (60) months prior to the month described in clause (i) of this sentence. "CPI" shall mean the Consumer Price Index, Northeast Urban, All Items, Base Period 1982-84 = 100 published by the Bureau of Labor Statistics (the "Index"). If the Index ceases to be published, Landlord shall select a substitute index which in Landlord's sole judgment is most comparable to the Index. If the initial Extension Option is not exercised or Tenant commits a default prior to the expiration of the then current term, the second Extension Option shall be deemed cancelled, null and void.]

**2nd.** That the Tenant shall take good care of the Premises and shall, at the Tenant's own cost and expense make all repairs except repairs to heat, ventilation and air conditioning, plumbing, structural, roof and mechanical systems which are the responsibility of the Landlord, and at the end or other expiration of the term, shall deliver up the Demised Premises in good order or condition, damages by the elements excepted.

**3rd.** That the Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and Local Governments and of any and all their Departments and Bureaus applicable to said Premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters, or any other similar body, at the Tenant's own cost and expense; and shall also promptly comply with and execute all rules of the Landlord imposed at the present or such future time as may be necessary to ensure the safe use and occupancy of the Premises, or, as may be necessary so as to not impair or waive any insurance policy or coverage required herein or otherwise applicable to any portion of the Premises.

**4th.** That the Tenant, successors, heirs, executors or administrators shall not assign this Lease, or underlet or underlease the Premises, or any part thereof, or make any alterations on the Premises, without the Landlord's consent in writing, which consent shall not be unreasonably withheld; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damages and forfeiture, and in the event of a breach thereof, the term herein shall immediately cease and determine at the option of the Landlord as if it were the expiration of the original term. The Tenant agrees to provide the following to the Landlord in connection with an assignment or sublease of the Premises: (a) a copy of the assignment and assumption of lease agreement in the case of an assignment or a copy of the sublease agreement in the case of a sublease, whichever is applicable, and (b) a non-refundable administrative fee of \$750.00 to cover the Landlord's cost in reviewing the proposed assignment or sublease document. Tenant further agrees to pay a non-refundable administrative fee of \$750.00 to cover Landlord's cost in reviewing any consent document required or requested by any lender of the Tenant, such fee to be paid contemporaneously with delivery of the proposed consent document(s) to Landlord.

**5th.** Tenant must give Landlord prompt notice of fire, accident, damage or dangerous or defective condition. If the Premises cannot be used because of fire or other casualty, Tenant is not required to pay rent for the time the Premises are unusable. If part of the Premises cannot be used, Tenant must pay rent for the usable part. Landlord shall have the right to decide which part of the Premises is usable. Landlord need only repair the damaged structural parts of the Premises. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. Landlord is not responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under Landlord's control.

If the fire or other casualty is caused by an act or neglect of Tenant, Tenant's employees or invitees, or at the time of the fire or casualty Tenant is in default in any term of this Lease, then all repairs will be made at Tenant's expense and Tenant must pay the full rent with no adjustment. The cost of the repairs will be added rent.

Landlord has the right to demolish or rebuild the building if there is substantial damage by fire or other casualty. Landlord may cancel this Lease within 30 days after the substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild; if no notice is given, this Lease shall be deemed cancelled. This Lease will end 30 days after (a) Landlord's cancellation notice to Tenant or (b) the date on which this Lease is deemed cancelled. Tenant must deliver the Premises to Landlord on or before the cancellation date in the notice and pay all rent due to the date of the fire or casualty. If the Lease is cancelled Landlord is not required to repair the Premises or building. The cancellation does not release Tenant of liability in connection with the fire or casualty. This Section is intended to replace the terms of New York Real Property Law Section 227. If there is substantial damage by fire or other casualty not caused by an act or neglect of Tenant, Tenant's employees or invitees, Tenant may cancel this Lease if Landlord fails to rebuild the building and deliver possession of the rebuilt Demised Premises within six (6) months after the date of Landlord's notice to intention to rebuild.

