

**AGREEMENT OF LEASE**

**between**

**THE CITY OF NEW YORK**

**Landlord,**

**and**

**WALKER STREET-CHUNG PAK LOCAL DEVELOPMENT CORPORATION,**

**Tenant.**

**Premises**

**Northern portion of  
Block 198, Lot 1**

**New York, New York**

**Dated as of December 18, 1990**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1    DEFINITIONS .....	1
ARTICLE 2    DEMISE OF PREMISES AND TERM OF LEASE .	12
ARTICLE 3    RENT; SECURITY	14
ARTICLE 4    LOCAL DEVELOPMENT CORPORATION.....	18
ARTICLE 5    INFLATION ADJUSTMENT.....	20
ARTICLE 6    LATE CHARGES	21
ARTICLE 7    INSURANCE .....	22
ARTICLE 8    DAMAGE, DESTRUCTION AND RESTORATION .....	29
ARTICLE 9    CONDEMNATION .....	34
ARTICLE 10    ASSIGNMENT, TRANSFER AND SUBLETTING .....	39
ARTICLE 11    MORTGAGES.....	47
ARTICLE 12    [INTENTIONALLY OMITTED]	
ARTICLE 13    CONSTRUCTION WORK.....	53
ARTICLE 14    REPAIRS, SIDEWALKS, UTILITIES AND WINDOW CLEANING.....	59
ARTICLE 15    CAPITAL IMPROVEMENTS.	61
ARTICLE 16    REQUIREMENTS ...	62
ARTICLE 17    DISCHARGE OF LIENS; BONDS.....	63
ARTICLE 18    REPRESENTATIONS	65
ARTICLE 19    LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC. ....	66

ARTICLE 20	INDEMNIFICATION OF LANDLORD AND OTHERS .....	74
ARTICLE 21	[INTENTIONALLY OMITTED]	
ARTICLE 22	LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS .....	78
ARTICLE 23	PERMITTED USE; NO UNLAWFUL OCCUPANCY .....	80
ARTICLE 24	EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC. ....	81
ARTICLE 25	NOTICES	89
ARTICLE 26	NO SUBORDINATION .....	90
ARTICLE 27	STREET WIDENING	91
ARTICLE 28	EXCAVATIONS AND SHORING .....	92
ARTICLE 29	CERTIFICATES BY LANDLORD AND TENANT .....	93
ARTICLE 30	CONSENTS AND APPROVALS .....	94
ARTICLE 31	SURRENDER AT END OF TERM .....	95
ARTICLE 32	ENTIRE AGREEMENT	97
ARTICLE 33	QUIET ENJOYMENT	98
ARTICLE 34	APPRAISAL AND ARBITRATION .....	99
ARTICLE 35	ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.....	
ARTICLE 36	INVALIDITY OF CERTAIN PROVISIONS.....	104
ARTICLE 37	FINANCIAL REPORTS.....	105
ARTICLE 38	RECORDING OF LEASE .....	107
ARTICLE 39	[INTENTIONALLY OMITTED]	
ARTICLE 40	NONDISCRIMINATION; AFFIRMATIVE ACTION; REFUSAL TO TESTIFY .....	

ARTICLE 41	EMPLOYMENT REPORTING AND REQUIREMENTS .....	113
ARTICLE 42	[INTENTIONALLY OMITTED]	
ARTICLE 43	MISCELLANEOUS	116
EXHIBIT A	DETENTION SPACE	
EXHIBIT B	LAND	
EXHIBIT C	DEFINITION OF "FLOOR AREA"	
EXHIBIT D	TITLE MATTERS	
EXHIBIT E	TENANT'S CERTIFICATE OF INCORPORATION	
EXHIBIT F	TENANT'S BY-LAWS	
EXHIBIT G	[INTENTIONALLY OMITTED]	
EXHIBIT H	[INTENTIONALLY OMITTED]	
EXHIBIT I	[INTENTIONALLY OMITTED]	
EXHIBIT J	COMMERCIAL SUBLEASE	
EXHIBIT K	MANHATTAN BOROUGH BOARD RESOLUTION	
EXHIBIT L	SCHEMATICS	
EXHIBIT M	DESIGN GUIDELINES	

THIS AGREEMENT OF LEASE, made as of the 18th day of December 1990 between THE CITY OF NEW YORK, a municipal corporation of the State of New York, acting through its Department of General Services, Division of Real Property, having an address at 2 Lafayette Street, New York, New York 10007, as landlord, and WALKER STREET-CHUNG PAK LOCAL DEVELOPMENT CORPORATION, a local development corporation under Section 1411 of the Not-for-Profit Corporation Law of the State of New York, having an address c/o Chinese-American Planning Council, 65 Lispenard Street, Fourth Floor, New York, New York 10013, as tenant,

**W I T N E S S E T H:**

WHEREAS, The City of New York is the owner of the Land (as defined below) and the Detention Space (as defined below) and any buildings and other improvements situated thereon or therein; and

WHEREAS, The City of New York desires to develop or cause to be developed said premises as a mixed-use residential-commercial complex, to include housing for low-income elderly persons as well as retail and other commercial space, thereby both serving the housing needs of the surrounding community and promoting commercial activities so as to preserve existing and produce new employment opportunities for its citizenry and generating new revenues to The City of New York; and

WHEREAS, the commercial portion of the said complex will be developed upon the Premises and will be partially financed by the Construction Loan (as defined below), while the residential portion of the complex will be developed upon adjacent City-owned premises pursuant to another ground lease between the parties hereto and will be financed partially by the HUD Loan (as defined below) and partially by The City of New York through the Funding Agreement (as defined below); and

WHEREAS, the parties in October 1988 executed in escrow a lease for the same premises which lease, because of failure of the escrow conditions, was null and void ab initio;

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

**ARTICLE I**

**DEFINITIONS**

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

**"Accounting Principles"** means the then current generally accepted accounting principles consistently applied which relate to the cash method of accounting.

