
FIRST AMENDMENT TO LEASE

between

**DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES OF
THE CITY OF NEW YORK**

Landlord

and

STARRETT 280 BROADWAY LLC

Tenant

Dated as of August 19, 1999

Premises: Portions of the sub-basement and basement levels and the first and second floors, as more fully described herein (together with the Improvements therein), of the building located at 280 Broadway (which Building comprises Block 153, Lots 1001 and 1002) in the Borough of Manhattan, City of New York

THIS FIRST AMENDMENT TO LEASE (the "Amendment") entered into as of the 19th day of August, 1999, by and between the CITY OF NEW YORK (The "City"), acting by the DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, having an address at 1 Centre Street, 20th Floor, New York, New York 10007, as landlord ("Landlord"), and STARRETT 280 BROADWAY, LLC, having an address at c/o Starrett Corporation, 1 Park Avenue, New York, New York 10016, as tenant ("Tenant").

W I T N E S S E T H

WHEREAS, Landlord and the New York City Economic Development Corporation, a local development corporation pursuant to Section 1411 of the New York Not-for-Profit Corporation Law ("EDC"), entered into that certain Lease dated June 19, 1998 (the "Lease"), pursuant to which, inter alia, Landlord leased the Premises, as defined therein, to EDC; and

WHEREAS, By an Assignment and Assumption of Lease between EDC and Tenant, dated of even date with the Lease (the "Lease Assignment") all right, title, interest and obligations of EDC in, to and under the Lease were assigned to, and assumed by, Tenant; and

WHEREAS, Landlord and Tenant desire to amend the Lease as set forth below;

NOW, THEREFORE, It is hereby mutually covenanted and agreed by and between the parties hereto that this Amendment is made upon and subject to the terms, covenants and conditions hereinafter set forth.

Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Lease.

1. Article 1--Definitions. The following defined terms in the Lease shall be modified and amended as follows:

(i) The definition of "Commencement Date" shall be amended to mean the date of this Amendment, which date is the date first above written.

(ii) The definition of "Existing Leases," as of the Commencement Date, shall be modified and amended in its entirety. In lieu and instead thereof, the following defined term shall be substituted:

"Existing Lease" means the lease (the "Modell Lease") for a five (5) year term that began on July 1, 1991 and expired on June 30, 1996 and is in holdover status at the Commencement Date, between the City of New York (as landlord) and Henry Modell and Company, Inc. (as tenant), for a portion of the Premises as more fully described in the Modell Lease. Landlord warrants to Tenant that Landlord has heretofore furnished Tenant with a true

and complete copy of the Existing Lease and that there are no replacements, amendments or modifications to the Existing Lease.

(iii) The definition of "Holdover Tenants," as of the Commencement Date, shall be modified and amended in its entirety. In lieu and instead thereof, the following defined term shall be substituted:

"Holdover Tenant" means the tenant under the Existing Lease

(iv) The definition of "Guaranty," as of the Commencement Date, shall be modified and amended in its entirety. In lieu and instead thereof, the following defined term shall be substituted:

"Guaranty" means the Guaranty, dated the date of the Lease, from Starrett Corporation in favor of Landlord, guaranteeing Tenant's obligations under this Lease, as such Guaranty shall be amended by the Amendment to Guaranty between Starrett and Landlord, dated of even date with this Amendment.

(v) The definition of "Assignment and Assumption Agreement," as of the Commencement Date, shall be modified and amended in its entirety. In lieu and instead thereof, the following defined term shall be substituted:

"Assignment and Assumption Agreement" means the agreement dated the date of the Lease, among Landlord, as assignor, EDC, as assignee, and Tenant, relating to the Existing Leases (as defined in such Assignment and Assumption Agreement), pursuant to which Landlord assigned to EDC Landlord's rights and obligations with respect to the Existing Leases (which rights and obligations were concurrently assigned by EDC to Tenant pursuant to the Lease Assignment), as such agreement shall be amended by the Amended and Supplemental Assignment and Assumption Agreement between Landlord and Tenant, dated of even date with this Amendment ("the Amended Assignment ")

2. **Article 2, Sections 2.01(b) and (c).** Sections 2.01(b) and (c) of the Lease are hereby amended, in their entirety, to provide and read as follows:

(b) Landlord has, as of the Commencement Date, simultaneously with Landlord's execution and delivery hereof, assigned to Tenant and Tenant's successors and assigns, all of Landlord's rights, interests and obligations under the Existing Lease and Tenant agrees to assume same, and to accept the Premises subject to the rights of Modell under the Existing Lease. Landlord warrants and represents that the Holdover Tenant under the Modell Lease is only a month to month tenant and Landlord has not granted any right to Modell to extend the term of the Existing Lease or to enter into any other lease or occupancy agreement for any portion of the Premises. Landlord hereby acknowledges and agrees that Tenant and/or Tenant's successors and assigns may hereinafter issue a thirty (30) day notice of termination to the Holdover Tenant under the Modell Lease and Landlord hereby assigns to Tenant and Tenant's successors and assigns, all of Landlord's rights and causes of action with respect to such

holdover tenancy. Claims by the Holdover Tenant against Landlord, if any, arising out of the Existing Lease, shall be the responsibility of Tenant as and to the extent provided in the Amendment to Assignment and Assumption, as defined below. Notwithstanding anything to the contrary contained in Section 3.02 below, the use and occupancy of any portion of the Premises by the Holdover Tenant under the Modell Lease shall not give rise to Tenant's obligation to pay Construction Period Rent. Landlord further warrants and represents that other than the occupancy under the Existing Lease, Landlord is delivering the Premises to Tenant free of any leases, occupancy rights or tenancies.

(c) Pursuant to Section 2.01(b) of this Lease, Landlord and Tenant have entered into the Assignment and Assumption Agreement, dated the date of the Lease, as amended pursuant to the Amended Assignment, setting forth their respective rights and obligations with respect to the Existing Lease and the Holdover Tenant.

3. Article 7, Section 7.07(a). Section 7.07(a) of the Lease is hereby modified and amended so that the reference therein to "\$50,000" shall be changed to "\$5,000,000".

4. No Other Amendment to Lease. Except as specifically set forth in this Amendment, all terms, covenants, provisions and conditions of the Lease shall be and remain in full force and effect.

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

APPROVED AS TO FORM:
NEW YORK CITY LAW DEPARTMENT:

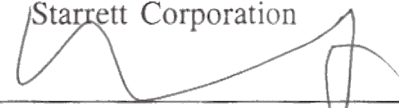
By: 
Acting Corporation Counsel

CITY OF NEW YORK acting by the
Commissioner of the DEPARTMENT OF
CITYWIDE ADMINISTRATIVE SERVICES

By: 
Deputy Commissioner

STARRETT 280 BROADWAY, LLC

By: Starrett Corporation

By: 
Title: MANAGING MEMBER

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

Jewel Nurse-Huntley
NOTARY PUBLIC

ACKNOWLEDGMENT OF LIMITED LIABILITY COMPANY

STATE OF NEW YORK)
)SS
COUNTY OF NEW YORK)

Melinda Telecarne
NOTARY PUBLIC

280lsam.3

LEASE

between

DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
of the CITY OF NEW YORK

Landlord,

and

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Tenant,

Dated as of June 19, 1998

Premises	Portions of the sub-basement and basement levels and the first and second floors, as more fully described herein (together with the Improvements therein) of the building located at 280 Broadway (which Building comprises Block 153, Lot 1001 and Lot 1002) in the Borough of Manhattan, City of New York
-----------------	---

TABLE OF CONTENTS

ARTICLE

DEFINITIONS

ARTICLE 2

DEMISE OF PREMISES AND TERM OF LEASE

Section 2.01.	Demise of Premises; Term 11
Section 2.02.	The Term 12

ARTICLE 3

BASE RENT; ADDITIONAL RENT AND PILOT; NET LEASE

Section 3.01.	Method and Place of Payment	12
Section 3.02.	Construction Period Rent	12
Section 3.03.	Base Rent	13
Section 3.04.	Security	13
Section 3.05.	Additional Rent; Rental	14
Section 3.06.	Payments in Lieu of Taxes	14
Section 3.07.	Taxes	17
Section 3.08.	Net Lease	17

ARTICLE 4

IMPOSITIONS

Section 4.01.	Payment of Impositions	18
Section 4.02.	Exclusions from Impositions	19
Section 4.03.	Evidence of Payment	19
Section 4.04.	Evidence of Non-Payment	19
Section 4.05.	Apportionment of Imposition	20
Section 4.06.	Contest	20

ARTICLE 5

LANDLORD'S OBLIGATION TO PROVIDE SERVICES; TENANT'S CONSENT RIGHTS; OPERATING EXPENSES

Section 5.01.	Definitions	21
Section 5.02.	Services Provided by Landlord	23
Section 5.03.	Landlord Not Liable	24
Section 5.04.	Tenant's Obligations	24
Section 5.05.	Fire Safety Equipment	26
Section 5.06.	Tenant's Consent Rights	26
Section 5.07.	Definition of Operating Expenses and Tenant Expenses; Calculation	28

Section 5.08.	Payment of Tenant's Expenses for each Lease Year.....	29
Section 5.09.	Disagreement Regarding Operating Expenses, etc.....	29
Section 5.10.	Delivery of Year-End Statement.....	29
Section 5.11.	Failure to Deliver a Statement not Prejudicial	29
Section 5.12.	Management Agreement	29
Section 5.13.	Books and Records.....	29

ARTICLE 6

LATE CHARGES

ARTICLE 7

INSURANCE

Section 7.01.	Insurance Requirements.....	30
Section 7.02.	Treatment of Proceeds.....	31
Section 7.03.	General Requirements Applicable to Policies	31
Section 7.04.	Additional Coverage	32
Section 7.05.	INTENTIONALLY OMITTED	33
Section 7.06.	Blanket or Umbrella Policies.....	33
Section 7.07.	Liability Insurance Requirements	34
Section 7.08.	Property Insurance Requirements	35
Section 7.09.	Other Insurance Requirements.....	36
Section 7.10.	Construction Insurance Requirements	37
Section 7.11.	Annual Aggregates.....	37
Section 7.12.	Determination of Replacement Value.....	37
Section 7.13.	Subleases.....	38
Section 7.14.	Additional Interests	38
Section 7.15.	Unavailability	38

ARTICLE 8

DAMAGE OR DESTRUCTION

Section 8.01.	Destruction, Fire and Other Casualty	39
Section 8.02.	Casualty Restoration	39
Section 8.03.	Restoration Funds	41
Section 8.04.	Conditions Precedent to Disbursement of Restoration Funds.....	42
Section 8.05.	Restoration Fund Deficiency	43
Section 8.06.	Effect of Casualty on This Lease.....	43
Section 8.07.	Waiver of Rights Under Statute	44
Section 8.08.	Effect of Events of Default.....	44
Section 8.09.	Effect of Lease Termination.....	44

ARTICLE 9

CONDEMNATION

Section 9.01	Certain Definitions.....	44
--------------	--------------------------	----

Section 9.02.	Permanent Taking	45
Section 9.03.	Temporary Taking	46
Section 9.04.	Governmental Action Not Resulting in a Taking.....	47
Section 9.05.	Condemnation Restoration Procedure	48
Section 9.06.	Collection of Awards	49
Section 9.07.	Landlord's Right to Award on Termination.....	49
Section 9.08.	Allocation of Award	49
Section 9.09.	Tenant's Appearance at Condemnation Proceedings	49
Section 9.10.	Intention of the Parties	49

ARTICLE 10

ASSIGNMENT, TRANSFER AND SUBLETTING

Section 10.01.	Tenant's Right to Assign, Transfer, Etc	49
Section 10.02.	Sublease Restrictions	55
Section 10.03.	Sublease Assignment	56
Section 10.04.	Collection of Subrent by Landlord	58
Section 10.05.	Required Sublease Clauses	58
Section 10.06.	Subtenant Non-Disturbance	59
Section 10.07.	Vendex	60

ARTICLE 11

MORTGAGES

Section 11.01.	Effect of Mortgages.....	60
Section 11.02.	Mortgagee's Rights Not Greater than Tenant's.....	61
Section 11.03.	Notice and Right to Cure Tenant's Defaults	61
Section 11.04.	Execution of New Lease	63
Section 11.05.	Recognition by Landlord of Recognized Mortgagee Most Senior in Lien.....	64
Section 11.06.	Application of Proceeds from Insurance or Condemnation Awards	65
Section 11.07.	Appearance at Condemnation and Adjustment Proceedings.....	65
Section 11.08.	Landlord's Right to Mortgage its Interest	65
Section 11.09.	Rights Limited to Recognized Mortgages	65

ARTICLE 12

INTENTIONALLY OMITTED

ARTICLE 13

CONSTRUCTION WORK

Section 13.01.	Construction of the Project	66
Section 13.02.	Construction Work Involving a Change to the Plans and Specifications	68
Section 13.03.	Commencement and Completion of All Construction Work	69

Section 13.04.	Supervision of Architect	69
Section 13.05.	Approval of Plans and Specifications.....	69
Section 13.06.	Conditions Precedent to Tenant's Commencement of All Construction Work.....	70
Section 13.07.	Completion of Construction Work.....	70
Section 13.08.	Title to the Project and Materials.....	71
Section 13.09.	Names of Contractors, Materialmen etc.; Approval of Consultants, etc.....	71
Section 13.10.	Construction Agreements	71
Section 13.11.	Demolition of the Project	72
Section 13.12.	Development Sign; Publicity	72
Section 13.13.	Dispute Resolution	73
Section 13.14.	Construction Credit	73
Section 13.15.	General	73

ARTICLE 14

REPAIRS, MAINTENANCE, ETC

Section 14.01.	Maintenance of the Premises, Etc.....	74
Section 14.02.	Removal of Equipment.....	74
Section 14.03.	Free of Dirt, Snow, Etc.....	74
Section 14.04.	Limitation of Landlord's Obligation to Repair or to Supply Utilities.....	75
Section 14.05.	Window Cleaning	75
Section 14.06.	Elevators	75

ARTICLE 15

CAPITAL IMPROVEMENTS

Section 15.01.	Capital Improvements	75
----------------	----------------------------	----

ARTICLE 16

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 16.01.	Requirements.....	76
----------------	-------------------	----

ARTICLE 17

DISCHARGE OF LIENS; BONDS

Section 17.01.	Creation of Liens	76
Section 17.02.	Discharge of Liens	77
Section 17.03.	No Authority to Contract in Name of Landlord.....	77

ARTICLE 18

REPRESENTATIONS

Section 18.01.	No Brokers	78
Section 18.02.	Tenant's Acknowledgment of No Other Representations.....	78

Section 18.03.	Tenant's Representations Warranties and Covenants	78
----------------	---	----

ARTICLE 19

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC

ARTICLE 20

INDEMNIFICATION

Section 20.01.	Obligation to Indemnify	79
Section 20.02.	Contractual Liability	80
Section 20.03.	Defense of Claim, Etc	80
Section 20.04.	Notification and Payment	81
Section 20.05.	Survival Clause	81

ARTICLE 21

NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 21.01.	Non-Discrimination and Affirmative Action	81
Section 21.02.	Compliance with Revised Program	88

ARTICLE 22

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS/TENANT'S RIGHT TO PERFORM LANDLORD'S COVENANTS

Section 22.01.	Landlord's Right to Perform	88
Section 22.02.	Amount Paid by Landlord as Additional Rental	89
Section 22.03.	Waiver, Release and Assumption of Obligations	89
Section 22.04.	Proof of Damages	89
Section 22.05.	Tenant's Right to Perform	90

ARTICLE 23

USE OF PREMISES; NO UNLAWFUL OCCUPANCY

Section 23.01.	Use of Premises	90
----------------	-----------------------	----

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC

Section 24.01.	Definition	91
Section 24.02.	Enforcement of Performance	93
Section 24.03.	Expiration and Termination of Lease	93
Section 24.04.	[Intentionally left blank]	95
Section 24.05.	Receipt of Moneys after Notice of Termination	95
Section 24.06.	Waiver of Rights	95
Section 24.07.	Strict Performance	95
Section 24.08.	Right to Enjoin Defaults or Threatened Defaults	95
Section 24.09.	Payment of All Costs and Expenses	96

Section 24.10.	Remedies Under Bankruptcy and Insolvency Codes.....	96
Section 24.11.	Funds Held by Depository.....	97
Section 24.12.	Funds held by Tenant.....	98
Section 24.13.	Deposits for Impositions and Insurance Premiums.....	98
Section 24.14.	Rights of Recognized Mortgagees.....	100

ARTICLE 25

NOTICES

Section 25.01.	All Notices, Communications, Etc. in Writing.....	100
----------------	---	-----

ARTICLE 26

NO SUBORDINATION

ARTICLE 27

STREET WIDENING

Section 27.01.	Proceedings for Widening Street	102
Section 27.02.	Contest of Proceedings	102
Section 27.03.	Distribution of Award	103

ARTICLE 28

EXCAVATIONS AND SHORING

ARTICLE 29

CERTIFICATES BY LANDLORD AND TENANT

Section 29.01.	Certificate of Tenant	103
Section 29.02.	Certificate of Landlord	104
Section 29.03.	Failure to Delivery Certificate	104
Section 29.04.	Authority of Party Executing Certificate.....	104

ARTICLE 30

CONSENTS AND APPROVALS

Section 30.01.	Effect of Granting or Failure to Grant Approvals or Consents	104
Section 30.02.	Remedy for Failure or Refusal to Grant Consent or Approval	104
Section 30.03.	No Fees, Etc	105
Section 30.04.	Expedited Arbitration.....	105

ARTICLE 31

SURRENDER AT END OF TERM AND OWNERSHIP OF IMPROVEMENTS

Section 31.01.	Surrender of Premises	105
Section 31.02.	Delivery of Subleases, Etc.....	106
Section 31.03.	Ownership of Improvements	106

Section 31.04.	Trade Fixtures and Personal Property	106
Section 31.05.	Survival Clause	107
ARTICLE 32		
ENTIRE AGREEMENT		
ARTICLE 33		
QUIET ENJOYMENT		
ARTICLE 34		
ARBITRATION		
Section 34.01.	Procedure for Arbitration..	107
ARTICLE 35		
ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.		
Section 35.01.	Tax Contest Proceedings.....	108
Section 35.02.	Imposition Contest Proceedings	108
Section 35.03.	Landlord's Participation in Contest Proceedings	109
ARTICLE 36		
INVALIDITY OF CERTAIN PROVISIONS		
ARTICLE 37		
REPORTS SUBMISSIONS AND RECORDS		
Section 37.01.	Financial Reports.....	110
Section 37.02.	Submission of TCO's.....	110
Section 37.03.	Books and Records.....	110
Section 37.04.	Survival Clause	111
ARTICLE 38		
RECORDING OF LEASE		
ARTICLE 39		
PUBLIC PURPOSE PAYMENTS		
Section 39.01.	Determination and Payment of Amount.....	111
Section 39.02.	Subsequent Public Purpose Payments	112
Section 39.03.	INTENTIONALLY OMITTED	112
Section 39.04.	Offset Against Rental.....	112
Section 39.05.	Application of Public Purpose Payments	112
Section 39.06.	INTENTIONALLY OMITTED	112
Section 39.07.	Definitions	113

ARTICLE 40

INVESTIGATIONS, SOLICITATIONS, ETC

Section 40.01.	Cooperation by Tenant	113
Section 40.02.	Adjournments of Hearing, Etc.....	114
Section 40.03.	Penalties.....	114
Section 40.04.	Criteria for Determination.....	114
Section 40.05.	Definitions	115
Section 40.06.	Failure to Report Solicitations	115

ARTICLE 41

EMPLOYMENT REPORTING AND REQUIREMENTS

Section 41.01.	Employment Reporting and Requirements	116
Section 41.02.	Remedies.....	118

ARTICLE 42

INTENTIONALLY DELETED

ARTICLE 43

MISCELLANEOUS; INDICTMENT

Section 43.01.	Captions	118
Section 43.02.	Table of Contents	118
Section 43.03.	Reference to Landlord and Tenant.....	119
Section 43.04.	Person Acting on Behalf of a Party Hereunder	119
Section 43.05.	Indictment	119
Section 43.06.	Limitation on Liability	121
Section 43.07.	Remedies Cumulative	121
Section 43.08.	Merger	121
Section 43.09.	Performance at Tenant's Sole Cost and Expenses.....	122
Section 43.10.	Relationship of Landlord and Tenant.....	122
Section 43.11.	Waiver, Modification, Etc.....	122
Section 43.12.	Depository Charges and Fees	122
Section 43.13.	Ownership and Investment of Deposited Funds	122
Section 43.14.	Transfer of Lease Interests	122
Section 43.15.	Governing Law	123
Section 43.16.	Claims	123
Section 43.17.	Successors and Assigns	124
Section 43.18.	Effect of Other Transactions	124
Section 43.19.	City as Landlord.....	124
Section 43.20.	Waiver of Jury	124
Section 43.21.	Designee	124
Section 43.22.	Conferences	124

ARTICLE 44

ACCESS

EXHIBIT A	ULURP Resolution
EXHIBIT B	Premises and certain common areas
EXHIBIT C	Title Matters
EXHIBIT D	Services Benefiting the Premises
EXHIBIT E	Common Expense Categories
EXHIBIT F	Assignment and Assumption Agreement
EXHIBIT G	Employment Report
EXHIBIT H	Plans and Specifications

AGREEMENT OF LEASE, made as of the 19th day of June, 1998, between THE CITY OF NEW YORK (the "City"), acting by and through THE DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, having an address at 1 Centre Street, Municipal Building, New York, New York 10007, as landlord ("Landlord"), and New York City Economic Development Corporation, a local development corporation pursuant to Section 1411 of the New York Not-for-Profit Corporation Law, having an address at 110 William Street, New York, New York 10038, as tenant ("Tenant").

WITNESSETH:

WHEREAS, the City of New York is the owner of the land and the Building (as defined below) (the land and the Building are together hereinafter the "Property"); and

WHEREAS, the City, acting through the New York City Department of General Services, the statutory predecessor of Landlord, issued a request for proposals for the redevelopment of the Building, and Tenant submitted a proposal and was conditionally designated to redevelop the Building; and

WHEREAS, pursuant to such designation, Landlord and Tenant will, simultaneously herewith, enter into a Construction Agreement (the "Construction Agreement") for the redevelopment of the Office Space (defined below) within the Building; and

WHEREAS, Tenant desires to lease certain space in the Building, such space being separate and apart from the Office Space and constituting the Premises (defined below), and the City has been authorized to enter into such Lease (as defined below), pursuant to the Uniform Land Use Review Procedure and the resolution duly adopted therein, a copy of which is annexed hereto as Exhibit A; and

WHEREAS, the parties desire to cause the Premises to be developed in accordance with this Lease and/or the other Project Documents (as defined below) and in connection therewith, the City desires to promote commercial activities thereon and to produce new employment opportunities for its citizens and generate new revenues for the City;

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon and subject to the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

For all purposes of this Lease and all agreements supplemental hereto the terms defined in this Article shall have the following meanings:

"Additional Rent" has the meaning provided in Section 3.04 hereof.

"Agreements" has the meaning provided in Section 21.01(a)(5) hereof.

"Architect" means Beyer Blinder Belle, or any other registered architect, architectural firm, professional engineer, or combined practice or association registered in the State of New York selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed.

"Assignee" has the meaning provided in Section 10.01(b)(ii) hereof.

"Assignment" has the meaning provided in Section 10.01(b)(i) hereof.

"Assignment and Assumption Agreement" means the Agreement of even date herewith between Landlord, as assignor, and Tenant as assignee, relating to the Existing Leases pursuant to which Landlord has assigned Landlord's rights with respect to the Existing Leases. The Assignment and Assumption Agreement is attached hereto as Exhibit F.

"Base Rent" has the meaning provided in Section 3.02 hereof.

"Base Rent Commencement Date" has the meaning provided in Section 3.03 hereof.

"Building" means the existing seven-story landmark structure designated in the National Register of Historic Places and situated on Tax Block 153, Lot 1001 and Lot 1002, and any and all Equipment situated therein, and any alterations thereto, replacements thereof and substitutions therefor in accordance with this Lease.

"Building Index" has the meaning provided in Section 7.12 hereof.

"Building Systems" has the meaning provided in Section 5.01 hereof.

"Bureau" has the meaning provided in Section 21.01 hereof.

"Capital Improvement" has the meaning provided in Section 15.01(c) thereof.

"Capital Transaction" has the meaning provided in Section 10.01(b)(iii) hereof.

"CERCLA" has the meaning provided in Article 19 hereof.

"Certificate" has the meaning provided in Section 41.01(d) hereof.

"Certificate of Completion" means the earlier to be issued of a temporary or permanent certificate of completion issued by the New York City Department of Buildings.

"City" means The City of New York, a municipal corporation of the State of New York.

"Commencement Date" means the date this Lease is fully executed on the signature page hereof.

"Commence Construction of the Project" or "Commencement of Construction of the Project" has the meaning provided in Section 13.01(b)(i) hereof.

"Common Elements" has the meaning provided in Section 5.01 hereof.

"Common Facilities" has the meaning provided in Section 5.01 hereof.

"Comptroller" has the meaning provided in Section 37.03(a) hereof.

"Condemnation Restoration" has the meaning provided in Section 9.01(d) hereof.

"Construction Agreement" means the Agreement of even date herewith between Starrett and the City for the redevelopment of the Office Space.

"Construction Commencement Date" has the meaning provided in Section 13.01(b)(ii) hereof.

"Construction Credit" has the meaning provided in Section 13.14 hereof.

"Construction of the Project" means the redevelopment of the Premises pursuant to this Lease.

"Construction Period Rent" has the meaning provided in Section 3.02.

"Construction Work" means any work performed under this Lease including, without limitation, Construction of the Project, a repair, an alteration, Restoration, a Capital Improvement, or other construction work performed on or within the Premises.

"Conviction" has the meaning provided in Section 43.05(c) hereof.

"Cost Estimator" means a professional cost estimator or cost estimating firm selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed (including a construction, architectural, or engineering firm with a cost estimating department) having experience in estimating the cost of the design, construction, acceptance, operation and maintenance of projects such as the Project.

"Cure Termination Notice" has the meaning provided in Section 11.03(d)(ii) hereof.

"Date of Taking" has the meaning provided in Section 9.01(c) hereof.

"Default" means any condition or event, or failure of any condition or event to occur, which constitutes or would, after notice or the lapse of time, or both, constitute an Event of Default.

"Depository" means an Institutional Lender selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed, which (a) has an office in the City of New York, and (b) has entered into a written agreement with Tenant and Landlord to hold funds as provided in this Lease.

"Director" has the meaning provided in Section 21.01 hereof.

"Discretionary Program" has the meaning provided in Section 3.05(b)(ii) hereof.

"EDC" means the New York City Economic Development Corporation.

"Employment Report" has the meaning provided in Section 21.01(b) hereof.

"E.O. 50" has the meaning provided in Section 21.01 hereof.

"E.O. 50 Requirements" has the meaning provided in Section 21.01(a)(9) hereof.

"Equipment" means all fixtures and personal property incorporated in or attached to and used or usable in the operation of the Premises and shall, but only if and to the extent such items are incorporated in or attached to the Premises, include, but shall not be limited to, all machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; partitions, doors, cabinets, hardware; floor, wall and ceiling coverings of the public areas only; washroom, toilet and lavatory equipment; windows, window washing hoists and equipment; and all additions thereto or replacements thereof, and shall exclude Tenant Equipment.

"Equity Interest" has the meaning provided in Section 10.01(b)(viii) hereof.

"Event of Default" has the meaning provided in Section 24.01 hereof.

"Existing Leases" means (i) the lease (the "Modell Lease") for a five (5) year term that began on July 1, 1991 and expired on June 30, 1996 and is in holdover status at the date of this Lease and between The City of New York (as landlord) and Henry Modell and Company, Inc. (as tenant) for a portion of the Premises as more fully described in the Modell Lease and (ii) the month to month lease (the "Park Right Lease") that began on July 1, 1996 between the City of New York (as landlord) and Park Right Corporation (as tenant) for a portion of the Premises as more fully described in the Park Right Lease, and was terminated by the City pursuant to a notice of termination dated March 31, 1998 and which is subject to a stipulation of settlement between the City and Park Right dated May 12, 1998, a true and complete copy of which has been furnished to Tenant. Landlord warrants to Tenant that Landlord has heretofore furnished Tenant with true and complete copies of the Existing Leases (which have been initialed by Landlord and Tenant) and that there are no replacements, amendments or modifications to the Existing Leases.

"Expiration Date" means the Fixed Expiration Date or such earlier date upon which this Lease may be terminated as herein provided.

"Expiration of the Term" means the Expiration Date.

"Federal Courts" has the meaning provided in Section 43.16 hereof.

"Final Completion of the Project" means that Certificate(s) of Completion have been issued for 100% of the Project.

"Fire Department" means the New York City Fire Department or its successor.

"Fixed Expiration Date" has the meaning provided in Section 2.03 hereof.

"Governmental Authority or Authorities" means the United States of America, the State of New York, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Property or the Premises or any portion thereof or any street, road, avenue, sidewalk or water immediately adjacent to the Property, or any vault in or under the Property.

"Guaranty" means the Guaranty of even date herewith from the Starrett Corporation in favor of Landlord, guaranteeing Tenant's obligations under this Lease.

"Hearing" has the meaning provided in Section 43.05(a) hereof.

"Hearing Officers" has the meaning provided in Section 43.05(a) hereof.

"Holdover Tenants" means (individually and collectively) the tenants under the Existing Leases.

"Imposition" or "Impositions" has the meaning provided in Section 4.01(a) hereof.

"Improvements" means all improvements to the Premises now existing or hereafter made by Tenant as part of the Construction Work and any subsequent Capital Improvements and any and all alterations thereto made by Tenant. Improvements shall include, without limitation, all electric, plumbing, sprinkler, heating, air conditioning and lighting systems, fixtures, Equipment, meters and related installations necessary for the operation thereof, within or serving the Premises, and all other installations the removal of which will either cause damage to the Premises, its appurtenances or any other portion of the Building or will render the item so removed inoperable or without significant value.

"Indicted Party" has the meaning provided in Section 43.05 hereof.

"Initial Base Rate" has the meaning provided in Section 3.02 hereof.

"Institutional Lender" means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a private pension fund, a credit union or company, an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency or any syndicate, joint venture, or other combination of Institutional Lenders, provided that each member of any such syndicate, joint venture, or other combination would qualify individually as an Institutional Lender, and such other entities as may be approved in writing by Landlord, which approval will not be unreasonably withheld or delayed; provided, that each of the above entities shall qualify as an Institutional

Lender only if it shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions pertaining to this Lease or the Premises, (b) have a net worth of not less than \$35,000,000 and assets of not less than \$100,000,000, or such lower amounts as are deemed acceptable in Landlord's sole discretion, and (c) not be a Prohibited Person.

"Landlord" means the City in its capacity as owner of the Property and the Premises, and not in its governmental capacity; provided, however, that if the City or any successor to its interest hereunder transfers or assigns its interest in the Premises or its interest under this Lease, then from and after the date of such assignment or transfer, the term "Landlord" shall mean the assignee or transferee.

"Landlord/Coordination Unavoidable Delays" means unavoidable delays in the renovation of the Premises resulting from Landlord Defaults or a Phase I Coordination failure.

"Landlord Defaults" means Landlord's negligence, willful misconduct or failure to comply with the terms of the Project Documents.

"Landlord's Cost Estimator" has the meaning provided in Section 8.02(b) hereof.

"Landlord's Occupancy Percentage" shall equal 64%.

"Landlord's Operating Expense Percentage" has the meaning provided in Section 5.01 hereof.

"Landlord's Payment Notice" has the meaning provided in Article 6 hereof.

"Late Charge Rate" has the meaning provided in Article 6 hereof.

"Lease" means this Agreement of Lease and all exhibits hereto and all amendments, modifications and supplements hereof and thereof.

"Lease Year" means each full calendar year falling within the Term and the partial calendar years, if any, that begins on the Commencement Date or ends on the last day of the Term

"LPC" means The New York City Landmarks Preservation Commission, or successor.

"Major Sublease" has the meaning provided in Section 10.01(b)(iv) hereof.

"Major Subtenant" has the meaning provided in Section 10.01(b)(v) hereof.

"Mortgage" has the meaning provided in Section 11.01(b) hereof.

"Mortgagee" means the holder or holders of a Mortgage, provided that any notice or cure period required to be given to the holder of any Mortgage shall be adequately given if given to one such holder designated by Tenant.

"New York State Courts" has the meaning provided in Section 43.16 hereof.

"Occupancy Percentage" shall mean, with respect to Landlord, the percentage of the square footage of the Building not demised to Tenant and with respect to Tenant the percentage of the square footage of the Building which the Premises represents.

"Office Space" means that part of the Building being redeveloped pursuant to the Construction Agreement consisting of the third through seventh floors and constituting the office space.

"Office Systems" has the meaning provided in Section 5.01 hereof.

"Operating Expenses" has the meaning provided in Section 5.01 hereof.

"Operating Statement" has the meaning provided in Section 5.01 hereof.

"Orders" has the meaning provided in Section 21.01 hereof.

"Owner" has the meaning provided in Section 21.01(a)(9) hereof.

"Partial Taking" has the meaning provided in Section 9.02(b) hereof

"Permitted Designee" has the meaning provided in Section 11.03(c) hereof.

"Permitted Person" has the meaning provided in Section 10.01(b)(vi) hereof.

"Person" means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Phase I Coordination Failure" means any of the following occurrences, to the extent caused by the contractor or subcontractors working on the project involving certain exterior, structural and other renovations at the Building, defined in the Construction Agreement as "Phase I," or Phase I related activity:

(a) inability to secure direct access (whether horizontal or vertical) to the Premises, either with personnel or material. Failure to access can be the result of physical inability to safely enter the Premises, or structural conditions which would make the Premises unsafe or unsuitable to receive the Construction Work, or the Phase I contractor attempting to perform its work in the same place and at the same time as Tenant.

(b) uncontrolled infiltration of either air, water, dust, or debris into, over, or under any area of the Construction Work; this condition, whether present initially or occurring as the result of ongoing Phase I work, or some defect in Phase I work already completed, or incomplete Phase I work remaining to be completed.

(c) interference by the Phase I contractor with Landlord-provided temporary (and subsequent permanent) utility services, such as electric, water, temporary fire standpipe, and during the winter, sufficient heat to permit Tenant to install and maintain the Construction Work.

(d) permission or sufferance by the Phase I contractor of any violations that might cause the Department of Buildings, or such other agency having appropriate jurisdiction, to issue a stop work order, or any other order or ruling requiring suspension of all or part of the Construction Work.

"PILOT" has the meaning provided in Section 3.05(a) hereof.

"PILOST Statement" has the meaning provided in Section 37.01(a) hereof.