**6th.** The said Tenant agrees that the said Landlord and the Landlord's agents and other representatives shall have the right to enter into and upon said Premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

**7th.** The Tenant also agrees to permit the Landlord or the Landlord's agents to show the Premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after the sixth month, next preceding the expiration of the term hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said Premises, or any part thereof, offering the Premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

**8th.** That if the said Premises, or any part thereof shall be deserted or become vacant during said term, or if any default be made in the payment of the said rent or any part thereof, or if any default be made in the performance of any of the covenants herein contained, including but not limited to any anticipatory breach or default which Tenant fails to cure within ten (10) days after written notice of such default, the Landlord or Landlord's representatives may re-enter the said Premises by force, summary proceedings or otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein and additional rent or other charges reserved herein, and the Landlord may rent the Premises on behalf of the Tenant, reserving the right to rent the Premises for a longer period of time than fixed in the Original Lease without releasing the Original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the Premises to a rentable condition, and then to the payment of the rent and all other charges due and to become due to the Landlord, any surplus to be paid to the Tenant, who shall remain liable for any deficiency. Landlord shall also have the option of accelerating all sums, including rent, additional rent and other charges, becoming due under the terms hereof after the date of such breach or default. If Landlord exercises such option, the Present Value (hereinafter defined) of all such sums shall become immediately due and payable as of the date on which Landlord notifies Tenant of Landlord's exercises of its option to accelerate as hereinabove provided, together with all sums past due. As used herein, the term "Present Value" means the present value of all sums due under the terms hereof after the date of Tenant's breach or default, discounted at the rate of eight (8%) percent per annum. Notwithstanding Landlord's option to accelerate set forth above, Landlord shall use commercially reasonable efforts to mitigate its damages.

**9th.** Landlord may replace, at the expense of Tenant, any and all broken glass in and about the Demised Premises, such broken glass caused by the carelessness, negligence or improper conduct on the part of the said Tenant or the Tenant's agents or employees. Damage and injury to the said Premises, caused by the carelessness, negligence or improper conduct on the part of the said Tenant or the Tenant's agents or employees shall be repaired as speedily as possible by the Tenant at the Tenant's own cost and expense.

**10th.** That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of said Premises, nor allow the same to be obstructed or encumbered in any manner.

**11th.** The Tenant shall neither place, or cause or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said Premises or any other part of same, except in or at such place or places as may be indicated by the Landlord and consented to by the Landlord in writing. And in case the Landlord or the Landlord's representatives shall deem it necessary to remove any such sign or signs in order to paint the said Premises or the building wherein same is situated or make any other repairs, alterations or improvements in or upon said Premises or building or any part thereof, the Landlord shall have the right to do so, providing the same be removed and replaced at the Landlord's expense, whenever the said repairs, alterations or improvements shall be completed. Landlord shall provide directory signs for the tenants in the building in the first floor and, if applicable, second floor lobbies. The cost of manufacture of Tenant's signs in the above referenced directory signs, and any replacement thereof, shall be borne by Tenant.

**12th.** That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever unless said damage or injury be caused by or be due to the negligence of the Landlord.

**13th.** That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord to re-enter the said Premises, and the same to have again, re-possess and enjoy. The said Tenant hereby expressly waives the service of any notice in writing of intention to re-enter.

**14th.** That this instrument shall not be a lien against said Premises in respect to any mortgages that are now on or that hereafter may be placed against said Premises, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this Lease, irrespective of the date of recording and the Tenant agrees to execute without cost, any such instrument which may be deemed necessary or desirable to further effect the subordination of this Lease to any such mortgage or mortgages, In the event Tenant fails to execute any such instrument, Tenant hereby authorizes Landlord to execute any such instrument with the same force as effect as if executed by Tenant. In the alternative, Landlord shall have the option of canceling this Lease without incurring any expense or damage and the term hereby granted shall be expressly limited accordingly.

**15th.** The Tenant has this day deposited with the Landlord the sum of \_\_\_\_\_ and \_\_\_/100 (\$ \_\_\_\_\_) Dollars as security for the full and faithful performance by the Tenant of all the terms, covenants and conditions of this Lease upon the Tenant's part to be performed, which said sum shall be returned to the Tenant after the time fixed as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all of said terms, covenants and conditions on Tenant's part to be performed. In the event of a bona fide sale, subject to this Lease, the Landlord shall have the right to transfer the security to the vendee for the benefit of the Tenant and the Landlord shall be considered released by the Tenant from all liability for the return of such security; and the Tenant agrees to look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord.

**16th.** That Tenant shall not mortgage or otherwise encumber Tenant's leasehold interest in the Premises or the security deposited under this Lease, and shall not assign the security except in connection with an assignment to which Landlord consents pursuant to Paragraph 4th hereof.

**17th.** It is expressly understood and agreed that if the Tenant shall file or there be filed against Tenant a petition in bankruptcy or arrangement, or Tenant be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the Landlord may, if the Landlord so elects, at any time thereafter terminate this Lease and the term hereof, on giving to the Tenant five days' notice in writing of the Landlord's intention so to do, and this Lease and the term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this Lease for the expiration hereof. Such notice may be given by mail to the Tenant addressed to the Demised Premises.