**"Additional Base Rent"** means the Base Rent payable pursuant to Section 3.02(d) hereof.

**"Additional Base Rent Commencement Date"** means the first day of the first full calendar month to commence after the final disbursement of funds pursuant to the Funding Agreement.

**"Additional Base Rent Period"** means the period from and including the Additional Base Rent Commencement Date until but not including the fortieth (40th) anniversary of the Additional Base Rent Commencement Date.

**"Affiliate" or "Affiliates"** means (A) any Person that is not a publicly-held corporation and that has, directly or indirectly, at least a 5% ownership interest in the capital and/or profits of Tenant, (B) any Person that is not a publicly-held corporation but in which Tenant, any partner of Tenant or any stockholder of any Person that is a partner of Tenant, has, directly or indirectly, a capital and/or profits ownership interest of at least 5%, (C) any publicly-held corporation which owns, directly or indirectly, at least 20% of Tenant, or is at least 20% owned by Tenant, or a principal officer of which is also a principal officer of Tenant, or a majority of directors of which are also directors or officers of Tenant, (D) any director of Tenant, or any director or principal officer of such director and (E) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition of a spouse; a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his spouse; a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing. Ownership of or by Tenant referred to in this definition includes beneficial ownership effected by ownership of intermediate entities.

**"All Risk"** has the meaning provided in Section 7.01(c) hereof

**"Architect"** means The Edelman Partnership Architects and Anschuetz, Christidis & Lauster Architects or any other registered architect or architectural firm 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) hereof.

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

**"Associated Contractor"** means any Person with whom Tenant or an Affiliate has material contracts for items or services in connection with properties other than the Premises. "Material contracts" shall mean any contract for items or services the value of which is in excess of twenty-five thousand dollars (\$25,000).

**"Bank"** has the meaning provided in Section 3.09(c) hereof.

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

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

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

**"Casualty Restoration"** has the meaning provided in Section 8.02(a) hereof.

**"Certificate of Occupancy"** means the earlier to be issued of a temporary or permanent certificate of occupancy, issued by the New York City Department of Buildings.

**"Certified Public Accountant"** means an independent certified public accountant or accounting firm, licensed in the State of New York, selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed.

**"Chung Pak"** means Walker Street-Chung Pak Local Development Corporation.

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

**"Commence Construction"** or **"Commencement of Construction"** has the meaning provided in Section 13.01(a) hereof

**"Commencement Date"** has the meaning provided in Article 2 hereof.

**"Commercial Base Rent"** has the meaning provided in Section 3.02(c) hereof

**"Commercial Building"** means the two-and-one-half story commercial building to be constructed on the Land substantially in accordance with the Plans and Specifications, containing approximately 30,800 zoning square feet.

"Commercial Sublease" has the meaning provided in Section 10.01 hereof.

"Commercial Subtenant" has the meaning provided in Section 10.01 hereof.

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

"Condemnation Restoration" has the meaning provided in Section 9.02(b) hereof.

"Construction Agreement(s)" has the meaning provided in Section 13.09(b) hereof.

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

"Construction Loan" means the construction leasehold mortgage loan in the amount of up to \$6,200,000, given by Citibank, N.A. to Tenant to finance the cost of construction of the Commercial Building.

"Construction" or "Construction of the Premises" has the meaning provided in Section 13.01(a) hereof.

"Construction Work" means any work required to be performed under any provision of this Lease including, without limitation, Construction of the Commercial Building or the Improvements to the Detention Space, a repair, a Restoration, a Capital Improvement, or work performed in connection with the use, maintenance or operation of the Premises.

"Consumer Price Index" has the meaning provided in Article 5 hereof.

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

"Debt Service" has the meaning provided in Section 3.09(c) hereof.

"Default" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after notice and the lapse of time constitute, an Event of Default (as hereinafter defined).

"Deferred Rent" has the meaning provided in Section 3.09(a) hereof.

"Deferred PILOT" has the meaning provided in Section 3.09(b) hereof.

**"Depository"** means (a) a savings bank, a savings and loan association or a commercial bank which is, at the time it is appointed as Depository, an Institutional Lender, or (b) a Recognized Mortgagee, which has an office in the City in the Borough of Manhattan and which has been selected by Tenant with Landlord's approval (not to be unreasonably withheld) to hold deposited funds as provided in this Lease.

**"Detention Space"** means approximately 5,960 square feet of raw (to be provided by Landlord without HVAC, electrical and plumbing systems or storefronts, etc.) retail space located in DOC's Manhattan House of Detention on Baxter and Center Streets, adjacent to the Land, as shown in Exhibit A.