"Plans and Specifications" has the meaning provided in Section 12.01(b)(iv) hereof.

"Preliminary Plans and Specifications" has the meaning provided in Section 12.01(b)(v) hereof.

"Premises" means the portion of the Building consisting of portions of the sub-basement and basement levels and the first and second floors as shown on Exhibit B hereto, to wit, the rentable portions of said levels and floors excluding stairways, elevator bank, public lobby and other areas as identified thereon, and any and all Improvements now or hereafter located therein. Tenant shall have the right to use a proportionate share of Building common areas (i.e., "Common Facilities"). Tenant shall have the right to install a freight elevator ("Tenant's Freight Elevator") and security door as shown on said Exhibit B. In the event of such installation, Tenant's Freight Elevator shall become part of the Premises (it being expressly understood that none of Tenant's Rental obligations under this Lease shall be increased thereby) and the vestibule leading to it shall become part of the Building common areas. For purposes hereof, the Premises, shall be deemed to be 100,216 square feet. Notwithstanding the foregoing, the definition of Tenant's Occupancy Percentage and Tenant's Operating Expense Percentage shall be as separately defined in this Lease.

"Prohibited Person" has the meaning provided in Section 10.01(c) hereof.

"Project" means the development of the Premises for the uses described in Article 23 hereof, pursuant to the Construction Work and in substantial accordance with the Plans and Specifications.

"Project Documents" means this Lease and the Construction Agreement.

"Project Public Purpose Payment" has the meaning provided in Section 39.07 hereof.

"Property" means the Land and the Building.

"Public Purpose Payment" has the meaning provided in Section 39.07 hereof.

"Recognized Mortgage" has the meaning provided in Section 11.02(b) hereof.

"Regulations" has the meaning provided in Section 21.01 hereof.

"Rental" has the meaning provided in Section 3.05 hereof.

"Repairs" has the meaning provided in Section 5.01 hereof.

"Replacement Value" has the meaning provided in Section 7.12 hereof.

"Requirements" has the meaning provided in Section 16.01 hereof.

"Restoration Costs" has the meaning provided in Section 8.03(b) hereof.

"Restoration Funds" means (a) any moneys that may be received by Depository or Tenant pursuant to the provisions of Sections 7.02(a), 7.02(b), 9.02(b)(iii), or 9.03(a)(iii) hereof, as a result of property loss or condemnation, together with the interest and dividends, if any, earned thereon, and (b) the proceeds of any security deposited with Depository pursuant to Section 8.05 hereof, together with the interest and dividends, if any, earned thereon.

"Revised Program" has the meaning provided in Section 21.02 hereof.

"Scheduled Completion Date" has the meaning provided in Section 13.01(b)(vi) hereof.

"Security Deposit" has the meaning provided in Section 43.21 hereof.

"Sublease" has the meaning provided in Section 10.02(a)(i) hereof.

"Substantial Completion" or "Substantially Complete(d)" has the meaning provided in Section 13.01(b)(vii) hereof.

"Substantial Completion Date" means the date on which the Construction of the Project shall have been Substantially Completed.

"Substantially All of the Premises" has the meaning provided in Section 9.01(b) hereof.

"Subtenant" has the meaning provided in Section 10.02(a)(ii) hereof.

"Taking" has the meaning provided in Section 9.01(a) hereof.

"Taxes" has the meaning provided in Section 3.05(d) hereof.

"Tax Year" means each tax fiscal year of New York City.

"TCO" means a temporary or permanent certificate of occupancy.

"Temporary Taking" has the meaning provided in Section 9.03(a) hereof.

"Tenant" means the EDC, the holder of the leasehold estate created by this Lease.

"Tenant Affiliate" has the meaning provided in Section 10.01(b)(vii) hereof.

"Tenant Doors" has the meaning provided in Section 5.01 hereof.

"Tenant Equipment" has the meaning provided in Section 5.01 hereof.

"Tenant's Cost Estimator" has the meaning provided in Section 8.02(b) hereof.

"Tenant's Fire Safety Equipment" has the meaning provided in Section 5.01 hereof.

"Tenant Indemnitees" has the meaning provided in Section 20.01 hereof.

"Tenant's Occupancy Percentage" shall equal 36%.

"Tenant's Operating Expense Percentage" has the meaning provided in Section 5.01 hereof.

"Tenant's Expenses" has the meaning provided in Section 5.01 hereof.

"Tenant's Systems" has the meaning provided in Section 5.01 hereof.

"Term" has the meaning provided in Section 2.01 hereof.

"Threshold Amount" means \$50,000.

"Title Matters" has the meaning provided in Section 2.01 hereof.

"Transfer" has the meaning provided in Section 10.01(b)(vii) hereof.

"Transferee" has the meaning provided in Section 10.01(b)(ix) hereof.

"Unavoidable Delays" means delays beyond the reasonable control of Tenant which have the effect of delaying Tenant's performance of any of Tenant's non-monetary obligations, including without limitation Tenant's construction obligations hereunder, and which delays are attributable to Landlord Defaults or the acts or omissions of Landlord or Persons acting by, through or under Landlord, a Phase I Coordination Failure, strikes, slowdowns, walkouts, lockouts, acts of God, catastrophic weather conditions (such as floods, extraordinary high water conditions, unusually high tides, or extraordinary rain, snow, or sleet), inability to obtain labor and comparable materials (at competitive prices and rates), court orders enjoining commencement or continuation of the Project (unless such result from disputes between or among present or former shareholders, officers, directors, affiliates, or members of Tenant), delays in insurance adjustment or collection, denial of physical access to the Premises by Landlord (unless such access is reasonably denied due to an Event of Default by Tenant), enemy action (including undeclared wars), civil commotion, fire, casualty, the failure of any Governmental Authority to grant any discretionary approvals required for the advancement of the Project within a reasonable period (provided that Tenant has made the necessary application for such approval and has made diligent and good faith efforts to comply with all reasonable conditions of any Governmental Authority required for the granting of any such approval), or other cause not within Tenant's reasonable control which is causing a delay in Tenant's performance of its construction or other non-monetary obligations hereunder provided, however, that in no event shall Tenant's financial condition or inability to obtain financing or any

delay arising out of disputes among or between shareholders of or partners in Tenant in and of themselves constitute an Unavoidable Delay. Within ten (10) business days after Tenant shall have knowledge that events or circumstances constitute an "Unavoidable Delay," Tenant shall render written notice thereof to Landlord.

"Zoning Resolution" has the meaning provided in Section 16.01(b)(i) hereof.

ARTICLE 2

DEMISE OF PREMISES AND TERM OF LEASE

Section 2.01. Demise of Premises; Term. (a) Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the reservations, conditions of title and other matters as set forth in Exhibit C hereto. Landlord shall have the right to further encumber its fee interest provided that, (i) no such further encumbrance shall adversely affect Tenant's interest in the Premises and (ii) any such encumbrance shall be subject and subordinate to this Lease.

(b) Landlord has simultaneously with Landlord's execution and delivery hereof assigned to Tenant and Tenant's successors and assigns, all of Landlord's rights under the Existing Leases and Tenant agrees to accept the Premises subject to the rights of Modell and Park Right under the Existing Leases. Landlord warrants and represents that (i) the Holdover Tenant under the Modell Lease is only a month to month tenant and Landlord has not granted rights of any kind whatsoever (a) with respect to the Premises other than as a holdover tenant and (b) other than to the extent, if any, to which such rights may arise by reason of a holdover tenancy, to extend the term of its Existing Lease or to enter into any other lease or occupancy agreement for any portion of the Premises and (ii) Landlord has heretofore entered into a Stipulation of Settlement dated May 12, 1998 with Park Right, pursuant to a thirty (30) day notice to vacate issued to such tenant (true and complete copies of the foregoing Stipulation of Settlement and notice to vacate are attached to the Assignment and Assumption). Landlord hereby acknowledges and agrees that Tenant and/or Tenant's successors and assigns may hereinafter issue a thirty (30) day notice of termination to the Holdover Tenant under the Modell Lease and Landlord hereby assigns to Tenant and Tenant's successors and assigns, all of Landlord's rights and causes of action with respect to such holdover tenancy. Notwithstanding anything to the contrary contained in Section 3.02 below, the use and occupancy of portions of the Premises by the Holdover Tenant under the Modell Lease and/or the Holdover Tenant under the Park Right Lease shall not give rise to Tenant's obligation to pay Construction Period Rent. Landlord further warrants and represents that other than the occupancy under the Existing Leases, Landlord is delivering the Premises to Tenant free of any leases, occupancy rights or tenancies.

(c) Pursuant to Section 2.01(b) of this Lease, Landlord and Tenant have entered into the Assignment and Assumption Agreement setting forth their respective rights and obligations with respect to the Existing Leases and the Holdover Tenants.

TO HAVE AND TO HOLD unto Tenant, its permitted successors and assigns, for the term specified in Section 2.02.

Section 2.02. The Term.

(a) The term ("Term") of this Lease shall commence and this Lease shall be effective on the Commencement Date.

(b) The Term shall continue for a period of forty-nine (49) years, expiring at midnight on the day immediately preceding the forty-ninth (49th) anniversary of the Commencement date (the "Fixed Expiration Date"), or on such earlier date upon which this Lease may be terminated as hereinafter provided (the Fixed Expiration Date or such earlier date is hereinafter the "Expiration Date").

ARTICLE 3

BASE RENT; ADDITIONAL RENT AND PILOT; NET LEASE

Section 3.01. Method and Place of Payment. Except as otherwise specifically provided herein, all Rental shall be paid without setoff or deduction and without prior notice or demand. All Rental (except Impositions, if the rules and regulations of the City (acting in its governmental capacity and not as Landlord) governing such payment are to the contrary) shall be paid by good checks payable to the order of Landlord and drawn on an account at a bank that is a member of the New York Clearing House Association or any successor body. Rental, including PILOT (but excluding Impositions) shall be payable to Landlord at the following address or at such other place as Landlord shall direct by written notice to Tenant: Division of Real Estate Services, Attention: Financial Information Unit, One Centre Street, Room 1450, New York, New York 10007. Impositions shall be payable in the form and to the location provided by the rules and regulations (issued by the City as aforesaid) governing the payment thereof, and if no such provision is made, to Landlord, who shall thereupon be fully responsible for application thereof.

Section 3.02. Construction Period Rent. Prior to the Base Rent Commencement Date, a construction period rent ("Construction Period Rent") shall be payable during any period that Tenant has subleased any portion of the Premises to a third party or a TCO has been issued for any portion of the Premises. Such Construction Period Rent shall be payable at a rate equal to the sum of: (a) a pro rata portion of the Base Rent calculated at the same rate that Base Rent shall be payable pursuant to Section 3.03(a) below during the initial five (5) year period of the Term which occurs after the Base Rent Commencement Date (such rate being the "Initial Base Rate"), based on (and at the rate allocable to) that portion of the Premises, if any, then subleased but for which a TCO has not yet been issued (but in no event shall this part of Construction Period Rent be greater than the amount of sublease rent which Tenant is receiving prior to the Base Rent Commencement Date), plus (b) a pro rata portion of the Base Rent payable at the Initial Base Rate, based on (and at the rate allocable to) that portion of the Premises for which a TCO has been issued. It is expressly agreed to and understood by Landlord and Tenant that, with respect to any portion of the Premises

for which a TCO has not been issued: (i) Tenant shall only pay Construction Rent during the period that such space is subleased and (ii) upon the termination or expiration of any sublease covering such space, Tenant shall no longer be required to pay Construction Rent prior to the issuance of a TCO for such space. Construction Period Rent shall be payable monthly in advance, in equal monthly installments to the extent feasible, on the first day of the calendar month in which such rent commences and on the first day of each calendar month thereafter until the Base Rent Commencement Date.

Section 3.03. Base Rent. Commencing with the date which is the first day of the twenty-third (23rd) month after the Construction Commencement Date, as such date may be extended by the length of any Landlord/Coordination Unavoidable Delays (the "Base Rent Commencement Date"), Tenant shall pay Landlord annual rent ("Base Rent"), as follows:

(a) Base Rent shall be paid in equal monthly installments, payable in advance, beginning on the Base Rent Commencement Date for the calendar month in which it falls, and on the first day of each calendar month thereafter, on the basis of the annual amounts set out below.

<u>Base Rent</u>	<u>Lease Years</u>
\$525,000	1-5
\$675,000	6-10
\$695,000	11-15
\$715,850	16-20
\$737,326	21-25
\$759,446	26-30
\$782,229	31-35
\$805,696	36-40
\$829,867	41-45
\$854,763	46-49

(b) Prorations of Base Rent. Monthly installments of Base Rent which are due for any period of less than a full month shall be appropriately apportioned on the basis of the number of calendar days in such month.

(c) Base Rent Credit. Tenant shall be entitled to the Construction Credit in the amount of certain additional costs of completing Construction of the Project, as provided in Section 13.14 hereof. In the event Tenant receives a Construction Credit pursuant to Section 13.14(i), the Base Rent Construction Date may not, at Landlord's sole option, be extended for any Landlord/Coordination Unavoidable Delays, as provided in Section 3.03 hereof.

Section 3.04. Security. Upon execution by the parties of this Lease, Tenant shall furnish Landlord with a security deposit in cash or securities of the City of New York in an amount equal to two (2) monthly installments of the Base Rent as security for the faithful performance of each and every term, condition and covenant in this Lease. The initial deposit of cash or securities upon the execution and delivery of this Lease shall be \$87,500 which is the amount equal to two (2)

monthly installments of the Base Rent payable by Tenant during the first (1st) year after the Base Rent Commencement Date. The Tenant may at any time, substitute, in whole or in part, for securities then on deposit, cash or other securities of the City of New York, so long as the Tenant always continues to maintain on deposit with Landlord cash or securities with a market value, in the aggregate, equal to two (2) monthly installments of Base Rent. Accrued interest payable on said securities or cash shall be paid to the Tenant, so long as Tenant is not in default hereunder. Said securities or cash shall be returned to Tenant within sixty (60) days following the Expiration Date, except that if an Event of Default shall then exist, Landlord shall be entitled to retain all or any portion of such security to the extent of any damages suffered by Landlord by reason of such Event of Default, and to which Landlord is entitled pursuant to the terms of this Lease.

Section 3.05. Additional Rent; Rental. Tenant further covenants and agrees to pay and discharge as additional rent ("Additional Rent") when the same shall become due, all other sums, costs, expenses and any Impositions required to be paid to Landlord, and any other amounts payable to Landlord pursuant to this Lease, together with all penalties, interest and costs which may be added thereto (if and to the extent same may be imposed upon Tenant in accordance with the terms of this Lease). If Tenant shall fail to pay any amount which is required by any provision of this Lease to be paid by Tenant promptly when such amount shall become due, Landlord shall have the right, at its election, to pay such amount, and upon payment of such amount by the Landlord, Tenant shall, within ten (10) days following Landlord's written demand therefor, which demand shall be accompanied by reasonably detailed explanation thereof, repay such amount to Landlord as Additional Rent. Base Rent and Additional Rent payable pursuant to this Lease are hereinafter sometimes referred to collectively as "Rental." In the event of Tenant's failure to pay Rental as provided in this Lease (and subject to any applicable notice and cure period specifically provided for in this Lease), Landlord shall have all rights and remedies provided under law in the case of nonpayment of rent in addition to those rights and remedies provided in this Lease.

Section 3.06. Payments in Lieu of Taxes.

(a) Payment of PILOT.

(i) For each Tax Year or portion thereof within the Term, Tenant shall pay to Landlord (or to such other entity or address of which Tenant shall have received written notice either from Landlord or an appropriate Governmental Authority), an annual sum (each such sum being hereinafter referred to as a "PILOT") in the amounts provided in Section 3.06(b) hereof. The amount of such PILOT shall be payable by Tenant in equal semi-annual installments during such Tax Year by the later of (x) thirty (30) days after Landlord shall have given Tenant a written statement (accompanied by copies of all bills, if any, or other statements or notices received by Landlord setting forth the actual assessed valuation and transitional valuation) with respect to such PILOT payment setting forth the amount due and payable by Tenant by reason of such PILOT and the method of computation thereof and (y) the first business day of each January and July or by such other method or on such other date as the City (in its capacity as a taxing authority, and not in its capacity as Landlord under this Lease) may generally require during such Tax Year for the payment of Taxes (without interest or penalty). If at any time the Premises shall form part of a tax lot that includes real property other than the Premises, Tenant shall be responsible only for that

portion of Taxes as are fairly attributable to the Premises, as reasonably agreed to by Landlord and Tenant.

(ii) Proration. PILOT which is calculated on a full Tax Year basis but which is due for any period of less than a full Tax Year shall be appropriately apportioned. If two or more methods of calculating PILOT for a Tax Year (as provided in subsection (a)(iv) below) are applicable to portions of a single Tax Year, the PILOT for such Tax Year will be calculated by applying each applicable method pro rata, based on the portion of the Tax Year during which each is applicable.

(iii) Adjustments. If, after a payment of PILOT with respect to a Tax Year has been made, the amount of PILOT due for such Tax Year increases, then, following the occurrence of the event which results in the increase, the additional amount which would have been payable on the prior, scheduled payment date or dates for such Tax Year, if it had been known at the time that such event was going to occur during the Tax Year, shall be due and payable no later than thirty (30) days after written notice to Tenant from Landlord or Landlord's designee of such additional amounts due (provided that such notice shall be accompanied by any statement issued by the taxing authority to Landlord setting forth, or which serves as the basis for determination of, the amount of such increase). If PILOT for a Tax Year decreases after a payment is made, Tenant shall be entitled to a credit, in the amount of the excess paid, against the next payments of Base Rent and Additional Rent becoming due pursuant to this Lease.

(iv) Determination of Amount of Payment. For purposes of determining the amount of PILOT payments, it shall be assumed that the circumstances or prevailing methods of calculation of PILOT in effect on the date of such payment shall remain in effect throughout the Tax Year or remainder thereof (except for methods of calculation which are to change on a specific date solely as the result of the passage of time), with adjustments resulting from changes occurring thereafter during the Tax Year to be made pursuant to the preceding subsection (a)(iii).

(b) Amount of PILOT.

(i) The amount of PILOT payable for each Tax Year shall be determined as follows:

(x) Tax Lot Subdivision. Pursuant to the formal tax lot subdivision of the Property and the Premises in effect at the date of this Lease, which formal tax lot subdivision Landlord represents has been completed, PILOT shall equal full Taxes assessed on the Premises. The Premises shall be assessed based on the Premises as currently built at the time of an assessment and as an income producing property (subject to any tax abatement program for which Tenant would be eligible as-of-right if it were the fee owner of the Property), taking into account the income and expense statements to be completed by Tenant pursuant to Section 37.01(b). Landlord covenants and agrees that during the Term it shall not seek or consent to a merger of the tax lots of the Property and the Premises without obtaining Tenant's prior written consent therefor, which consent shall not be unreasonably withheld, conditioned or delayed provided that: (i) Tenant's rights under this Lease shall not be adversely affected thereby, (ii) the amounts payable by

Tenant (whether pursuant to this Article 3 or otherwise) and/or any of its subtenants shall not be increased by virtue of such merger per se (e.g. an assessment or other increases which would occur irrespective of the merger shall not be a basis for Tenant to withhold approval) and (iii) any tax exemptions, incentives or other benefits available to Tenant and/or any of its subtenants as provided herein or permitted hereby shall not be affected thereby.

In the event that the tax lot subdivision shall not be in existence for any period during the Term of this Lease, PILOT shall equal the full Taxes which would be payable on that portion of the Property (i.e., on both the land and the Building) measured in square footage allocable to the Premises if the Property were not exempt from Taxes. The determination of the square footage allocable to all premises forming part of such tax lot (including the Premises) shall be made on a consistent basis, such that Landlord shall not be entitled to recover more than 100% percent of the Taxes payable (or that would be payable) with respect to such tax lot.

(ii) If during the Term any real estate tax abatement or exemption program becomes effective which was not effective on the Commencement Date and under which the Premises or a part thereof (if such were not owned by a public entity) would qualify for an "as-of-right" (i.e., non-discretionary) abatement of or exemption from Taxes (a "New Program"), then, if Tenant provides proof to Landlord that Tenant has satisfied all of the requirements for participation in such New Program, the PILOT due hereunder for any Tax Year during which such New Program is effective shall be reduced by the amount by which Taxes would be reduced during the Tax Year under such New Program; provided that Tenant is not prohibited from applying for and receiving the benefits of a discretionary program or abatement of or exemption from Taxes (a "Discretionary Program") for which it actually qualifies; and provided, further, that PILOT shall be reduced under this Section 3.06(b)(ii) only if and to the extent that the benefits of the New or Discretionary Program as applied to the Premises would be in excess of any existing benefits as applied to the Premises.

(c) Tax Contest. Tenant shall continue to pay the full amount of PILOT required under this Section 3.06, notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 35.01 hereof to reduce the assessed valuation of the Premises or any portion thereof, contest the tax rate or manner of assessment as applied to the Premises or otherwise. If any such tax reduction or other action or proceeding shall result in a final determination in Tenant's favor, Tenant shall be entitled to a credit against the payment of the Base Rent and Additional Rent next becoming due pursuant to this Lease to the extent, if any, that the PILOT previously paid for the Tax Year for which such final determination was made exceeds the PILOT as so determined. In no event, however, shall Tenant be entitled to any cash refund of any such excess amount from Landlord, except for that amount of the credit outstanding on the last day of the Term, provided it is a Fixed Expiration date, for which Landlord shall make a cash refund.

(d) Taxes Defined. "Taxes" means the real property taxes assessed and levied against the Property or any part thereof (or, if the Property or any part thereof or the owner or occupant thereof is exempt from such real property taxes by reason of governmental ownership of the Property, then the real property taxes assessed and which would be levied if not for such

exemption) pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 2 of the Administrative Code of New York City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part, provided, however that Taxes shall in no event include any real property or other taxes on any Impositions or any franchise, corporation, estate, inheritance, successor, capital levy, transfer, income, sales, excess profits or gains tax assessed, levied or imposed on Landlord or any entities affiliated with Landlord, Tenant or Tenant's Affiliates, any operator or Subtenant or any penalties or late charges assessed against Landlord or the Property with respect to Taxes which are otherwise expressly chargeable to Tenant hereunder. If by law any Tax or assessment may be divided into installments then the same shall be divided into the maximum number of installments so that Taxes shall be deemed to include only the current installment thereof.

Section 3.07. Taxes. Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof. Furthermore, if at any time during the Term, Landlord shall not be exempt from the payment of Taxes and/or if the Premises shall no longer be exempt from Taxes, then, from and after the date that Taxes shall be payable with respect to the Premises by Tenant, PILOT shall no longer be payable and the provisions of the Lease relating to the payment of PILOT shall not be applicable. The payment or other disposition of Taxes by Landlord (if Landlord shall then be the City) under this Section 3.07 shall have no effect on Tenant's obligation to pay PILOT. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Section 35.01 hereof, or if Tenant shall have timely commenced such a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then, without limiting any other remedies which may be available to Tenant, Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next payment of Rental due under this Lease, with interest at the rate which is the lesser of the City's borrowing rate or the interest rate specified in Section 3a(1) of the General Municipal Law of the State of New York, as it may be amended from time to time.

Section 3.08. Net Lease. It is the intention of Landlord and Tenant that except as provided in Sections 3.06(c) and 3.07 in this Lease: (a) Rental be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, setoff or offset whatsoever (except as expressly provided in this Lease and where not so expressly provided as may be required in any proceeding where the right to assert any claim against Landlord would be extinguished unless such a counterclaim, set off, or deduction is asserted in such proceeding) so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) Tenant shall pay all costs, expenses and charges of every kind relating to the Premises (except Taxes) that may arise or become due or payable during or after (but attributable only to a period falling within) the Term, except for costs, expenses and charges, if any, that, pursuant to the terms of this Lease, are the responsibility of Landlord.

ARTICLE 4
IMPOSITIONS

Section 4.01. Payment of Impositions.

(a) **Obligation to Pay Impositions.** Except as otherwise provided in this Lease (and provided no such charge or assessment is duplicative of any amount required to be paid by Tenant, as Rental, to Landlord or any taxing authority), Tenant agrees to pay, as Additional Rent, and without abatement, deduction or setoff of any kind, where charged or assessed against the Property or Building, based on Tenant's Occupancy Percentage (on the basis of Landlord's actual cost) or where separately charged or assessed against the Premises only, the total cost of all of the following items ("Impositions"), if and to the extent applicable:

(i) real property general and special assessments (including, without limitation, any special assessments for or imposed by any business improvement district or by any special assessment district, other than Taxes);

personal property taxes;

water, water meter and sewer rents, rates and charges;

(iv) occupancy and rent taxes (but only if and to the extent imposed directly upon Tenant by a taxing authority by reason of this lease);

excises;

(vi) levies;

license and permit fees;

(viii) except for Taxes (which are specifically excluded from this enumeration and from the definition of "Impositions") and as hereafter provided in Section 4.02, any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time during the Term (x) may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or charged with respect to, the Property, Building or Premises or any document to which Tenant is a party creating or transferring any interest or estate in the Premises, the use or occupation of the Premises by Tenant, or this transaction, or (y) becomes a lien on (i) the Premises, or (ii) the sidewalks or streets in front of or on the Premises, or (iii) any Equipment used in the operation thereof, or (iv) the Rental (or any portion thereof) payable by Tenant hereunder.

(ix) any fines, penalties and other similar governmental charges applicable to the foregoing, but only to the extent the same are assessed against or arise out of the actions of Tenant,

together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed as a result of Landlord's acts or omissions.

Section 4.02. Exclusions from Impositions. Nothing contained in this Lease shall require Tenant to pay (and, without limiting the foregoing, amounts attributable to the same shall not be included within the definition of Impositions) for any portion of (a) municipal, state, or federal income taxes assessed against Landlord; or (b) municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of Landlord; or (c) any penalties or late charges assessed against Landlord with respect to Impositions which are otherwise chargeable to Tenant hereunder, except if, and to the extent, any such late charges or penalties shall be assessed by reason of Tenant's late payment or failure of payment.

(b) Payment of Impositions.

Tenant shall throughout the Lease Term pay each Imposition or installment thereof, (whether payable to Landlord or directly to a governmental authority) no later than (i) thirty (30) days after receipt of notice thereof, except that if such notice provides otherwise (and subject to Tenant's having received at least thirty (30) days prior notice of any Imposition payable to Landlord), then Tenant shall pay such Imposition or installment thereof no later than the date specified therein, or (ii) the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if by law, any Imposition may at the option of the payer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of only such installments which shall become due and payable during the Lease Term.

Any notice from Landlord regarding any Imposition which is owing shall be accompanied by the bill, if any, issued by the taxing authority and, if applicable, Landlord's calculation of Tenant's Occupancy Percentage thereof. If Landlord shall receive notice of any Imposition to be paid directly by Tenant, Landlord shall forward such notice to Tenant upon Landlord's receipt thereof. For the purposes of the previous sentence, notice may be sent by telecopier.

Section 4.03. Evidence of Payment. In those instances where Tenant shall make payment of an Imposition directly to the taxing authority, Tenant shall furnish Landlord, within thirty (30) days (or such longer period as may be reasonably necessary) after the date an Imposition is due and payable, official receipts of the appropriate taxing authority (if and to the extent same are customarily issued by the taxing authority within such time period) or other proof reasonably satisfactory to Landlord, evidencing the payment thereof. Landlord agrees that copies of canceled checks accompanied by copies of the bill(s) from the relevant taxing authority shall be satisfactory to Landlord for such purpose.

Section 4.04 Evidence of Non-Payment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie (but not conclusive) evidence that

such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

Section 4.05. Apportionment of Imposition. Any Imposition relating to a fiscal period of the imposing authority, a part of which is included within the Term and a part of which is included in a period of time either prior to the Commencement Date or subsequent to the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Property, Building or Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or Expiration Date (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment [except for the purpose of applying such amount as a credit pursuant to Section 11.04(c) or Section 24.03(c)(ii) hereof), respectively, so that Tenant shall pay Tenant's share only with respect to that portion of such Imposition as that part of such fiscal period which is included within the Term bears to the full fiscal period, and Landlord shall pay the remainder thereof.

Section 4.06. Contest.

(a) Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith.

(b) Landlord shall not be required to join in any proceedings referred to in subsection (a) of this Section 4.05 unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord or that Landlord join in such proceeding, in which events Landlord shall, as applicable, join in such proceedings (but only in its capacity as Landlord of the Premises), or permit the same to be brought in its name.

(c) Landlord agrees that whenever Landlord's cooperation is reasonably required in any of the proceedings brought by Tenant as aforesaid in this Section 4.06, Landlord will reasonably cooperate therein. Such cooperation may include, without limitation, Landlord's execution of applications and rendering any statements that may be reasonably required in connection with such proceeding.

(d) Tenant agrees to pay and/or discharge any penalty, interest, charge or lien incurred as a result of a delay in payment of such Imposition or the contesting of such Imposition by Tenant or at Tenant's behest.

(e) Without limiting Tenant's other rights to contest an Imposition as set forth in this Section 4.06, if in the case of an Imposition or any other charge alleged to be payable by Tenant to Landlord (in Landlord's capacity as Landlord hereunder and not in Landlord's capacity as a governmental or taxing authority and specifically excluding any Imposition imposed by a Governmental Authority that is merely payable through Landlord), pursuant to this Lease, Tenant shall dispute, in good faith, its obligation to pay all or a portion of such Imposition or other charge claimed by Landlord hereunder, Tenant shall give Landlord notice specifying in reasonable detail

the basis for such dispute and unless by reason of Tenant's failure to pay such Imposition, Landlord shall be subjected to imminent criminal prosecution, Tenant may withhold payment of the particular amount in dispute and shall not be deemed to be in Default by reason thereof unless and until such dispute shall be determined adversely to Tenant and Tenant shall have failed to pay the withheld amount, or so much thereof as shall be determined to be due and payable to Landlord, within ten (10) days following notice to Tenant of the determination of such dispute. Tenant and Landlord shall proceed diligently to resolve any such dispute by arbitration or such other manner as shall be acceptable to the parties.

ARTICLE 5

LANDLORD'S OBLIGATION TO PROVIDE SERVICES; TENANT'S CONSENT RIGHTS; OPERATING EXPENSES

Section 5.01. Definitions. For purposes of this Lease, the following additional terms shall have the following meanings:

"Building Systems" shall mean:

each of the following utility and service systems:

- (i) the steam supply from source in the street to the Landlord/Tenant meters in the Building;
 - (ii) the domestic water supply pipe from main in the street to the Landlord/Tenant meters in the Building; and
 - (iii) the waste water return (sewer) system of the Building;
- the air distribution and exhaust system of the Building that is shared by the Premises and the Office Space;
- (c) the life safety system of the Building (limited to the fire alarm system, automatic sprinkler, smoke exhaust and standpipe system);
 - (d) to the extent not specifically identified as part of the Premises or as part of the Office Space, all other equipment, apparatus and installations the common use of which is necessary or convenient for the existence, maintenance or safe operation of the Office Space and the Premises.

"Common Elements" shall mean:

- (a) any easements and appurtenances appurtenant to the Building to the extent same shall benefit the Office Space and the Premises;

(b) the Common Facilities;

(c) the following elements and portions of the Building, whether or not located within any of the Common Facilities:

(i) all doors (other than doors serving as entrances to the Premises or the Office Space from the exterior of the Building) separating the Premises from the Common Facilities;

(d) the Building Systems; and

(e) to the extent not specifically identified as part of the Premises or as part of the Office Space, all other parts of the Building the common use of which is necessary or convenient for the existence, maintenance or safe operation of the Office Space and the Premises, but excluding the roof, all exterior portions and structural elements (including, without limitation, the foundation and slab on grade) of the Building.

"Common Facilities" means all those areas and facilities of the type hereinafter described which may now or hereafter be furnished by Landlord for the nonexclusive use or benefit, in common, by all tenants and occupants of the Building (including the tenants and occupants of the Premises), their officers, agents, employees, customers, deliverymen and invitees, and which are not located in and exclusively serving either the Premises or the Office Space, as the case may be. Common Facilities shall consist of hallways, stairways and other common areas, utility mains, risers, lines, pipes, conduits and meters serving all or portions of the Building including the Premises (other than such branch or service lines or meters located within or serving or measuring utility services exclusively for particular tenants or occupants of the Building).

"Landlord's Services" shall mean, collectively, the Services Benefiting the Premises, the Services in Respect of the Common Elements and any services other than or in addition to or in substitution for any of the foregoing provided by Landlord at the request of Tenant.

"Operating Expense Percentage" shall mean the allocable portion of Operating Expenses. Landlord's Operating Expense Percentage is 70% and Tenant's Operating Expense Percentage is 30%.

"Office Systems" shall mean systems and equipment located in and or serving only the Office Space, of the general nature described in the definition of "Tenant Systems."

"Operating Expenses" has the meaning given in Section 5.07 hereof.

"Operating Statement" has the meaning given in Section 5.10 hereof.

"Repairs" shall mean repairs, replacements, substitutions, restoration and any other work, other than Alterations, performed in or to all or any portion of the Common Facilities, but excluding any such repair benefiting only the Office Space.

"Tenant Doors" shall mean the swing door(s) that serve as entrances to the Premises from the exterior of the Building during the Term, and any replacements or substitutions therefor.

"Tenant Equipment" shall mean trade fixtures, furniture, machinery or other moveable personal property owned by Tenant or any Subtenant or contractor engaged in maintaining same.

"Tenant's Expenses" shall mean an amount equivalent to Tenant's Occupancy Percentage of the Operating Expenses, as provided in Section 5.07 hereof.

"Tenant's Fire Safety Equipment" shall mean the equipment described in the third to last paragraph of Exhibit D attached hereto.

"Tenant Systems" shall mean (a) Tenant's cooling tower, heating system, pump and condenser systems related to cooling and heating, and piping; (b) all utility, plumbing and other service systems or equipment that are not Office Systems or Building Systems and that are (i) installed by or on behalf of Tenant, or (ii) located within and serving the Premises only (including all freestanding enclosures, structural supports, and ancillary switches, cables, pipes and ducts used in conjunction therewith); (c) the telephone and data transmission equipment and facilities serving the Premises; (d) the Premises security systems; and (e) Tenant's Fire Safety Equipment.

Section 5.02. Services Provided by Landlord.

(a) Subject to the provisions of this Lease, including without limitation, those relating to the payment by Tenant of Tenant's Expenses, Landlord shall (i) provide the services listed in Exhibit D to and for the benefit of Tenant (collectively, "Services Benefiting the Premises") and (ii) operate, keep, clean and maintain, and make repairs as appropriate to, the Common Elements to maintain the same in a condition appropriate to an office building which contains retail space (any such activities being herein referred to as "Services in Respect of the Common Elements"). Nothing contained in this Section 5.02 shall be deemed or construed to modify any requirements imposed upon Landlord pursuant to Article 14 hereof.