**18th.** That the Tenant will not nor will the Tenant permit undertenants or other persons to do anything in said Premises, or bring anything into said Premises, or permit anything to be brought into said Premises or to be kept therein, which will in any way increase the rate of fire insurance on said Demised Premises, nor use the Demised Premises or any part thereof, nor suffer or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on said building, and the Tenant agrees to pay on demand any such increase.

**19th.** The failure of the Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies that the Landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. The failure of the Tenant to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies that the Tenant may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. This instrument may not be changed, modified, discharged or terminated orally.

**20th.** If the whole or any part of the Demised Premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this Lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim against Landlord for the value of any unexpired term of said Lease. No part of any award shall belong to the Tenant.

**21st.** If after default in payment of rent or violation of any other provision of this Lease, or upon the expiration of this Lease, the Tenant moves out or is dispossessed and fails to remove any trade fixtures or other property prior to such said default, removal, expiration of Lease, or prior to the issuance of the final order or execution of the warrant, then and in that event, the said fixtures and property shall be deemed abandoned by the said Tenant and shall become the property of the Landlord.

**22nd.** It is mutually agreed between Landlord and Tenant that the respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this Lease, the Tenant's use or occupancy of said Premises, and/or any claim of injury or damage.

**23rd.** The Tenant waives all rights to redeem under any law of the State of New York.

**24th.** This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with a National Emergency or in connection with any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the condition of supply and demand which have been or are affected by war or other emergency.

**25th.** No diminution or abatement of rent, or other compensation, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances, nor for any space taken to comply with any law, ordinance or order of a governmental authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished by the Landlord to the Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service" or to some other cause, not gross negligence on the part of the Landlord. No such interruption or curtailment of any such "service" shall be deemed a constructive eviction. The Landlord shall not be required to furnish, and the Tenant shall not be entitled to receive, any of such "services" during any period wherein the Tenant shall be in default in respect to the payment of rent. Neither shall there be any abatement or diminution of rent because of making of repairs, improvements or decorations to the Demised Premises after the date above fixed for the commencement of the term, it being understood that rent shall, in any event, commence to run at such date so above fixed.

**26th.** Landlord shall not be liable for failure to give possession of the Premises upon commencement date by reason of the fact that Premises are not ready for occupancy or because a prior Tenant or any other person is wrongfully holding over or is in wrongful possession, or for any other reason. Except as provided in Paragraphs 2 and 3 of Exhibit D, the rent shall not commence until possession is given or is available, but the term herein shall not be extended.

And the said Landlord doth covenant that the said Tenant on paying the said yearly rent, and performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said Demised Premises for the term aforesaid, provided however, that this covenant shall be conditioned upon the retention of title to the Premises by the Landlord.

And it is mutually understood and agreed that the covenants and agreements contained in the within Lease shall be binding upon the parties hereto and upon their respective successors, heirs, executors and administrators.

In Witness Whereof, the parties have interchangeably set their hands and seals (or caused these presents to be signed by their proper corporate officers and caused their proper corporate seal to be hereto affixed) as of the day and year first above written.

LANDLORD

\_\_\_\_\_

By: ABELE LIMITED PARTNERSHIP, Sole Member

By: \_\_\_\_\_ L.S.  
Edward P. Abele, General Partner

TENANT

\_\_\_\_\_

By: \_\_\_\_\_ L.S.  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of New York }  
                                  }ss.  
County of                }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared Edward P. Abele personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity) and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York }  
                                  }ss.  
County of                }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

In Consideration of letting of the Premises within mentioned to the within named Tenant and the sum of \$1.00 paid to the undersigned by the within named Landlord, the undersigned does hereby covenant and agree, to and with the Landlord and the Landlord's legal representatives, that if default shall at any time be made by the said Tenant in the payment of the rent and the performance of the covenants contained in the within lease, on the Tenant's part to be paid and performed, that the undersigned will well and truly pay the said rent, or any arrears thereof, that may remain due unto the said Landlord, and also pay all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said Landlord. The undersigned hereby waives all right to trial by jury in any action or proceeding hereinafter instituted by the Landlord, to which the undersigned may be a party.

Dated: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Additional Guarantor (if applicable)

EXHIBIT "A"

BLUMBERG'S GILSEY FORM A-185

**GROSS LEASE ATTACHMENT**

27th. Landlord's Work. Prior to the commencement date, Landlord agrees to cause to be constructed at its sole cost and expense certain improvements to the Premises in accordance with the plans and specifications annexed hereto and made a part hereof as Exhibit B.