**"Detention Space Improvements"** means the Improvements to be constructed in the Detention Space substantially in accordance with the Plans and Specifications.

**"DOC"** means the City's Department of Correction

**"DRP"** means the Division of Real Property of the City's Department of General Services.

**"Enforcement Proceeding"** has the meaning provided in Section 11.03(d) 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 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; lobby decorations; windows, window washing hoists and equipment; communication equipment; and all additions or replacements thereof, excluding, however, any personal property which is owned by Subtenants (other than an Affiliate) or contractors engaged in maintaining same.

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

**"Everlasting Pine"** means Everlasting Pine Housing Development Fund Company, Inc

**"Expiration Date"** has the meaning provided in Article 2 hereof.

**"Expiration of the Term"** means the expiration of this Lease and the Term on the Expiration Date.

**"Fair Market Rental Value"** has the meaning provided in Section 3.02(e) hereof.

**"Financing Proceeds"** has the meaning provided in Section 3.09(c) hereof.

**"First Permanent Loan"** or **"Permanent Loan"** has the meaning provided in Section 3.09(c) hereof

**"Fixed Expiration Date"** has the meaning provided in Article 2 hereof.

**"Foreclosure Transferee"** has the meaning provided in Section 11.10(a) hereof.

**"Funding Agreement"** means the agreement entered into between Landlord and Everlasting Pine pursuant to which Landlord will provide funds, in an amount up to one million seven hundred thousand dollars (\$1,700,000), to be used by Everlasting Pine in constructing the Residential Building.

**"Governmental Authority or Authorities"** means the United States of America, the State of New York, New York City and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises.

**"Gross Income"** has the meaning provided in Section 3.09(c) hereof.

**"HUD Loan"** means the United States Department of Housing and Urban Development loan to Everlasting Pine under Section 202 of the Housing Act of 1959, as amended, 12 U.S.C.1701q, for construction of the Residential Building.

**"Imposition"** or **"Impositions"** has the meaning provided in Section 3.05(b) hereof.

**"Improvement(s)"** means any building (including footings and foundations), Equipment, and other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon the Land or in the Detention Space, including without limitation the Commercial Building and improvements to the Detention Space, and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

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

**"Initial Developer"** means Chung Pak.

**"Initial Rent Period"** has the meaning provided in Section 3.02(a) hereof.

**"Institutional Lender"** means (1) a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a publicly held real estate investment trust, a religious, educational or eleemosynary institution, an employee's welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency or any combination of Institutional Lenders, or (2) any other institution which at the time in question is generally regarded in the financial community as an institutional lender; 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 action and (b) have net assets of not less than \$100,000,000, adjusted for inflation. However, notwithstanding the provisions of subdivision (2) above, an institution described in said subdivision (2) shall not be deemed an "Institutional Lender" under this Lease, unless Tenant shall have furnished Landlord the name and principal office address of such institution, and such other relevant information regarding its financial and business affairs as Landlord may reasonably request within thirty (30) days after receipt of such name and address, and thirty (30) days shall have elapsed following receipt of such other information without Landlord having given notice to Tenant of any reasonable objections to such institution as an "Institutional Lender" hereunder.

**"Labor Costs"** has the meaning provided in Section 3.09(c) hereto

**"Land"** means the land and certain adjacent air space described in Exhibit B hereto but excluding any land or air space taken or condemned as provided in Section 9.02(a).

**"Landlord"** means the City, acting in its proprietary capacity by and thorough DRP; provided, however, that if the City or any successor to its interest hereunder transfers or assigns its interest in the Land 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.

**"Late Charge Rate"** means the rate of interest charged at the time in question by New York City for delinquent Taxes.

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

**"Lease Year"** means (a) the period of 12 calendar months beginning on the Commencement Date, if it occurs on the first day of a calendar month, or else beginning on the first day of the first full calendar month following the Commencement Date, (b) each succeeding 12-month period during the Term and (c) the final shorter period, if any, ending on the last day of the Term.

**"Loan Documents"** has the meaning provided in Section 3.09(c) hereof

**"Loan Year"** has the meaning provided in Section 3.09(c) hereof.

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

**"Mortgagee"** means the holder of a Mortgage

**"Net Cash Flow of the Property"** has the meaning provided in Section 3.09(c) hereof.

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

**"Operating Expenses"** has the meaning provided in Section 3.09(c) hereof.

**"Permanent Loan"** or **"First Permanent Loan"** has the meaning provided in Section 3.09(c) 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.

**"PILOT"** has the meaning provided in Section 3.04(a) hereof

**"Plans and Specifications"** has the meaning provided in Section 13.01(a) hereof.

**"Premises"** means the Land, the Commercial Building and the Detention Space.

**"Principal Equivalent"** means the sum of (a) the total amount disbursed pursuant to the Funding Agreement plus (b) an amount equal to the total interest which would have accrued on disbursements pursuant to the Funding Agreement if interest had

accrued on such disbursements, at the rate of nine percent (9%) per annum, from the date of disbursement until the Additional Base Rent Commencement Date.

**"Principal Officers"** of a corporation are the chief executive officer, the chief financial officer and the president (and, if two of these three are the same individual, the most senior vice president or other officer).