(b) Tenant understands that the Common Elements shall be subject to the control and management of Landlord, and Landlord shall be entitled to do and perform such acts therein and with respect thereto as Landlord shall reasonably determine to be advisable, provided, however, that nothing herein shall be deemed to qualify Tenant's Consent Rights (as hereinafter defined).

(c) If Tenant requests that Landlord provide services other than or in addition to the services described above or in Section 14.01(b) hereof, then Landlord shall endeavor to procure such services on a commercially reasonable basis and Tenant shall pay to Landlord, as Tenant's Charges, any reasonable costs (including overhead) incurred by Landlord in procuring any such services (within ten (10) days of presentation of an invoice therefor). Nothing herein, however, shall be construed to require Landlord to provide any services to Tenant other than Services

Benefiting the Premises or Services in Respect of the Common Elements or as otherwise provided in Section 14.01(b).

(d) Tenant shall be responsible for any sales taxes imposed on the provision of Services Benefiting the Premises (including on the purchase, by Landlord, of supplies or materials used in the course of providing Services Benefiting the Premises) or, to the extent attributable to Tenant, Services in Respect of Common Elements.

(e) Landlord and Tenant shall cooperate in all reasonable respects in connection with the provision of Landlord's Services, including the coordination of temporary system shutdown, systems maintenance and Repairs, and the like.

Section 5.03. Landlord Not Liable. If Landlord has complied with the foregoing, Landlord shall have no liability to Tenant for any loss, damage or expense sustained or incurred by reason of any change, failure, inadequacy, unsuitability or defect in the supply or character of Landlord's Services and, in any event, Landlord shall have no liability to Tenant for punitive damages on account of any such change, failure, inadequacy, unsuitability or defect (except that Landlord shall be liable for any loss, damage or expense proximately caused by its own gross negligence, bad faith and willful misconduct).

Section 5.04. Tenant's Obligations.

(a) Repairs to Premises. Subject to Landlord's obligations set forth in Section 14.01(b) hereof, all liability, costs and expenses associated exclusively with the operation, maintenance, leasing, licensing, cleaning, repair, safety, decorating, management and administration of subleases of the Premises shall be borne by Tenant. Tenant shall at its sole cost and expense, maintain the Premises in good condition and repair, subject to normal wear and tear. Nothing in this Article 5 shall be deemed or construed to modify any requirement imposed on Tenant pursuant to Article 14 hereof.

(b) Repairs to Building Other Than Premises. Notwithstanding any provisions of this Article 5, Article 14 or any other provision of this Lease to the contrary, any damage caused by Tenant or any Subtenant to the Building, including any Common Element, shall be the responsibility of Tenant and shall be repaired by Landlord at the expense of Tenant, such expense to be payable by Tenant within ten (10) days of presentation of an invoice therefor as Additional Rent. At Landlord's sole option, such repair may be undertaken by Tenant.

(c) Specific Utilities. With respect to specific utilities, the following shall apply:

(i) Gas. Tenant shall arrange with the utility company supplying gas to the Property for the installation of separate meters for the supply of gas as shall be required for the operation and functioning of the Premises and for separate billing to Tenant for usage by the Premises. Such installation shall be subject to the prior approval of Landlord not to be unreasonably withheld, conditioned or delayed. Landlord shall have access to the

heating plant and equipment serving the Premises at all times and Landlord or its designee shall be the sole provider of maintenance for the heating plant.

(ii) Electricity.

Subject to the provisions of Exhibit "D", Tenant shall arrange to obtain electricity for the Premises through its own separate facilities, equipment and installations, including, but not limited to, all lighting fixtures, tubes, bulbs, ballast transformers, starters and other necessary electrical equipment, which Tenant shall be required to furnish and install in the Premises. Tenant's use of electricity in the Premises shall be measured by separate meter(s) which shall be installed by Tenant's utility company. The cost of such installation and use shall be separately billed to Tenant. Such separate facilities shall be subject to Landlord's prior approval, not to be unreasonably withheld, conditioned or delayed. Throughout the Term, Tenant shall keep said meter(s), electric distribution system, and related equipment in good working order and repair at Tenant's cost and expense, in default of which Landlord may cause such meter(s) and equipment to be replaced or repaired and collect the cost thereof from Tenant as Additional Rent; provided that, except in an emergency or when a hazardous condition exists, Landlord shall provide Tenant with at least ten (10) business days notice of Landlord's intention to exercise Landlord's right to repair or replace such meter(s) and/or equipment.

(iii) Water/Sewer

(A) Tenant shall arrange for the installation of a utility submeter for the supply of water as shall be required for the operation and functioning of the Premises and to measure consumption at the Premises. Such installation shall be subject to the prior approval of Landlord not to be unreasonably withheld, conditioned or delayed. Tenant shall be billed by Landlord, on the basis of Landlord's actual cost, for the cost of Tenant's consumption of water.

(B) Tenant shall keep said submeter and installation equipment in good working order and repair at Tenant's own cost and expense. In the event of a default by Tenant (following notice and the expiration of any applicable cure periods), Landlord may cause such submeter and equipment to be replaced or repair and collect the reasonable cost thereof from Tenant as Additional Rent. Tenant agrees to pay for water consumed as shown on said submeter, as Additional Rent, within ten (10) days of receipt of water bills. If Tenant shall default in making such payment, Landlord may pay such charges and collect the same from Tenant, as Additional Rent.

(iv) Telephone Service. Tenant shall arrange directly with a public or private utility company for the supply of telephone service as shall be necessary for the operation and functioning of the Premises. The cost of such installations and use shall be separately billed to Tenant.

(v) Cooling. Tenant shall have access to and exclusive use of (i) Tenant's separate cooling tower to be installed on the roof of the Building by Landlord and (ii) Tenant's condenser water system for the Premises through separate facilities, installations and equipment to be installed in the Common Facilities by Tenant. Maintenance and repair of Tenant's cooling tower and the costs therefor shall be the responsibility of Tenant.

(vi) Sprinkler. Landlord shall provide connections for Tenant's Sprinkler System, including floor control valve, water flow switch and inspector test station.

(vii) No Liability or Obligation of Landlord.

(A) Landlord shall not be liable to Tenant at any time for any change, failure or defect in the character or supply of any utility furnished to the Premises or for any loss, damage or expenses which Tenant may sustain, other than such as may result from Landlord's negligent act or omission with respect to Landlord's maintenance or repair of Landlord's equipment, facilities and installations in the Building.

(B) Landlord shall have no obligation to provide any utility facilities or services to the Premises other than as expressly set forth herein. Independently of and in addition to any of the remedies reserved to Landlord hereinabove or elsewhere in this Lease, Landlord may sue for and collect any monies to be paid by Tenant to Landlord, or paid by Landlord upon Tenant's failure to pay (following the expiration of the applicable notice and cure period set forth in Article 24 hereof), for any of the reasons or purposes hereinabove set forth.

Section 5.05. Fire Safety Equipment. Tenant shall maintain Tenant's Fire Safety devices in good condition and repair. Tenant and Landlord shall cooperate with one another in the testing and/or monitoring of any fire and safety systems in the Building (including any start-up tests following the installation of any additional systems or devices). Either Tenant or Landlord may, subject to the reasonable approval of the other, but at the expense of the party making such installation, install such additional safety systems or devices as such party deems appropriate, provided such systems and devices are compatible with and shall not exceed the capacity of the then existing Building Systems.

Section 5.06. Tenant's Consent Rights.

(a) Notwithstanding anything to the contrary in this Lease and without limiting any other consent or approval rights accorded to Tenant under this Lease, the following actions and/or decisions and/or matters shall be subject to Tenant's prior approval (which approval shall not, with respect to clauses (ii), (iii), (v), (vi), and to the extent provided specifically for in clause (i), be unreasonably withheld, conditioned or delayed):

(i) any single, one time Operating Expense expenditure during a Lease Year or any Exhibit E Operating Expense line item (i.e., category) of expenditure anticipated by Landlord for a Lease Year, which, in either case, exceeds, or is anticipated to exceed twenty-five thousand dollars (\$25,000) (other than utility services as provided in Exhibit E), unless such expenditures are required in order to make emergency repairs (provided that Landlord shall give written notice to Tenant prior to the making of any such expenditure, if reasonably possible or, in any case, promptly after making same), or if such expenditures are required because of any Requirement. Tenant shall not unreasonably withhold, condition or delay Tenant's approval for any reasonable and customary expenditure the cost of which does not exceed or is not anticipated to exceed One Hundred Thousand Dollars (\$100,000).

(ii) any increase in Tenant's Operating Expense Percentage pursuant to Section 5.07 (a) hereof;

(iii) the selection of management companies from which Landlord may solicit bids, in accordance with Section 5.12 hereof;

(iv) any Alteration, other than Alterations required by a Requirement or in the event of an emergency, which would (a) affect in any material respect (including any structural change in or to) any of the Common Elements, (b) result in a material change in the exterior appearance of the Building or (c) materially modify the ingress and egress to the Common Elements, where applicable;

(v) the development and implementation of fire command and fire safety programs and procedures, the employment of a reputable contractor to test any fire safety equipment in the Building and the terms of any such employment, and the installation of additional safety systems or devices to serve any part of the Building, including, without limitation, smoke detectors and auxiliary emergency electric power supplies;

(vi) the establishment and reasonable amendment by Landlord of reasonable rules and regulations for tenants of the Building, including Tenant, for the conduct and operation of the Common Elements, in compliance with Section 23.01.

(vii) any request for or consent to a zoning change which would materially adversely affect Tenant's use and operation of the Premises; and

(viii) the granting of any easement, right, restriction (other than Office Space leases) or any other encumbrance against any portion of the Building (collectively, a "Title Encumbrance") if such Title Encumbrance would materially adversely affect Tenant or Tenant's use and operation of the Premises.

(b) Tenant understands that Landlord, in contracting for the provision of services and supplies to the Building, is subject to the procedural requirements of the New York City Procurement Policy Board rules and other applicable laws.

(c) Subject to and supplementing the provisions of Section 5.06 (a) (i) above, Tenant shall have the right to submit to Arbitration in accordance with Article 34 below, dispute(s) relating to any line item expenditure(s) (ie, a "Common Expense Category" as designated in Exhibit E hereto) for which Tenant shall not have had prior rights of approval, provided that either (a) the amount of the line item expenditure(s) in dispute shall be equal to or greater than Fifteen Thousand (\$15,000) Dollars (as such amount may be adjusted as herein provided, with the applicable amount being the "Line Item Threshold Amount") or (b) the aggregate amount of the line item expenditures in dispute shall be equal to or greater than One Hundred Twenty-Five Thousand (\$125,000) Dollars (as such amount may be increased as herein provided, with the applicable amount being the "Aggregate Threshold Amount") and in either instance, the amount of any contested line item expenditure(s) for the relevant Lease Year shall exceed the amount of the immediately preceding Lease Year's expenditure for such line item by ten (10%) percent or more. Commencing on the fifth (5th) anniversary of the first full Lease Year for which Landlord shall have issued an Operating Statement, and for every five (5) year period thereafter, the then applicable Line Item Threshold Amount and Aggregate Threshold Amount shall be increased by fifteen (15%) percent.

Section 5.07. Definition of Operating Expenses and Tenant Expenses; Calculation.

(a) Definition. Landlord and Tenant agree that the Operating Expenses (as defined below) in connection with those items or categories of items stated on Exhibit E hereto shall be shared by Landlord and Tenant as provided in this Article. "Operating Expenses" shall be defined as all reasonable costs and expenses, without duplication, paid or incurred by Landlord in the reasonable exercise of Landlord's business judgment with respect to the items or categories of items stated on Exhibit E, which items or categories may be changed by Landlord (by the substitution of like items determined by Landlord in the exercise of its reasonable business judgment) during the Term. "Tenant Expenses" shall be as defined in Section 5.01; provided that, Landlord shall have the right in the reasonable exercise of its business judgment, to increase the Tenant's Operating Expense Percentage with respect to any item on Exhibit E if Landlord deems such increase necessary in the exercise of Landlord's reasonable business judgment (it being understood that Landlord shall not be permitted to increase Tenant's Operating Expense Percentage so as to include the garage portion of the Premises), subject to Tenant's rights to consent as provided in Section 5.06(a)(ii). Tenant Expenses shall constitute Additional Rent.

(b) Calculation. Operating Expenses payable for each Lease Year (or partial Lease Year) during the Term shall be the actual amount of costs incurred by Landlord in accordance with Section 5.07(a), which amount shall be stated in the Operating Statement for each Lease Year provided to Tenant pursuant to Section 5.10 hereof.

Section 5.08. Payment of Tenant's Expenses for each Lease Year. Commencing as of the Commencement Date, Tenant shall pay to Landlord, annually, the Tenant Expenses for each such Lease Year, or partial Lease Year, no later than thirty (30) days following receipt by Tenant of the Operating Statement for such Lease Year.

Section 5.09. Disagreement Regarding Operating Expenses, etc. In the event that Landlord and Tenant fail to agree on any items to which Tenant is entitled to consent pursuant to Section 5.06 hereof within sixty (60) days of notification by Landlord to Tenant regarding such items, then, the item or items in controversy shall be submitted for resolution to arbitration in accordance with (and be decided in accordance with) the provisions of Article 34 hereof. Until resolution of such arbitration, Landlord shall be authorized, in the event of disagreement pursuant to Section 5.06(a)(i), to make only such expenditures as are authorized by that Section for the items in dispute, and in the event of disagreement involving Section 5.06(a)(ii) through (viii), to take only such actions as are authorized by those Sections.

Section 5.10. Delivery of Year-End Statement. Within ninety (90) days after the end of each Lease Year (or partial Lease Year), Landlord shall furnish to Tenant an operating statement (the "Operating Statement") for such Lease Year (or partial Lease Year) signed by an official of Landlord, in form and substance: (i) setting forth actual operating costs for the items on Exhibit E; and (ii) setting forth Tenant's Expenses for such Lease Year (or partial Lease Year) based on the actual costs stated in the Operating Statement. Subject to Tenant's right to contest same as provided in Section 5.09, Tenant shall pay the amount of Tenant's Expenses such in accordance with Section 5.08. Tenant shall have the right to have any Operating Statement audited at its expense. If on the basis of such audit, it shall be determined that Tenant shall have been overcharged, then Landlord shall promptly reimburse Tenant in the amount of such overcharge as a credit against the next due installment of Base Rent.

Section 5.11. Failure to Deliver a Statement not Prejudicial. Landlord's failure to render any statement hereunder within ninety (90) days from the end of the period covered thereby, or cause the Managing Agent, if any, to render same, shall not bar Landlord's right to thereafter render a statement with respect thereto. The foregoing shall not bar any right of Tenant to require and be furnished with same.

Section 5.12. Management Agreement. In the event that Landlord, in its discretion, shall determine to retain a building manager to perform Landlord's Services and Landlord's other obligations pursuant to this Article, Landlord shall obtain and present to Tenant competitive bids for management services for the Common Elements of the Building. The management entities chosen to submit bids shall be selected by Landlord from among a prequalified list of at least three (3) potential bidders. Tenant will have the right to reasonable approval of the prequalification list. The prequalification list will include at least two entities which do not control, are not controlled by, and are not under common control with Tenant.

Section 5.13. Books and Records. Upon sixty (60) days' written notice to Landlord, Tenant may inspect the books and records of Landlord in order to verify Tenant's Expenses. Such notice shall specifically designate the Lease Year(s) during the term of this Lease for which Tenant

intends to inspect applicable books and records, which year(s) shall be limited to three (3) years immediately preceding the date of such inspection. (b) Tenant's inspection shall be at Landlord's office made during normal business hours. Tenant shall provide Landlord with a copy of any written report on the results of such inspection within thirty (30) days of Tenant's preparation or receipt of any such report. All costs of such inspection shall be borne by Tenant.

ARTICLE 6

LATE CHARGES

If Tenant fails to pay the Base Rent within ten (10) days after the date such payment is due and Additional Rent or any other charges payable hereunder (to the extent the same are payable to or through Landlord as provided herein), within ten (10) days after the date on which Tenant shall have received notice from Landlord ("Landlord's Payment Notice") that same is due and payable in full, an interest charge on such overdue amounts (excluding late charges designated as Additional Rent) at the rate (the "Late Charge Rate") which shall be the lesser of (i) one and one half (1.5) percent per month and (ii) the maximum rate then legally permissible in New York State shall become due and payable to Landlord as provided in the penultimate sentence of this Section. If Tenant shall fail to make the required payment within ten (10) days of the due date in the case of Base Rent and, in the case of Additional Rent or other charges payable to or through Landlord, within ten (10) days following Tenant's receipt of Landlord's Payment Notice, the aforesaid interest charges (sometimes referred to as "Overdue Charges") shall accrue from the eleventh (11th) day in the case of overdue Base Rent and such Additional Rent or other charges which are due, through the date upon which Tenant shall pay the overdue amount. Under no circumstances shall the amount of the Overdue Charges be less than a minimum charge of Ten Dollars (\$10.00). Upon expiration of the aforesaid ten (10) day period the Overdue Charges shall immediately become due and payable to Landlord as liquidated damages for the additional administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make timely payment, and said Overdue Charges shall thereafter be payable by Tenant on demand as Additional Rent. Failure to demand an Overdue Charge in any month shall not waive Landlord's right to issue a Landlord's Payment Notice at a later date.

ARTICLE 7

INSURANCE

Section 7.01. Insurance Requirements.

(a) Liability Insurance. At all times during the Term, Tenant, at its sole cost and expense, shall carry or cause to be carried insurance against liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, in an amount of not less than Three Million (\$3,000,000.00) Dollars per occurrence, combined single limit of Five Million (\$5,000,000.00) Dollars, and designating Landlord as an additional insured. Such insurance shall meet all of the standards, limits, minimums and requirements described in Section 7.07.

(b) Property Insurance. At all times during the Term, Tenant, at its sole cost and expense shall carry or cause to be carried All Risk property damage insurance protecting Tenant and Landlord against loss to the Improvements and meeting all the standards, limits, minimums and requirements described in Section 7.08.

(c) Other Insurance. At all times during the Term, Tenant shall carry insurance meeting all of the standards, limits, minimums, and requirements described in Section 7.09.

(d) Construction Insurance. Prior to the commencement of any Construction Work, the estimated cost of which exceeds the Threshold Amount, Tenant shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance described in Section 7.10.

Section 7.02. Treatment of Proceeds.

(a) Proceeds of Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to Depository if greater than or equal to the Threshold Amount, or to Tenant, if less than the Threshold Amount. In either case, the insurance proceeds with respect to such loss shall be held in trust for the purpose of paying the cost of the Restoration, and such proceeds shall be applied to the payment in full of the cost of such Restoration in accordance with Article 8 hereof.

(b) Proceeds of Rent Insurance. Rent Insurance referred to in Section 7.09 hereof shall be carried in the name of Tenant as named insured and shall be payable to Depository. Depository shall pay Landlord, at the time and in the manner provided in Article 3 hereof, such proceeds to be applied to Base Rent and PILOT for the period from the occurrence of the damage Or destruction until substantial completion of the Restoration as determined in accordance with the provisions of Section 13.07 hereof.

(c) Cooperation in Collection of Proceeds. Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant and Landlord shall as soon as practical execute and deliver such proofs of loss and other instruments as may be required of Tenant or Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

(d) Adjustments for Claims. All property insurance policies required by this Article shall provide that all adjustments for claims with the insurers involving a loss be made with Landlord and Tenant.

Section 7.03. General Requirements Applicable to Policies.

(a) Insurance Companies. All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of New York

that have a rating in the latest edition of "Bests Key Rating Guide" of "A VIII" or better or another comparable rating reasonably acceptable to Landlord and Tenant considering market conditions.

(b) Required Forms. All references to forms and coverages in this Article shall be those used by the Insurance Services Office of New York or equivalent forms reasonably satisfactory to Landlord and Tenant in all material respects.

(c) Required Certificates. Certificates of insurance evidencing the issuance of all insurance required by this Article, describing the coverage and providing for thirty (30) days prior notice to Landlord by the insurance company of cancellation or nonrenewal, shall have been delivered to Landlord by the Commencement Date, and in the case of any policies replacing or renewing any policies expiring during the Term, not later than thirty (30) days before the expiration dates of any such expiring policies. The certificates of insurance shall be issued by the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance shall also deliver to Landlord, together with the certificates, proof reasonably satisfactory to Landlord that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. Tenant shall deliver evidence reasonably satisfactory to Landlord of the validity and accuracy of said certificate, immediately after the date each such policy is available, but no later than four (4) months after the date each such policy takes effect.

(d) Compliance With Policy Requirements. Tenant shall not violate or knowingly permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies.

(e) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Article shall contain (i) a provision that no negligent act or omission of Tenant shall effect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord, (ii) a written waiver of the right to subrogation with respect to all of the named insureds and additional insureds, including Landlord and any Recognized Mortgagees named in such policy, (iii) a clause designating Landlord and any Recognized Mortgagee as loss payee or additional insured, as its interests may appear, and (iv) an agreement by the insurer that such insurer shall give no less than thirty (30) days prior written notice to Landlord and the holder of each Recognized Mortgage named under a standard New York form of mortgagee endorsement or its equivalent, before canceling, or denying renewal of such policy (except that in the case of a cancellation or non-renewal for non-payment of premium the insurer shall give no less than ten (10) days prior written notice).

Section 7.04. Additional Coverage.

(a) Other Insurance. Subject to the provisions of Section 7.15, Tenant shall maintain such other insurance in such amounts as from time to time (but not more than once in any

three (3) year period), reasonably may be required by Landlord against such other insurable hazards as at the time are commonly insured against by a tenant in the case of premises similarly situated to the Premises or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises.

(b) Adjustment of Limits. All of the limits of insurance required pursuant to this Article 7 shall be subject to review by Landlord and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as Landlord may reasonably require from time to time (but not more than once in any three year period). Any request by Landlord that Tenant carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of premises similarly situated to the Premises, or business operations of a size, nature or character similar to the size, nature and character of the business operations being conducted at the Premises; provided, however, that in no event shall the provisions of this subsection (b) relieve Tenant of its obligation to carry or to cause to be carried All Risk insurance in an amount not less than the Replacement Value as provided in Section 7.01(b) hereof; and provided further, however, that in no event shall Tenant be required to carry or to cause to be carried All Risk insurance in an amount which is greater than the Replacement Value. Landlord shall also have the right, throughout the Term, to approve the amount of any loss deductible contained in any insurance policy required pursuant to the provisions hereof, which approval Landlord shall not unreasonably withhold or delay, taking into account Tenant's financial capability to pay such deductible, market conditions, and the deductible commonly included in insurance coverages obtained with respect to premises similarly situated to the Premises or business operations of a size, nature, or character similar to the size, nature, or character of the business operations being conducted on the Premises. A request by Landlord that Tenant reduce or cause to be reduced the amount of any such loss deductible shall not be deemed reasonable unless loss deductibles of such lower amounts are commonly included in policies insuring premises similarly situated to the Premises, or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises.

Section 7.05. INTENTIONALLY OMITTED.

Section 7.06. Blanket or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at the option of Tenant, be effected by blanket and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or its affiliates, provided, such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insured hereunder, without possibility of reduction of co-insurance by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certificates of such policies as provided in Section 7.03(c), setting forth the amount of insurance applicable to the Premises and proof reasonably satisfactory to Landlord that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

Section 7.07. Liability Insurance Requirements. The insurance required by Section 7.01(a) shall consist of commercial general liability insurance protecting against liability for bodily injury, death, property damage, and personal injury occurring in, on or about the Premises and the streets and sidewalks adjoining the Property. Such insurance shall:

(a) include a broad form property damage liability endorsement with fire legal liability limit of not less than \$50,000.00;

(b) contain blanket contractual liability insurance covering written contractual liability;

(c) contain contractual liability insurance specifically covering (to the extent covered by a standard commercial general liability insurance policy) Tenant's indemnification obligations under Article 20 hereof;

(d) contain independent contractors coverage;

(e) contain a notice of occurrence clause;

(f) contain a knowledge of occurrence clause;

(g) contain an unintentional errors and omissions clause;

(h) contain coverage for suits arising from the use of reasonable force to protect persons and property;

(i) contain a cross liability endorsement;

(j) contain coverage for water damage and sprinkler leakage legal liability;

(k) contain coverage for owned and non-owned automobiles;

(l) contain Products Liability/Completed Operations coverage;

(m) contain liquor legal liability coverage, if applicable;

(n) provide for a deductible of not more than \$25,000 per loss;

(o) if such endorsement shall generally then be available an endorsement providing that excavation and foundation work are covered and that the "XCU exclusions" have been deleted; and

(p) contain no exclusions (other than those exclusions customarily included in standard policies for such insurance) or deductibles unless specifically approved in each instance by Landlord, which approval will not be unreasonably withheld or delayed.

Section 7.08. Property Insurance Requirements. The insurance required by Section 7.01(b) shall consist at least of property damage insurance under an "All Risk" policy or its equivalent covering the Improvements with full replacement cost valuation and a stipulated value endorsement in an amount not less than the full Replacement Value (determined in accordance with Section 7.12) and including the following coverages or clauses:

- (i) coverage for physical loss or damage to the Improvements;
- (ii) a replacement cost valuation without depreciation or obsolescence clause;

debris removal coverage;
- (iv) provision for a deductible of not more than \$10,000.00 per loss, except for flood and earthquake coverage, which shall have a deductible of \$50,000.00;
- (v) contingent liability from operation of building laws;

demolition cost for undamaged portion coverage;

increased cost of construction coverage;

an agreed or stipulated amount endorsement negating any coinsurance clauses;

flood coverage;

earthquake coverage;

hurricane coverage;
- (xii) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by Landlord);
- (xiii) a clause designating Landlord as an additional insured, or if a Recognized Mortgagee exists, a clause designating Landlord and such Recognized Mortgagee as joint additional insured as their interests may appear; and
- (xiv) contain no exclusions (other than those exclusions generally included in standard policies for such insurance) or deductible unless approved in writing by Landlord, which approval will not be unreasonably withheld or delayed.

If Tenant elects to insure Tenant Equipment, such insurance shall be in addition to the other insurance carried by Tenant hereunder. If not included within the All Risk coverage above, Tenant

shall also carry or cause to be carried coverage against damage due to water and sprinkler leakage and collapse, flood and earthquake, which shall be written with limits of coverage of not less the full Replacement Value per occurrence.

Section 7.09. Other Insurance Requirements. The insurance required by Section 7.01(c) shall consist at least of the following:

(a) Rent Insurance on an "All Risk" basis in an amount not less than the aggregate Base Rent and PILOT payable for the one year period immediately following the loss. The insurance specified in this subsection shall:

(i) provide coverage against all insurable risks of physical loss or damage to the Improvements;

(ii) provide for a twelve (12) month coverage period;
contain flood and hurricane coverage if obtainable at commercially reasonable rates;

(iii) contain earthquake coverage, if obtainable at commercially reasonable rates;

(v) contain explosion caused by steam pressure-fired vessels coverage;
provide for a deductible of not more than \$50,000.00;

designate Landlord, Depository, and Tenant as loss payees; and

(viii) contain no exclusions (other than exclusions generally included in standard policies for such insurance) or deductible unless approved in writing by Landlord, which approval will not be unreasonably withheld or delayed.

(b) Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Premises or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than \$500,000.

(c) Boiler and Machinery Insurance, covering the heating, ventilating and air-conditioning systems (if and to extent any of the foregoing shall exclusively service the Premises), in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air-conditioning systems, to the extent located on any portion of the Premises and exclusively servicing the Premises and other machinery located on such portion of the Premises, which shall name Landlord and

Tenant, as insureds and the Depository as loss payee for the benefit of Landlord and Tenant, and any Recognized Mortgagee as their interests may appear.

Section 7.10. Construction Insurance Requirements. The insurance required by Section 7.01(d) shall consist at least of the following:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value (non-reporting) basis, for property damage protecting Tenant, Landlord, the general contractor, and any Recognized Mortgagee against all insurable legal liability claims resulting from any work being performed on the Premises.

(b) Automobile liability insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the Premises in an amount not less than \$1,000,000.00 per occurrence.

(c) The insurance specified in subsections (a) and (b) above shall contain no exclusions other than those included in the basic forms described unless approved by Landlord.

Section 7.11. Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

Section 7.12. Determination of Replacement Value.

(a) Definition. The current replacement value of the Improvements (the "Replacement Value") shall be the full cost of replacing the Improvements, including without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including, without limitation, architect's and development fees, but exclusive of the cost of foundation and excavation. Replacement Value shall be determined periodically by an appraiser (selected and subject to the immediately following sentence), paid by Tenant and reasonably approved by Landlord, initially on the Substantial Completion Date and thereafter on each Revaluation Date and at such additional times as Landlord, may reasonably request. It is expressly agreed that Tenant shall not be required to pay for the cost of a revaluation more than one (1) time in any twelve (12) month period and that the cost of any additional revaluations in a twelve (12) month period shall be paid for by Landlord. If the insurance required by Section 7.08 above is not sufficient to cover the Replacement Value, then within forty-five (45) days after such appraisal, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements. Any dispute with respect to the determination of Replacement Value shall be subject to the provisions of Section 34.01.

(b) Adjustment. The amount of Replacement Value shall be adjusted on each anniversary of the initial determination of Replacement Value and of each subsequent decennial

redetermination of Replacement Value throughout the Term by a percentage equal to the percentage change in the Building Index in effect on such anniversary date as compared to the Building Index in effect on the date of Substantial Completion or prior redetermination, whichever is latest.

(c) Building Index. As used herein, the "Building Index" shall mean the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by Landlord and reasonably agreed to by Tenant, provided that such index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Improvements.

Section 7.13. Subleases. All Subleases shall require the Subtenant to carry commercial general liability insurance naming Tenant, Landlord, and any Recognized Mortgagee as additional insureds with limits reasonably prudent under the circumstances; it being agreed that a commercial general liability policy in a combined single limit of \$2,000,000 shall generally be deemed to be prudent.

Section 7.14. Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Landlord and Landlord's agent, if any. Any holder of any Recognized Mortgage which, pursuant to the Recognized Mortgage, is required to be named under any of the insurance carried hereunder shall be named under a standard New York form of mortgagee endorsement or its equivalent.

Section 7.15. Unavailability. If any of the insurance required to be carried under this Lease shall not, after diligent efforts by Tenant, and through no act or omission on the part of Tenant, be obtainable from domestic carriers customarily insuring premises similar to the Premises and business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises, then Tenant shall promptly notify Landlord of Tenant's inability to obtain such insurance and Landlord shall have the right, but not the obligation, to arrange for Tenant to obtain such insurance. If Landlord shall be able to arrange for Tenant to obtain such insurance, Tenant shall obtain the same up to the maximum limits provided for herein. If Landlord shall be unable to arrange for Tenant to obtain the insurance required hereunder, Tenant shall promptly obtain the maximum insurance obtainable, and in such case, the failure of Tenant to carry the insurance which is unobtainable shall not be a Default hereunder for as long as such insurance shall remain unobtainable. Types or amounts of insurance shall be deemed unobtainable if such types or amounts of insurance are (a) actually unobtainable, or (b) virtually unobtainable as a result of commercially unreasonable premiums for such insurance with respect to premises similar to the Premises, located in New York City and used for purposes similar to those for which the Premises are used.

ARTICLE 8

DAMAGE OR DESTRUCTION

Section 8.01. Destruction, Fire and Other Casualty. If the Premises or any part of the Premises is destroyed or damaged by fire or casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (each, a "Casualty") or if Tenant has knowledge of any accident, loss or damage or dangerous or defective condition materially affecting the Premises or any part thereof, Tenant shall give to Landlord prompt notice thereof and this Lease shall continue in full force and effect except as hereinafter set forth. Such notice shall not, however, be deemed or construed to impose upon Landlord any obligation to perform any work required to be performed by Tenant under this Lease or not otherwise hereunder agreed to be performed by Landlord.

Section 8.02. Casualty Restoration.

(a) Obligation to Restore. Subject to the provisions of Section 8.02(e), if all or any portion of the Improvements are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, the cost of the restoration of which exceeds Fifty Thousand Dollars (\$50,000), Tenant shall restore the Improvements to the extent of the value and as nearly as possible to the quality of the Improvements as they existed immediately before such casualty and otherwise in substantial conformity with the Plans and Specifications (a "Casualty Restoration"), whether or not (i) such damage or destruction was insured or insurable, (ii) Tenant is entitled to receive any insurance proceeds, or (iii) the insurance proceeds are sufficient to pay in full the cost of the Construction Work in connection with the Casualty Restoration. No holder of any Mortgage shall have the right to apply any insurance proceeds paid in connection with any casualty of the Improvements toward payment of the sum secured by or owed pursuant to its Mortgage unless and until the Casualty Restoration has been completed and the conditions set forth in Section 8.03(c) below are met.

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration and within ninety (90) days of the damage or destruction, Tenant shall furnish Landlord with an estimate prepared by a Cost Estimator selected and paid for by Tenant ("Tenant's Cost Estimator") of the cost and duration of such construction work. If Landlord shall fail to disapprove Tenant's estimate of such cost within thirty (30) days of receipt of such estimate, Tenant's Cost Estimator's estimated cost of such Construction Work shall be deemed to have been approved. If Landlord shall dispute the estimate provided by Tenant's Cost Estimator, the dispute shall be resolved by a Cost Estimator chosen by agreement of Landlord and Tenant (or if the parties cannot agree by an Arbiter in accordance with Article 34 hereof), whose estimate shall be binding on the parties.

(c) Commencement of Construction Work. Tenant shall commence such Construction Work promptly after adjustment of the insurance claim, if any, relating to the damages or destruction (which settlement will be diligently prosecuted), but in any event within two hundred (270) days of the damage or destruction, subject to Unavoidable Delays relating to the Construction Work in connection with a Casualty Restoration. If and to the extent Tenant shall be

able to do so, during any such period after the occurrence of a Casualty, Tenant shall secure the damaged portion of the Improvements against further damage, injury to persons, and/or damage to other property.

(d) Restoration by Landlord. If any part of the Premises, other than the Improvements, is damaged or destroyed by Casualty, Landlord shall promptly commence to restore the same, but in any event within six (6) months and complete said restoration within eighteen (18) months from the date of Casualty, subject to unavoidable delays (not to exceed a total of three (3) months), whether or not such damage or destruction was insured or insurable, as nearly as practicable, to the character and condition as existed prior to such Casualty; provided, however, that in the event of a Casualty to "substantially all" (as defined in Section 8.02(e), hereof) of the Premises, other than the Improvements, Landlord may elect not to restore same, subject to Tenant's rights as set out in Section 8.02(e). Notwithstanding the provisions of Section 8.02(c) hereof, in the event of Casualty to "substantially all" of the Premises, other than the Improvements, Tenant shall not be required to commence Construction Work until such restoration by Landlord is substantially completed. However, in the event that Tenant elects to commence restoration of the Improvements during Landlord's performance of work and can perform Tenant's Casualty Restoration without interfering with Landlord's Casualty Restoration, Landlord and Tenant will cooperate with each other with respect to the scheduling of their respective repair obligations. During any period that all or any part of the Premises other than, or in addition to, the Improvements is rendered unuseable by Casualty, the Rental shall be apportioned from the day following such Casualty according to that part of the Premises which shall then be useable until completion of Landlord's restoration.