The facilities, materials and work to be furnished, installed and performed on the Premises by the Landlord are hereinafter and in Exhibit B referred to as "Landlord's Work". Landlord's Work shall be performed and completed in accordance with the plans and specifications conforming to the conditions set forth in Exhibit B, approved in writing by the Tenant, and shall comply with the requirements of any and all governmental departments and agencies having jurisdiction.

Landlord and Tenant consent to any changes in Landlord's Work as may be imposed by any municipal departments having jurisdiction, provided said changes do not substantially alter or modify the purposes for the improvements or the size or character of the Premises.

During the performance of Landlord's Work, Tenant shall be entitled to enter upon the Premises for the purpose of installing any leasehold improvements contemplated by the Tenant, provided however, that in so doing, the progress of the Landlord's Work shall not be unreasonably interfered with or delayed. Any such prior use shall be at Tenant's sole risk.

Tenant may request changes to Landlord's Work after the date of this Lease, subject to the following: (a) Landlord shall have the right to reject any requested changes; (b) as soon as practicable after receipt of a change request, Landlord shall provide Tenant with the estimated cost of the requested changes, which estimate shall include an administrative/overhead fee of fifteen (15%) percent of the actual expenses to be incurred by Landlord in connection with the changes, and an estimate of the delay in the date on which the Leased Premises shall be ready for occupancy as a result of the changes; (c) Tenant shall agree in writing to the changes and to pay the cost of the changes contemporaneously with the payment of Rent for the first month or partial month of the Term. Any changes to Landlord's Work accepted by Landlord shall mean that the Lease Commencement Date in the "WITNESSETH" Paragraph of this Lease shall be the Rent Commencement Date, without regard to the actual date of occupancy.

Notwithstanding anything to the contrary contained herein, in the event that it is hereafter determined that any of the facilities, materials and/or work to be furnished, installed and/or performed by Landlord under this Paragraph 27th shall instead be furnished, installed and/or performed by Tenant, and Tenant fails to complete such facilities, materials and/or work in the time frame to permit Landlord, in the exercise of commercially reasonable efforts, to complete the remainder of Landlord's Work by the Commencement Date under Paragraph 1st of this Lease, the Commencement Date shall not be extended and Tenant's obligation to commence payment of rent shall not be postponed.

28th. Gross Lease. It is the intention of Landlord and Tenant that the annual rent specified in Paragraph 1<sup>st</sup> shall be gross to Landlord (i.e., inclusive of charges in addition to base rent that landlords often bill to tenants) during the term and any extended term of this Lease, except as provided in Paragraph 29<sup>th</sup> hereof.

29th. Other Charges. Tenant shall pay (a) one hundred percent (100%) of all telephone and other communication services used, rendered or supplied upon or in connection with the Demised Premises and (b) its Proportionate Share (hereinafter defined) of all charges for gas, electricity, and telephone or other communication services used, rendered or supplied upon or in connection with the Demised Premises and shall indemnify Landlord against any and all liabilities or damages on such account. Landlord may, at its option, elect to separately meter the Premises if not already separately metered. If separate metering facilities are available for the Premises, Tenant shall pay the utility provider(s) directly. If the Premises is not separately metered, Tenant will be billed for Tenant's Proportionate Share of utilities on a monthly basis and each invoice shall be due and payable to Landlord within ten (10) days after Tenant's receipt of said invoice. "Proportionate Share" shall be calculated by dividing the rentable square footage of the Premises by the rentable square footage of the Building, subject to adjustment in the case of charges for electricity (a) pursuant to the provisions of this Paragraph 29th regarding Landlord's right to apply a load factor or multiple, (b) pursuant to the provisions of Paragraph 40th regarding Landlord's right to surcharge a tenant with a Computer Room (hereinafter defined), (c) Landlord's right, in the event any rentable square footage in the Building is vacant for any part of the year, to exclude such square footage from the calculation of Proportionate Share for the period of vacancy and (d) based upon an independent engineering study of utility use in the event there is a disproportionate use of utilities by one or more tenants in the Building. Landlord reserves the right to apply a load factor or multiplier to Tenant's utility bill to reflect excessive utility usage associated with a multi-shift operation or expanded operating hours, so long as Landlord notifies Tenant in writing of such intent to apply a load factor. If the Premises is not separately metered, Landlord reserves the right to apply a load factor or multiplier to calculate Tenant's Proportionate Share to reflect excessive utility usage associated with a multi-shift operation or expanded operating hours, so long as Landlord notifies Tenant in writing of such intent to apply a load factor. Tenant shall pay and be solely responsible for all janitorial service within the Premises.