**"Prohibited Person"** has the meaning provided in Section 10.01 hereof.

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

**"Recognized Mortgagee"** means the holder of a Recognized Mortgage.

**"Rental"** means Base Rent, PILOT, Impositions, the amounts payable pursuant to Article 20 hereof and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease, to pay and/or deposit.

**"Rent Insurance"** has the meaning provided in Section 7.01(c) hereof.

**"Replacement Value"** has the meaning provided in Section 7.01(c) hereof.

**"Required Principal Repayment"** has the meaning provided in Section 3.09(c) hereof.

**"Requirements"** has the meaning provided in Section 16.01(b) hereof.

**"Residential Building"** means the thirteen story residential tower to be constructed by Everlasting Pine on premises immediately adjacent to the Premises.

**"Restoration"** means either a Casualty Restoration or a Condemnation Restoration, or both.

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

**"Revaluation Date"** means the seventeenth (17th) and thirty-fourth (34th) anniversaries of the first day of the first Lease Year.

**"Revaluation Period"** shall have the meaning set forth in Section 3.02(b) hereof.

**"Revaluation Period Calculation Date"** means for any Revaluation Period, the day before the first day of such Revaluation Period.

**"Sales Proceeds"** has the meaning provided in Section 3.09(c) hereof.

**"Scheduled Completion Date"** has the meaning provided in Section 13.01(a) hereof.

**"Schematics"** has the meaning provided in Section 13.01(a) hereof.

**"Security Deposit"** has the meaning provided in Section 3.07 hereof

**"Sublease"** has the meaning provided in Section 10.01 hereof

**"Substantial Completion" or "Substantially Complete"** has the meaning provided in Section 13.01(a) hereof.

**"Substantial Completion Date"** means the date on which Substantial Completion occurs.

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

**"Subtenant"** has the meaning provided in Section 10.01 hereof.

**"Taking of Possession"** has the meaning provided in Section 2.02(a) hereof.

**"Taxes"** has the meaning provided in Section 3.04(d) hereof.

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

**"Tenant"** means Chung Pak, provided, however, that if Chung Pak or any successor to its interest hereunder transfers or assigns this Lease and the leasehold estate hereby created, then, from and after the date of such assignment or transfer, the term "Tenant" shall mean the assignee or transferee.

"Term" has the meaning provided in Article 2 hereof.

"Title Matters" has the meaning provided in Article 2 hereof

"Transfer" has the meaning provided in Section 10.01 hereof.

"Transferee" has the meaning provided in Section 10.01 hereof.

"Unavoidable Delays" means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, enemy action, civil commotion, fire, unavoidable casualty, catastrophic weather conditions, litigation the ultimate result of which could be the voiding of this Lease, a court order which mandates a delay, or other similar causes beyond the control of Tenant, provided Tenant shall have notified Landlord not later than thirty (30) days after Tenant knows or should have known of the occurrence of same. In no event shall Tenant's or any other party's financial condition or inability to obtain funding or financing be an "Unavoidable Delay".

"Zoning square foot (or feet)" means a square foot of space in a building or portion of a building measured as provided in, and including all areas included in, the definition of "Floor area" set forth in the City's Zoning Resolution in effect on the date this Lease is executed, which definition is attached hereto as Exhibit C (any dispute as to the number of zoning square feet in a space shall be determined by arbitration in accordance with Article 34 hereof).

## ARTICLE 2

### DEMISE OF PREMISES AND TERM OF LEASE

#### Section 2.01. Demise of Premises; Term.

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 such matters affecting title as may exist on the date hereof (the "Title Matters") as set forth in Exhibit D.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") commencing on the first date on which both full execution and delivery of this Lease and the Taking of Possession have occurred (the "Commencement Date"), and expiring on the earlier of the day before the forty-ninth (49th) anniversary of the Commencement Date (the "Fixed Expiration Date") or such earlier date upon which this Lease may be terminated as hereinafter provided (in either case, the "Expiration Date").

#### Section 2.02. Taking of Possession.

(a) "Taking of Possession" means Tenant's entry upon and taking of possession of the Premises.

(b) Tenant shall give Landlord at least three (3) days' prior notice of the date of Taking of Possession.

#### Section 2.03. Conditions Precedent

Notwithstanding the foregoing, the occurrence of all of the following shall constitute a condition precedent to Taking of Possession, the occurrence of the Commencement Date and the effectiveness of this Lease:

(a) approval by HUD, in connection with the HUD Loan, of a "Request for Permission to Commence Construction Prior to Initial Endorsement of Section 202 Loan";

(b) closing of the Construction Loan;

(c) submission to Landlord of certificates of insurance (as described in Section 7.03(c) hereof) certifying that the insurance required in Article 7 is in effect and initial premiums therefor have been paid;

(d) payment of the Security Deposit or, at Tenant's option, the Security Deposit installment required by Section 3.07(b);

(e) execution by the parties of all tax filings and returns required under the laws of New York City and New York State to be filed in connection with the execution, delivery and/or recording of this Lease; and

(f) submission to Landlord of corporate documentation as follows establishing Tenant's authority to enter into this Lease and the authority of the signatory on behalf of Tenant to execute this Lease and bind Tenant to the obligations set forth herein:

(i) a certificate of good standing for Tenant issued by the Department of State of the State of New York;

(ii) Tenant's certificate of incorporation and all amendments thereto;

(iii) a certificate of the secretary of Tenant stating that the by-laws of Tenant included in Exhibit F of this Lease are current and valid;

(iv) an incumbency certificate executed by the secretary of Tenant confirming the incumbency of the officer executing this Lease and related documents; and

(v) a resolution of the Board of Directors of Tenant authorizing the execution of this Lease and related documents, accompanied by a certificate of the secretary of Tenant certifying that the resolution was duly adopted in the form set forth.