(e) Option not to Restore. Notwithstanding the foregoing, if (i) all or "substantially all" of the Premises, other than the Improvements, is destroyed by Casualty and Landlord does not agree within three (3) months of such Casualty to restore such part of the Premises, commence such restoration within six (6) months and complete such restoration within twenty one (21) months from the date of Casualty, subject to unavoidable delays (not to exceed a total of three (3) months), or (ii) "substantially all" of the Building, other than the Premises, is destroyed by Casualty and Landlord does not agree within three (3) months of such Casualty to restore the Building, commence such restoration within nine (9) months and complete such restoration within twenty four (24) months from the date of Casualty subject to unavoidable delays not to exceed three (3) months, or (iii) at any time during the last five (5) years of the Term, all or substantially all of the Improvements are damaged or destroyed by Casualty and Tenant's Property Insurance shall have been in effect at the time of such Casualty, then, in any such instance, Tenant may, at its option, in lieu of performing the Casualty Restoration required by Section 8.02(a) hereof, terminate this Lease within sixty (60) days after it is finally determined that the conditions in clauses (i), (ii), or (iii) of Section 8.02(a) have been met. Such termination shall be made by (A) serving upon Landlord, at any time within said sixty (60) day period, a ten (10) days' written notice of Tenant's election to so terminate; (B) assigning over to Landlord, subject first, in any event, with respect to termination under clause (i) or (ii), to the rights of any Recognized Mortgagee to receive all or part of such proceeds, all of Tenant's right, title and interest in and to all available insurance and other proceeds payable due to such damage or destruction but subject to the continuing obligation of Tenant to assist in the prosecution of all insurance and other claims, and (C) paying to Landlord concurrently with the service of such notice an amount equal to all Rental which shall be

due and owing up to and including said date of termination whether or not otherwise payable at such time. Upon the service of such notice and the making of such assignment and payment within the period aforesaid, this Lease shall terminate on the date specified in such notice with the same force and effect as if such date were the Fixed Expiration Date, and Tenant shall comply with all surrender requirements of Article 31 hereof. For the purposes of this Section 8.02(e), "substantially all" of the Premises, other than the Improvements, means a degree of structural or other damage to the Premises, other than the Improvements, such that a Casualty Restoration by Tenant is not reasonably feasible or possible without prior restoration by Landlord of such structural or other damage; and "substantially all" of the Building, other than the Premises, means a degree of damage to the Building, other than the Premises, such that Casualty Restoration by Tenant is not feasible or possible, without prior restoration by Landlord of such damage to the Building, other than the Premises; and "substantially all" of the Improvements shall be deemed to include such portion of the Improvements, the restoration of which would not be economically viable on a commercially reasonable basis (in the exercise of Tenant's reasonable judgment) in view of the then remaining Term. Whether substantially all of the Premises, other than the Improvements or substantially all of the Building, other than the Premises, have been damaged shall be subject to arbitration as provided in Article 34 hereof.

Section 8.03. Restoration Funds.

(a) Reimbursement of Depository's and Landlord's Expenses. Before paying the Restoration Funds to Tenant, Depository shall reimburse itself, Landlord and Tenant therefrom to the extent of all documented necessary and proper expenses (including, without limitation, reasonable and customary attorneys' fees and disbursements) paid or incurred by each of them respectively in the collection of such Restoration Funds.

(b) Disbursement of Restoration Funds.

Application for Disbursement. Landlord shall direct Depository to pay to Tenant the Restoration Funds from time to time as the Restoration proceeds, in the manner and at the times as required by the Recognized Mortgagee first in priority. If the first Recognized Mortgagee has no provision substantially similar to those herein for the disbursement of the Restoration Funds or there is no Recognized Mortgagee, then, subject to the provisions of Sections 8.03(a), (8.03(b)(ii), 8.04 and 8.05 hereof, Restoration Funds held by Depository shall be paid to Tenant in installments (no less than monthly) as the Restoration progresses, on the basis of applications for payment to be submitted by Tenant to Depository and Landlord stating the Restoration costs then due and payable, including architects' and engineer's fees, construction labor costs and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Improvements since the last previous application and paid for by Tenant (or payments that are then due and owing), or (B) not been incorporated in the Improvements but have been purchased since the last previous application and paid for by Tenant (or payments that are then due and owing) (such costs collectively referred to as "Restoration Costs"); provided that, the Depository shall not make any installment payment to Tenant for materials, fixtures and equipment purchased but not yet incorporated in the Improvements until Tenant shall have delivered to Landlord certificates of insurance evidencing

that such materials, fixtures and equipment are insured for one hundred percent (100%) of the cost thereof.

(c) Disbursement of Remaining Restoration Funds. Provided that this Lease shall then be in full force and effect, and subject to Landlord's right to withhold a portion of such Restoration Funds as hereinafter provided in Section 8.04 (c), any Restoration Funds, together with any interest earned thereon, remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 13.03 and 13.07 hereof shall be paid to Tenant.

Section 8.04. Conditions Precedent to Disbursement of Restoration Funds. If the Restoration Funds are, pursuant to Section 7.02(a) hereof, being held by Tenant, Tenant shall apply said funds to the Restoration, but during the pendency of any Event of Default, Tenant shall not disburse any Restoration Funds except as provided in Section 8.08 below. If the Restoration Funds are being held by Depository pursuant to Section 7.02(a) hereof, the following conditions shall apply to each payment of Restoration Funds to be made to Tenant pursuant to Section 8.03(b) hereof:

(a) Certificate of Architect. A certificate of the Architect shall be submitted to Depository and Landlord stating that:

(i) The sum then requested to be withdrawn either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons with respect thereto, and stating, in reasonable detail, the progress of the Construction Work in connection with the Restoration up to the date of the certificate;

(ii) No part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of Restoration Funds or has been paid out of any of the Restoration Funds previously received by Tenant;

(iii) The sum then requested does not exceed the cost of the services and materials described in the certificate;

(iv) The materials, fixtures and equipment, for which payment is being requested pursuant to Section 8.03(b)(i) hereof, are equal or better in quality and character to the materials, fixtures, and equipment being restored or replaced;

(v) Except in the case of the final request for payment for Tenant, the balance of the Restoration Funds held by Depository (including any bond, cash or other security provided by Tenant in accordance with Section 8.05 hereof) shall in the reasonable opinion of the Architect be sufficient, upon completion of the Construction Work in connection with the Restoration, to pay for the Construction Work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Construction Work;

(vi) The Construction Work has been performed substantially in accordance with the Plans and Specifications, as such may be required to be modified in the course of construction in order to adapt to field conditions, and fully in accordance with all Requirements; and

(vii) In the case of the final request for payment by Tenant, the Construction Work in connection with a Restoration shall have been completed, except for punch list items, in accordance with the provisions of Sections 13.03 and 13.07 hereof.

(b) Certificate of Title Insurance. There shall be furnished to Landlord a report or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence satisfactory to Landlord, showing that there are no (i) vendors', mechanics', laborers' or materialmans' statutory or other similar liens filed against the Premises or any part thereof, or (ii) public improvement liens created or caused to be created by Tenant affecting Landlord or the assets of, or any funds appropriated to, Landlord, except those as will be discharged upon payment of the amount then requested to be withdrawn or the discharge of which is guaranteed to the reasonable satisfaction of Landlord by a bond, letter of credit or similar security installment.

(c) Defaults. If and to the extent that an Event of Default shall then exist, Landlord may withhold disbursements of the Restoration Funds to the extent of such damages suffered by Landlord by reason of such Event of Default.

Section 8.05. Restoration Fund Deficiency. If the estimated cost (determined as provided in Section 8.02(b) hereof) of any Construction Work in connection with any Restoration exceeds the net Restoration Funds (i.e., Restoration Funds available after the reimbursement provided for in Section 8.03(a) above) received by Depository pursuant to Section 7.02(a) hereof, then, before the commencement of such Construction Work or at any time after commencement of such Construction Work if it is reasonably determined by Landlord that the cost to complete such Construction Work exceeds the unapplied portion of the Restoration Funds, Tenant shall, within thirty (30) days of Landlord's request, deposit with Depository a bond, cash, letter of credit or other security, reasonably satisfactory to Landlord, in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 8.03 hereof. In lieu of the foregoing, Tenant shall have the right to modify the scope of the Construction Work, so that the cost thereof shall not exceed the amount of the net Restoration Funds; provided that the other provisions of this Article 8, including, but not limited to, requirements with respect to the quality and character of any Casualty Restoration, are complied with .

Section 8.06. Effect of Casualty on This Lease. Except as specifically provided in Section 8.02(d), this Lease shall neither terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental by reason of damage to, or total, substantial or partial destruction of, the Improvements, or by reason of the untenability of the Improvements or any part thereof, nor for any other reason or cause whatsoever. Tenant's obligations hereunder, including the payment of Rental, shall continue as though the Improvements had not been damaged

or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.07. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any casualty to the Improvements. It is the intention of Landlord and Tenant that the provisions of this Article 8 are an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

Section 8.08. Effect of Events of Default. Notwithstanding anything to the contrary herein, if an Event of Default shall have occurred and be continuing, the Tenant and Depository shall pay any Restoration Funds then held by them in accordance with Landlord's directions subject to the rights, if any, of the Recognized Mortgagee under this Lease.

Section 8.09. Effect of Lease Termination. Notwithstanding anything to the contrary contained herein, if this Lease has been terminated (and such termination, if challenged by Tenant, is upheld by a court of competent jurisdiction and, if applicable, final appeal) the Depository shall pay any Restoration Funds then held by it in accordance with Landlord's directions (and this provision shall survive the termination of the Lease).

ARTICLE 9

CONDEMNATION

Section 9.01 Certain Definitions.

(a) "Taking" shall mean a taking of the Premises or any part thereof for any public or quasi-public purpose by any lawful power of authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right irrespective of whether the same affects the whole or Substantially All of the Premises or a lesser portion thereof but shall not include a taking of the fee interest in the Premises or any portion thereof if, after such taking, Tenant's and any Recognized Mortgagee's rights under this Lease are not affected.

(b) "Substantially All of the Premises" shall be deemed to mean such portion of the Premises the Taking of which would not readily allow the remaining portion of the Premises to be capable of accommodating a facility to support the uses described in Section 23.01 hereof on a commercially reasonable basis due either to the area so taken or the location of the part so taken in relation to the part not so taken in light of economic conditions, zoning laws, physical constraints, or building regulations then existing or prevailing and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed by Tenant. The determination of "commercially reasonable basis" shall be subject to arbitration in accordance with Section 34.02.

(c) "Date of Taking" shall be deemed to be the date on which title to the whole or Substantially All of the Premises or a lesser portion thereof, as the case may be, shall have vested in any lawful power or authority pursuant to the provisions of applicable federal, state, or local condemnation law or the date on which the right to the temporary use of the same has so vested in any lawful power or authority as aforesaid.

(d) "Condemnation Restoration" shall mean a restoration of any portion of the Premises remaining after a partial Taking and/or a restoration of any portion of the Premises which have been changed or altered as a result of a temporary Taking or as a result of any governmental action not constituting a Taking but creating a right to compensation as provided in Section 9.04 hereof so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units and, to the extent practicable, having a character and condition similar to the character and condition of the Premises existing immediately prior to the Date of Taking or the date of such other governmental action.

Section 9.02. Permanent Taking.

(a) Taking of the whole etc.. If during the Term there shall be a Taking of the whole or Substantially All of the Premises or to the extent set forth in Section 9.03(b) below, a lesser portion thereof (other than a Temporary Taking except as hereafter provided in Section 9.03(b)), the following consequences shall result:

(i) this Lease and the Term shall terminate and expire on the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned to the Date of Taking (subject to audit and adjustment by Landlord as provided in Section 37.03 hereof), and all such Rental shall be paid to Landlord on the Date of Taking; and

(ii) the award payable in respect of such Taking shall be paid as follows: (A) there shall first be paid to Landlord so much of the award as is equal to the sum of outstanding amounts due and payable under this Lease to the date of the Taking; (B) then, to the extent proceeds are available, there shall next be paid to any Recognized Mortgagee(s), in the order of the priority of their liens, so much of the balance of such award as shall equal the unpaid principal indebtedness secured by the applicable Recognized Mortgage, but not more than the original principal amount of such Recognized Mortgage, with up to three months' unpaid interest thereon at the rate specified therein; (C) then, to the extent proceeds are available, there shall next be paid to Tenant so much of the balance of such award which is for or attributable to the value of the Improvements made and paid for by Tenant and the value of Tenant's remaining leasehold estate; and (D) then, subject to rights of any Recognized Mortgagees, Landlord shall receive the balance of the award, if any.

(b) "Partial Taking". If there shall be a Taking of less than Substantially All of the Premises (other than a temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall continue without diminution of any of Tenant's obligations hereunder, except that this Lease shall terminate as to the portion of the

Premises so taken and any remaining portion of the Premises which is no longer useable on a commercially reasonable basis, and from and after the Date of Taking, a just proportion of Base Rent and PILOT as fixed by mutual agreement of Landlord and Tenant, according to the portion of the Premises extent and nature of such Taking, and any remaining portion of the Premises rendered unusable on a commercially reasonable basis shall abate for the remainder of the Term;

(ii) Tenant shall at its sole cost and expense proceed with diligence (subject to Unavoidable Delays) to effect a Condemnation Restoration of the remaining portion of the Premises not so taken which shall then be useable on a commercially reasonable basis, whether or not the award, if any, shall be sufficient for the purpose of paying for such Condemnation Restoration in full, but Landlord shall in no event be called upon to restore any remaining portion of the Premises not so taken or to pay any costs or expenses thereof; and

(iii) any award greater than or equal to the Threshold Amount shall be paid to Depository and any award less than the Threshold Amount shall be paid to Tenant and, in either case, shall be disbursed in accordance with the provisions hereof first to the cost of a Restoration and thereafter as provided in Section 9.02(a)(ii).

Section 9.03. Temporary Taking.

(a) Not extending beyond Term. If during the Term there shall be a Taking of the temporary use of the whole or Substantially All of the Premises or a lesser portion thereof for a period of less than six (6) months not extending beyond the Term (a "Temporary Taking"), the following consequences shall result:

(i) this Lease and the Term shall continue without reduction or diminution of any of Tenant's obligations hereunder and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, but Tenant shall be entitled to receive for itself, subject to the rights of any Recognized Mortgagee(s), any award or payments for such use to the extent provided in Section 9.03(a)(iii) hereof; provided, however, that (A) if a Temporary Taking shall extend for a period longer than one (1) week, then such portion of Base Rent as is reasonably allocable to the portion of the Premises taken and any remaining portion of the Premises which is no longer useable on a commercially reasonable basis, shall be deferred until an award with respect to such Temporary Taking is received, provided Tenant diligently proceeds to obtain such award, and (B) if a Temporary Taking shall be made or caused solely by the City (a "Temporary City Taking"), then such portion of Base Rent as is reasonably allocable to the portion of the Premises taken and any remaining portion of the Premises which is no longer useable on a commercially reasonable basis, shall be abated to the extent it is not covered by an award with respect to such Temporary Taking, provided Tenant diligently proceeds to obtain such award;

(ii) if such Taking necessitates that changes or alterations be made to the remaining Premises which shall then be useable on a commercially reasonable basis or any part thereof, Tenant shall effect a Condemnation Restoration with respect thereto;

(iii) the award or payment payable with respect to such Temporary Taking shall be paid to and held by the Depository and (X) if such Temporary Taking shall not be a Temporary City Taking, such award shall first be disbursed by the Depository to Landlord on account of the Rental payable by Tenant as and when the same shall become due and payable hereunder, and the balance or, in the case of a Temporary City Taking, the entire award, shall be disbursed to Tenant, subject to the rights of Recognized Mortgagees; provided however, that if Tenant shall be required to effect a Condemnation Restoration pursuant to Section 9.03(a)(ii) hereof, then (Y) a portion of such award or payment equal to the estimated cost (calculated as provided in Section 8.02(b) hereof) of such Condemnation Restoration shall instead be retained by the Depository for the purpose of paying the cost of said Condemnation Restoration and shall be disbursed by the Depository to Tenant in accordance with the terms and conditions contained in Section 9.05(a) hereof with any balance remaining thereafter to be applied in accordance with Section 9.03(a)(iii)(X) hereof.

(b) Extending Beyond Lease Term. If during the Term there shall be a Temporary Taking for a period extending beyond the Term Tenant shall have the right to terminate the Lease, in which case the consequences specified in clauses (i) and (ii) of Section 9.02(a) hereof shall result. If Tenant shall not terminate this Lease, then the consequences specified in clauses (i), (ii) and (iii) of Section 9.03(a) hereof shall result, except that the award or payment payable with respect to such Taking shall be apportioned between Landlord and Tenant as of the last day of the Term. The amount of the award or payment attributable to the period up to and including the last day of the Term shall be paid and applied in accordance with the provisions of Section 9.03(a)(iii) hereof, and the portion of the award attributable to the period after the last day of the Term shall belong to Landlord; provided, however, that the amount of any award or payment allowed or retained to pay for a Condemnation Restoration which shall not have been previously applied for that purpose, shall remain the property of, and shall be paid over to Landlord if this Lease shall terminate for any reason prior to completion of the Condemnation Restoration in accordance with the provisions of this Article.

Section 9.04. Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, this Lease shall continue in full force and effect without reduction or abatement of Rental; provided, however, that if such governmental action necessitates that changes or alterations be made to the Premises, then Tenant shall effect a Condemnation Restoration with respect thereto. Any award payable in the case of such governmental action shall be paid to and held by the Depository and shall be applied first to Tenant by Depository for the purpose of paying for the cost of the Condemnation Restoration in accordance with Section 9.05(a) hereof. Any balance of the award remaining after completion of the Condemnation Restoration shall be shared by Tenant and Landlord based upon the value of their respective interests in the Premises at the time. Notwithstanding the foregoing, if such governmental action shall be made or caused by the City, Tenant shall retain the entire remaining award. If the portion of the award paid to Depository or Tenant is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, then, subject to all other applicable provisions of this Lease, Tenant shall (subject to Tenant's right to reduce the scope of the Construction Work so that the cost thereof shall not exceed the portion of the award paid to Tenant or the Depository) perform such

Construction Work as required hereby and pay any additional sums required for such Construction Work; it being agreed, however, that if the Taking shall have been made or caused solely by the City, upon Tenant's completion of such Construction Work, Tenant shall have the right to deduct against the Rental next becoming due under this Lease, an amount equivalent to the additional sums paid by Tenant for such Construction Work.

Section 9.05. Condemnation Restoration Procedure.

(a) Disbursement of Award. If Tenant shall be required by the terms hereof to effect a Condemnation Restoration, the Depository shall, subject to the provisions and limitations in this Article 9, make available to Tenant in the manner specified in Section 8.03(b) hereof, as much of that portion of the award or payment actually received and held by the Depository as is payable in respect of the Taking, if any (less all necessary and proper expenses paid or incurred by the Depository in connection with the condemnation proceedings), as may be necessary to pay the cost of such Condemnation Restoration. Any balance of the award held by the Depository after completion of, and payment for the Condemnation Restoration shall be paid in accordance with the requirements of this Lease.

(b) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, Tenant's obligation to provide additional security, and disbursement of the condemnation award by Depository shall be done, determined, made and governed in accordance with the provisions of Article 13 and Sections 8.02(c), 8.03 (except Section 8.03(c)), 8.04 and 8.05 hereof. If the portion of the award paid to Depository or Tenant is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, then, subject to all other applicable provisions of this Lease, Tenant shall (subject to Tenant's right to reduce the scope of the Construction Work, so that the cost thereof shall not exceed the portion of the award paid to Tenant or Depository), perform such Construction Work as required hereby and pay any additional sums required for such Construction Work; it being agreed, however, that if the Taking shall have been made or caused by the City, upon Tenant's completion of such Construction Work, Tenant shall have the right to deduct against the Rental next becoming due under this Lease, an amount equivalent to the additional sums paid by Tenant for such Construction Work.

(c) Payments to Recognized Mortgagee Prohibited. No Recognized Mortgagee shall have the right to apply the proceeds of any award paid in connection with any Taking toward payment of the sum secured by its Recognized Mortgage unless and until any Condemnation Restoration required by this Lease has been completed.

(d) Option not to Restore. Notwithstanding the foregoing, if a Partial or Temporary Taking requiring the performance of a Condemnation Restoration occurs in the last five years of the Term, Tenant may elect not to effect such a Condemnation Restoration by so notifying Landlord in writing within fifteen (15) days after the Date of Taking, provided that the following conditions occur concurrently within thirty (30) days after such notice: (i) the award payable in

respect to such Taking is assigned in whole to Landlord, (ii) Tenant surrenders the Premises in accordance with Article 31 hereof, and (iii) this Lease is terminated in writing by Tenant.

Section 9.06. Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article and shall cooperate with each other to permit collection of the award.

Section 9.07. Landlord's Right to Award on Termination. Notwithstanding anything to the contrary contained herein, the amount of any award or payment allowed or retained to effect a Condemnation Restoration which shall not have been previously applied to that purpose shall become the property of and shall be paid over to the Landlord, if this Lease shall terminate for any reason prior to completion of said Condemnation Restoration in accordance with the provisions of this Article 9.

Section 9.08. Allocation of Award. Upon a Taking, the parties shall make every effort to agree to an allocation of the award or payment as delineated in Section 9.02. If, after a reasonable time, the parties cannot agree, the dispute shall be resolved in accordance with the arbitration procedure pursuant to Section 34.02 hereof.

Section 9.09. Tenant's Appearance at Condemnation Proceedings. Tenant and any Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith.

Section 9.10. Intention of the Parties. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Taking of less than Substantially All of the Premises, except as specifically provided in Section 9.05(d) or elsewhere in this Article 9. It is the intention of Landlord and Tenant that the provisions of this Article 9 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

ARTICLE 10

ASSIGNMENT, TRANSFER AND SUBLETTING

Section 10.01. Tenant's Right to Assign, Transfer, Etc.

(a) Limitations on Right to Assign, Transfer or Enter into a Major Sublease.

(i) Permitted Transactions. Subject to the provisions of this Section 10.01(a), Tenant may, at any time during the Term, enter into a Capital Transaction:

(A) If on the effective date of such Capital Transaction, there exists no uncured Default, notice of which has been given to Tenant, or any Event of Default;

(B) If the proposed Assignee, Transferee or Major Subtenant is a Permitted Person;

(C) If Tenant shall have complied in all material respects with any and all of the applicable provisions of this Article 10;

(D) If, in the case of an Assignment, there shall have been provided to Landlord a written assumption, in form and substance reasonably satisfactory to Landlord and executed by the Assignee, of all of Tenant's obligations under this Lease, whether accruing before or after the date of such Assignment, unless otherwise accepted by Landlord pursuant to Section 43.14(b) hereof; and

(E) If Guarantor shall have guaranteed, in substantially the same form as the Guaranty, the obligations of the proposed Assignee, Transferee or Major Subtenant under the Lease or an alternative guaranty has been given to Landlord which provides, in Landlord's reasonable determination, a level of assurance that Tenant's obligations under the Lease will be met that is reasonably equivalent to the Guaranty.

(ii) Prior to Substantial Completion. Prior to Substantial Completion of the Office Space, Tenant shall have no right to enter into any Capital Transaction without the prior written consent of Landlord, to be given in Landlord's discretion unless the third anniversary of the Commencement Date has occurred and such substantial completion has not been accomplished by reason of a Landlord Default or Phase I Coordination Failure, in which instance Landlord's consent shall not be required; provided that Tenant is not in default under the Construction Agreement and such Capital Transaction complies with Section 10.01(a)(i) hereof.

(iii) After Substantial Completion. After Substantial Completion of the Office Space, Tenant may, without Landlord's consent to such transaction enter into a Capital Transaction that complies with Section 10.01(a)(i) hereof. If such transaction does not comply with Section 10.01(a)(i), Landlord's prior written consent, to be given in Landlord's sole discretion shall be required.

(b) Definitions.

(i) "Assignment" means the sale, exchange, assignment or other disposition of all or any portion of Tenant's interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise.

(ii) "Assignee" means an assignee under an Assignment.

(iii) "Capital Transaction" means an Assignment, a Transfer or a Major Sublease, or any other transaction by which any of the benefits of ownership or control of the leasehold estate created hereby are transferred in a manner allowing Tenant or the beneficial owners

of Tenant to realize appreciation in the value of the leasehold estate created by this Lease or which would constitute the functional equivalent of an Assignment, Transfer, or Major Sublease.

(iv) "Major Sublease" means a Sublease of all or substantially all (i.e., at least 80%) of the Premises (excluding the portion of the Premises used as a parking garage (the "Garage Area")) or a Sublease of 50% of the Premises (excluding the Garage Area) to an entity which is entering into such sublease for purposes of further subleasing such space rather than use such space itself (except that any Subtenant which was a bona fide user of subleased space but subsequently chooses to vacate all or any portion of such space and to further sublease it will not be treated as a Major Subtenant, and the pertinent transaction will not be treated as a Major Sublease). All Major Subleases shall comply with the provisions of Section 10.05.

(v) "Major Subtenant" means a Subtenant under a Major Sublease.

(vi) "Permitted Person" shall mean any Person which meets the following conditions: (A) such Person submits to the City's "Vendex" background investigation system (or any successor system serving the same function) sixty days prior to the anticipated date of the proposed Capital Transaction for the purpose of determining whether such Person is a Prohibited Person; [(B) such Person is found not to be a Prohibited Person;] (C) such Person, in Landlord's reasonable judgment, has sufficient financial capability to manage and maintain the Premises, to support the Project and otherwise to perform Tenant's obligations under the Lease including all recourse obligations which survive termination of the Lease; and (D) such Person, in Landlord's reasonable judgment, has the ability to administer the Premises in a manner consistent with the public interest and possesses a level of experience and management skill at least equal to that of Tenant; provided, however, that in the case of a partial Assignment or Transfer pursuant to which the Tenant shall continue to manage the Project, the condition set forth in (D) shall not apply.

(vii) "Transfer" means a disposition of any Equity Interest of more than ten (10%) percent in Tenant or in any direct or indirect constituent entity of Tenant, where such disposition directly or indirectly produces any change in the direct or indirect beneficial ownership of an interest in, or control of Tenant; provided that the foregoing shall not be applicable if either Tenant or the relevant constituent controlling entity shall be a corporation whose shares are publicly traded. With respect to a Tenant whose shares are not publicly traded, and only for so long as the City or another landlord entity which, by law or regulation, is required to utilize Vendex or equivalent process shall be Landlord, the term Transfer also includes any (i) transaction or series of related transactions, including, without limitation, the issuance of additional Equity Interests, or (ii) direct or indirect revision of the beneficial ownership structure or control of Tenant or any direct or indirect constituent entity of Tenant whose shares are not publicly traded, which, in either case, produces any change in the direct or indirect beneficial ownership of more than ten (10%) percent Equity Interest in, or control of, Tenant. Further (and without regard to whether Tenant's shares are publicly traded, transfers of shares or issuance of new shares of Tenant's stock or, as applicable, partnership interests (i) made in connection with a sale of Tenant's business or (ii) by and among existing holders of stock or partnership interests in Tenant and their family members or (iii) to

employees of Tenant and (iv) made in connection with Tenant's becoming a corporation whose shares are publicly traded (e.g., a public offering) shall not be deemed Transfers.

(viii) "Equity Interest" means, with respect to any entity, (A) the beneficial ownership of (i) outstanding stock, or the right to buy outstanding stock, of such entity if such entity is a corporation, a real estate investment trust or a similar entity, (ii) a capital, profits, or partnership interest in such entity, or the right to buy such an interest, if such entity is a partnership or joint venture, (iii) interest in a trust, or the right to buy such an interest, if such entity is a trust, (B) any right of a mortgagee to participate in cash flow, gross or net profits, gain or appreciation, or (C) any other beneficial interest that is the functional equivalent of any of the foregoing. The right of a Recognized Mortgagee to participate in cash flow, gross or net profits, gain or appreciation in the form of an "equity kicker" or "convertible mortgage" participation shall be deemed excluded from the definition of Equity Interest to the extent and only to the extent that amounts paid pursuant to such rights of participation are or are to be characterized as interest in the federal tax returns of Tenant, and/or its partners or shareholders, and any such Recognized Mortgagee that is a partner or shareholder of Tenant, pursuant to the Internal Revenue Code, provided that Tenant delivers to Landlord such information as is required to establish the propriety of making such characterization under the Internal Revenue Code.

(ix) "Transferee" means a Person to whom a Transfer is made.

(x) "Substantial Completion of the Office Space" means substantial completion of the Office Space, as provided in the Construction Agreement.

(c) Definition of Prohibited Persons. The term "Prohibited Person" as used in this Lease shall mean:

(i) Any Person (A) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with EDC or the City, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with EDC or the City, unless such default or breach has been waived in writing by EDC or the City, as the case may be;

(ii) Any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure;

(iii) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the

Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof;

(iv) Any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act 1917, as amended;

(v) Any Person that has received written notice of default in the payment to the City of any Taxes, sewer rents or water charges totaling more than \$10,000, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; and

(vi) Any Person (A) that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City, or (B) that, directly or indirectly controls, is controlled by, or is under common control with a Person that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

(d) Determination of Organized Crime Figure. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or directly or indirectly controls, is controlled by, or is under common control with a Person that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of Landlord exercised in good faith.

(e) Notice to Landlord. Tenant shall notify Landlord of its intention to enter into any Capital Transaction not less than sixty (60) days before the proposed effective date of such Assignment, Transfer or Major Sublease.

(f) Contents of Notice.

(i) The Notice required by Section 10.01 (e) hereof shall contain the name and address of the proposed Assignee, Transferee or Major Subtenant and the following information:

(A) in the case of a proposed corporate Assignee, Transferee or Major Subtenant, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee, Transferee or Major Subtenant (other than a corporation

whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission), a certificate of an authorized officer of such corporation giving the names and addresses of all current directors and officers of the corporation and Persons having more than a five percent (5%) interest in such Assignee, Transferee or Major Subtenant;

(B) in the case of a proposed corporate Assignee, Transferee or Major Subtenant, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee, Transferee or Major Subtenant whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission, copies of all periodic reports required to be filed by such entity with the Securities and Exchange Commission by such corporation pursuant to the Securities Exchange Act of 1934 (any amendments thereto), and the regulations promulgated thereunder by such entity, within the immediately preceding twelve (12) month period, including, without limitation, its most recently filed annual report on form 10-K and all reports required to be filed by any Person owning stock of such corporation with the Securities and Exchange Commission pursuant to the reporting requirements of Sections 13(d), (e), (f) and (g) of the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder;

(C) in the case of a proposed partnership or joint venture Assignee, Transferee or Major Subtenant, a certificate of the managing general partner or other authorized general partner or managing venturer of the proposed Assignee, Transferee or Major Subtenant giving the names and addresses' of all current general partners, any single limited partners having an ownership interest in Tenant of more than five (5%) percent and joint venturers of the partnership or joint venture and describing their respective interests in said partnership or joint venture;

(D) in all cases, a certification by an authorized officer, managing general partner, or other authorized general partner or managing venturer, whichever shall be applicable of the proposed Assignee, Transferee or major Subtenant to the effect that to his or her knowledge the Capital Transaction will, as the date of closing, comply with the provisions of Section 10.01(a) hereof;

(E) in all cases, a proposed form Guaranty, pursuant to Section 10.01(a)(i)(E) hereof, which shall be reasonably satisfactory to Landlord; and

(F) in the case of an Assignment, a proposed form of assumption agreement from the Assignee to Landlord, which assumption agreement shall be reasonably satisfactory to Landlord pursuant to Section 10.01(a)(i)(D).

(ii) If any material change in circumstances prior to the closing of the transaction renders the information provided in (i) above incomplete or incorrect, Tenant shall, promptly after learning of same, notify Landlord of the change. If, in Landlord's reasonable judgment such change in circumstances necessitates further evaluation or investigation with respect

to such transaction, then, if and to the extent reasonably necessary, Landlord may recommence the period for Landlord's notification to Tenant under Section 10.01(g) below; it being agreed, however, that Tenant shall not be required to resubmit any new or additional documentation, except if and to the extent that such material change in circumstances rendered the documentation previously submitted incomplete or incorrect.

(g) Objections and Waiver. Landlord shall notify Tenant, within thirty (30) days after receipt of notice from Tenant pursuant to the provisions of Section 10.01(e) hereof and submission of all necessary information, (except with regard to the provisions of Section 10.01(a)(i)(B), about which Landlord shall endeavor to notify Tenant as provided in Section 10.07 hereof), whether consent by Landlord to such Capital Transaction is required under this Article, and if required, whether such consent is given or denied. Landlord shall be deemed to have waived its objections to the Assignee, Transferee, or major Subtenant if Landlord shall fail to notify Tenant as provided in this Section 10.01(g).

(h) Capital Transaction Instruments. Tenant shall deliver to Landlord, or shall cause to be delivered to Landlord, within fifteen (15) days after the execution of (i) in the case of an Assignment, an executed counterpart of the instrument of assignment and an executed counterpart of the instrument of assumption by the Assignee of all of Tenant's obligations under this Lease (such assumption to be for the benefit of Landlord), in form and substance reasonably satisfactory to Landlord, (ii) in the case of a Transfer, an executed counterpart of the instrument of Transfer, and if the Transfer is effected through admission of a new or substitute partner or joint venture of Tenant all relevant amendments to the partnership agreement or the joint venture agreement and, if applicable, the certificate of limited partnership, (iii) in the case of a Major Sublease, an executed counterpart of the Major Sublease, and (iv) in the case of any of the above, the guaranty required pursuant to Section 10.01(a)(i)(E) hereof.

(i) Invalidity of Transactions. Any Capital Transaction entered into without Landlord's consent and for which Landlord's consent is required pursuant to this Lease or which in any other material respect fails to comply with the provisions of this Lease shall have no validity and shall be null and void and without any effect unless Landlord shall thereafter consent to such transaction in accordance with the applicable provisions of this Article 10.

Section 10.02. Sublease Restrictions.

(a) Definitions.

(i) "Sublease" means any sublease (including a Major Sublease, sub-sublease, or any further level of subletting), occupancy, license, franchise or concession agreement applicable to the Premises or any part thereof.