30th. Liability of Landlord. The word "Landlord" as used herein, means only the owner of Landlord's interest in this Lease, and, in the event of any transfer of Landlord's interest in this Lease the transferor shall cease to be liable, and shall be released from all liability for the performance or observance of any agreements or conditions on the part of Landlord to be performed or observed provided that from and after said transfer, the transferee shall assume and be liable for the performance and observance of said agreements and conditions, otherwise the transferor shall continue to be liable. In addition, the words "Landlord" and "Tenant" as used in this Lease shall mean every person or party named as Landlord and/or Tenant in this Lease. Any notice given to Tenant or Landlord as provided in the Lease shall bind Tenant or Landlord. Anything in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the estate and property of Landlord, subject to the prior rights of any mortgagee of such property and the primary lessor, for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this lease to be observed and/or performed by Landlord, and no other liability or recourse shall be had against any partner, officer, stockholder or director of Landlord or against any mortgagee of the building.

31st. Estoppel Certificate. Tenant shall, within ten (10) business days upon request by Landlord, execute and deliver to Landlord a written declaration in recordable form: (1) ratifying this lease; (2) expressing the commencement and termination dates thereof; (3) certifying that this lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated); (4) that all conditions under this lease to be performed by Landlord have been satisfied; (5) that there are no defenses, offsets or counterclaims against the enforcement of this lease by Landlord, or stating those claimed by Tenant; (6) the amount of

advance rental, if any (or none if such is the case) paid by Tenant; (7) the date to which rental has been paid; and (8) the amount of security deposited with Landlord. Such declaration shall be executed and delivered by Tenant from time to time as may be requested by Landlord. Landlord's mortgage lenders and/or purchasers shall be entitled to rely upon same.

32nd. Insurance.

A. Tenant shall carry Commercial General Liability insurance (1986 Form) written on an occurrence form for the duration of this Lease. Such insurance shall cover the Leased Premises. The Commercial General Liability policy shall reflect the interests of the Landlord as an additional insured.

Such insurance shall be provided in amounts not less than:

<u>Coverage</u>	<u>Limits of Liability</u>
General Aggregate Limit	\$2,000,000.00
Personal/Advertising Injury Occurrence Limit	\$2,000,000.00
Each Occurrence Limit	\$2,000,000.00
Fire Damage (any one fire)	\$ 300,000.00
Medical Expenses (any one person)	\$ 5,000.00

Prior to occupying the leased Premises, Tenant shall provide a Certificate of Insurance naming the Landlord as an additional insured to the Landlord evidencing coverages in compliance with the above requirements. The Certificate of Insurance shall provide thirty (30) days advance written notice if reasonably available to the Landlord in the event of the cancellation, change and/or non-renewal of the coverages certified. The Certificate of Insurance shall be renewed and filed with the Landlord annually for the duration of this Lease. A copy of the Policy shall be delivered to Landlord upon ten (10) days' written notice.

33rd. Indemnification. Each party agrees to protect, indemnify, defend and hold the other harmless from and against any and all liability, damages, costs and expenses from causes of action, suits, claims, demands and judgments of any nature whatever arising out of or in any way connected with Tenant's use and occupancy of the Premises unless caused or contributed to by the negligence or willful acts or omissions of the indemnified party, its employees, agents, contractors or invitees.

34th. Accord and Satisfaction. Landlord is entitled to accept, receive and cash or deposit any payment made by Tenant on account of this Lease in any amount whatsoever and apply the same at Landlord's option to any obligation of Tenant under this Lease, provided that Landlord notifies Tenant in writing if any payment is to be applied other than to rent, and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same, no endorsement or statement or any check or letter of Tenant shall be deemed accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to Landlord's right to recover any and all amounts owed by Tenant hereunder and Landlord's right to pursue any other available remedy.

35th. Notice to Mortgagee. (A) Landlord shall in no event be charged with default in any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice to Landlord by Tenant, specifically describing such failure.

If Landlord commences and proceeds with due diligence to remedy a defect or to make any change required under this lease, it shall not be in default.

(B) If the holder of any mortgage covering the Premises shall have given written notice to Tenant of the address to which notices to such holder are to be sent, Tenant shall give such holder written notice simultaneously with any notice given to Landlord of any default of Landlord, and if Landlord fails to cure any default asserted in said notice within the time provided above, Tenant shall notify such holder in writing of the failure to cure, and said holder shall have thirty (30) days after receipt of such second notice to cure such default before Tenant may take any action by reason of such default.