#### Section 2.04. Commencement Certificate.

Promptly after the Commencement Date, Landlord and Tenant shall execute a certificate acknowledging that the Commencement Date has occurred and setting forth the date on which the Commencement Date occurred.

**ARTICLE 3**

**RENT; SECURITY**

**Section 3.01. Method and Place of Payment.**

Except as otherwise specifically provided herein, all Rental shall be paid without notice or demand. All Rental payable to Landlord (except Impositions, if the rules and regulations of the City governing such payment are to the contrary) shall be paid by good checks drawn on an account at a bank that is a member of the New York Clearing House Association (or any successor body of similar function) or in currency that at the time of payment is legal tender for public and private debts in the United States of America. Rental that is payable to Landlord (other than PILOT and Impositions) shall be payable at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. PILOT shall be payable to Landlord at the address set forth in Section 3.05. Impositions shall be payable in the form and to the location provided by rules and regulations governing the payment of such.

**Section 3.02. Base Rent.**

(a) Tenant shall pay Landlord annual rent ("Base Rent") in the amounts provided in Sections 3.02(c) and 3.02(d).

(b) [Intentionally Omitted]

(c) **Commercial Building and Detention Space.**

(i) Initial Rent Period. For the period (the "Initial Rent Period") from and including the Commencement Date until but not including the first Revaluation Date, Base Rent payable with respect to the Commercial Building and the Detention Space ("Commercial Base Rent") shall be at the rate per annum of the greater of (A) the "Minimum Annual Rent" set forth in the following table and (B) \$2.07 per zoning square foot in the Commercial Building and \$21.00 per zoning square foot in the Detention Space, increasing after every fifth year by an increment equal to the aggregate of a four percent (4%) annual increase, compounded, over each of the preceding five years.

	<b><u>Minimum Annual Rent</u></b>	
<b><u>Lease Year</u></b>	<b><u>Commercial Building</u></b>	<b><u>Detention Space</u></b>
1-5	\$63,747	\$125,160
6-10	77,557	152,133
11-15	94,360	184,918
16	114,804	224,770

The Minimum Annual Rents of not less than \$63,747 for the approximately 30,800 square feet of the Commercial Building and of not less than \$125,160 for the approximately 5,960 square feet of retail space in the Detention Space will be increased in the event that the actual zoning floor areas of the aforementioned spaces exceed 30,800 square feet and 5,960 square feet, respectively. Such rent increases will be in direct proportion to any increases in said zoning floor areas.

For example, if the actual zoning square footage of the Detention Space were 5,970, the Base Rent for the Detention Space in each of the first five years would be  $\$21.00 \times 5,970 = \$125,370$ , and in each of the sixth through tenth years would be  $\$125,370 \times 104\% \times 104\% \times 104\% \times 104\% \times 104\% = \$152,532$ . If the actual zoning square footage of the Detention Space were 5,945, the Base Rent for the Detention Space during the Initial Rent Period would be the applicable Minimum Annual Rent.

(ii) Revaluation Periods. For each period (a "Revaluation Period") from and including each Revaluation Date until but not including the next Revaluation Date (or if there are no further Revaluation Dates prior to the Expiration of the Term, then until the Expiration of the Term) Commercial Base Rent shall be at the rate per annum of the greater of (A) the Fair Market Rental Value, as of the Revaluation Period Calculation Date, and (B) the annual Commercial Base Rent payable during the immediately preceding Revaluation Period (or, in the case of the first Revaluation Period, the annual Commercial Base Rent in effect immediately before the Revaluation Period Calculation Date).

(d) Additional Base Rent. In addition to and not in lieu of the amounts due as Commercial Base Rent under the preceding subsection (c), there shall also be a monthly Base Rent due with respect to the Commercial Building and the Detention Space, throughout the Additional Base Rent Period, in an amount equal to the amount which would be due each month if Tenant were repaying a loan to Landlord, in the principal amount of the Principal Equivalent, with an interest rate of nine percent (9%) per annum, payable by constant monthly payments calculated to fully amortize the loan over forty years.

(e) Definition.

"Fair Market Rental Value" means the annual fair market rent, as determined by appraisal in accordance with the provisions of Article 34 hereof, for (i) the Land, as if unimproved and vacant and unencumbered, and (ii) the Detention Space, as if vacant and unencumbered.

Section 3.03. Payment of Base Rent.

Commercial Base Rent shall be paid in monthly installments equal to one-twelfth of the then applicable annual Commercial Base Rent and shall be paid in advance, commencing on the Commencement

Date and on the first day of each and every calendar month thereafter during the Term. Additional Base Rent shall be paid on the Additional Base Rent Commencement Date and on the first day of each and every calendar month thereafter throughout the Additional Base Rent Period. All Commercial Base Rent which is due for any period of less than a full month shall be appropriately apportioned. Commercial Base Rent for the period, if any, between the Commencement Date and the first Lease Year shall be calculated at the same rate as for the first Lease Year.