(ii) "Subtenant" means any subtenant (including a Major Subtenant, operator, licensee, franchisee, concessionaire or other occupant of the Premises or any portion thereof.

(b) Subleases Permitted. Notwithstanding the provisions of Section 10.01(a) hereof, Tenant may (without the necessity of obtaining Landlord's consent) at any time during the Term sublet any portion of the space within the Premises to a Subtenant (other than a Major Subtenant) pursuant to a Sublease (other than a Major Sublease) which shall include the provisions set forth in Section 10.05, provided that:

(i) Tenant shall furnish Landlord with the name of each proposed Subtenant and the individual principals, as provided in Section 10.01(f)(i), in such proposed Subtenant's business entity;

(ii) unless waived for such Subtenant or for a category of Subtenants which includes such Subtenant, in Landlord's sole discretion, such proposed Subtenant and principals submit to the City's "Vendex" background investigation (or successor system serving the same function) at least sixty (60) days prior to the proposed commencement date of a Sublease;

(iii) unless the requirement set forth in clause (ii) has been waived in Landlord's sole discretion, Landlord advises Tenant that a proposed Subtenant is not a Prohibited Person, provided that such condition shall be deemed waived, in accordance with Section 10.07, if, within 30 days after Tenant has made a complete "Vendex" submission for such proposed Subtenant, Landlord has failed to advise Tenant that such proposed Subtenant is a Prohibited Person; and

(iv) Tenant shall include such Sublease in the next schedule of Subleases to be submitted by Tenant (following the effective date of such Sublease) in accordance with Section 10.03(c) hereof.

(c) Tenant's Obligations. During the Term, Tenant shall make reasonable and diligent efforts to cause all Subtenants to comply with their obligations under their respective Subleases if and to the extent that a failure to comply with any such obligations would serve to create a condition placing Tenant in default hereunder. A violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a Subtenant shall not prevent such violation or breach from being an Event of Default hereunder nor relieve Tenant of Tenant's obligation to cure such violation or breach, provided that Landlord shall provide Tenant with a reasonable period to cause such Subtenant to cure such violation or breach and further provided that, subject to the first sentence of this Section 10.02(c), any Subtenant's failure to pay Impositions shall not result in an Event of Default hereunder if such payment is by law the obligation of such Subtenant and not the obligation of Tenant.

Section 10.03. Sublease Assignment.

(a) Definitions.

(i) "Construction Bond" means the payment and performance bonds provided by Tenant under the Construction Agreement.

(ii) "Construction Default" means an event of default under the Construction Agreement.

(iii) "Effective Date" has the meaning given in Section 10.03(b) hereof.

(b) Assignment of Subleases to Landlord. As security for Tenant's obligations hereunder, Tenant hereby conditionally assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents made in connection with any Recognized Mortgage, which assignment Landlord shall recognize and agree to be subordinate to, all of Tenant's right, title and interest in and to all Subleases and if and to the extent not in violation of any applicable Requirements and subject to Landlord's compliance with applicable Requirements and any other applicable provisions of this Lease, hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and ensure the collection by Landlord of all sums payable under the Subleases and enforcement of all other rights of Tenant under the Subleases. The exercise of such right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof. If such right of entry and possession is denied to Landlord, its agents or representatives, Landlord, in the exercise of this right, subject, however to Landlord's compliance with applicable Requirements and the other applicable provisions of this Lease, as aforesaid, may use all requisite force to gain and enjoy the Premises with neither responsibility for, nor liability to Tenant, its servants, employees, guests or invitees, or any Person whatsoever. This assignment, although presently effective, shall be operative only upon the occurrence and during the continuance of a Construction Default and not before the date (the "Effective Date") which is the first anniversary of the occurrence of such Construction Default; provided, that, during such one (1) year period, Landlord has made good faith efforts to collect on the Construction Bonds and has been unable to collect under such bonds in a manner which fully cures said Construction Default.

If this assignment of Subleases has not been exercised prior to final completion of construction pursuant to the Construction Agreement (including punch list items), such assignment will be automatically discharged and terminated upon such completion and of no further effect, without the need for a formal instrument discharging and terminating same. At Tenant's request, Landlord shall execute an instrument evidencing such discharge and termination of Tenant's assignment of Subleases to Landlord. Neither Tenant's failure to request, nor Landlord's failure to execute, such instrument shall affect the discharge and termination of Tenant's assignment of Subleases to Landlord.

(c) Schedule of Subleases. At any time upon Landlord's demand, and in any event, no less frequently than once per year, Tenant shall deliver to Landlord, within forty-five (45) days of such demand, (i) a schedule of all Subleases giving the names of all Subtenants, a description of the space that has been sublet, expiration dates, rentals and such other information as Landlord reasonably may request, and (ii) a photostatic copy of all Subleases and any amendments thereto. In addition, upon entering into a Sublease at any time Tenant shall deliver to Landlord, within forty-five (45) days after the date of such Sublease, the information and document(s) described in clauses (i) and (ii). Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Subleases.

Section 10.04. Collection of Subrent by Landlord. After the Effective Date, and prior to termination of the assignment in accordance with Section 10.03(b) hereof, Landlord may, subject to the rights of any Recognized Mortgagee, collect rent and all other sums due under any Subleases and apply the net amount collected to the Rental payable by Tenant hereunder. No such collection shall be, or shall be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease nor the recognition by Landlord of any Subtenant as a direct tenant of Landlord nor a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 10.05. Required Sublease Clauses. Each Sublease shall provide that:

(a) It is subordinate and subject to this Lease and any new lease entered into pursuant to Section 11.04 hereof.

(b) Except for security deposits and any other amounts deposited with Tenant or with any Recognized Mortgagee in connection with the payment of insurance premiums, PILOT or real property taxes and assessments and other similar charges or expenses, the Subtenant shall not pay rent or other sums payable under the Sublease to Tenant for more than two (2) months in advance (unless Landlord gives its consent to a period of three (3) months, which consent will not be unreasonably withheld or delayed if the consent of any and all Recognized Mortgagees has been obtained for the same period).

(c) Upon the termination of this Lease pursuant to Article 24, the Subtenant shall (i) if the conditions set forth in Section 10.06 below shall be satisfied or (ii) if such conditions shall not be satisfied, and Landlord elects to recognize such Subtenant, attorn to or shall enter into a direct lease with Landlord on terms identical to its Sublease, for the balance of the unexpired term of the Sublease and such direct lease or sublease shall provide that it may be assigned by Landlord to a Recognized Mortgagee with whom Landlord has entered into a new lease of the Premises in accordance with Section 11.04(b) hereof as provided in Section 11.04(f) hereof.

(d) In the Event the City becomes the Landlord under such Sublease and such Sublease includes a percentage rent clause, Subtenant shall maintain full and accurate books of accounts and records of Subtenant's business operation or enterprise, which books and records shall be so kept and maintained for at least six (6) years after the end of each Lease Year.

(e) In the event that the City becomes the Landlord under such Sublease, Landlord or Landlord's agents or representatives, from time to time during regular business hours, upon reasonable notice shall be permitted to inspect and audit all books and records and other papers and files of Subtenant relating to its Sublease and Subtenant shall produce such books and records for such inspection, audit and for the reproduction, if requested, by Landlord.

(f) If such Sublease includes a percentage rent clause, Subtenant shall within 90 days of the end of each Sublease year, provide a detailed schedule of percentage rent, accompanied by a report of Subtenant's independent certified public accountant, based upon an audit conducted

in accordance with generally accepted auditing standards, stating that the schedule fairly presents percentage rent, as defined in the Sublease.

(g) Subtenant shall comply with all laws applicable to its subtenancy.

Section 10.06. Subtenant Non-Disturbance.

(a) Landlord, for the benefit of any Subtenant whose Sublease was made in accordance with the applicable provisions of this Article, shall recognize such Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to the provisions of Article 24 hereof, subject to the rights of Recognized Mortgagee(s), provided that (i) the Subtenant is determined by Landlord not to be a Prohibited Person and is not an Affiliate and Tenant has delivered to Landlord, at the time the Sublease was executed, a certificate of an independent real estate appraiser that is a member of the American Institute of Real Estate Appraisers or any similar organization reasonably satisfactory to Landlord, certifying that in the opinion of the appraiser, as of the date of the execution of such Sublease, the rent and other moneys payable by the Subtenant throughout the term of its Sublease, after taking into account any escalation, renewal rent, credits, offsets or deductions to which such Subtenant may be entitled thereunder, constitutes not less than the then fair rental value of the space demised thereunder; (ii) the Sublease confers no greater rights upon Subtenant than are conferred upon Tenant under this Lease nor imposes more onerous obligations upon Landlord under the Sublease than are imposed upon Landlord under this Lease; and (iii) at the time of the termination of this Lease (1) no default exists under such Sublease, which at such time would permit the landlord thereunder to terminate the Sublease or to exercise any remedy for dispossession provided for therein, and (2) such Subtenant delivers to Landlord an instrument confirming the agreement of the Subtenant to attorn to Landlord and to recognize Landlord as the Subtenant's landlord under its Sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(A) liable for any act or omission of any prior landlord except to the extent such act or omission shall then constitute a continuing default by Landlord under this Lease,

(B) subject to any offsets or defenses that such Subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord),

(C) bound by any payment of rent that such Subtenant might have paid for more than two (2) months in advance (unless Landlord has given its reasonable consent to payments for a longer period) to any prior landlord (including, without limitation, the then defaulting landlord) other than security deposits and any other amounts deposited with any prior landlord (including, without limitation, the then defaulting landlord) in connection with the payment of insurance premiums, PILOT or real property taxes and assessments and other similar charges or expenses, to the extent such security deposits or other deposits or payments have actually been transferred to Landlord,

(D) bound by any covenant to undertake or complete any construction on the Premises or any portion thereof demised by the Sublease (other than as expressly agreed to by Landlord and the Subtenant),

(E) bound by any obligation to make any payment to the Subtenant which accrues prior to the attornment, or

(F) bound by any amendment thereto or modification thereof which reduces the basic rent, additional rent, supplemental rent or other charges payable under the Sublease or changes the term thereof, or otherwise materially affects the rights of Landlord thereunder, made without the written consent of the Landlord.

(b) Landlord agrees to deliver to any Subtenant entitled to the benefit of this Section 10.06 a non-disturbance agreement in recordable form within forty-five (45) days after request by Tenant, confirming the rights and subject to the limitations described herein. Such request by Tenant shall be accompanied by (i) a duplicate original or photocopy of the Sublease, the nondisturbance agreement from each Recognized Mortgagee, and a certificate of an independent real estate appraiser that complies with the provisions of clause (a) (i) of this Section 10.06, and (ii) execution copies of the non-disturbance agreement to be signed by Landlord and Subtenant.

Section 10.07. Vendex. Whenever in this Article Vendex review is required, Landlord will endeavor, to the extent possible, to complete such review within fifteen (15) business days from the submission of all necessary forms to Landlord; provided no matters are discovered which reasonably require such review to exceed fifteen (15) business days. If matters requiring further review shall be discovered, Landlord shall thereafter diligently and continuously complete such Vendex review. If Landlord fails to complete its Vendex review and advise Tenant of the results thereof within thirty (30) business days from the submission of all necessary forms to Landlord, such Vendex requirement shall be deemed waived.

ARTICLE 11

MORTGAGES

Section 11.01. Effect of Mortgages.

(a) Tenant shall have the right, at any time and from time to time during the Term, to mortgage the leasehold estate created hereby for the purpose of obtaining financing related to the Project. Notwithstanding the foregoing, no Mortgage shall extend to or be a direct lien or encumbrance upon the fee estate and interest of Landlord in the Premises or any part thereof.

(b) "Mortgage" means any mortgage or deed of trust that now or hereafter constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby.

Section 11.02. Mortgagee's Rights Not Greater than Tenant's.

(a) With the exception of the rights granted to Recognized Mortgagees pursuant to the provisions of Sections 11.03, 11.04 and 11.07 hereof, the execution and delivery of a Mortgage or a Recognized Mortgage shall not give nor shall be deemed to give a Mortgagee or a Recognized Mortgagee any greater rights against Landlord than those granted to Tenant hereunder.

(b) "Recognized Mortgage" means a Mortgage (i) the holder of which is not an Affiliate of Tenant, provided that a holder of a Mortgage shall not be deemed an Affiliate if said holder merely has the right to participate in cash flow, gross or net profits, gain or appreciation in the form of an "equity kicker" or "convertible mortgage" and all such participations are, or are to be, characterized as interest in the federal tax returns of Tenant, and/or its partners or shareholders, and such holder pursuant to the Internal Revenue Code (or successor legislation), (ii) which is subordinate to Landlord's fee simple interest in the Premises and this Lease and complies in all respects with the provisions of this Article, (iii) a photostatic copy of which has been delivered to Landlord, together with photostatic copies of all other relevant loan documents related thereto (requested by Landlord) and a certification by Tenant confirming that said photostatic copies are true copies of the Mortgage and any related documents and giving the name and post office address of the holder of the Mortgage, (iv) copies of all modifications and extensions of which have been similarly delivered to Landlord, (v) which is held by an Institutional Lender, (vi) that is not also a lien on real or personal property or any interest therein which is not located at the Premises, and (vii) which has been recorded in the Office of the City Register, New York County.

Section 11.03. Notice and Right to Cure Tenant's Defaults.

(a) Notice to Recognized Mortgagee. Landlord shall give to each Recognized Mortgagee, at the address of the Recognized Mortgagee stated in the most recent certification referred to in Section 11.02(b)(iii) hereof, or in any subsequent notice given by the Recognized Mortgagee to Landlord, and otherwise in the manner pursuant to the provisions of Article 25 hereof, a copy of each notice of Default at the same time as it gives notice of Default to Tenant, and no such notice of Default shall be deemed effective unless and until a copy thereof shall have been so given to each Recognized Mortgagee.

(b) Right and Time to Cure. Subject to the provisions of Section 11.05 hereof, each Recognized Mortgagee shall have the right, at its option, within a period of (i) thirty (30) days more, in the case of a Default in the payment of Rental, (ii) sixty (60) days more, in the case of any other Default, than is given Tenant under the provisions of this Lease, to remedy the Default, or cause it to be remedied, provided that in the case of a non-monetary Default such Recognized Mortgagee delivers to Landlord, within thirty (30) days after the expiration of the time given to Tenant pursuant to the provisions of this Lease to remedy the event or condition which would otherwise constitute an Event of Default hereunder, its written agreement to take the action described in clauses (i) or (ii) of subsection (d).

(c) Acceptance of Recognized Mortgagee's Performance. Subject to the provisions of Section 11.05 hereof, Landlord shall accept performance by a Recognized Mortgagee

or its designee or nominee which is not a Prohibited Person (a "Permitted Designee") of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(d) Commencement of Performance by Recognized Mortgagee for Non-Rental Defaults.

(i) Curable without Possession. In the case of a Default that is curable without possession of the Premises by the Recognized Mortgagee, no Event of Default (other than an Event of Default arising from the nonpayment of Rental) shall be deemed to have occurred if, within the period set forth in Section 11.03(b) (ii) hereof, a Recognized Mortgagee shall have delivered its written agreement in accordance with Section 11.03(b) and commenced in good faith to cure the Default, and is prosecuting such cure to completion with diligence and continuity.

(ii) Possession Required for Cure. In the case of a Default where possession of the Premises is required in order to cure the Default or which is a Default that is otherwise not susceptible of being cured by a Recognized Mortgagee, no Event of Default shall be deemed to have occurred if a Recognized Mortgagee has proceeded to institute foreclosure proceedings, or proceedings for the appointment of a receiver, within forty-five (45) days after the date on which such Default would otherwise become an Event of Default under Article 24 hereof, and is continuously prosecuting the foreclosure proceedings, or proceedings for the appointment of a receiver, with diligence and continuity to obtain possession of the Premises and, upon obtaining possession of the Premises, promptly commences to cure the Default (other than a Default which is not susceptible of being cured by a Recognized Mortgagee) and prosecutes such cure to completion with diligence and continuity, provided that such Recognized Mortgagee shall have delivered to Landlord, in writing, its agreement to take the actions described in this subsection (ii), and shall have assumed the obligation to cure such Default, and further provided that during the period in which such action is being taken and/or any foreclosure proceedings are pending, no Event of Default shall exist under Section 24.01(a)(i) hereof. At any time after the delivery of the aforementioned agreement, such Recognized Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings, or proceedings for the appointment of a receiver, or, if such proceedings shall have been commenced, that it has discontinued such proceedings (such notice from a Recognized Mortgagee to Landlord shall be referred to hereinafter as a "Cure Termination Notice"), and, in such event, such Recognized Mortgagee shall have no further liability under such agreement from and after the date on which it delivers such notice to the Landlord. Upon the delivery of a Cure Termination Notice, Landlord shall, subject to the applicable terms of this Lease, have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any Event of Default by Tenant, unless Tenant shall have cured the Event of Default prior to Landlord's delivery to Tenant of notice of the termination of the Term, and upon any such termination, the provisions of Section 11.04 hereof shall apply.

Section 11.04. Execution of New Lease.

(a) Notice of Termination. If this Lease is terminated by reason of an Event of Default, Landlord shall give prompt notice thereof to each Recognized Mortgagee. Such notice shall include a statement setting forth (i) all Rental that would then be due under this Lease, but for such termination, (ii) all unpaid expenses which are then due and owing by Tenant to Landlord, and (iii) all other Defaults or Events of Default then known to Landlord.

(b) Request for and Execution of New Lease. If, within thirty (30) business days after the giving of the notice referred to in Section 11.04(a) hereof, a Recognized Mortgagee shall request a new lease, then subject to the provisions of Section 11.04(c) and 11.05 hereof, within thirty (30) business days after Landlord shall have received such request, Landlord shall execute and deliver a new lease of the Premises for the remainder of the Term to the Recognized Mortgagee, or any Permitted Designee, which new lease shall have the same priority as this Lease and shall be subject to the rights of Subtenants pursuant to Article 10 hereof. Said Recognized Mortgagee (or designee or nominee thereof) shall simultaneously execute such new lease, as Tenant thereunder. The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease except if and to the extent that any such covenants, conditions, limitations, or agreements by their terms shall be inapplicable to such Recognized Mortgagee or Permitted Designee, and provided, however, Landlord shall not be deemed to have represented or covenanted that such new lease shall be superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant.

(c) Conditions Precedent to Landlord's Execution of New Lease. The provisions of Section 11.04(b) hereof notwithstanding, Landlord shall not be obligated to enter into a new lease with a Recognized Mortgagee, or its designee or nominee, unless the Recognized Mortgagee, or such designee or nominee (i) shall pay to Landlord, concurrently with the execution and delivery of the new lease, all Rental then due under this Lease (as though the Lease had not been terminated) up to and including the date of the commencement of the term of the new lease and all unpaid expenses which Landlord would otherwise be entitled to collect from Tenant, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Event of Default that shall have given rise to the termination of this Lease, and the preparation of such new lease, with due credit being given for amounts, if any, collected by Landlord from Tenant, Subtenants, or intermediate Operators of the Premises (ii) agrees that it shall promptly, within the grace periods permitted under the new lease, cure all Defaults then existing under this Lease (as though this Lease had not been terminated), except for Defaults described in Sections 24.01(g) through (j) hereof, and (iii) shall deliver to Landlord a statement, in writing, acknowledging that Landlord, by entering into such new lease with such Recognized Mortgagee or such designee or nominee, shall not have or be deemed to have waived any Defaults or Events of Default then existing under this Lease (other than the Defaults or Events of Default mentioned in Section 24.01(g) through (j)) notwithstanding that any such Defaults or Events of Default existed prior to the execution of such new lease and that the breached obligations which gave rise to the Defaults or Events of Default are also obligations under such new lease.

(d) No Waiver of Default. The execution of a new lease shall not constitute a waiver of any Default existing immediately before termination of this Lease and, except for a Default which is not susceptible of being cured by the Recognized Mortgagee or its Permitted Designee, the tenant under the new lease shall cure, within the applicable periods set forth in Section 24.01 hereof (extended by the time necessary for the Recognized Mortgagee or its Permitted Designee to obtain physical possession of or access to the Premises, if such is required to cure the Default), all Defaults existing under this Lease immediately before its termination.

(e) Assignment of Depository Proceeds. Concurrently with the execution and delivery of a new lease pursuant to the provisions of Section 11.04(b) hereof, and provided any Defaults (notice of which shall have been given to Tenant) curable by payment of money have been cured, Landlord shall assign to the tenant named therein all of its right, title in and interest to moneys (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Landlord or Depository that Tenant would have been entitled to receive but for the termination of the Lease. If and to the extent there shall be any uncured Defaults of the nature described in the immediately preceding sentence, Landlord may, pending the cure of such Default(s), retain such portion of the monies as are reasonably necessary to effectuate the cure thereof. Upon the curing of the Defaults, Landlord shall return to the new tenant, any portion of the money retained by Landlord which was not used by Landlord to effectuate such cure. Any sums then held by, or payable to, Depository, shall be deemed to be held by, or payable to, Depository as depository under the new lease.

(f) Assignment of Subleases. Upon the execution and delivery of a new lease pursuant to the provisions of Section 11.04(b) hereof, all Subleases that have been assigned to Landlord or entered into directly with Landlord, subject to the rights of Recognized Mortgagees, shall be assigned and transferred, without recourse, by Landlord to the tenant named in the new lease; provided, however, that, if and to the extent the provisions of such Section shall then be applicable, such tenant collaterally re-assigns said Subleases back to landlord as contemplated by Section 10.03(a) hereof. Between the date of termination of this Lease and the date of the execution of delivery of the new lease, if a Recognized Mortgagee has requested a new lease as provided in Section 11.04(b) hereof, Landlord shall not cancel any Sublease or accept any cancellation, termination or surrender thereof (unless such termination is effected as a matter of law upon the termination of this Lease or terminated by the terms of the Sublease) or enter into or permit any material modification or amendment of its terms or enter into any collateral or related agreement that would have the same effect without the written consent of the Recognized Mortgagee entitled to request a new lease as provided in Sections 11.04(b) and 11.05 hereof, unless within the time provided in Section 11.04(b) hereof, such Recognized Mortgagee has not requested a new lease as provided in Section 11.04(b) hereof.

Section 11.05. Recognition by Landlord of Recognized Mortgagee Most Senior in Lien. If more than one Recognized Mortgagee has exercised any of the rights afforded by Sections 11.03 or 11.04 hereof, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien as evidenced by a priority in recording or a specific written agreement among Recognized Mortgagees providing for the relative priorities of liens, shall be recognized by Landlord as having exercised such right, for so long as

such Recognized Mortgagee shall be diligently exercising its rights under this Lease with respect thereto, and thereafter only the Recognized Mortgagee whose Recognized Mortgage is next most senior in lien shall be recognized by Landlord, unless such Recognized Mortgagee has designated a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right. If the relevant parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined by a nationally recognized title insurance company chosen by Landlord, and such determination shall bind the parties. Any cost or expense of securing such determination by a title company shall be paid by the Recognized Mortgagees seeking to exercise such rights.

Section .06. Application of Proceeds from Insurance or Condemnation Awards.

(a) To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Improvements, or the proceeds of an award paid in connection with a Taking referred to in Article 9 hereof be applied to restore any portion of the Improvements, no Mortgagee shall have the right to apply the proceeds of insurance or such condemnation awards toward the payment of the sum secured by its Mortgage and Landlord shall not have the right to apply such proceeds on account of any Rental coming due hereunder unless and until the Improvements have been restored in accordance with this Lease.

(b) No Mortgage shall be a Recognized Mortgage unless it acknowledges that the insurance and other proceeds payable due to damage or destruction shall be paid to Landlord free and clear of the lien of such Mortgage in the event Tenant elects to terminate this Lease under certain conditions as provided in Section 8.03(b) or Section 9.05(d).

Section 11.07. Appearance at Condemnation and Adjustment Proceedings. A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith. A Recognized Mortgagee shall have the right to participate in the adjustment and/or settlement of any insurance claims respecting fire or other insured casualty losses.

Section 11.08. Landlord's Right to Mortgage its Interest. Landlord shall have the right to mortgage its fee interest in the Premises, as long as such mortgage is subject and subordinate to (i) this Lease, and any new lease executed pursuant to the provisions of Section 11.04 hereof, (ii) all Subleases with respect to which non-disturbance agreements are delivered by Landlord pursuant to Section 10.06, and (iii) all Recognized Mortgages.

Section 11.09. Rights Limited to Recognized Mortgages. The rights granted to a Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgage this is not a Recognized Mortgage.

ARTICLE 12

INTENTIONALLY OMITTED

ARTICLE 13

CONSTRUCTION WORK

Section 13.01. Construction of the Project.

(a) Commencement and Completion of Work. Tenant shall (i) Commence Construction of the Project on or before the Construction Commencement Date, (ii) thereafter continue to prosecute such Construction Work with diligence and continuity, and (iii) Substantially Complete the Project on or before the Scheduled Completion Date.

(b) Definitions.

(i) "Commence Construction of the Project" or "Commencement of Construction of the Project" means Tenant shall have done, or caused to have done all of the following: (A) all required site testing work shall have been substantially completed; (B) any Construction Work on the Project shall have been commenced, and (C) a non-cancelable, binding contract for any material in an amount in excess of \$50,000 to be incorporated into the Project or for any Construction Work for the Project shall have been entered into and a copy of such contract shall have been delivered to Landlord.

(ii) "Construction Commencement Date" means the earlier of (A) the date specified in the Construction Agreement for commencement of the Work (as defined in the Construction Agreement), subject to Unavoidable Delays, or (B) the date on which Commencement of Construction of the Project actually occurs.

(iii) "Construction of the Project" means the construction, rehabilitation, preservation, and reconstruction (as applicable) of the Project substantially in accordance with the Plans and Specifications and this Lease.

(iv) "Construction Work" has the meaning provided in Article hereof.

(v) "Plans and Specifications" means the drawings and plans and specifications for the initial Construction Work for the Project (which shall exclude construction of demising walls, items customarily required as space tenant fit-out and space tenant finish work) prepared by the Architect and approved by Landlord as provided in Section 13.01(c), as they may be amended pursuant to Section 13.01(d).

(vi) "Preliminary Plans and Specifications" means the preliminary plans and specifications for the initial Construction Work for the Project (which shall exclude construction of demising walls, items customarily required as space tenant fit-out and space tenant finish work) prepared by the Architect and approved by Landlord.

(vii) "Scheduled Completion Date" means the date which is twenty-two (22) months after the Commencement Date, subject to Unavoidable Delays.

(viii) "Substantial Completion" or "Substantially Complete(d)" means that

(A) the Project shall have been substantially completed in accordance with the Plans and Specifications, as certified by The Architect; and (B) Landlord shall have received the certificates and plans referred to in clauses (a), (b), (c) and if such are available, (d) of Section 13.07 hereof.

(c) Submission and Review of Plans and Specifications. The Plans and Specifications shall be annexed to this Lease as Exhibit H, at the execution hereof. In the event such Plans and Specifications are not annexed hereto at the execution hereof, then the Preliminary Plans and Specifications shall be annexed hereto as Exhibit H promptly following the execution hereof and:

(i) As soon as practicable but no later than thirty (30) days after the Commencement Date, Tenant shall submit, or have submitted, to Landlord, and any applicable Governmental Authorities, proposed Plans and Specifications. If Landlord in Landlord's reasonable discretion determines that the Plans and Specifications conform in all material respects to the Preliminary Plans and Specifications, Landlord shall so notify Tenant of its approval. If Landlord determines that said proposed Plans and Specifications are inconsistent with the Preliminary Plans and Specifications, Landlord shall so notify Tenant, specifying in what respects the proposed Plans and Specifications do not so conform. Landlord shall notify Tenant in writing of its approval or disapproval (it being agreed that Landlord shall act reasonably with respect thereto) of the submitted Plans and Specifications within fifteen (15) days of the date of Tenant's submission to Landlord. If Landlord disapproves of the submitted Plans and Specifications, Tenant shall within twenty (20) days of its receipt of Landlord's notice of disapproval submit revised proposed Plans and Specifications, modified to meet Landlord's objections, which shall be reviewed by Landlord within a reasonable period.

(ii) Prior to or within ten days after the Commencement Date, Tenant shall submit, or have submitted, to the Department of Buildings an application for a building permit for the Construction of the Project. Tenant shall thereafter prosecute the approval of its application in good faith.

(d) Modification of Approved Plans and Specifications. If Tenant desires to materially modify the Plans and Specifications in connection with Construction of the Project after they have been initially approved by Landlord, Tenant shall submit the proposed modifications to Landlord. Landlord shall review the proposed changes as if such were an original submission of proposed Plans and Specifications under Section 13.01(c) hereof, and the provisions thereof governing such a submission shall apply.

(e) Compliance with Requirements, Etc. The Plans and Specifications and any Construction Work shall comply with and be performed in accordance with all Requirements. It is Tenant's responsibility to effect such compliance. Landlord's approval in accordance with this Article of the Plans and Specifications shall not be, nor shall be construed as being, or relied upon as, a determination that such comply with the Requirements or are structurally architecturally or by any other standard, technically correct.

(f) Landlord's Right to Use Field Personnel. Landlord reserves the right to, without interfering with the Construction of the Project, maintain its field personnel at the Premises to observe Tenant's construction means, methods, procedures and techniques solely for the purpose of ensuring the Construction of the Project in accordance with the Plan and Specifications and all Requirements and Landlord shall be entitled to have its field personnel or other designees receive reasonable prior notice of and attend Tenant's job and/or safety meetings, if any. No such observation or attendance by Landlord's personnel or designees shall impose upon Landlord responsibility for any failure by Tenant to observe any Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with Requirements or with the provisions of this Lease.

(g) Tenant to Keep Landlord Informed. Tenant shall keep Landlord fully informed of Tenant's progress in Construction of the Project. Upon request of Landlord, Tenant shall promptly provide Landlord with copies of all materials normally or actually provided to a construction lender including, but not limited to, scheduling of payments, projections and certifications of construction costs and sources of funds on a monthly basis, and all construction documents and all plans and specifications reasonably specified by Landlord to assist Landlord in monitoring said progress by Tenant.

(h) Development Risks. All risks of demolition, removal, and reconstruction of the Premises are hereby expressly assumed by Tenant. Except as otherwise provided in Section 13.14 hereof, the redevelopment of the Premises will be designed, constructed, maintained, secured and insured entirely at Tenant's expense without reimbursement by Landlord or credit or offset of any kind to Tenant for cost overruns or otherwise, and Tenant shall pay all municipal fees and impositions in connection therewith.

(i) Materiality. As used in this Article 13(i) the term "material" shall, when used as a modifier mean that the item in question affects the landmark status of the Premises, public health and safety or the structural integrity of the Building and (ii) the term "Material Construction Work" shall mean Construction Work that affects the landmark status of the Premises, public health and safety or the structural integrity of the Building.

Section 13.02. Subsequent Construction Work. Tenant shall notify Landlord of any Construction Work it plans to perform subsequent to the Construction of the Project, which involves a material change to the Plans and Specifications or other Material Construction Work, at least forty-five (45) days before commencing any such Material Construction Work. Such notice shall contain a specific reference to this Section 13.02 of this Lease. Any such Subsequent Construction Work referred to in this Section 13.02 shall be subject to the provisions of this Article 13 to the greatest extent practicable as if it were initial Construction of the Project. Landlord may, in its sole discretion, require Tenant to submit, at least twenty (20) days before commencing any such Subsequent Construction Work, any or all of the following:

(a) Except to the extent already submitted pursuant to Section 13.01, a duplicate of the complete plans and specifications for the proposed Subsequent Construction Work prepared by the Architect. All plans and specifications submitted pursuant to this Section 13.02(a) shall be

subject to review and approval by Landlord in accordance with the provisions of Section 13.01(d) hereof (as if such plans and specifications were a modification of the Plans and Specifications) if the Construction Work involves a material change to the Plans and Specifications or otherwise consist of Material Construction Work. Any dispute between Landlord and Tenant as to the materiality of any Construction Work performed by Tenant shall be subject to resolution by Arbitration pursuant to Article 34 below.

(b) A stipulated sum or cost-plus contract, with a guaranteed maximum price, or construction management contract, or other form of contract approved by Landlord, in form assignable to Landlord, made with a reputable and responsible contractor or construction manager approved by Landlord, providing for the completion of the Construction Work in accordance with the plans and specifications approved by Landlord pursuant to Section 13.02(a) hereof.

(c) Upon Landlord's request, an assignment to Landlord of the contract so furnished, the assignment to be duly executed and acknowledged by Tenant (and consented to by the contractor), and by its terms to be effective upon any termination of this Lease or upon Landlord's re-entry upon the Premises following an Event of Default before the complete performance of such contract, provided that such assignment may be subordinate to such an assignment to a Recognized Mortgagee if so required by such Recognized Mortgagee. The assignment shall also include the benefit of all payments made on account of such contract, including payments made before the effective date of the assignment. The assignment may include a provision that in order for the assignment to become effective Landlord must assume Tenant's remaining obligations (other than accrued obligations) under the assigned contract.

Section 13.03. Commencement and Completion of All Construction Work. All Construction Work, once commenced, shall be performed and completed promptly in a good and workmanlike manner and, if applicable, in accordance with the plans and specifications therefor, approved in accordance with this Article, and all Requirements. All materials, equipment, and workmanship utilized or furnished in connection with any and all Construction Work shall be in new (unless otherwise specified in applicable plans and specifications approved in accordance with this Lease) and good condition, fully operational without defects, in accordance with such plans and specifications.

Section 13.04. Supervision of Architect. All Construction Work (a) in connection with the Construction of the Project or (b) that involves a material change to the Plans and Specifications, shall be carried out under the supervision of the Architect, unless Landlord expressly agrees to waive such requirement.

Section 13.05. Approval of Plans and Specifications. Tenant shall neither (i) Commence Construction of the Project unless and until Landlord shall have approved the Plans and Specifications as required in Section 13.01(c) above, nor (ii) with respect to Construction Work described in Section 13.02 above, commence such Construction Work unless and until Landlord shall have reviewed and approved the proposed plans and specifications in the manner provided therein.

Section 13.06. Conditions Precedent to Tenant's Commencement of All Construction Work.

(a) **Permits and Insurance.** Tenant shall not commence any Construction Work unless and until (i) Tenant shall have obtained and delivered to Landlord copies of all permits, consents, certificates and approvals of all Governmental Authorities which are necessary for the work to be done, certified by Tenant or the Architect, (ii) Tenant shall have delivered to Landlord certified copies of the policies of insurance required to be carried pursuant to the provisions of Article 7 hereof, and (iii) Tenant shall have obtained the bonds if required by subsection (c) of this Section 13.06.