36th. Notices. Any notice pertaining to the lease shall be in writing and shall be deemed given if delivered to a recognized overnight courier or deposited in a United States postal mail box, postage prepaid by registered or certified mail, addressed to Landlord at c/o Abele Builders, Inc., 14 Corporate Drive, Clifton Park, New York 12065 and to Tenant at the Demised Premises or the address which appears in the opening paragraph of this Lease or such other address as such party may designate in writing. A duplicate copy of all notices from Tenant shall be sent to any mortgagee as provided for in the immediately preceding paragraph.

37th. Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this lease, the period for the performance of any such acts shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, the provisions of this paragraph shall at no time operate to excuse Tenant from any obligations for payment of rent, percentage rent, additional rent or any other payments required by the terms of this Lease when the same are due, and all such amounts shall be paid when due.

38th. Tenant's Work.

Note: This paragraph shall only apply if the Tenant is to perform work at the demised Premises other than that to be done by the Landlord as set forth in Exhibit B.

A. General.

1. Tenant, at its sole cost and expense shall perform all work, other than that to be performed by the Landlord as set forth in Exhibit "B", required to complete the Premises to a finished condition ready for the conduct of business therein.

2. All of the Tenant's work within the Premises performed pursuant to this Section shall, for the purpose of this Lease to which this Exhibit is attached and made a part of, be deemed to be improvements made to the Premises by Tenant.

3. Landlord, if a lien is filed pertaining to Tenant's work, shall have the right to require Tenant to remove said lien or furnish payment and performance bonds or other security in form satisfactory to Landlord for the prompt and faithful performance of Tenant's Work, assuring completion of Tenant's Work and conditioned that Landlord will be held harmless from payment of any claim either by the way of damages or liens on account of bills for labor or material in connection with Tenant's Work. Tenant shall not commence Tenant's Work, nor employ any contractor or person to do Tenant's Work, without Landlord's prior written approval, which shall not be



unreasonably withheld, of such contractor or other person. If Landlord does not approve same in ten (10) days then said approval will be automatic.

4. Compliance with Requirements - All Tenant's Work shall conform to applicable statutes, ordinances, regulations and codes and the requirements of Landlord's insurance company and all rating bureaus. Tenant shall obtain and convey to Landlord all approvals with respect to electrical, gas, water, heating, cooling and telephone work, all as may be required by the utility company supplying the service.

5. Approvals - No approvals by Landlord shall be deemed valid unless in writing and signed by Landlord.

6. Insurance - Prior to the commencement of Tenant's Work and until completion thereof, or commencement of the Lease Term, whichever is the last to occur, Tenant shall effect and maintain Builder's Risk Insurance covering Landlord, Tenant and Tenant's Contractors, as their interests may appear, against loss or damage by fire, vandalism and malicious mischief and such other risks as are customarily covered by a so-called "Extended Coverage Endorsement" upon all of Tenant's Work in place and all materials stored at the site of Tenant's Work and all materials, equipment, supplies and temporary structures of all kinds incidental to Tenant's Work, and equipment, all while forming a part of or contained in such improvements or temporary structures, or while on the Premises or within 100 feet thereof, or when adjacent thereto, while on sidewalks, streets or alleys, all to the full insurable value thereof at all times.

In addition, Tenant agrees to indemnify and hold Landlord harmless against any and all claims for injury to persons or damage to property by reason of the use of the Premises for the performance of Tenant's work, and claims, fines and penalties arising out of any failure of Tenant or its agents, contractors and employees to comply with any law, ordinance, code requirements and regulations or other requirement applicable to Tenant's Work and Tenant agrees to require all contractors and subcontractors engaged in the performance of Tenant's Work to effect and maintain and deliver to Tenant and Landlord, certificates evidencing the existence of, and covering Landlord, Tenant and Tenant's contractors, prior to commencement of Tenant's Work and until completion thereof, the following insurance coverage:

(i) Worker's Compensation Insurance in accordance with the laws of the State in which the property is located, including Employer's Liability Insurance to the limit of \$100,000.00.

(ii) Comprehensive General Liability Insurance, excluding "Automobile Liability" against personal injury, including death resulting therefrom to the limits of \$100,000.00 for any one person and \$300,000 for more than one person in any one accident and against property damage to the Building of \$50,000.00.

(iii) Automobile Insurance, including "non-owned" automobiles, against personal injury, including death resulting therefrom, to the limits of \$100,000.00 for any one person and \$300,000.00 for more than one person in any one accident and against property damage to the limit of \$50,000.00.

7. Any Tenant Work which disturbs subgrade compaction to be recompact to 95% modified proctor. Any excess material to be disposed of by Tenant.