**Section 3.04. Payments in Lieu of Taxes.**

(a) Tenant's Obligation to Pay PILOT. For each Tax Year or portion thereof within the Term, Tenant shall pay as Rental (and not as a tax) to Landlord, c/o City Collector, Department of Finance, Bureau of Central Real Estate, 25 Elm Place, Brooklyn, New York 11201 (or such other address of which the Landlord shall give Tenant notice) without notice or demand, an annual sum (each such sum being hereinafter referred to as a "PILOT") in the aggregate amounts provided in Section 3.04(b) hereof, payable in equal semiannual installments during such Tax Year (or by such other method as the City may generally require during such Tax Year for the payment of real estate taxes), in advance on the first day of each January and July. PILOT due for any period of less than six months shall be appropriately apportioned.

**(b) Amount of PILOT.**

(i) PILOT payable with respect to the Commercial Building shall be at an annual rate equal to Taxes, as reduced or deferred pursuant to the benefits to which the Commercial Building would have been entitled as-of-right under the City's Industrial and Commercial Incentive Program if Tenant had duly applied under such Program. Notwithstanding the foregoing, no PILOT shall be payable with respect to the second and third floor space in the Commercial Building to the extent that such space (x) is sublet to one or more nonprofit organizations and is used for a community health clinic and a community child care or day care center or similar community facility and (y) would, as a separate tax lot owned by such nonprofit organization(s), be exempt from real property tax under Section 420 of the Real Property Tax Law.

(ii) PILOT payable with respect to the Detention Space shall be at an annual rate equal to a pro rata share of Taxes on DOC's Manhattan House of Detention, as determined by the City's Department of Finance.

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PILOT  
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xi?

(c) Tax Contest. Tenant shall continue to pay the full amount of PILOT required under this Section 3.04, 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. 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 future PILOT 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. If, at the time Tenant is entitled to receive such a credit, New York City is paying interest on refunds of Taxes, Tenant's credit shall include interest at the rate then being paid by New York City. In no event, however, shall Tenant be entitled to any cash refund of any such excess from Landlord.

(d) Definition.

"Taxes" means the real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the owner thereof is exempt from such real property taxes, then the real property taxes which would be so assessed and 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.

Section 3.05. Impositions.

(a) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 3.05(c) hereof, all Impositions that at any time are or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would be assessed, levied, confirmed, imposed upon, or would be charged to the owner of the Premises with respect to (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder, or (vii) any document to which Tenant is a party creating or transferring an interest or estate in the Premises, or (viii) the use and occupancy of the Premises, or (ix) this transaction.

(b) Definition.

"Imposition" or "Impositions" means:

(i) real property general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district),

(ii) personal property taxes,

(iii) occupancy and rent taxes,

charges (iv) water, water meter and sewer rents, rates and

excises,

levies,

(vii) license and permit fees,

(viii) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever, and

(ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

**(c) Payment of Impositions**

(i) Subject to the provisions of Section 35.02 hereof, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty. However, if by law any Imposition may at the taxpayer's option 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 Imposition in such installments and shall be responsible for the payment of such installments with interest.

(ii) If Tenant twice fails within any twenty-four month period to make any payment of an Imposition (or installment thereof) on or before the date the same may be paid without interest or penalty, Tenant shall, at Landlord's request, and notwithstanding (i) above, pay all Impositions or installments thereof thereafter payable by Tenant not later than ten (10) days before the due date thereof. However, if Tenant thereafter makes all such payments as required in this paragraph (ii) for twenty-four consecutive months without failure, the Imposition payment date in (i) above shall again become applicable, unless and until there are two further failures within a twenty-four month period. Nothing in this paragraph shall be construed to limit Landlord's default remedies as set forth elsewhere in this Lease after failure by Tenant timely to pay any Imposition.

(d) Evidence of Payment. Tenant shall furnish to Landlord, within thirty (30) days after the date when an Imposition is due and payable, an official receipt of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

(e) 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 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.

(f) Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration of the Term, shall be apportioned pro rata between Landlord and Tenant (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).

(g) Taxes. Provided the City shall be Landlord, Landlord shall pay on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord), cancel or otherwise satisfy and discharge of record any and all Taxes. If the City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof. The payment or other disposition of Taxes by Landlord under this Section 3.05(g) shall have no effect on Tenant's obligation to pay PILOT. If Landlord (i) shall have failed to pay or discharge the Taxes as required hereunder and shall not have timely commenced a proceeding to contest same as provided in Section 35.01 hereof, or (ii) 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 Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next PILOT or Base Rent due, together with interest thereon at the Late Charge Rate.

#### Section 3.06. Net Lease.

It is the intention of Landlord and Tenant that, except as provided in Sections 3.04(c) and 3.05(g) of this Lease, (a) Rental be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) Tenant pay all costs, expenses and charges of every kind relating or allocable to the Premises (except Taxes) that may arise or become due or payable during or after (but attributable to a period falling within) the Term.