(b) **Cooperation of Landlord in Obtaining Permits.** Landlord, in its proprietary capacity, shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by **Section 13.06(a)** hereof and any necessary utility easements, and shall not unreasonably withhold, condition or delay its consent to signing any accurate application made by Tenant required to obtain such permits, consents, certificates, approvals and easements. Tenant shall reimburse Landlord within ten (10) days after Landlord's demand for any reasonable out-of-pocket cost or expense incurred by Landlord (in its proprietary capacity) in obtaining the permits, consents, certificates and approvals required by **Section 13.06(a)** hereof and any necessary utility easements.

(c) **Bonds.** Prior to commencement of any Construction Work having a cost in excess of \$500,000.00, Tenant shall obtain (i) a performance or completion bond naming Landlord as obligee in an amount equal to one hundred percent (100%) of the cost and expense of such work to secure the faithful performance and completion of such Construction Work; and (ii) a payment bond in an amount equal to one hundred per cent (100%) of the cost and expense of such work guaranteeing prompt payment of monies due to all persons furnishing labor or materials for such Construction Work. Each bond shall contain such terms and conditions as are approved by Landlord, shall be with a surety company licensed or authorized to do business in New York State, and such surety company shall have been approved by the Comptroller of the City.

Section 13.07. Completion of Construction Work. Upon Substantial Completion of the Project and/or the substantial completion of any other Construction Work for which plans are required to be submitted to Landlord, Tenant shall furnish Landlord with (a) a certification of the Architect or a licensed professional engineer reasonably acceptable to Landlord (and certified to Landlord) that it has examined the applicable plans and specifications (which shall include the Plans and Specifications in the case of Construction Work done in connection with the Construction of the Project or a Casualty or Condemnation Restoration) and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Construction Work has been substantially completed in accordance with the plans and specifications applicable thereto and, as constructed, the Project complies with the Building Code of New York City and all other Requirements, (b) a copy or copies of the temporary or permanent (whichever is applicable) Certificate(s) of Completion (or the relevant portion thereof) applicable to the Construction Work issued by the Department of Buildings and the Fire Department, (c) copies of official certificates evidencing compliance with all Requirements, and (d) the most current set of available architectural plans and a survey of the Premises showing the Project and appurtenant easements. Tenant shall

further furnish Landlord with a complete set of "as built" plans, as of the date a permanent Certificate of Completion is issued, as soon as such are prepared, but in no event later than thirty (30) days after a permanent Certificate of Completion is issued. Landlord shall have an unrestricted, non-exclusive, irrevocable license to use such "as built" plans and survey for any purpose related to Landlord's interest in the Premises without paying any additional cost or compensation therefor, subject to copyright and similar rights under applicable law of the Architect and other Persons who prepared such plans and surveys. Landlord shall at all times during the Term exercise good faith efforts to maintain the plans, specifications, and surveys at any time furnished by Tenant to Landlord in strict confidence, except as otherwise provided herein, subject, however, to the City's obligation by law to make information available to the public.

Section 13.08. Title to the Project and Materials. Title to the Premises, is in Landlord. Materials, other than Tenant's Equipment, to be incorporated in the Project shall, effective upon their purchase and at all times thereafter, constitute the property of Landlord, and upon Construction of the Project or any other Construction Work, or the incorporation of such materials therein, title thereto shall be and continue in Landlord. However, (a) Landlord shall not be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such materials, and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to the materials. Notwithstanding the foregoing, Tenant may, during the Term, take all depreciation deductions and tax credits to which it may be entitled, if any, with regard to the Premises and Improvements thereon.

Section 13.09. Names of Contractors, Materialmen etc.; Approval of Consultants, etc.

(a) Tenant shall furnish Landlord with a list of all Persons entering into contracts to perform any labor or supply any materials in connection with any Construction Work costing in excess of an amount equal to \$50,000. The list shall state the name and address of each such Person and the capacity in which such Person is under contract performing work at the Premises. All persons employed by Tenant with respect to any Construction Work shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

(b) All architects, engineers, and consultants retained by Tenant other than those engaged in Construction of the Project shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 13.10. Construction Agreements

(a) Required Clauses. All construction agreements shall include the following provisions:

(i) ["Contractor"]/"Subcontractor"]/"Materialman"] hereby agrees that immediately upon the purchase from ["contractor"]/"subcontractor"]/"[materialman"] of any building materials to be incorporated in the Project (as such terms are defined in the lease pursuant to which the contract purchaser hereunder acquired a leasehold interest in the property (the

"Lease")), such material shall become the sole property of Landlord (as defined in the Lease), notwithstanding that such materials have not been incorporated in, or made a part of, such Project at the time of such purchase; provided, however, that Landlord shall not be liable in any manner for payment or other wise to ["contractor"]/"subcontractor"]/"materialman"] in connection with the purchase of any such materials and Landlord shall have no obligation to pay any compensation to ["contractor"]/"subcontractor"]/"materialman"] by reason of such materials becoming the sole property of Landlord."

(ii) ["Contractor"]/"Subcontractor"]/"Materialman"] hereby agrees that notwithstanding that ["contractor"]/"subcontractor"]/"materialman"] performed work at or furnished any materials for the Premises (as such term is defined in the Lease) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to ["contractor"]/"subcontractor"]/"materialman"] in connection with the work performed at or materials furnished for the Premises."

(iii) ["Contractor"]/"Subcontractor"]/"Materialman"] hereby agrees to make available for inspection by Landlord, during reasonable business hours, ["contractor"]/"subcontractor"]/"materialman"] books and records relating to Construction Work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as such term is defined in the Lease) furnished for the Premises."

(iv) "All covenants, representations, guarantees and warranties of ["contractor"]/"subcontractor"]/"materialman"] hereunder shall if this contract is taken over by the Landlord (as defined in the Lease) be deemed to be made for the benefit of said Landlord under the Lease and shall be enforceable against ["contractor"]/"subcontractor"]/"materialman"] by said Landlord."

(v) "Landlord is not a party to this ["agreement"] ["contract"] and will not in any way be responsible to any party for any claims of any nature whatsoever arising or which may arise from such ["contract"] ["agreement"] unless Landlord shall take over this ["agreement"] ["contract"] and then only as to claims arising after this ["agreement"] ["contract"] is so taken over."

Section 13.11. Demolition of the Project. Tenant shall not demolish the Project or any portion thereof unless Landlord shall give its prior written consent thereto.

Section 13.12. Development Sign; Publicity. Within sixty (60) days after the Commencement Date, Tenant shall furnish and install a project sign, the wording, design and location of which shall be reasonably satisfactory to Landlord and Tenant. Tenant shall extend to Landlord, EDC and any of their designee(s) the privilege of being featured participants in groundbreaking and opening ceremonies to be held at such time and in such manner as Landlord shall reasonably approve and shall use its best efforts to consult with Landlord and EDC concerning any publicity announcements to any news media prior to or upon Substantial Completion.

Section 13.13. Dispute Resolution. If a dispute arises between Landlord and Tenant with regard to:

(i) whether or not any Plans and Specifications or modifications thereof submitted to Landlord in accordance with this Article 13 substantially conform to the Preliminary Plans and Specifications; or

(ii) whether or not any Construction Work conforms with the Plans and Specifications and/or the Requirements; then such dispute may be submitted to the dispute resolution procedure provided in Section 34.02; provided, however, that Tenant shall proceed with all other Construction Work susceptible to performance pending the resolution of such dispute.

Section 13.14. Construction Credit. Tenant shall be entitled to a credit against Base Rent (the "Construction Credit") in the amount of the additional cost, if any, of Substantial Completion or Final Completion of the Project caused by (i) Tenant's inability to Commence Construction of the Project within the earlier of (A) four months after the Commencement Date due to Landlord/Coordination Unavoidable Delays or (B) five business days after the issuance of a building permit for any portion of the Premises, due to Landlord/Coordination Unavoidable Delays, or (ii) Phase I Coordination Failures which delay such Construction Work after Tenant's Commencement of Construction of the Project, if the cumulative delays resulting from (i) and/or (ii) exceed six months in total. The amount of any such credit shall be limited to the following demonstrable direct increases in the cost of Construction of the Project: (i) documented increases in the prevailing rate of obsolete, wages for required classifications of labor, and (ii) documented increases in the cost of required materials, plus an additional fixed five percent of such documented increases reflecting additional overhead costs, plus documented increases in outside architectural and engineering costs provided such are reasonable under the circumstances and reflect standard practice in the industry for architectural and engineering costs and services. Such credit will not include amounts for any other costs or expenses incurred by Tenant, including, without limitation, lost profits, inefficiencies, supervisory costs or overhead in excess of said fixed five percent.

Section 13.15. General. Notwithstanding anything in this Article 13 to the contrary, Landlord acknowledges and agrees as follows:

(a) Tenant shall not be obligated to perform any interior finish work in the Premises unless and until Tenant shall have entered into binding Subleases for the portion of the Premises in question, and

(b) To the extent not addressed in this Lease, the provisions of the Construction Agreement dealing with the preparation of Plans and Specifications, performance of work, approvals by Landlord, delays and similar matters shall be deemed to govern the Construction of the Project and other Construction Work.

ARTICLE 14

REPAIRS, MAINTENANCE, ETC.

Section 14.01. Maintenance of the Premises, Etc.

(a) Tenant's Repairs. Subject to the performance by Landlord of Landlord's obligations under Section 14.01(b) below and Article 5 above, and without limiting Tenant's obligations under said Article 5, Tenant shall, at its sole cost and expense, take good care of the Premises, including without limitation, the bathrooms and lavatory facilities, the windows and window frames and the fixtures and shall keep and maintain the Premises (including all of the foregoing) in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or desirable to keep the Premises in good and safe order and condition. Tenant's obligations hereunder shall include, without limitation, performing routine maintenance and capital repairs, and securing the Premises during the performance of any and all Construction Work in accordance with Landlord's requirements and standard practice. Tenant shall neither commit nor suffer, and shall use all reasonable precautions to prevent, waste, damage or injury to the Premises. Except as specifically provided in Section 14.04, all repairs and maintenance which are Tenant's responsibility hereunder shall be made at no cost or expense to Landlord and shall be made in compliance with the Requirements and all materials therefor shall be substantially equal in quality and class to the original work. As used in this Section 14.01, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions.

(b) Landlord's Repairs. Landlord, at Landlord's expense (except as expressly provided in Article 5), shall keep, repair and maintain in good working order (i) the structural elements (including, without limitation, the foundation and slab on grade) and Common Facilities of the Building (including the structural elements within the Premises) and (ii) the Building systems which service the Premises and (iii) the roof and facade of the Building and (iv) subject to Tenant's obligations under Section 14.03 below, the "sidewalk area" (as such term is defined in Section 14.03), including all vaults.

Section 14.02. Removal of Equipment. Except as hereafter provided, Tenant shall not, without the consent of Landlord, which consent will not be unreasonably withheld, remove or dispose of any Equipment unless such Equipment (a) is promptly replaced by Equipment of substantially equal utility and quality, or (b) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Equipment on the Premises with reasonable diligence; except, however, Tenant shall not be required to replace any Equipment that has become obsolete, or that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises. Notwithstanding the foregoing, Tenant shall not be required to obtain Landlord's consent to remove or dispose of Equipment if such removal or disposal shall not materially and adversely affect any Building system or the structural integrity of the Building.

Section 14.03. Free of Dirt, Snow, Etc. Tenant, at its sole cost and expense, shall at all reasonable times keep or cause to be kept reasonably clean and free from dirt, snow, ice, rubbish, (and to the extent within Tenant's reasonable control to do so) obstructions and encumbrances, the

sidewalks and curbs located in front of, or adjacent to, the Premises (collectively the "sidewalk area").

Section 14.04. Limitation of Landlord's Obligation to Repair or to Supply Utilities. Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and Landlord shall not have any duty or obligation to make any repair, alteration, change, improvement, replacement, or repair to the Project or the Premises, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, repair, maintenance and management of the Premises, except to the extent otherwise specifically provided herein or to the extent such is not normally the responsibility of a fee owner or tenant. If Landlord is required to maintain or repair any utility system serving the Premises (for reasons not attributable to the negligence or willful misconduct of Landlord or of Landlord's agents employees or contractors or any other tenant of the Building), Tenant shall, subject to the provisions of Article 5 above, be responsible for Tenant's Occupancy Percentage of the cost thereof. Subject to Tenant's right to contest same, Tenant shall pay such amount in accordance with the provisions of Article 5.

Section 14.05. Window Cleaning. Tenant shall not clean, nor require, permit, suffer or allow to be cleaned, any window in the Project from the outside in violation of Section 202 of the Labor Law of the State of New York or of the rules of the Industrial Board of any other Governmental Authority.

Section 14.06. Elevators. Tenant and permitted subtenants shall have access at all times to Tenant's Freight Elevator. Installation, maintenance and repair thereof, and all costs with respect thereto, shall be the responsibility of Tenant.

ARTICLE 15

CAPITAL IMPROVEMENTS

Section 15.01. Capital Improvements.

(a) Tenant's Right to Make Capital Improvements. Tenant shall be permitted to make Capital Improvements provided that in each case Tenant shall comply with all applicable provisions of Article 13 hereof.

(b) Completed Capital Improvements Shall Not Reduce Value of Premises. All Capital Improvements, when completed, shall be of a character that will not substantially reduce the value of the premises below its value immediately before commencement of such Capital Improvement.

(c) Definition. "Capital Improvement" means a change, alteration or addition to the Project (including, without limitation, all [space] tenant work) other than Construction of the Project.

ARTICLE 16

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 16.01. Requirements.

(a) Obligation to Comply. In connection with any Construction Work, maintenance, management, use and operation of the Premises and Tenant's performance of each and every obligation hereunder, Tenant shall (subject to Tenant's right to contest same) comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put. No actual or deemed consent to, approval of or acquiescence in any plans or actions of Tenant by EDC, Landlord, in its proprietary capacity as landlord under this Lease, or Landlord's designee (acting in such proprietary capacity), shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient.

(b) Definition. "Requirements" means:

(i) the Zoning Resolution of The City of New York (as the same may be amended and/or replaced) (the "Zoning Resolution") and any and all present and future laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, permits, approvals, certificates, resolutions, and requirements of all Governmental Authorities and any direction of any public officer having jurisdiction over the Premises, Building or the Property (including, without limitation, the Building Code of New York City, and any applicable equivalent, the New York City Administrative Code and the laws, rules, regulations and orders, ordinances, statutes, codes and requirements of the New York Board of Fire Underwriters or any other body exercising similar functions).

(ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease, and

(iii) the Certificate or Certificates of Occupancy issued for the Project as then in force.

ARTICLE 17

DISCHARGE OF LIENS; BONDS

Section 17.01. Creation of Liens. Tenant shall not create or cause to be created (a) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, or (c) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises or any part thereof might be impaired. Notwithstanding

the foregoing, Tenant shall have the right to execute Recognized Mortgages and Subleases as provided by, and in accordance with, the provisions of this Lease.

Section 17.02. Discharge of Liens. If any mechanic's, laborer's, vendor's, materialmans or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or a provision of this Lease) is filed against the Premises or any part thereof by reason of work or materials furnished to Tenant, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, then, Tenant shall, within forty-five (45) days after receipt of notice of the filing of such mechanic's, laborer's, vendor's materialman's or similar statutory line or public improvement lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such liens if Tenant shall have (a) furnished Landlord with, at Tenant's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Landlord) or other security (such as personal guaranty reasonably satisfactory to Landlord in an amount sufficient to discharge the lien with interest and penalties) and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Tenant's efforts to seek discharge of the lien, Landlord reasonably believes such lien is about to be foreclosed and so notifies Tenant, Tenant shall within such reasonable time period as may be appropriate under the circumstances to prevent such foreclosure (i) cause such lien to be discharged of record or (ii) cause the foreclosure proceeding to be stayed. Following any failure by Tenant to act as aforesaid, Landlord may (on such written notice as may be reasonable under this circumstance) use the security furnished by Tenant in order to so discharge the lien.

Section 17.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage (except as provided in Section 11.01) or other encumbrance against the Premises or any part thereof or against assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that to the extent enforceable under New York law, Landlord shall not be liable for any work performed or to be performed at the Premises or any part thereof for Tenant or any Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, the City.

ARTICLE 18

REPRESENTATIONS

Section 18.01. No Brokers. Landlord and Tenant each represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby and such mutual representations with regard to this Lease shall survive the termination of this Lease.

Section 18.02. Tenant's Acknowledgment of No Other Representations. Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Premises and are fully familiar therewith, the physical condition thereof. Tenant accepts the Premises in its existing condition and state of repair and agrees to take the Premises "as is" on the date possession is tendered. Tenant confirms that: (a) except as set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord with respect to the Premises or the transactions contemplated by this Lease, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, the use that may be made of the Premises, or the absence of "hazardous substances" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA ' 9601 et. seq.) on or under the Premises, (b) Tenant has relied on no representations, statements or warranties (except those expressly set forth in this Lease), and (c) Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

Section 18.03. Tenant's Representations Warranties and Covenants. Tenant represents, warrants, and covenants that: (a) to the best of Tenant's knowledge, none of the shareholders, officers or members of Tenant (or any entity having an ownership interest in Tenant or in such other entity) are Prohibited Persons, and (b) to the best of Tenant's knowledge, no officer, agent, employee or representative of the City of New York has received or will receive any payment or other consideration for the making of this Lease and that no officer, agent, employee or representative of the City of New York has or will have any interest, directly or indirectly, in this Lease or the proceeds thereof.

ARTICLE 19

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Landlord shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises (including, but not limited to, any of the common areas within the Building openings, installations, stairways or hallways or other common facilities, the streets, sidewalk areas or water within or adjacent to the Premises) or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which, (i) any such injury or damage is determined to be caused by Landlord or its agents' or employees' or contractors' grossly negligent or intentional tortious acts or omissions or (ii) Landlord is strictly

liable for such injury or damage pursuant to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

Landlord shall not be liable to Tenant or to any Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or body of water under or adjacent to the Premises or the Property, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless, and only to the extent of the proportion by which, (i) caused by Landlord's, or its agents' or employees' or contractors' negligent or intentional tortuous acts or omissions or (ii) Landlord is strictly liable for such injury or damage pursuant to the provisions of CERCLA.

ARTICLE 20

INDEMNIFICATION

Section 20.01. Obligation to Indemnify. Tenant shall not knowingly do or permit any act or thing to be done upon the Premises, or any portion thereof, which subjects Landlord to any liability or responsibility for injury or damage to Persons or property or to any liability by reason of any violation of law or of any legal requirements of any public authority, but shall exercise such control over the Premises so as to protect fully Landlord against any such liability. The foregoing provisions of this Section shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of Section 35.03 hereof. To the fullest extent permitted by law, Tenant shall indemnify and save Landlord, and Landlord's officers, directors, employees, agents and servants (each of the foregoing, individually, an Indemnitee and, collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any Indemnitee by reason of any of the following, except that no Indemnities shall be so indemnified and saved harmless to the extent of the proportion by which such liabilities, etc., (i) are caused by the grossly negligent or intentional tortious acts or omissions of such Indemnitee or any other Indemnities(s):

(a) Construction Work. Construction Work or any other work or act done in, on, or about the Premises or any part thereof by or through Tenant;

(b) Control. The control or use, non-use, possession, occupation, alteration, condition, operation or maintenance of the Premises or any part thereof or (subject to Landlord's repair obligations under Section 14.01(b)), of any street, plaza, sidewalk, curb, or space comprising a part thereof or immediately adjacent thereto, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or (where a duty to act is imposed upon Tenant or a Subtenant pursuant to this Lease) failure to act on the part of Tenant or any Subtenant or any of its or their respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees;

(d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Premises or any part thereof, or in, on, or about any immediately adjacent street, sidewalk, curb, or space comprising a part thereof or immediately adjacent thereto;

(e) Lease Obligations. Tenant's failure to make any payment or to perform or comply with any of the other covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and, if applicable, Landlord's right to perform same as provided in Section 22.01 hereof;

(f) Lien, Encumbrance or Claim Against Premises. Any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their partners, joint venturers, officers, shareholders, directors, agents, contractors or servants, Licensees or invitees against any assets of, or funds appropriated to, Landlord or any liability that may be asserted against Landlord with respect thereto;

(g) [INTENTIONALLY OMITTED]

(h) Execution Delivery and Recording Fees. Any tax attributable to the execution, delivery or recording of this Lease or a memorandum thereof by Tenant;

(i) Contest and Proceedings. Any contest or proceeding brought or permitted to be brought pursuant to the provisions of Article 35 hereof; or

(j) Brokerage. Any claim for brokerage commissions, fees or other compensation by any Person who alleges to have acted or dealt with Tenant in connection with this Lease or the transactions contemplated by this Lease.

Section 20.02. Contractual Liability. The obligations of Tenant under this Article shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

Section 20.03. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 20.01 hereof, then within a reasonable time following demand by Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Landlord shall reasonably approve; it being agreed that, without limiting Tenant's right to employ alternate counsel, Landlord hereby approves Stroock & Stroock & Lavan LLP for such purpose. The foregoing notwithstanding, such

Indemnatee or another Indemnatee may engage its own attorneys to defend such Indemnatee, or to assist such Indemnatee in such Indemnatee's defense of such claim, action or proceeding, as the case may be, and Tenant shall pay the reasonable fees and disbursements of such attorneys of such Indemnatee if it is determined that Landlord or any other Indemnatee is not at fault in any way.

Section 20.04. Notification and Payment. Each Indemnatee shall notify Tenant of the inurrence by or assertion against such Indemnatee, or the imposition of any cost or expense as to which Tenant has agreed to indemnify such Indemnatee pursuant to any of the provisions of this Article 20. Tenant agrees to pay to such Indemnatee all reasonable amounts due under this Article 20 within thirty (30) days after such payment is determined to be Tenant's obligation, and any non-payment thereof by Tenant shall constitute a Default for which Landlord may declare an Event of Default in accordance with and subject to the provisions of Section 24.01(f) hereof.

Section 20.05. Survival Clause. The provisions of this Article shall survive the Expiration of the Term.

ARTICLE 21

NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 21.01. Non-Discrimination and Affirmative Action. So long as the City or its designee shall be Landlord and subject to any applicable future amendments to E.O. 50, the Regulations, and/or Orders, then (except as otherwise provided below), Tenant shall be subject to the requirements of Executive Order No. 50 (April 25, 1980), as amended ("E.O. 50"), or any successor thereto, as long as E.O. 50 or any successor thereto, in whatever form and whenever enacted, is in force, in whole or in part, and the regulations promulgated thereunder ("Regulations") and order ("Orders") of the Director ("Director") of the Bureau of Labor Services ("Bureau"), and Tenant shall (except as provided in the sentence that immediately follows) be bound for such period or periods by the requirements set forth below, which will be deemed amended by such applicable future amendments. Notwithstanding anything to the contrary contained in this Lease (including, without limitation, the provisions of Section 21.01(b) below), the "Trainee" requirements as stated in E.O. 50 are hereby waived by reason of Tenant's compliance with New York State Labor Law §220.

(a) Non-Discrimination.

(1) Tenant will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation with respect to all employment decisions including, but not limited to, recruitment advertising, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, lay-off and termination and all other terms and conditions of employment;

(2) Tenant will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation;

(3) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation, or (ii) that Tenant is an equal opportunity employer;

(4) Tenant will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "if you feel that you have been unlawfully discriminated against, you may call or write the Bureau of Labor Services, General Counsel's Office, 66 Leonard Street, 4th Floor, New York, New York 10013, (212) 431-1772";

(5) Tenant will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement or understanding, written notification of its equal employment opportunity commitments under E.O. 50, the Regulations, Orders and all employment programs and other agreements between Tenant and the Bureau (collectively, "Agreements");

(6) Tenant will, before any contract for Construction Work in the amount of \$1,000,000 or more is awarded, furnish or cause its contractor to furnish an Employment Report to the Bureau in the form annexed hereto as Exhibit "G" ("Employment Report"), as it may be amended from time to time by the Bureau, and obtain from the Bureau written approval of the proposed contractor(s). After Construction Work commences, Tenant will submit all information and reports required by E.O. 50, the Regulations and Orders, including but not limited to certified payrolls covering Tenant's construction work force and additional information required pursuant to a Conditional Certificate of Compliance, employment program or other Agreement, in such frequency and format as the Bureau may require;

(7) Tenant will permit the Bureau to have access to all relevant books, records, accounts and work sites, to investigate compliance with this Lease and E.O. 50, the Regulations, Orders, and all other Agreements;

(8) Tenant will refrain from entering into any contract, other written or oral agreement or contract modification subject to E.O. 50 submission requirements with a contractor who has not been approved by the Bureau;

(9) Tenant, as "Owner" (as such term is used in AIA Form 201), will include, or cause to be included, the following provisions and such additional language as the Bureau may in writing require in every Construction Agreement of \$1,000,000 or more or subcontract for Construction Work of \$750,000 or more in such a manner that the provision will be binding upon all contractors and subcontractors, and will cause each contractor and subcontractor to provide access to books, records and the work site(s) and to submit the information required by the Bureau and/or Landlord, and will cause each contractor or subcontractor engaged in Construction Work to comply with the following provisions. Landlord reserves the right to inspect all contracts

and subcontracts pertaining to this Project prior to execution to ensure that the required language is included:

"This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980), as amended ("E.O. 50") and the regulations promulgated thereunder ("Regulations"), and orders ("Orders") of the Director ("Director") of the Bureau of Labor Services ("Bureau") (collectively, "E.O. 50 Requirements"). The Bureau may examine this contract to ensure that these provisions are included. By signing this contract, contractor agrees:

(A) that it

(1) will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions, including, but not limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer training and apprenticeship, layoff and termination and all other terms and conditions of employment;

(2) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of contractor (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (ii) that contractor is an equal opportunity employer;

(4) will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "if you feel that you may call or write the Bureau of Labor Services, General Counsel's Office, 66 Leonard Street, 4th Floor, New York, New York 10013, (212) 431-1772;"

(5) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement or understanding, written notification of its equal employment opportunity commitments under E.O. 50 Requirements, and all employment programs and other agreements between the contractor and the Bureau (collectively, "Agreements");

(6) will furnish before any Construction Work commences an Employment Report, copies of which are available upon request from Owner. After Construction Work commences, contractor will submit all information and reports required by E.O. 50 Requirements including but not limited to certified payrolls covering contractors' construction work

force and additional information required pursuant to a Conditional Certificate of Compliance, employment program or other Agreement, in such frequency and format as the Bureau may require;

(7) will permit the Bureau to have access to all relevant books, records, accounts and work sites, to investigate compliance with this contract and E.O. 50 Requirements and Agreements.

(B) Contractor's failure to file timely, complete and accurate Employment Reports or other information required by E.O. 50 Requirements and any other Agreement (or other document(s) required by a Federal or state agency providing assistance to the Construction Work) or contractor's violation of the nondiscrimination clauses (A)(1) through (7) of this contract, contractor's failure to comply with an employment program or other Agreement and/or contractor's failure to cause compliance on the part of a subcontractor as provided below shall constitute a material breach of this contract. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the union's refusal to comply with E.O. 50 Requirements, shall excuse contractor's obligations to abide by E.O. 50 Requirements. If the Bureau's staff, as a result either of the Bureau's review of or a complaint by a job applicant, employee or former employee, finds that contractor may not be in compliance, the Bureau's staff and the contractor will meet to negotiate an employment program of corrective actions to achieve contractor's full compliance with this contract and E.O. 50 Requirements. If contractor fails or refuses either to meet, to agree to take necessary corrective measures, or to implement agreed corrective measures, this contract or any portion hereof may be disapproved, canceled, terminated or suspended, or liquidated damages may be assessed by Owner (or the general contractor, construction manager, prime contractor or their subcontractors, as the case may be) or payments thereon may be withheld and such other sanctions may be imposed and remedies invoked in accordance with law. Liquidated damages for contractors failure to comply with the equal opportunity requirements hereunder will be the amount of wages and fringe benefits that would have been paid to the parties that should have been employed, as determined by the Bureau or Owner. Nothing hereinbefore stated in these requirements shall limit the Owner or the Bureau from pursuing any other remedy available by law to enforce the E.O. 50 Requirements or Agreements as the Director may order.

(C) Contractor agrees to include the provisions of the foregoing paragraphs (A) and (B) in every subcontract of \$750,000 or more to which it becomes a party. Contractor agrees, and will state in every subcontract, that contractor will take such action with respect to the subcontract as Owner or the Director may direct, including canceling, suspending or terminating the subcontract and/or stopping payments under the subcontract, to enforce the E.O. 50 Requirements and Agreements

(D) Contractor further agrees that it will refrain from entering into any subcontract, written or oral agreement or contract modification subject to E.O. 50 submission requirements with a subcontractor who has not been approved by the Bureau."

(b) Training

(1) Tenant will, for any Construction Work performed by Tenant costing in the aggregate more than \$1,000,000 in any one Lease Year, employ (or cause the employment of) trainees for training-level jobs as provided below. "Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program approved by the Bureau and, where required by law, the New York State Department of Labor or the United States Department of Labor, Bureau of Apprenticeship and Training. An apprenticeship program is not an approved training program. Tenant shall make a good faith effort to achieve the ratio of one (1) trainee to four (4) journey-level employees for each trade employed in Construction Work if the four (4) journey-level employees will be working for four (4) journey-level employees in a particular trade when it employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours four (4) full-time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 1/2 hours, etc. For example, in a craft with a forty hour work week, the employment of four (4) journey-level employees results in 160 hours of employment (4 x 40 hours). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal four (4) journey-level employees, e.g., three (3) journey-level employees who work 53 1/3 hours (3 x 53 1/3 hours = 160 hours). The training requirement shall not apply to any trade in which the equivalent of four (4) or more journey-level employees and the trainee shall work for less than four (4) consecutive weeks; provided, that four (4) weeks shall mean four (4) weeks of full-time work as defined by the prevailing practice in the industry for the particular craft, e.g., if a week of full-time work for journey-level workers is 160 hours, the journey-level workers in that trade must work 60 hours in each of the four (4) consecutive weeks. The trainees shall work for the same period as the journey level workers e.g., 160 hours (4 weeks x 40 hours), 150 hours (4 weeks x 37 1/2 hours), 140 hours (4 weeks x 35 hours) etc. Tenant shall attempt to provide continuous employment for trainees after the completion of the Construction Work, to enable them to complete their course of training.

(2) Tenant, as Owner, will incorporate or cause to be incorporated into every contract for Construction Work of \$1,000,000 or more, or subcontract of \$750,000 or more, performed by Tenant the following language:

"The contractor further agrees that it shall employ trainees for training-level jobs. "Trainee" means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program approved by the Bureau and, where required by law, the New York State Department of Labor or the United States Department of Labor, Bureau of Apprenticeship and Training. An apprenticeship program is not an approved training program.

(A) The contractor shall make a good faith effort to achieve the ratio of one (1) trainee to four (4) journey-level employees for each trade employed in Construction Work, if the four (4) journey-level employees will be working for four (4) consecutive weeks.

(B) The contractor shall be considered to employ four (4) journey-level employees in a particular trade when he or she employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours four (4) full-time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 1/2 hours, etc. For example, in a craft with a forty-hour work week, the employment of four (4) journey-level employees results in 160 hours of employment (4 x 40 hours). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal four (4) journey-level employees, e.g., three (3) journey-level employees who work 53 1/3 hours (3 x 53 1/3 hours = 160 hours).

(C) The training requirement shall not apply to any trade in which the equivalent of four (4) or more journey-level employees and the trained shall work for less than four (4) consecutive weeks; provided, that four (4) weeks shall mean four (4) weeks of full-time work as defined by the prevailing practice in the industry for the particular craft, e.g., if a week of full-time work for journey-level workers is 160 hours in each of the four (4) consecutive weeks. The trainees shall work for the same period as the journey-level e.g., 160 hours 94 weeks x 40 hours), 150 hours (4 weeks x 37 1/2 hours), 140 (4 weeks x 35 hours) etc.

(D) The contractor shall attempt to provide continuous employment for trainees after the completion of the contract, to enable them to complete their course of training.

(E) The contractor, if a union contractor, shall refer, recommend and sponsor for union membership any of its trainees who can perform the duties of a qualified journey level employees who have satisfactorily completed the training program. Such former trainees shall be paid full journey-level wages and fringe benefits, whether or not union membership is granted after the referral, recommendation or sponsorship, and the contractor shall attempt to continue employing these persons

(F) The contractor shall also include the training provisions of this section in every subcontract of \$750,000 or more to which it becomes a party so that the provisions will be binding upon each subcontractor. The contractor agrees and will state in each subcontract to which the training requirement applies that the contractor will take such action to suspend or terminate the subcontract because of the subcontractor's repeated failure to comply with the training requirements.

(G) Neither the provisions of any collective bargaining agreement, memorandum of agreement, practice, or other contract or understanding with a union, or the union's refusal to recognize the validity of the training program shall excuse the contractor's obligation to provide training pursuant to E.O. 50 Requirements.

(H) If, during performance of the Construction Work, Owner's or the Bureau's review of the Employment Report or other forms, inspections of the contractor's work site(s), and/or audits of the contractor's certified payroll records show that the contractor is failing to provide training to the required number of trainees for the required number of weeks, Owner or the

Bureau shall require the contractor to attend a conference at which the Bureau will negotiate an employment program to ensure that the contractor meets the training requirements. As part of the employment program, the Bureau may require the contractor to provide individual trainees in a trade with continuous employment as long as that trade is employed on the Construction Work, on the contractor's non-City funded projects, and/or on the contractor's future projects subject to the training requirements. If the contractor either willfully or repeatedly refuses or fails to make a good faith effort to employ trainees, the Bureau may direct Owner to terminate the contract.

(I) If, after completion of the Construction Work, Owner of the Bureau finds that the contractor failed to provide training to the required number of trainees for the required number of weeks, either (i) the contractor's compensation shall be decreased by an amount equal to the difference between the wages and fringe benefits paid by the contractor to the trainees and the wages and fringe benefits which would have been paid to the trainees had the required number of trainees been employed for the required number of weeks or (ii) contractor shall be assessed a like amount as liquidated damages, unless the contractor can demonstrate that it made a good faith effort to provide training and was unsuccessful. A good faith effort includes at least:

(i) documented efforts to secure trainees from approved training programs; and

(ii) documented outreach efforts to the New York State Employment Service, New York City Department of Employment Service, New York City Department of Employment, TAP Centers, and community and civil rights groups to identify candidates for the training positions, and the contractor's sponsorship of those persons for entrance into an approved training program; and

(iii) written notification by certified mail to the Bureau that the contractor has been unable to secure trainees pursuant to subsections (i) and (ii) above, requesting the Bureau's assistance in securing trainees, and taking actions recommended by the Bureau to obtain trainees. To demonstrate its good faith effort, the contractor may supply documentation concerning its employment of trainees on all its construction sites, both City and non-City funded. The Bureau will review this documentation as part of its analysis to determine whether the contractor made a good faith effort to employ trainees."