B. Telephone and Data Wire Transmission Service

Landlord shall bring to a location designated by Landlord's architect a main telephone and data transmission wire service for the Building. Tenant shall be responsible for branch distribution to the Premises using plenum-rated cable.

C. Garbage and Rubbish Removal

Landlord shall be responsible for providing a dumpster for removal of office trash. Location and size of dumpster shall be determined by Landlord and/or its managing agent. Tenant shall be responsible for removal and disposal of any packaging or crating material relative to their business.

D. Heating, Ventilating and Air Conditioning

Landlord shall provide HVAC in accordance with Exhibit B.

E. Sprinkler System (if applicable)

Landlord shall provide a sprinkler system as required by code and pursuant to layout as specified in Exhibit B.

F. Plans and Specifications:

Note: This paragraph shall only pertain to any work undertaken by Tenant prior to or after occupancy, which is not the Landlord's responsibility as indicated in Exhibit B.

(i) Preparation

Plans and specifications for Tenant's Work in the Premises, as well as fixturing plans, shall be Tenant's responsibility. All such plans and specifications shall be delivered by Tenant to Landlord and must be approved by Landlord, in writing, such approval shall not be unreasonably withheld, prior to Tenant commencing any of its work in the Premises. Landlord shall promptly review all plans and specifications submitted by Tenant and either approve or list the items which are disapproved. Tenant shall not commence any work until all plans and specifications have been approved, in writing, by the Landlord.

(ii) Tenant shall submit one (1) set of plans sealed by a registered architect/engineer licensed in the State of New York to Landlord.

(iii) Governmental Approvals:

All plans and specifications shall be prepared in accordance with all state and local codes and ordinances. Tenant shall submit plans and specifications to all state and local commissions, agencies and/or departments, as required, and shall obtain all necessary approvals from state and local authorities having jurisdiction. Tenant shall obtain and pay for all permits and approvals required for Tenant's Work.

(iv) Cost of Work:

Tenant shall be solely responsible for and shall pay for all costs involved in completing Tenant's Work in the Premises, including any costs involved in changes, alterations or additions made to Landlord's Work by Tenant. Upon Landlord's notice to Tenant, Tenant shall post a bond in favor of Landlord or make a cash payment to Landlord in the amount of the cost or the remaining unpaid cost of Tenant's work, as such cost is reasonably determined by Landlord, to enable Landlord to pay the claims of any contractors, materialmen, suppliers or other entities who perform any portion of Tenant's work and file or threaten to file mechanic's liens against the property on which the Premises is located.

39th. Environmental.

Tenant shall comply, in its use of the Demised Premises, with all environmental laws, which include all federal, state, local and municipal laws, statutes, ordinances, rules, regulations, orders, decrees or requirements for regulating, relating to, or imposing liability or standards of conduct concerning the use, storage, treatment, transportation, manufacture, refinement, handling, production and/or disposal and removal of all waste generated on the Demised Premises, (the aforementioned are hereinafter called the "Waste Disposal Regulations" or "WDR") hazardous materials covered by any Environmental Law, or otherwise pertaining to environmental protection, as now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601; the Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; Toxic Substances Control Act of 1976; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Occupational Safety and Health Act, 29 U.S.C. Section 655 and Section 657; the Clean Air Act, 42 U.S.C. Section 7401; the Clean Water Act, 33 U.S.C. Section 1251; the New York State Environmental Quality Review Act, New York State Environmental Conservation Law Section 8-1101; the New York Environmental Conservation Law, together with all amendments thereto, substitutions therefor, rules and regulations promulgated thereunder and all amendments to and substitutions for the rules and regulations (the aforementioned are called the "Environmental Laws").

Tenant shall defend, indemnify and hold harmless the Landlord and the Landlord's employees, agents, partners, officers, directors and trustees from any and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs and/or expenses of whatever kind or nature and/or any other environmental clean-up of any kind or description, known or unknown, contingent or otherwise, arising out of or in any way relating to any violation of any Waste Disposal Regulations or Environmental Laws arising out of Tenant's use of the Building and Demised Premises and caused by Tenant, its employees, contractors, invitees or such other persons under Tenant's control.