#### Section 3.07. Security Deposit.

(a) Tenant shall pay to Landlord, as security for the full performance of all of Tenant's obligations hereunder, a security deposit (the "Security Deposit") in an amount equal to the first full year's Commercial Base Rent for the Premises.

(b) The Security Deposit may be paid in installments, in a number and at intervals agreeable to Landlord, provided that an amount equal to at least two (2) months' Commercial Base Rent shall be paid upon execution of this Lease and that the entire Security Deposit shall have been paid not later than the last day of the third Lease Year.

(c) The Security Deposit shall be paid in the same manner as provided for payment of Rental under Section 3.01 hereof.

(d) Upon the occurrence of a Default, Landlord may (but shall not be required to) use, apply or retain all or part of the Security Deposit to the extent required for the payment of any Rental or other sums as to which Tenant may be in default or for the reimbursement of any sum which Landlord may expend or be required to expend by reason of such Default. Notwithstanding any actions which may be taken to cure such Default, no cure shall be deemed complete (and the Default shall remain outstanding) until Tenant has replenished the Security Deposit to its full amount. Notwithstanding the foregoing, so long as any portion of the Construction Loan or the First Permanent Loan is outstanding, Landlord shall not use, apply or retain any part of the Security Deposit except upon the occurrence of an Event of Default.

(e) Upon Expiration of the Term, if there is no Event of Default then outstanding, Landlord shall return to Tenant the Security Deposit without interest, deducting therefrom any amounts necessary to cure any outstanding Defaults.

**Section 3.09. Rental Deferral.**

**(a) Base Rent.**

(i) Until the earlier of (x) payment in full of the First Permanent Loan and all sums due and payable in connection therewith and (y) the expiration of twenty (20) years following the date of the initial closing of the First Permanent Loan (such initial closing, the "Permanent Loan Closing"), Commercial Base Rent and Additional Base Rent shall be deferred (the amount of such deferred Commercial Base Rent and Additional Base Rent, plus interest at nine percent (9%) per annum, compounded annually, from the date of deferral, the "Deferred Rent"), except to the extent that Net Cash Flow of the Property exceeds the Required Principal Repayment.

(ii) Thereafter, the Deferred Rent shall be payable in equal monthly installments over a fifteen-year period, with interest to continue to accrue, as provided above, on the outstanding balance.

**PILOT.**

(i) Until the earlier of (x) payment in full of the First Permanent Loan and (y) the expiration of twenty (20) years following the date of the Permanent Loan Closing, PILOT payable between the Commencement Date and the date one (1) year following the date of issuance of a temporary certificate of occupancy for the Commercial Building shall be deferred (the amount thus deferred, plus interest at nine percent (9%) per annum, compounded annually, from the date of deferral, the "Deferred PILOT"), except to the extent, if any, that Net Cash Flow of the Property in any year exceeds the sum of (x) the Required Principal Repayment, (y) Commercial Base Rent and (z) Additional Base Rent.

(ii) Thereafter, the Deferred PILOT shall be payable in equal monthly installments over a fifteen-year period, with interest to accrue, as provided above, on the outstanding balance.

**Definitions.**

(i) "Bank" means the lender under the First Permanent Loan.

(ii) "Construction Loan" means the construction leasehold mortgage loan or loans in the aggregate amount of up to \$6,200,000, given by Citibank, N.A. to Tenant to finance a portion of the cost of construction and associated expenses of the Commercial Building.

(iii) "Debt Service" means all interest payable from time to time by Tenant to the Bank pursuant to the Loan Documents out of funds other than the proceeds of the Permanent Loan.

(iv) "Financing Proceeds" means the original principal amount of any mortgage closed in connection with a refinancing of the Permanent Loan.

(v) "First Permanent Loan" or the "Permanent Loan" means the "mini-permanent" leasehold mortgage loan in the amount of the final outstanding balance of the Construction Loan, up to \$6,200,000, given by Citibank, N.A. to Tenant upon, inter alia, the completion of construction of the Commercial Building, including any extension of such loan.

(vi) "Gross Income" means the aggregate of all income from all sources (including, without limitation, base rent under Subleases), calculated on a cash basis, received by Tenant in respect of the Premises or any interest therein for each respective Loan Year other than (i) Sales Proceeds, (ii) Financing Proceeds, (iii) insurance proceeds (except for the proceeds of rent loss insurance) and condemnation awards to the extent used to repair and/or restore the Premises, as the case may be, and (iv) security deposits, except to the extent such sums are applied by Tenant to the payment of any rent or additional rent due under any Sublease for all or any portion of the Premises, as the case may be.

(vii) "Labor Costs" means all reasonable and customary expenses actually paid by Tenant out of funds other than the proceeds of the Permanent Loan pursuant to arms-length transactions during any Loan Year which are directly related to the employment of on-site personnel whose responsibilities relate solely to the Premises, including amounts paid for wages, salaries and other compensation for services, payroll, social security, unemployment and other similar taxes, worker's compensation insurance, disability benefits, pensions, hospitalization, retirement plans and group insurance, uniforms and working clothes and the cleaning thereof, and expenses imposed pursuant to any collective bargaining agreement.

(viii) "Loan Documents" means all of the documents executed in connection with the Construction Loan and the conversion thereof into the Permanent Loan.