(c) Defaults. To the extent required pursuant to this Article 21, Tenant's failure (i) to file or cause the timely filing and complete and accurate Employment Reports or other information required by E.O. 50, the Regulations, Orders, or other Agreements (or other document(s) required by a federal or state agency providing assistance to Construction Work) or (ii) to comply with nondiscrimination clauses (1) through (8) of Section 21.01(a) or (iii) to comply with the trainee provisions of Section 21.01(b) or (iv) to comply with the nondiscrimination and trainee provisions of clauses (a)(9), (b)(1) and (b)(2) of Section 21.01 or to enforce the requirements imposed on contractors or subcontractors by such clauses at the direction of the Bureau, shall constitute a material breach of this Lease. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the unions refusal to comply with E.O. 50 shall excuse Tenant's obligations to abide by E.O. 50 and the Regulations or its obligations

to include the enforce the contractor clauses of Section 21.01(a) and (b) hereof. If Landlord, acting through the Bureau, as a result either of the Bureau's review or the complaint by a job applicant, employee or former employee, finds that Tenants or a contractor or subcontractor may not be in compliance, Landlord, acting through the Bureau, may notify Tenant (and the contractor or subcontractor, as the case may be) describing the extent of non-compliance. If the non-compliance is not remedied within thirty (3) days of Tenant's receipt of notice, the Bureau shall request a meeting with Tenant (and with the contractor or subcontractor, as appropriate) to negotiate an employment program of corrective actions to achieve Tenant's full compliance with these clauses, E.O. 50, the Regulations and Orders. If Tenant fails or refuses either to meet, to agree to take necessary corrective measures, to implement agreed corrective measures, or to enforce contractors' obligations pursuant to the contract provisions set forth in clauses (a)(9) and (b)(2) of this Section 21.01 and to cause contractors to enforce subcontractors' obligations thereunder, Landlord, acting through the Director may (i) require Tenant to take corrective measures pursuant to an employment program, (ii) assess Tenant as liquidated damages an amount equal to the wages and fringe benefits that would have been paid to the parties that should have been employed pursuant to the non-discrimination clauses of this Lease or the trainee provisions or (iii) impose such other sanctions as may be imposed and remedies invoked in accordance with law. Nothing hereinbefore stated in these requirements shall limit Landlord from pursuing any other remedy available by law to enforce the E.O. 50 Requirements and Agreements or from seeking additional damages.

Section 21.02. Compliance with Revised Program. In the event that a "Pre-apprenticeship" or similar program is developed after the date of this Lease by the Bureau in consultation with New York State and City agencies and construction industry representatives, to provide opportunities for and recruitment of economically disadvantaged persons, women and minorities in the construction trades (a "Revised Program"), then with respect to every Construction Agreement of \$1,000,000 or more or subcontract for Construction Work of \$750,000 or more, which in either instance involves Construction Work to be performed by Tenant at the Premises. Tenant shall also implement and comply with the requirements of such Revised Program if, as and when such requirements are incorporated into the provisions of Executive Order No. 50 and/or the regulations in connection therewith.

ARTICLE 22

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS/TENANT'S RIGHT TO PERFORM LANDLORD'S COVENANTS

Section 22.01. Landlord's Right to Perform. If the Tenant shall at any time fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 7 hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, and such failure will be likely to materially adversely affect Landlord or Landlord's interest in the Premises (it being agreed that a failure by Tenant to discharge Tenant's obligation to cause the discharge of liens pursuant to Article 17 shall give rise to Landlord's rights hereunder) then Landlord (i) after thirty (30) days written notice (specifying the nature of the act that Tenant is alleged to have failed to perform) to Tenant, or such longer period as may be reasonably necessary if Tenant has commenced and is diligently proceeding to effectuate a cure, or (ii) in case of

emergency, on such other notice (if any), as may be reasonable under the circumstances), and without releasing Tenant from any obligation of Tenant hereunder and without waiving the right to terminate this Lease upon an Event of Default in accordance with the provisions hereof or any other right or remedy permissible hereunder, may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 7 hereof, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided (except for (x) any maintenance or repair obligation imposed on Tenant pursuant to Article 14 hereof, or (y) any act which would require Landlord, its agent, employee, contractor, or any other person acting on Landlord's behalf to enter upon the Premises or any portion thereof for any such purpose), and may take all such action as may be reasonably necessary therefor. Notwithstanding the foregoing, neither Landlord nor any agent, employee, contractor or any other person acting on Landlord's behalf may enter upon the Premises or any portion thereof for any such purpose.

Section 22.02. Amount Paid by Landlord as Additional Rental. All reasonable sums so paid by landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant, Additional Rent under this Lease and shall be paid by Tenant to Landlord with and in addition to the Base Rent payable on the first day of the month following the giving of such notice, provided that Tenant shall have been given no less than thirty (30) days notice thereof.

Section 22.03. Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or event of Default) or of Landlord's right to terminate this Lease in accordance with the provisions hereof and/or to take such other reasonable action as may be permissible hereunder; provided, however, that, if Landlord shall have performed an obligation of Tenant prior to the expiration of the applicable cure period, or after said cure period, but prior to having served a notice of termination of this Lease upon Tenant (and Tenant shall not have defaulted in Tenant's obligation to reimburse Landlord for the cost of Landlord's performance as required hereunder), then Landlord shall not have the right to terminate this Lease by reason of Tenant's failure to perform the obligation performed by Landlord; or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.04. Proof of Damages. Neither Landlord nor Tenant shall be limited in the proof of any damages that such party may claim against the other party arising out of, or by reason of, the other party's failure to provide and keep insurance in force in accordance with the provisions of this Lease. Either Landlord or Tenant shall be entitled to seek, and if successful, to recover, as damages, the uninsured amount of any loss and damages sustained or incurred by it and the

reasonable costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

Section 22.05. Tenant's Right to Perform. If the Landlord shall at any time fail to make any payment or perform any act on its part to be made or performed hereunder, and such failure will be likely to materially adversely affect Tenant and Tenant's operation of the Premises, then Tenant: (i) after thirty (30) days written notice (specifying the nature of the act that Landlord is alleged to have failed to perform) to Landlord, or such longer period as may be reasonably necessary if Landlord has commenced and is diligently proceeding to effectuate a cure, or (ii) in case of emergency, on such other notice (if any), as may be reasonable under the circumstances, and without releasing Landlord from any obligation of Landlord hereunder and without waiving any other right or remedy permissible hereunder, may (but shall not be required to): (perform such obligation, or, in the case of a payment due others, make such payment. The full amount of the cost and expense so reasonably incurred by Tenant or the payment so reasonably made, shall be paid by Landlord to Tenant with interest at the Late Charge Rate thereon. If Landlord shall fail to pay such costs and expenses within sixty (60) days after written demand therefor, Tenant shall have the right to deduct such amounts, including interest thereon at the Late Charge Rate, without liability of forfeiture, as an offset from Rental then due or thereafter coming due thereunder.

(b) in the case of any payment due to Tenant hereunder, if Landlord shall fail to pay the same within fifteen (15) days after written demand therefor, Tenant shall have the right to deduct the amount due, including interest thereon at the Late Charge Rate, without liability for forfeiture, as an offset against Rental.

ARTICLE 23

USE OF PREMISES; NO UNLAWFUL OCCUPANCY

Section 23.01. Use of Premises. Tenant shall develop, use and operate the Premises as follows:

(a) Restrictions on Use. The Premises shall be used and occupied for retail, below-ground parking or other purposes which are permitted at the Premises pursuant to applicable zoning laws, rules, regulations and any other applicable laws, rules and regulations and insurance requirements. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, which constitutes a public or private nuisance or involves a dangerous or noxious trade or business, or arcades, slot machines games rooms, billiard halls, gun repair, pornography or other similar adult uses or physical culture establishments of any kind, or for discotheques or cabarets or in violation of the provisions of this Section 23.01 or Article 16 hereof or the Certificate(s) of Completion for the Premises, or in such manner as may make void or voidable any insurance then required to be carried under Article 7 hereof. Upon Tenant's discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of this Section 23.01 or Article 16 hereof, Tenant shall (subject to Unavoidable Delays), promptly take all necessary steps, legal and equitable, to compel discontinuance of such business or use

(unless Tenant shall, in good faith, be contesting such matter), including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises for any unlawful or illegal business, use or purpose or in violation of this Section 23.01 or Article 16 hereof.

(b) Tenant's Right to Use Common Facilities. Landlord grants to Tenant, for the use or benefit of Tenant, all Subtenants, and its and their officers, agents, employees, customers, deliverymen and invitees, a non-exclusive license during the Lease Term to use, for the respective uses and purposes for which they are designed, the Common Facilities, subject to the exclusive reasonable control, operation and management thereof by Landlord and its agents. Landlord shall operate, manage and maintain, or will cause to be operated, managed and maintained, the Common Facilities in a non-discriminatory manner with respect to tenants in the Building (including Tenant) and in a manner reasonably deemed by Landlord to be, reasonable and appropriate and in the best interests of the Building. Landlord reserves the right: (i) to establish, modify and enforce (in a non-discriminatory manner) reasonable written rules and regulations with respect to the Common Facilities and the use thereof (provided that in no event shall any such rules and regulations increase Tenant's obligations hereunder or materially reduce Tenant's rights hereunder; and if such rules and regulations conflict with this Lease, this Lease shall govern. Furthermore Landlord shall give Tenant no less than thirty (30) days prior written notice as to the establishment or modification of any rules or regulations). Tenant's compliance with such rules and regulations shall not be construed as a waiver of Tenant's right to contest any rules and regulations (or Landlord's manner of enforcement thereof) which contest shall be by arbitration as provided in Sections 5.06(a)(vi) and 5.09 hereof; (ii) to close all or any portion of the Common Facilities to such extent as may, in the reasonable opinion of Landlord, be necessary to prevent the accrual of any rights to any person or to the public generally therein; (iii) to close temporarily any portion of the Common Facilities, provided that Landlord reasonably determines that there is a need to close such portion; and (iv) at any time and from time to time to change the area, location, level and arrangement or to otherwise alter, expend, reduce or withdraw any areas or facilities at any time forming a part of the Common Facilities, provided that Landlord shall use reasonable efforts to minimize interference with the conduct of Tenant's operations;

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) (i) if Tenant shall fail to make any payment (or any part thereof) of Rental as and when due hereunder and such failure shall continue for a period of fifteen (15) days after written notice;

(ii) if Tenant shall fail to maintain the Premises as provided in Sections 14.01 and 14.03 hereof and if such failure shall (subject to Unavoidable Delays) continue for a period of thirty (30) days after written notice (unless such failure requires work to be performed,

acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period;

(b) if Tenant shall fail to Commence Construction of the Project within the time period provided for such Commencement in Article 13 hereof, and such failure shall continue for a period of sixty (60) days after notice thereof from Landlord (subject to Unavoidable Delays), or if Tenant shall fail to diligently prosecute the Construction of the Project until completion in accordance with the provisions of this Lease and such failure shall continue for thirty (30) days after notice;

(c) if Tenant shall fail to Substantially Complete the Construction of the project in accordance with the provisions of this Lease and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant;

(d) if a Construction Default, as defined in Article 10 hereof, shall occur;

(e) If Tenant shall enter into (or permit to be entered into) a Capital Transaction, in violation of the provisions of this Lease and such Capital Transaction shall not be made to comply with the provisions of this Lease or canceled within thirty (30) business days, or such longer period as Tenant may reasonably require, provided that Tenant has commenced taking appropriate action within such thirty (30) business day period and shall act diligently thereafter, after Landlord's notice thereof to Tenant;

(f) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion;

(g) to the extent permitted by law, if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(h) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors;

(i) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if a petition under Title 11 of the United States Code shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal

bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant shall take any partnership, joint venture or corporate action in furtherance of any action described in Sections 24.01(h) or 24.01(i) or this Section 24.01(i);

(j) to the extent permitted by law, if within one hundred and twenty (120) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustees, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated;

(k) if any of the representations made by Tenant herein is or shall become false or incorrect in any material respect, provided that, if such misrepresentation was unintentionally made, the underlying condition is susceptible to being corrected, and Landlord has not been adversely affected by such misrepresentation or underlying condition, Tenant shall have a period of thirty (30) days after Landlord's notice of such misrepresentation to correct the underlying condition and thereby cure such Default; or

(l) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of ninety (90) days.

Section 24.02. Enforcement of Performance. If an Event of Default occurs, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 24.03. Expiration and Termination of Lease.

(a) If an Event of Default occurs and Landlord, at any time thereafter, at its option, gives Tenant notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than ten (10) days after the giving of the notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and surrender the Premises forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 24.01(i) or (l) thereof or by federal or state statute, then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the

period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.10 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the five (5) day period this Lease shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(b) If this Lease is terminated as provided in Section 24.03(a) hereof, Landlord may, without notice, re-enter and repossess the Premises without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings.

(c) If this Lease shall be terminated as provided in Section 24.03(a) hereof and a new lease is not entered into pursuant to Section 11.04:

(i) Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the Expiration Date and Tenant shall remain liable for Rental thereafter falling due on the respective dates when such Rental would have been payable but for the termination of this Lease, less any amount applied under clause (iii)(D) of this subsection (c); and

(ii) Landlord may complete all Construction Work required to be performed by Tenant hereunder and may repair and alter any portion(s) of the Premises in such manner as Landlord may deem reasonably necessary or advisable without relieving Tenant of any liability, and/or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting or through rents or other monies received from the Depository or any Subtenants, Assignees, operator or occupant of all or any portion of the Premises, Landlord shall (A) first, pay to itself the reasonable cost and expense of terminating what would otherwise have constituted the unexpired portion of the Lease Term, re-entering, retaking, repossessing, repairing, altering and/or completing construction of any portion(s) of the Premises and the reasonable cost and expense of removing all persons and property therefrom, including in such costs reasonable brokerage commissions, legal expenses and attorneys' fees and disbursements, (B) second, pay to itself the reasonable cost and expense of completing any Construction Work required to be performed by Tenant hereunder, (C) third, pay to itself the reasonable cost and expense sustained in securing any new tenants and other occupants, including in such costs, reasonable brokerage commissions, legal expenses and attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises and, to the extent that Landlord shall maintain and operate any portion(s) of the Premises, the cost and expense of operating and maintaining same and (D) fourth, pay to itself any balance remaining. Landlord shall in no way be responsible or liable for any failure to relet any portion(s) of the Premises, provided that Landlord shall have used reasonable efforts to do so, or for any failure to collect any rent due on any such reletting, provided that Landlord shall have used reasonable efforts to do so, and no

such failure to relet or to collect rent despite Landlord's reasonable efforts to do so shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 24.04. [Intentionally left blank].

Section 24.05. Receipt of Moneys after Notice of Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.06. Waiver of Rights. Tenant hereby expressly waives service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Tenant, for and on behalf of itself and all Persons claiming through or under Tenant, also waives and releases any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession, or (d) to restore the operation of this Lease, if Tenant is dispossessed by a judgment or by warrant of a court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings. Tenant shall execute, acknowledge, and deliver within thirty (30) days after request by Landlord any instrument evidencing such waiver or release that Landlord may reasonably request.

Section 24.07. Strict Performance. No failure by either party to insist upon the other's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to it hereunder, including, without limitation, Landlord's acceptance or Tenant's payment, as the case may be, of full or partial Rental during the continuance of any Default or, Event of Default or Landlord Default shall constitute a waiver of any such Default, or Event of Default or Landlord Default, as the case may be, or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no default by Tenant or Landlord, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

Section 24.08. Right to Enjoin Defaults or Threatened Defaults. In the event of a default or threatened default by either Landlord or Tenant, as the case may be, the non-defaulting (or threatened) party, shall be entitled to enjoin the default or threatened default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or by this Lease, other

remedies that may be available to the non-defaulting (or threatened) party notwithstanding. Each right and remedy of Landlord or Tenant, as the case may be, provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute, and the exercise or beginning of the exercise by Landlord or Tenant, as applicable, of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute.

Section 24.09. Payment of All Costs and Expenses. (a) Tenant shall pay Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant and in which Landlord shall prevail. Tenant shall also pay Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants or provisions of this Lease. All of the sums paid or obligations incurred by Landlord, with interest (at the Late Charge Rate, accruing from the date incurred) and costs, shall be paid by Tenant to Landlord within ten (10) days after demand.

(b) Except if and to the extent such costs and expenses are not covered by insurance that Tenant is required to maintain pursuant to this Lease, Landlord shall pay Tenant all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Tenant in any action or proceeding to which Tenant may be made a party by reason of any act or omission of Landlord and in which Tenant shall prevail.

Section 24.10. Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to protect adequately Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection and Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under the Lease, shall include, without limitation, all of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease;
- (b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the amount by

which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire such security personnel as may be reasonably necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the Base Rent payable hereunder, for the then current Lease Year;

(g) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord shall be granted a security interest reasonably acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C.'365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C.'365(b), as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Lease.

Section 24.11. Funds Held by Depository. If this Lease shall terminate as a result of an Event of Default and no new lease has been requested (or, if requested, then the time period for entering into such new lease has passed without such new lease having been entered into) under the new lease provisions of Section 11.04 hereof, any funds held by Depository shall be paid to Tenant

except that the Depository shall pay to Landlord such portion thereof to the extent of any damages suffered by Landlord by reason of such Event of Default, and to which Landlord is entitled to recover pursuant to the terms of this Lease, free of any claim by Tenant, or any Person claiming through Tenant.

Section 24.12. Funds held by Tenant. From and after the date, if any, on which Tenant receives notice from Landlord that a Default or an Event of Default shall have occurred hereunder (but only, in the case of a Default, until such Default has been cured), it shall not pay, disburse or distribute any rents, issues or profits of the Premises, or any portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Article 8 or 9), any distributed cash, certificates of deposit, United States Treasury bills or similar cash equivalents arising out of or in any way connected with the Premises or this Lease or any portion thereof or any other sums or receivables appurtenant to the Premises or this Lease or any portion thereof except to (i) creditors which are not Affiliates, in payment of amounts then due and owing by Tenant to such creditors with respect to work at the Premises and (ii) the holders of Recognized Mortgages, in payment of the principal amount of, and all unpaid and accrued interest then outstanding under, such Recognized Mortgages and any other amounts payable pursuant to such Recognized Mortgages; provided, however, that the foregoing provisions of this Section 24.12 shall not prohibit Tenant from making distributions to directors, officers or shareholders of Tenant or to such partners, or tenants-in-common, as may comprise Tenant, provided that, prior to making any such distributions, Tenant shall have placed in escrow an amount which is not less than the amount which Landlord reasonably determines is due and owing in connection with such Default or reasonably determines to be adequate to cure such Default, and provided further that if such amounts due are not susceptible to calculation, Tenant shall have no right to make any distribution.

Section 24.13. Deposits for Impositions and Insurance Premiums.

(a) Tenants' Obligation to Make Deposits. Subject to the provisions of subsection (f), upon Landlord's demand made at any time after the occurrence of two Events of Default with respect to a monetary obligation under this Lease within a twelve (12) month period, Tenant shall (subject to the provisions of Section 24.13(e)), deposit with Depository on the first day of each of the next twelve (12) months of the Term an amount equal to (i) in the case of Impositions, one-twelfth (1/12) of the amount of annual Impositions as reasonably estimated by Landlord, and (ii) in the case of insurance premiums, one-twelfth (1/12) of the annual premiums for the insurance coverage required to be carried or caused to be carried by Tenant pursuant to the provisions of Article 7 hereof. If, at any time, the moneys so deposited by tenant shall be insufficient to pay in full the next installment of Impositions or insurance premiums, Tenant shall, not later than the date which is ten (10) days prior to the due date of the Imposition or thirty (30) days prior to the due date of the insurance premium, as the case may be, deposit the amount of the insufficiency with Depository.

(b) Depository's Obligations. Depository shall place all moneys deposited pursuant to the provisions of this Section 24.13 in a special interest-bearing account in the name of Landlord and Tenant in a savings or commercial bank or in city, state or federal government obligations to be used by Depository to pay the Impositions and insurance premiums for which such amounts were deposited. Depository shall apply the amounts deposited and the interest earned thereon to pay (i) such Impositions not later than the last day on which any such Imposition may be paid without penalty or interest, and (ii) such premiums not later than the last day on which such premiums may be paid without penalty, interest or cancellation of the subject policies. Interest earned on such deposits shall be applied to the next required deposit. Upon the occurrence of an Event of Default, Depository shall apply such deposits to the payment of the Impositions or premiums next due, unless this Lease has been terminated and a new lease has not been entered into with a Recognized Mortgagee, in which event Depository shall apply such deposits in accordance with subsection (h) below or Section 24.11, as applicable.

(c) Increase of Deposits. If the amount of any Imposition or insurance premium is increased, Tenant shall, within ten (10) days of receipt of notice of such increase, increase the amount of such monthly deposits so that sufficient moneys for the payment of such Imposition or insurance premium shall always be available to pay before the Imposition become due and payable and at least thirty (30) days before the insurance premium becomes due and payable, as the case may be.

(d) Determination of Sufficiency of Deposits. For the purpose of determining whether Depository has on hand sufficient moneys to pay an Imposition or insurance premium, deposits for each category of Imposition or insurance premium shall be treated separately. Depository shall not be obligated to use moneys deposited for the payment of an Imposition or an insurance premium not yet due and payable or the payment of an Imposition or an insurance premium that is due and payable.

(e) Return of Deposits. If the Events of Default that gave rise to Landlord's demand for Tenant to make deposits for Impositions or insurance premiums under the provisions of Section 24.13(a) hereof have been cured by Tenant and, for a period of twelve (12) consecutive months following such cure, no Default with respect to any monetary obligation of Tenant under this Lease has occurred that has not been cured within the applicable grace period, then, at any time after the expiration of such twelve (12) month period, upon demand by Tenant and provided no Default or Event of Default with respect to any monetary obligation of Tenant under this Lease then exists, Landlord shall cause Depository to return to Tenant all unexpended moneys then held by Depository pursuant to the provisions of Section 24.13(a) and (c) hereof, with accrued interest thereon which shall not have been applied by Depository pursuant to the provisions of this Section 24.13. Thereafter, Tenant shall not be required to make any deposits required by this Section 24.13 unless and until there shall occur within a twelve (12) month period two (2) subsequent Events of Default with respect to any monetary obligation of Tenant under this Lease and Landlord has demanded of Tenant to make such deposits.

(f) Deposits with Recognized Mortgagee. In the event that a Recognized Mortgagee shall require Tenant to deposit funds to insure payment of Impositions or insurance

premiums, any amounts so deposited by Tenant shall be credited against the amounts which Tenant would otherwise be required to deposit under this Section 24.13.

(g) Effect of Sale or Transfer of Premises by Landlord. In the event of Landlord's sale or transfer of the Premises, Depository shall continue to hold any moneys deposited with it pursuant to the provisions of Sections 24.13(a) and (c) hereof and shall transfer such deposits to a special account with such Depository established in the name of Tenant and the Person who acquires the Premises and becomes landlord for the purposes provided in the applicable provisions of this Lease. Upon such sale or transfer, the transfer of such deposits and notice thereof to Tenant, Landlord shall be deemed to be released to the extent of the deposits so transferred from all liability with respect thereto and Tenant shall look solely to the Depository and the new landlord with respect thereto. Landlord shall promptly deliver to Tenant a copy of the instrument of transfer to the new landlord. The provisions of this Section shall apply to each successive transfer of such deposits.

(h) Effect of Expiration. Upon expiration of the Term, all deposits then held by the Depository, together with the interest, if any, earned thereon shall be applied by Landlord on account of any and all sums due under this Lease and the balance, if any, remaining thereafter with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or, if there shall be a deficiency, Tenant shall pay such deficiency to Landlord on demand.

Section 24.14. Rights of Recognized Mortgagees. Nothing in this Article 24 shall limit the rights of Recognized Mortgagees set forth in Article 11.

ARTICLE 25

NOTICES

Section 25.01. All Notices, Communications, Etc. in Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served as follows:

(a) If to Tenant, in duplicate, by telecopy, hand delivery, nationally recognized overnight courier or express mail, one addressed to

New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attention: General Counsel

The New York City Law Department

100 Church Street, 6th Floor
New York, New York 10007
Attention: Chief, Economic Development Division

or to such other address as Tenant may from time to time designate by notice given to Landlord in accordance with this Lease.

(b) If to Landlord, in quadruplicate, by telecopy, hand delivery, by nationally recognized overnight courier or express mail, one addressed to

The City of New York
Department of Citywide Administrative Services
1 Centre Street, Room 2017
New York, New York 10007
Attention: Lease Administration Unit

one to

The City of New York
Department of Citywide Administrative Services
1 Centre Street, 16th Floor
New York, New York 10007
Attention: Deputy Commissioner: Facilities Management
and Construction

and one to

The New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

and one to

The City of New York
Department of Citywide Administrative Services
1 Centre Street, 16th Floor
New York, New York 10007
Attention: General Counsel

or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant by express or certified mail, return receipt requested.

Section 25.02. Service. Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served as follows: (i) upon receipt or refusal if by hand delivery, (ii) on the next business day if by express mail or overnight courier, or (iii) upon delivery if by telecopy.

ARTICLE 26

NO SUBORDINATION

Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises.

ARTICLE 27

STREET WIDENING

Section 27.01. Proceedings for Widening Street. If any proceedings are instituted or orders made, by any Governmental Authority (other than the City), for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment from the Premises on, under or above any such street, or any changes or alterations upon the Premises, Tenant shall (subject to Tenant's right to contest same) comply promptly with such requirements at its sole cost and expense, as may be reasonably imposed upon Tenant by the relevant Governmental Authority and if Tenant shall fail to comply with such requirements within the time period mandated by the relevant authority (subject to Tenant's right of contest, as aforesaid), Landlord may, following thirty (30) days notice thereof to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, if, within such thirty (30) day period, Tenant shall fail to commence to remedy such failure or shall fail to diligently and continuously, subject to Unavoidable Delays, prosecute the same to completion), then Landlord, upon notice to Tenant may comply with the same, and the reasonable amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder and shall be payable by Tenant to Landlord within thirty (30) days following demand. If such proceedings or orders shall have been caused by, instituted or promulgated, as applicable by the City, Landlord shall effectuate such compliance and Tenant shall reimburse Landlord for Tenant's Occupancy Share of the documented costs incurred by Landlord in effectuating such compliance with respect to the Premises.

Section 27.02. Contest of Proceedings. Tenant shall be permitted to contest in good faith any proceeding or order to which Section 27.01 pertains, provided that such contest shall be brought in accordance with the provisions of Section 35.03 hereof as though Tenant were contesting a Requirement thereunder.

Section 27.03. Distribution of Award. Any award made or damages paid in connection with such proceedings shall be deemed to be an award made in connection with a Partial Taking (other than a temporary Taking) and shall be first paid to Tenant to the extent of its reasonable costs and expenses actually incurred in effecting compliance therewith and the remainder shall be paid, distributed and applied in accordance with provisions of Section 9.02 (b) hereof.

ARTICLE 28

EXCAVATIONS AND SHORING

In accordance with Section 26-229 of the Administrative Code of the City, if any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, Tenant shall:

(a) afford to Landlord, or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner upon reasonable notice at reasonable times for the purpose of doing such work, at Landlord's or such other Person's expense, as may be necessary to preserve any of the walls of the Building from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant, provided that such representative is available when the entry or work are scheduled to be done, and in all events such work shall be performed with reasonable diligence, subject to Unavoidable Delays, in accordance with, and subject to, any applicable Requirements and the Person or Persons performing (or on whose behalf such work is being performed shall use reasonable efforts to minimize interference with the ongoing operations of Tenant and Subtenants.

Except as hereafter otherwise provided in this Lease, Tenant shall not, by reason of such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder.

ARTICLE 29

CERTIFICATES BY LANDLORD AND TENANT

Section 29.01. Certificate of Tenant. Tenant shall, within thirty (30) days after notice by Landlord, execute, acknowledge and deliver to Landlord, or any other Person reasonably specified by Landlord, a written statement (which may be relied upon by such Person) (a) certifying (i) that his Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, (b) stating (i) whether Tenant has given Landlord written notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease, and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default; and (c) stating such other information as Landlord may reasonably request.

Section 29.02. Certificate of Landlord. Landlord shall, within (30) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or any other Person reasonably specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, (b) stating (i) whether an Event of Default has occurred and not been cured or whether Landlord has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and (ii) whether, to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so specifying, in detail, each such Default or Event of Default, and (c) stating such other information as Tenant may reasonably request.

Section 29.03. Failure to Delivery Certificate. Tenant's failure to deliver the certificate required by Section 29.01 hereof within such thirty (30) days period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults on the part of Landlord, (c) not more than two (2) months' rent has been paid in advance, and (d) no notice has been sent to Landlord of any default by Landlord which has not been cured. Landlord's failure to deliver the certificate required by Section 29.02 hereof within such thirty (30) day period shall be conclusive upon Landlord that (a) this Lease is in full force and effect, without modification except as may be represented by Tenant, (b) there are no uncured Defaults on the part of Tenant hereunder, (c) Rental has been paid to date, and (d) no notice has been sent to Tenant of any Default by Tenant which has not been cured.

Section 29.04. Authority of Party Executing Certificate. If the party delivering a certificate described in this Article 29 shall be other than an individual, the instrument shall be signed by a person authorized to execute such instrument on behalf of said party and the delivery of such instrument shall be a representation to such effect by such person. Any such certificate may be relied upon by any prospective purchaser of the interest of Landlord or Tenant hereunder or by any prospective Mortgagee or Subtenant.

ARTICLE 30

CONSENTS AND APPROVALS

Section 30.01. Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be required under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 30.02. Remedy for Failure or Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is required, then unless

expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party within (30) days or such other period as is expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted; provided, however, that if it is Landlord's consent or approval that is to be deemed granted, it shall not be deemed granted unless Tenant shall have included in its written request when made, in a separate notice, a specific statement that failure of Landlord to respond by a particular date shall be deemed consent or approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 30.03. No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease (but this provision shall limit Landlord only in its proprietary capacity as owner of the Premises and landlord under this Lease and it shall not affect Landlord in its governmental capacity).

Section 30.04. Expedited Arbitration. In the event that Tenant shall allege that Landlord has failed to act reasonably with respect to the granting of a consent or approval where Landlord is required to act reasonably pursuant to the terms of this Lease, Tenant shall have the right to submit such dispute to binding arbitration under the Expedited Procedures provisions (Rules 53 through 57 in the current edition) of the Commercial Arbitration Rules of the American Arbitration Association ("AAA") provided, however, that with respect to any such arbitration: (i) the list of arbitrators referred to in Rule 54 shall be returned within five (5) business days from the date of mailing, (ii) the parties shall notify the AAA, by telephone, within four (4) business days of any objections to the arbitrator appointed and will have no right to object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to in accordance to Rule 54, (iii) the Notice of Hearing referred to in Rule 55 shall be four (4) business days in advance of the hearing, and (iv) the hearing shall be held within seven (7) business days after the appointment of the arbitrator. If it shall be determined that Landlord acted unreasonably in refusing to grant the required consent or approval, then the consent or approval shall be deemed granted by Landlord. Utilization by Tenant of this Section 30.04 shall be preceded by written notice to Landlord that Tenant is taking such actions and such notice shall include specific reference to this Section and the expedited timing requirements herein.

ARTICLE 31

SURRENDER AT END OF TERM AND OWNERSHIP OF IMPROVEMENTS

Section 31.01. Surrender of Premises. Upon the Expiration of the Term (or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof), Tenant, without any payment or

allowance whatsoever by Landlord, shall surrender the Premises to Landlord in reasonably good order, condition and repair, reasonable wear and tear excepted, free and clear of all Subleases, liens and encumbrances (except that in the case of re-entry by Landlord pursuant to Article 24 hereof, the Premises shall be surrendered subject to those Subleases as to which Landlord has entered into non-disturbance agreements pursuant to the provisions of Section 10.06 hereof). Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 31.02. Delivery of Subleases, Etc. Upon the Expiration of the term (or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof), Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, any true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Completion then in effect for the Premises and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at the Premises, together with duly executed assignments of those warranties or guarantees which may be assigned by Tenant and with respect to which Tenant is the direct beneficiary, without recourse except as provided in Section 43.06(b), to Landlord, and all financial reports, books and records required by Article 37 hereof and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises which are in Tenant's control at such time (or copies thereof, to the extent Tenant is required by law or Accounting Principles to retain the originals).

Section 31.03. Ownership of Improvements. At the Expiration Date, title to all Improvements erected or installed by Tenant shall vest in Landlord unless purchased by Tenant as provided herein and shall be surrendered in accordance with the provisions of Section 31.01 of this Article.

Section 31.04. Trade Fixtures and Personal Property. Tenant, or any Subtenants that shall have entered into a Sublease in accordance with the provisions of this Lease, may remove Tenant Equipment (for which it was not reimbursed by Landlord or other Government Authority) if any, but upon removal of any such Tenant Equipment from the Premises prior to the end of the Term, Tenant shall promptly and at its sole expense, repair and restore, or cause to be repaired and restored the Premises and repair any damage to the Premises due to such removal. If such Tenant's Equipment shall be removed at the end of the Term, Tenant's obligation with respect thereto shall be limited to repairing (or causing to be repaired) any damage due to any such removal. Any Tenant Equipment or other personal property of Tenant or of any Subtenant which shall remain on the Premises after the Expiration of the Term (or upon a reentry by Landlord upon the Premises pursuant to Article 24 hereof) and after the removal of Tenant or such Subtenant from the Premises, may, at the option of Landlord be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by Landlord as its property or be disposed of at Tenant's expense without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant.

Section 31.05. Survival Clause. The provisions of this Article shall survive the Expiration of the Term.

ARTICLE 32

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

ARTICLE 33

QUIET ENJOYMENT

Landlord covenants that, as long as Tenant faithfully shall perform the agreements, terms, covenants and conditions hereof, Tenant shall and may, subject to the exceptions, reservations, terms and conditions of this Lease, peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through or under Landlord. This covenant shall run with the land and shall bind Landlord (and all assigns and successors of Landlord) and shall inure to the benefit of Tenant (and all assigns and successors of Tenant).

ARTICLE 34

ARBITRATION

Section 34.01. Procedure for Arbitration. Except as provided in Section 30.04, every dispute between the parties which is specifically provided in this Lease to be determined by arbitration shall be submitted to arbitration in the manner hereinafter provided. The party desiring the arbitration shall give notice to that effect to the other party and shall in such notice appoint a person as arbitrator. Within ten days, the other party by notice to the original party shall appoint a second person as arbitrator, the two selected arbitrators shall select a third arbitrator, or request the appointment of such by the American Arbitration Association (or any successor organization thereto) ("AAA"). Each arbitrator shall be fit and impartial and shall have at least ten years experience in the City in a calling connected with the matter of the dispute. The Arbitration shall be conducted, to the extent consistent with this Section, in accordance with the then prevailing commercial arbitration rules of the AAA. The matter in dispute will be determined by the decision of a majority of the three arbitrators. The arbitrators shall render their decision and award in writing within 30 days after the appointment of the third arbitrator.