40th. Computer Room/Data Center. Landlord and Tenant acknowledge that if the Leased Premises includes a separate data center or computer room (the "Computer Room"), now or at any time during the term of this lease or renewal thereof, which may require air conditioning year round, the following requirements shall apply: All expenses in connection with the installation and operation of such air conditioning equipment as may be required to provide adequate cooling to the Computer Room, including utilities, shall be borne by Tenant. Landlord shall cooperate, to the extent reasonably possible, to coordinate building access to accommodate the installation of air conditioning equipment supplied by the Tenant, who does hereby release, indemnify and hold harmless Landlord from and against any liabilities, including without limitation damage to Landlord's Building, arising out of such installation and operation. Tenant shall be solely responsible for any Computer Room cooling failure, and all direct and consequential damages arising from such failure, including without limitation, repair costs, down-time, lost business and lost revenue. Until such time,

if any, as Landlord may cause the Leases Premises to be separately metered, Landlord shall have the right to surcharge Tenant for the utility consumption associated with Tenant's Computer Room.

41st. Use Restriction. During the initial term of this Lease and any extensions thereof, Tenant, its successors, assigns and sublessees, shall be prohibited from using the Premises for the purpose of providing any type of medical services therefrom.

42nd. Pets. Pets are not allowed on Leased Premises at any time.

43rd. Net Worth. In the event that any provision of this Lease references the "net worth" of Tenant, any guarantor of Tenant's obligations under this Lease, any assignee or subtenant of Tenant or any successor to Tenant by merger or otherwise, the "net worth" of such entity shall be computed without regard to goodwill.

44th. Early Termination. So long as Tenant is not default under any of the terms and provisions of this lease and all of the terms, covenants and conditions on Tenant's part to be performed under this lease and have been fully and faithfully carried out, Tenant shall have the option to terminate this lease effective on the end of the \_\_\_\_\_ month following the Commencement Date of this Lease. Tenant's is exercisable by Tenant given written notice to Landlord \_\_\_\_\_ months prior to the \_\_\_\_\_ anniversary of the Commencement Date of this Lease. Such notice shall be accompanied by a certified check in the amount equal to \_\_\_\_\_ months rent.

45th. Lender Approval. This Lease is subject to approval, if required, by the holder of the Mortgage on the Building and the parcel on which it is located. Landlord shall diligently seek such approval, if required.

46th. Disclosure. Edward P. Abele, a general partner of the sole member of Landlord, is a licensed real estate broker in the State of New York and a Certified Commercial Investment Member (CCIM) but claims no commission in connection with this lease.

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EXHIBIT "D"

**LEASE ATTACHMENT**

Notwithstanding the fact that Landlord and Tenant have not finalized the Floor Plan design or the itemization of the fit-up, allowances and extras to be incorporated into the Premises, Tenant acknowledges the following:

1) Tenant has received, reviewed and approved the preliminary Floor Plan design and Landlord's Standard Fit-Up and Options List annexed to the Lease as Exhibit C;

2) Landlord may commence with the construction and fit-up of the Premises immediately following the approval of the final Floor Plan design by Landlord and Tenant. In the event the final Floor Plan design has not been so approved within fourteen (14) days of the signing of the Lease, Landlord is relieved of its obligation to complete Landlord's Work by the date specified in the Lease and Tenant will be obligated to pay rent commencing on the target occupancy date set forth in Paragraph 1st of the Lease whether or not the Premises is ready for occupancy on said date.

3) In the event Tenant has not communicated to Landlord Tenant's choices regarding fit-up, allowances and extras within fourteen (14) days of the approval of the final Floor Plan design by Landlord and Tenant as set forth in paragraph two (2) above, Tenant waives the right to specify fit-up, allowances and extras and Landlord is authorized, but not obligated, to complete the construction and fit-up pursuant to Landlord's Standard Fit-Up and any extras and/or options which have been agreed upon by Landlord and Tenant or which are apparent from the layout of the final Floor Plan design in order to insure the Premises are ready for occupancy by the date specified in the Lease. Landlord may, as an alternative to completing construction and fit-up as permitted under the immediately preceding sentence, extend the period for Tenant to communicate Tenant's choices regarding fit-up, allowances and extras. In such event, Landlord is relieved of its obligation to complete Landlord's Work by the date specified in Paragraph 1st of the Lease and Tenant will be obligated to pay rent commencing on the target occupancy date set forth in Paragraph 1st of the Lease whether or not the Premises is ready for occupancy on such date.

4) Tenant shall pay for any items of fit-up, allowances and extras over and above Landlord's Standard Fit-Up by making payment to Landlord within five (5) days of Landlord's written demand for payment.

5) Landlord shall endeavor to have Tenant fit-up "punch list" work completed by the applicable subcontractor as soon as reasonably possible, and generally within sixty (60) days of the Rent Commencement Date, but Tenant shall have no right to withhold rent based on the lack of completion of the "punch list" work.

6) The Lease is a binding obligation of the Tenant and is effective as of the date of the signing thereof by Landlord and Tenant.

TENANT

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_