Each party shall pay the fees and expenses of the arbitrator appointed by such party, and the fees and expenses of the third arbitrator and all other expenses of the arbitration panel (except fees and disbursements of attorneys and witnesses for each party which shall be paid by the party for which such attorneys or witnesses appeared) shall be paid as ordered by a majority of the three arbitrators.

In rendering their decision, the arbitrators shall have no power to modify or reform any of the provisions of this Lease, and the jurisdiction of the arbitrators is expressly limited accordingly. The decision of the arbitrators shall be final and conclusive on the parties, and judgment may be entered on the decision of the arbitrators rendered in accordance with this Section 34.01 and may be enforced in accordance with the laws of New York State.

ARTICLE 35

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 35.01. Tax Contest Proceedings. Tenant shall have the exclusive right, at its sole cost and expense, to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith, in accordance with the Charter and Administrative Code of New York City.

Section 35.02. Imposition Contest Proceedings. Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, could be, by reason of such postponement or deferment, in the reasonable judgment of Landlord, in danger of being forfeited and Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 35.02(b) hereof by reason of nonpayment thereof; and

(b) Tenant has either (i) deposited with Depository cash, or (alternatively, at Tenant's option) given to Landlord a letter of credit in form and substance reasonably satisfactory to Landlord, issued by an Institutional Lender located in New York City, in the amount so contested and unpaid together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Landlord's reasonable judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during (and by reason of) the pendency of such proceedings, or (ii) provided other equivalent security (for example, a deposit placed with a Recognized Mortgagee that is an Institutional Lender) in form, substance and amount, and on terms, reasonably satisfactory to Landlord. Upon the termination of such proceedings, Tenant shall promptly pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees

and disbursements), interest, penalties or other liabilities in connection therewith, and, upon such payment, Depository shall return any cash deposited with it with respect to such Imposition, together with the interest, if any, earned thereon and Landlord shall return any form of security being held by it together with interest, if any, earned thereon. If Tenant shall not pay the amounts referred to in the preceding sentence of this paragraph, then Depository shall, at Landlord's direction, disburse any moneys deposited with it by Tenant pursuant to the first sentence of this paragraph directly to the Person to whom or to which such Imposition is payable, and the Landlord shall likewise be entitled to apply the proceeds of any security deposited with it by Tenant pursuant to said sentence to such Person in payment of said amounts. Tenant shall remain liable for any unpaid balance of said amounts remaining after application by Depository or Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it within thirty (30) days after Landlord's written demand. If at any time during the continuance of such proceedings Landlord, in its sole reasonable judgment, shall deem insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Landlord's demand, shall make an additional deposit with Depository of such additional sums or deliver to Landlord such other acceptable security as Landlord may reasonably request, and upon failure of Tenant to so do, the amount therefore deposited (or made available by alternative security), together with the interest, if any, earned thereon, may be applied by Depository (or Landlord, if it is the holder of the security) to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any reasonable costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Depository or Landlord as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand. Nothing contained in this section shall be deemed to limit Tenant's obligation to make deposits provided for in Section 24.13 hereof.

Section 35.03. Landlord's Participation in Contest Proceedings. Landlord shall not be required to join in any action or proceeding brought by Tenant referred to in this Article or permit the action to be brought by Tenant in Landlord's name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord or that Landlord join in such proceedings. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all reasonable out-of-pocket costs and expenses (including, without limitation, attorney's fees and disbursements) incurred by Landlord (in Landlord's capacity as Landlord and not a Governmental Authority) in connection therewith.

ARTICLE 36

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it

is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 37

REPORTS SUBMISSIONS AND RECORDS

Section 37.01. Financial Reports. Tenant shall furnish to Landlord the following:

(a) within ninety (90) days after the Substantial Completion Date, a statement (the "PILOST Statement") in reasonable detail setting forth Tenant's calculation of the Project Public Purpose Payment, such statement to be certified by the chief operating officer or managing general partner of Tenant or the designee of such chief operating officer or managing general partner; and

(b) at any time that the Premises are used such that, if Tenant owned fee title to the Premises, the Premises would be "income-producing property" as that term is used in City Administrative Code Section 11-208.1 (or successor thereto), income and expense statements of the type required by such code section (or successor thereto) as if Tenant were the "owner" of the Premises as such term is used in Section 11-208.1, such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and such statements to be submitted notwithstanding that the City holds fee title to the Premises, or that PILOT rather than real estate taxes are being paid with respect to the Premises.

Section 37.02. Submission of TCO's. Tenant shall submit to Landlord a copy of each and every TCO received for part or all of the Premises, within three (3) business days of the receipt thereof by Tenant, through and including the TCO which represents the occurrence of Substantial Completion.

Section 37.03. Books and Records.

(a) Maintenance of Books and Records. Tenant shall keep and maintain at an office in the City complete and accurate books and records relating in any manner to the calculation of Public Purpose Payments and Tenant shall preserve such records for a period of at least six (6) years. However, if, at the expiration of such six (6) year period, Landlord is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

(b) Inspection and Audits of Books and Records.

Landlord, the Comptroller of the City (the "Comptroller") and/or Landlord's agents or representatives shall have the right from time to time during regular business hours, upon two (2) business days notice, to inspect and audit Tenant's books and records, and all other papers and files of Tenant, relating in any manner to the calculation of Public Purpose Payments. Tenant shall

produce all such books, records, papers and files, upon request of Landlord, the Comptroller and/or Landlord's agents and representatives for inspection at Tenant's premises. Subject to applicable law, Landlord and the Comptroller shall hold in confidence, and shall cause Landlord's agents and representatives to hold in confidence, all information obtained from Tenant's books, records, papers and files, except as may be necessary for the enforcement of Landlord's rights under this Lease.

(c) Notice to Tenant of Underpayments of Rental. Should any audit performed by Landlord, the Comptroller and/or Landlord's agents or representatives disclose that any PILOT, Public Purpose Payment or other Rental was underpaid or otherwise provide information that leads to the discovery of an underpayment of Rental, then any underpayments shall be paid to Landlord within ten (10) days after Tenant has received notice of such underpayment from Landlord together with interest thereon, from the date such amount was due hereunder, at the Late Charge Rate plus the reasonable cost of the audit.

Section 37.04. Survival Clause. The obligations of Tenant under this Article shall survive the Expiration of the Term.

ARTICLE 38

RECORDING OF LEASE

On the Commencement Date, or promptly thereafter, Landlord and Tenant shall execute a memorandum of this Lease and Tenant shall cause such memorandum and any amendments thereto to be recorded in the Office of the Register of the City of New York (New York County) promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

ARTICLE 39

PUBLIC PURPOSE PAYMENTS

Section 39.01. Determination and Payment of Amount.

(a) Estimate Payments. Tenant shall pay, within ten (10) days after the end of each calendar month, beginning with the month in which Commencement of Construction of the Project occurs and ending when the total of the amounts paid by Tenant pursuant to this section (a) shall equal the Estimated Public Purpose Payment, an amount equal to the lesser of (i) five (5%) percent of the Estimated Public Purpose Payment, and (ii) an amount which when added to all previous amounts paid pursuant to this subsection (a) equals the Estimated Public Purpose Payment. However, if Construction of the Project is delayed during any such month by an Unavoidable Delay, the amount payable for such month pursuant to the preceding sentence shall be reduced by multiplying such amount by a fraction, the numerator of which is the number of days of Unavoidable Delay occurring in such month and the denominator of which is the total number of days in such month.

(b) Adjustments. If the actual Project Public Purpose Payment, according to the PILOST Statement, exceeds the Estimated Public Purpose Payment, Tenant shall pay the amount of such excess at the same time as it delivers the PILOST Statement. If the actual Project Public Purpose Payment, according to the PILOST Statement, is less than the Estimated Public Purpose Payment, then within thirty (30) days of Tenant's submission of the PILOST Statement Landlord shall reimburse Tenant from the funds collected from previous payments pursuant to the preceding subsection (a) to the extent such funds have not already been spent or obligated under existing contracts. If such amounts not already spent or obligated are insufficient to reimburse Tenant in full, the remainder of the reimbursement shall be made by giving Tenant a credit against the next Rental due thereafter.

Section 39.02. Subsequent Public Purpose Payments. In addition to the Project Public Purpose Payment, Tenant shall pay Landlord, the Public Purpose Payment derived from any Construction Work performed after the Substantial Completion Date, each such payment to be made within ninety (90) days after completion of such Construction Work, and each such payment to be accompanied by a statement, in form similar to the statement required by Section 37.01(a) hereof, documenting the calculation of such payment. Such statement shall be accompanied by a report of Tenant's CPA, based upon an audit conducted in accordance with generally accepted auditing standards, stating that the schedules fairly present, Project Public Purpose Payments, as defined in the Lease.

Section 39.03. INTENTIONALLY OMITTED.

Section 39.04. Offset Against Rental. If it is determined by the appropriate taxing authority that any sales, compensating use or other similar taxes, the anticipated or assumed non-payment of which generated a Public Purpose Payment are payable by Tenant, or if any commercial rent or occupancy taxes are charged on any Public Purpose Payment, then the amount of such taxes (including interest and penalties if not due to Tenant's fault) which Tenant has been compelled to pay may be deducted by Tenant from the Rental and any other sums payable hereunder by Tenant to Landlord until Tenant has recovered the full amount of such, provided that Tenant has notified Landlord in writing prior to payment of such taxes that a claim has been made therefor. If permitted by applicable law, Landlord has the right to contest the imposition of such taxes provided that neither Tenant's interest in the Premises nor any income derived by Tenant therefrom would, by reason of such contest, be forfeited or lost, or subject to any lien, encumbrance or charge, and Tenant would not by reason thereof be subject to any civil or criminal liability. In no event shall any payment to be made to Tenant hereunder by reason of sales, compensating use or similar taxes being charged to Tenant, exceed the Public Purpose Payment paid to Landlord in lieu of such taxes pursuant to this Article.

Section 39.05. Application of Public Purpose Payments. The proceeds of all Public Purpose Payments (including, without limitation, Estimated Public Purpose Payments) shall be spent for purposes to be determined by Landlord, in its sole discretion, after consultation with Tenant.

Section 39.06. INTENTIONALLY OMITTED.

Section 39.07. Definitions.

(a) "Public Purpose Payment" means an amount equal to the amount of the sales, compensating use and other similar tax savings realized by Tenant, in connection with any Construction Work or purchase of the Equipment, by reason of Landlord's ownership of all or any part of the Premises.

(b) "Project Public Purpose Payment" means the Public Purpose Payment in connection with the Construction of the Project and purchase of Equipment in connection with or during such Construction, up to and including the Substantial Completion Date.

(c) "Estimated Public Purpose Payment" means an amount which Landlord and Tenant agree, as of the date construction drawings for Construction of the Project are available for bid by contractors, is the best estimate of what the Project Public Purpose Payment will be.

ARTICLE 40

INVESTIGATIONS, SOLICITATIONS, ETC.

Section 40.01. Cooperation by Tenant. Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to this Lease, when it is the subject of the investigation, audit or inquiry. If:

(a) any Person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, EDC or any local development corporation, or any public benefit corporation organized under the laws of the State of New York, or

(b) any Person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of a Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, State or any, then the commissioner or agency head whose agency is a party in interest to the submitted bid, submitted proposal, transaction, contract, lease, permit or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a Person to testify.

Section 40.02. Adjournments of Hearing, Etc. If Tenant or any agent, employee or associate of Tenant requests an adjournment in any proceeding investigating the events surrounding the negotiation and consummation of this Lease of up to thirty (30) days, such adjournment shall be granted. If a further adjournment is sought it must be done by a written request to the agency head or commissioner who convened the hearing, at least three (3) business days prior to the scheduled hearing date, setting forth the reasons for the request. If the commissioner or agency head denies the request for an additional adjournment, then Tenant, its agent, employee or associate must appear at the scheduled hearing or commence an action to obtain a court order, pursuant to Article 78 of the Civil Practice Laws and Rules, substantiating a claim that the denial of the adjournment was capricious or arbitrary. If Tenant, its agent, employee or associate fails to appear at the rescheduled hearing or to diligently pursue such judicial relief, as the case may be, then, if in the sole judgment of the commissioner or agency head the failure to appear would have a material adverse effect on the investigation, the commissioner or agency head who convened the hearing may suspend this Lease pending the final determination pursuant to Section 39.05 below without the City's incurring any penalty or damages for delay or otherwise; provided, that the right to suspend this Lease shall not be invoked if Tenant shall have discharged or disassociated itself from such agent, employee or associate and said agent, employee or associate is not reemployed either directly or indirectly or otherwise compensated by Tenant.

Section 40.03. Penalties. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any Person, or any entity of which such Person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or EDC; and/or

(b) The Cancellation or termination of any and all such existing City or EDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged, to an unaffiliated and unrelated Institutional Lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or EDC incurring any penalty or damages on account of such cancellation or termination.

Section 40.04. Criteria for Determination. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in subsections (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any Person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 40.03 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 40.03 above gives notice and proves that such interest was previously acquired. Under either circumstances the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

Section 40.05. Definitions. As used in this Article:

(a) The term "license" or "permit" shall mean a license, permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal, or employee.

(c) The term "entity" shall mean any firm, partnership, corporation, association, or Person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" shall mean any Person associated with another Person or entity as a partner, director, officer, principal or employee.

Section 40.06. Failure to Report Solicitations. In addition to and notwithstanding any other provision of this Lease, the commissioner or agency head may in his or her sole discretion terminate this Lease upon not less than three (3) days written notice in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by the Tenant, or affecting the performance of this Lease.

ARTICLE 41

EMPLOYMENT REPORTING AND REQUIREMENTS

Section 41.01. Employment Reporting and Requirements. So long as the City or its designee shall be Landlord, Tenant (if Tenant is other than EDC) shall be bound by the following requirements:

(a) Within ten (10) calendar days after execution of this Lease, Tenant, if it has not already done so, shall complete and deliver to EDC a questionnaire, on the form prescribed by EDC, setting forth in substance, how many and what types of jobs Tenant in good faith estimates will be created or retained at the Premises when the Project is completed and ready for occupancy, and such supplementary documentation as may be required by the form.

(b) Tenant shall cause each Sublease entered into before the fifth (5th) anniversary of Substantial Completion (x) to provide either that the Subtenant, and any sub-Subtenant or assignee, under such Sublease shall furnish such reports to EDC or that said Subtenant shall furnish such reports to Tenant, and (y) to provide that said Subtenant, and any sub-Subtenant or assignee, shall cooperate with City employment opportunity programs, in the manner more particularly set forth below. Tenant shall include (or, in the case of Subtenants who are governmental entities, use reasonable efforts to include in each Sublease entered into before the fifth (5th) anniversary of Substantial Completion a covenant by the Subtenant, for itself, its subtenants and any assignee:

(i) in good faith to consider such proposals as the City or City-related entities may make with regard to filling employment opportunities created at the Premises;

(ii) to provide the City and such entities with the opportunity (A) to refer candidates (as the same relates to new hires) who are City residents having the requisite experience or training for positions at the Premises, and (B) to create a program to train City residents for those jobs; and

(iii) for each calendar year included in whole or in part in the period ending on the fifth (5th) anniversary of the commencement of the Sublease, to report to Tenant or EDC (the Sublease to provide which), by February 1 of the following year, the gross number of jobs at the demised premises at the end of the prior calendar year and the number of employees at the demised premises at the end of the prior calendar year who were New York City residents (if the Sublease provides that the reports are to be submitted to EDC, said reports shall be on a form to be provided by EDC).

(c) In addition to the foregoing, Tenant shall provide (or, in the case of Subtenants who are governmental entities, use reasonable efforts to provide) in each Sublease with a Subtenant who in the aggregate leases at least 5,000 gross square feet in the Project that such Subtenant shall meet with EDC or its designee (i) within six months after the execution of the Sublease by the Subtenant and its lessor, on a date mutually agreeable to EDC and such Subtenant, or, in the absence of such agreement, on the weekday closest to six months after the execution of

the Sublease by the Subtenant and its lessor and (ii) until the fifth anniversary of the commencement of the Sublease, within 90 days after EDC's written request (which request may not be made more often than once each calendar year, the meeting required by the preceding clause (i) being separate from such requested meeting, and shall be sent by certified or registered mail to the Subtenant's address as supplied to EDC by Tenant) on a date mutually agreeable to EDC and such Subtenant, or, in the absence of such agreement, on the weekday closest to 90 days after such request. Such meetings shall consider, among other matters, (1) the breakdown by job category of the Subtenant's employees, (2) the Subtenant's projected employment for the following twelve months, (3) the Subtenant's interaction with City-wide or project-specific employment programs and (4) the Subtenant's problems with recruitment, retention of employees and job training. As a follow-up to such meeting, EDC or its designee may submit a written proposal to the Subtenant suggesting employment/training programs designed to address the Subtenant's stated needs. The Sublease must provide that the Subtenant shall in good faith consider such suggestions. Each Subtenant shall explicitly acknowledge in its Sublease that the covenants and requirements referred to above are made for the benefit of Tenant, EDC and the City and shall agree that such covenants and requirements may be enforced at the expense of the Subtenant by Tenant, and by EDC or the City (or the designee of either) as a third party beneficiary, and that such entities and Tenant may seek equitable relief to enforce such provisions.

(d) Tenant, by March 1 of each year, for each prior calendar year included in whole or in part in the period from the date of Substantial Completion until the fifth (5th) anniversary of the commencement of the last Sublease entered into prior to the fifth (5th) anniversary of Substantial Completion, shall submit to EDC a certificate (the "Certificate"), certified by its managing general partner (or, if a corporation, its president), setting forth as of the end of the prior calendar year (1) the names, addresses and contact persons of all Subtenants, (2) the number of square feet leased by each Subtenant, and (3) with regard to Subtenants required at any time during the prior calendar year to submit information to Tenant as provided above, the number of employees of each such Subtenant at the Premises and the number of such employees who were New York City residents, to the extent such information has been supplied to Tenant, and if not supplied to Tenant, then Tenant's own best estimate of such numbers. Each such Certificate must be accompanied by a certificate of an officer or managing partner, or managing venturer in Tenant stating that the Certificate is a correct summation of reports received from Subtenants and identifying which Subtenants did not submit reports and the number of square feet subleased by such Subtenants. Tenant must retain all backup documents relating to any Certificate in its office until at least one year after submitting such Certificate to EDC. EDC and its agents and employees shall be permitted upon two (2) business days notice to inspect and copy such documents during normal business hours.

(e) Tenant must also notify EDC or its designee of the name and address of any Subtenant which has executed a Sublease within 30 days after such Subtenant has executed the Sublease. After the fifth (5th) anniversary of Substantial Completion, such notification of the name and address of any Subtenant shall only apply to a Subtenant which in the aggregate leases at least 5,000 square feet in the Building.

(f) The above obligations of Tenant are for the benefit of EDC and the City and may be enforced at the expense of the Tenant by EDC or the City (or the designee of either).

(g) Reference is made to the second recital set forth on the first page of this Lease. Tenant acknowledges that accurate and complete information concerning employment opportunities generated at the Project is of material concern to the City and agrees that Tenant's covenants and obligations in this Article 41 are a material inducement for the City, as landlord, to deliver this Lease. Tenant agrees to cooperate fully with the City and EDC and their designees in enforcing against Subtenants the covenants and requirements referred to in paragraphs (b) and (c), provided, however, that the City shall reimburse Tenant for any out-of-pocket litigation costs resulting from such cooperation and that a failure by a Subtenant to meet its obligations under its Subleases as described in paragraphs (b) and (c) above shall not in and of itself constitute a Default under this Lease, although it shall create a right in the City and EDC, and their designees, to pursue equitable enforcement of such obligations against such Subtenants. Upon demand made by EDC or the City of their designees, as the case may be, Tenant shall assign to EDC or the City or their designees Tenant's cause of action and legal rights to enforce such covenants and requirements or otherwise permit EDC or the City or their designees to enforce such covenants and requirements.

(h) The City and EDC and their designees shall be entitled to seek equitable relief in the event that Tenant or any Subtenant should fail to fulfill any of its obligations contained in this Article 41.

(i) References to the City and EDC in this Article 41 shall be construed to include their representative designees.

Section 41.02. Remedies. Notwithstanding anything to the contrary contained in this Article, the remedies available to Landlord in the case of a Default or Event of Default resulting from a violation of the provisions of this Article shall not include the right to terminate this Lease under Article 24 hereof.

ARTICLE 42

INTENTIONALLY DELETED

ARTICLE 43

MISCELLANEOUS; INDICTMENT

Section 43.01. Captions. The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 43.02. Table of Contents. The table of contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 43.03. Reference to Landlord and Tenant. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant. The use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 43.04. Person Acting on Behalf of a Party Hereunder. If more than one Person is named as, or becomes a party hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each person acting through or named as a party shall be fully and jointly and severally liable for all of such party's obligations hereunder. Any notice by a party to any Person acting through or named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 43.05. Indictment.

(a) Procedures and Requirements. If any grand jury impaneled by any federal or state court files an indictment with such court charging Tenant or any principal of Tenant (such indicted Person referred to hereafter as the "Indicted Party") with having committed an intentional felony in connection with the Premises, construction or operations thereon, or any other matter, then Landlord shall convene a hearing (the "Hearing") before a panel of three persons consisting of (i) the City's Deputy Mayor for Economic Development and Planning (or a successor in function designated by the City's Mayor), (ii) the Commissioner of the Department of Citywide Administrative Services (or a successor in function designated by the City's Mayor), and (iii) the Corporation Counsel of the City, or the respective duly authorized designees of any of them, or such substitute persons as the City's Mayor may designate (the "Hearing Officers"). Such Hearing shall be held upon not less than forty-five (45) days written notice to the Indicted Party and Tenant for the purpose of determining whether it is in the best interest of the City to require the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be. At the Hearing, Tenant and the Indicted Party shall have the opportunity to be represented by counsel and to make a presentation to the Hearing Officers orally and in writing. The Hearing Officers shall consider and address in reaching their determination (x) the nexus of the conduct charged in the indictment to this Lease, (y) the deleterious effect which an assignment of the Indicted Party's interest in this Lease or in Tenant, as the case may be, would have on the economic development interests of the City which this Lease is intended to promote, and (z) other relevant matters. The Hearing Officers shall render a decision in writing within thirty (30) days of the last day of the Hearing. If the Hearing Officers decide by a majority vote that it is in the best interest of the City to require an assignment by the Indicted Party, then Landlord shall notify the Indicted Party and Tenant of the Hearing Officers' decision within five (5) days of the date thereof. The Indicted Party shall assign its interest in this Lease or in Tenant, as the case may be, within six (6) months of the date of the notice of such decision by the Hearing Officers to a Permitted Assignee who is not an affiliate of the Indicted Party acting either in its own behalf or as an independent trustee in accordance with Section 43.05(c) below for the benefit of the Indicted Party for the purpose of actively managing this Lease or the Indicted party may receive the consideration, if any, for such assignment in installment payments, provided that such consideration shall be for a sum certain and that, except as

hereinafter provided, following such assignment the Indicted Party shall have no further interest in the Premises or in any profits arising therefrom. If the Indicted Party has sought review of the Hearing Officers' decision by appropriate lawful means, the time for the assignment of the Indicted Party's interest, if required by the Hearing Officers' decision, shall be stayed until such review has been completed.

(b) Failure to Assign. Any failure of (i) the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be, or (ii) a Permitted Assignee who is not affiliated with the Indicted Party, acting as a trustee, to assign the Indicted Party's interest in this Lease or in Tenant, as the case may be, following a Conviction within the time and in the manner provided hereunder, shall be deemed to be a material Default by Tenant hereunder and shall permit Landlord to obtain injunctive or equitable relief to compel an assignment, or other appropriate remedies, but shall not permit Landlord to terminate this Lease. Upon the occurrence of such Default, Landlord and the Recognized Mortgagee(s) shall have all of the rights and remedies provided hereunder in the case of a Default by Tenant, except that the Recognized Mortgagee(s) shall have no obligation to cure the Default as a condition to exercising its right to obtain a new lease pursuant to Section 11.04 hereof, nor shall such an obligation to cure be a condition to an assignment of this Lease pursuant to an otherwise proper foreclosure.

(c) Assignment to Trustee. If the Indicted Party assigns its interest in Tenant or in this Lease to a trustee as provided in Section 43.05(a) hereof, the trust agreement between the Indicted Party and the trustee shall be reasonably satisfactory to Landlord and the Recognized Mortgagee(s), and the trust agreement shall provide as follows:

1. If (x) the Indicted Party is found not guilty of the felony for which it is indicted by a court of competent jurisdiction or (y) the felony charges against such Indicted Party are dismissed, then the trustee shall reassign the Indicted Party's interest in Tenant or in this Lease, as the case may be, to the Indicted Party;

2. If (x) the Indicted Party is found guilty of the felony for which it is indicted by a court of competent jurisdiction and either the period for appeal of such verdict has expired or such verdict is affirmed by the court having ultimate jurisdiction to hear an appeal of such determination or (y) the Indicted Party pleads guilty to the felony for which it is indicted or another intentional felony or pleads "no contest" to the felony for which it is indicted or another intentional felony (either (x) or (y) above, a "Conviction"), then the trustee shall assign this Lease or the Indicted Party's interest in Tenant, as the case may be, within six (6) months of the date of the Conviction to a Permitted Assignee who is not affiliated with the Indicted Party; and

3. During the pendency of any such trust, the Indicted Party shall exercise no control over the Premises but may make contributions in connection with operations at the Premises and receive distributions therefrom.

(d) Application. This Section 43.05 shall apply only for so long as the City or any agency or instrumentality thereof shall be Landlord hereunder.

Section 43.06. Limitation on Liability.

(a) Landlord Exculpation. The liability of Landlord, or of any other Person who has at any time acted as Landlord hereunder, for damages or otherwise, shall be limited to Landlord's interest in the Premises, the proceeds, payable to Landlord, of any insurance policies covering or relating to the Premises, and any awards payable to Landlord in connection with any condemnation of part or all of the Premises. In no event, however, shall Landlord's interest in the Premises include: (i) any rights, claims, or interests of Landlord that at any time may exist pursuant to a loan document to which the Landlord is a party or any note or mortgage given to Landlord in connection with the Premises; (ii) any rights, claims, or interests of Landlord that at any time may arise from or be a result of Landlord's governmental capacity; (iii) any rents, issues, or proceeds from or in connection with the Premises, or that would otherwise be within Landlord's interest in the Premises, from and after such time as such items have been received by the Landlord; (iv) any proceeds resulting from a levy under execution or attachment against Landlord's fee interest in the Premises (it being understood and agreed that Tenant shall not seek to effect such a levy under execution or attachment). None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Landlord or EDC shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder.

(b) Intentionally omitted.

(c) Governs Lease. The provisions of this Section 43.06 shall govern every other provision of this Lease. The absence of explicit reference to this Section 43.06 in any particular provision of this Lease shall not be construed to diminish the application of this Section 43.06 to such provision. This Section 43.06 shall survive the Expiration of the Term.

(d) Other Remedies. Nothing in this Section 43.06 is intended to limit the remedies available to any party under this Lease other than by limiting the enforcement of those remedies to a party's interest in the Premises, in the manner and to the extent provided in this Section 43.06. Nothing in this Section 43.06 is intended to prevent or preclude any person from obtaining injunctive or declaratory relief with respect to any claim arising under this Lease or in connection with the Premises.

Section 43.07. Remedies Cumulative. Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 43.08. Merger. Unless Landlord, Tenant and all Mortgagees sign and record an agreement to the contrary, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any party thereof by reason of the same Person

acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 43.09. Performance at Tenant's Sole Cost and Expenses. All of Tenant's obligations hereunder shall be performed at Tenant's sole cost and expense.

Section 43.10. Relationship of Landlord and Tenant. This Lease is not to be construed to create a partnership or joint venture between the parties, it being the intention of the parties hereto only to create a landlord and tenant relationship.

Section 43.11. Waiver, Modification, Etc. No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Landlord and Tenant. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default thereof.

Section 43.12. Depository Charges and Fees. Tenant shall pay any and all fees, charges and expenses owing to Depository in connection with any services rendered by Depository pursuant to the provisions of this Lease.

Section 43.13. Ownership and Investment of Deposited Funds. All funds held by Depository pursuant to this Lease shall be and shall be deemed to be trust funds and shall be disbursed only in accordance with the provisions of this Lease. The Depository shall invest all funds deposited with it pursuant to this Lease, in United State Treasury bills or notes, or, at the option of Tenant, in certificates of deposit or bankers' acceptances of any State or United States commercial bank with gross assets in excess of one billion dollars (\$1,000,000,000) and which is reasonably satisfactory to Landlord, or in the notes of corporations, reasonably satisfactory to Landlord, listed on the New York Stock Exchange. The Depository will not be liable for any loss which may be incurred by reason of any such investment of the funds which it holds hereunder, except to the extent such loss shall be attributable to the improper investment of such funds (e.g., in an investment vehicle other than as described above, or by reason of any improper or negligent acts or omissions of Persons acting by through or under the Depository). Any income resulting from such investment, including any gains realized on the sales thereof, shall be added to and be deemed to be part of the funds which generated such income, and shall be reinvested in accordance with this Section 43.13.

Section 43.14. Transfer of Lease Interests.

(a) Transfer of Landlord's Interest. In the event of any sale or sales, assignment or assignments, or transfer or transfers of the Landlord's interest in the Premises and this Lease, the seller, assignor or transferor, as the case may be, shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed after the date of such sale, assignment or transfer (unless the relevant conveyance documents provide otherwise), and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Premises

including, without limitation, the purchaser, assignee or transferee on any such sale, assignment or transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder whether accruing before or after the date of such sale, assignment or transfer.

(b) Transfer of Tenant's Interest. If the named Tenant or any successor to its interest hereunder ceases to have any interest in the leasehold estate hereby created by reason of any authorized and valid sale or sales, assignment or assignments or transfer or transfers of the Tenant's interest hereunder in accordance with the terms of this Lease, the seller, assignor or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed whether accruing before or after the date of such sale, assignment or transfer (unless the relevant conveyance documents provide otherwise), with the exception of obligations, as limited by the provisions of Section 43.06(b), arising from fraud, fraud of creditors, conversion or breach of trust or intentional damage to the Premises by the seller, assignor or transferor occurring before the sale, assignment or transfer, or from individual liability when Landlord is acting in or pursuant to its governmental capacity, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Tenant's interest in the Premises under this Lease, including, without limitation, the purchaser or transferee in any such sale, disposition or transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Tenant hereunder to be performed whether accruing before or after the date of such acquisition, sale or transfer. Notwithstanding the preceding, however, a buyer, assignee or transferee of the tenancy interest in this Lease shall not be required to assume, or be deemed to have assumed, obligations of Tenant accruing before the sale, assignment or transfer, provided the seller, assignor or transferor provides Landlord, at the closing of the sale, assignment or transfer, an agreement, in form and substance satisfactory to Landlord, to continue to be liable for all obligations under this Lease accruing up to the date of the sale, assignment or transfer and security for the seller's, assignor's or transferor's liability under such agreement, such security also to be in form and substance satisfactory to Landlord.

Section 43.15. Governing Law. This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 43.16. Claims. Any and all claims asserted by or against Landlord arising under this Lease or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in the City of New York or in the courts of the State of New York ("New York State Courts") located in the City of New York. To effect this agreement and intent, Landlord and Tenant agree and, where appropriate, shall require each contractor or consultant to agree, as follows:

(i) If Landlord initiates any action against Tenant in Federal Court or in New York State Court, service of process may be made on Tenant either in person, wherever Tenant may be found, or by registered mail (return receipt requested) addressed to Tenant at its address as set forth in this Agreement, or to such other address as Tenant may provide to Landlord in writing.

(ii) With respect to any action between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non convenient (ii) to remove to Federal Court outside New York City, and (iii) to move for a change of venue to New York State Court outside New York City.

(iii) With respect to any action between Landlord and Tenant in Federal Court located in New York City, Tenant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

(iv) If Tenant commences any action against Landlord in a court located other than in the City and State of New York, then, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, then Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 43.17. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 43.18. Effect of Other Transactions. No Sublease, Mortgage or Capital Transaction, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Landlord, shall be deemed to modify this Lease in any respect.

Section 43.19. City as Landlord. The obligations of the City in its governmental capacity are not to be construed as obligations of the City in its capacity as Landlord under this Lease. The rights of the City in its governmental capacity are not to be construed as rights of the City in its capacity as Landlord under this Lease.

Section 43.20. Waiver of Jury. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim for injury or damages. In the event Landlord commences any proceeding for nonpayment of Rental or any other sums required to be paid by Tenant under the terms of this Lease, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings.

Section 43.21. Designee. References to Landlord in this Lease shall be deemed to refer also to any designee named by Landlord to act in its behalf with respect to this Lease. Actions to be taken by DCAS hereunder may instead, at Landlord's option, be taken by Landlord or Landlord's designee.

Section 43.22. Conferences. Tenant, and any partners in or principals of Tenant having decision making authority with respect to the Project, shall be available from time to time to

confer with Landlord regarding issues arising or decisions to be made with respect to the Project at times reasonably acceptable to Tenant during the City's regular business hours, within ten (10) days of following receipt of a written request for such a conference or such shorter period as may be necessary in an emergency situation. Landlord's request for any such conference shall include a reasonable description of the subject matter to be discussed as well as an agenda for such conference and the names, affiliations and titles of all attendees. Except for emergency situations or when otherwise reasonably necessary, Landlord shall not call such conferences more than one time per calendar month. Landlord shall cause DCAS to be available for such conferences as may be requested by Tenant within the time frames set forth in the preceding sentence.

ARTICLE 44

ACCESS

To the extent such access shall be mandated by applicable Requirements for purposes of enabling the Fire Department and other government agencies to discharge their required governmental duties, Tenant shall provide reasonable access to the Premises during the Construction of the Project; it being agreed that under emergency circumstances such access will not be denied.

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

THE CITY OF NEW YORK DEPARTMENT
OF CITYWIDE ADMINISTRATIVE SERVICES

Landlord

ATTEST:

By: Lori Fierstein
Name: LORI FIERSTEIN
Title: DEPUTY COMMISSIONER

[SEAL]

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION

Tenant

By: Charles M. Hanel
Name:
Title:

Approved as to Form by the New York City Corporation Counsel:

[Signature]
Acting Corporation Counsel