(ix) "Loan Year" means, as applicable, the period beginning on the date of the Permanent Loan Closing and ending on December 31, of the year in which the Permanent Loan Closing occurs and each subsequent calendar year (or portion thereof) thereafter.

(x) "Net Cash Flow of the Property" means, for each Loan Year, the amount, if any, by which Gross Income exceeds Operating Expenses for such Loan Year.

(xi) "Operating Expenses" means the aggregate amount of monies actually expended by Tenant, with respect to the Premises, on a cash basis pursuant to arms-length transactions during each Loan

Year for (i) Labor Costs, (ii) Debt Service, (iii) general maintenance, repairs and replacements, (iv) the cost of the licenses, permits and similar fees and charges related to the operation, repair and maintenance of the Premises, (v) premiums for insurance customarily carried for comparable buildings which premiums, to the extent they do not relate to policies of insurance required to be maintained by Tenant under the Loan Documents, shall be subject to the Bank's prior approval, (vi) charges (including applicable taxes) for electricity, fuel oil and other utilities, (vii) real estate taxes, assessments, water charges and sewer rents (including escrows therefor which are required by the Bank), (viii) reasonable accounting and auditing expenses and reasonable attorneys' fees, (ix) awards, settlements, damages and/or judgments arising out of the sale, use, construction, operation and/or maintenance of the Premises and reasonable attorneys' fees paid in connection therewith for which Tenant is liable but only to the extent not covered by insurance, (x) fees paid to an independent third-party manager or managing agent for the Premises provided that such fees do not exceed in any Loan Year three percent (3%) of the Gross Income received with respect to the Premises, and (xi) any other customary expenses in connection with the operation, maintenance and preservation of the Premises which are approved by the Bank. Without limiting the generality of those items which shall not be included in or which shall be excluded from Operating Expenses, the following shall be specifically excluded from Operating Expenses:

(A) Tenant's general overhead expenses in connection with the operation of the Premises except for those enumerated items set forth above;

(B) depreciation and other non-cash items;

(C) prepaid expenses, which are not customarily prepaid in the ordinary course of business;

(D) any costs, fees or expenses which are either incurred in connection with the closing of a refinancing of the Permanent Loan or a sale of all or any portion of the Premises;

(E) any cost, fee or expense which is paid or reimbursed to Tenant out of the proceeds of the Permanent Loan;

(F) interest paid with respect to the HUD Loan;

(G) Deferred Rent and Deferred PILOT; and

(H) expenses which are "passed through" under Subleases

(xii) "Required Principal Repayment" means the principal required to be repaid in any year under the terms of the First Permanent Loan, but not to exceed three hundred thousand dollars (\$300,000) per annum.

(xiii) "Sales Proceeds" means the gross proceeds payable to, on behalf of or for the benefit of Tenant with respect to the sale, transfer or other conveyance of all or any portion of the Premises including, without limitation, the principal amount of any mortgage taken subject to or assumed by the purchaser of all or any portion of the Premises, as if the principal amount of such mortgage were cash received at the closing of such sale, transfer or conveyance, without deduction or setoff for any commission, cost, charge, fee or tax incurred in connection with such sale, as substantiated to the Bank's satisfaction.

(d) Financial Statements. In addition to Tenant's obligations under Article 37 hereof with respect to financial reporting, Tenant shall also furnish to Landlord, in connection with the deferral of Rental provided above, all financial statements furnished to the Bank setting forth Gross Income, Operating Expenses and Net Cash Flow of the Property in any Loan Year.

## ARTICLE 4

### LOCAL DEVELOPMENT CORPORATION

#### Section 4.01. Representations.

Tenant represents that:

(a) Tenant is a not-for-profit local development corporation duly organized and validly existing under Section 1411 of the New York Not-for-Profit Corporation Law, and its board of directors has been duly constituted and its officers duly elected.

(b) Exhibit E hereto is a correct and complete copy of Tenant's certificate of incorporation as effective on the date hereof and no amendments or changes thereto have been authorized.

(c) Exhibit F hereto is a correct and complete copy of Tenant's by-laws as effective on the date hereof and no amendments or changes thereto have been authorized.

(d) All Tenant's actions pursuant to and in connection with this Lease, including the execution hereof, have been duly authorized and do not contravene any agreement, order or restriction to which Tenant may be subject.

#### Section 4.02. Covenants.

Tenant covenants that, so long as this Lease is in force:

(a) Tenant shall obtain Landlord's prior written approval of any and all amendments or changes to its certificate of incorporation or by-laws, and shall certify such amendments or changes to Landlord upon their becoming effective.

(b) Tenant shall obtain Landlord's prior written approval (which shall be given or denied within 45 days of receipt by Landlord) of each annual budget of Tenant, which shall be certified to Landlord by a Principal Officer of Tenant as true, correct and complete.

(c) Any and all excess revenues over expenses realized by Tenant in connection with this Lease and the transactions contemplated hereunder shall, subject to Landlord's prior written approval, be used for improvements to the Premises or for community-related activities consistent with Tenant's certificate of incorporation and the Not-for-Profit Corporation Law.

## ARTICLE 5

### INFLATION ADJUSTMENT

Any dollar amount subject to adjustment for inflation under this Lease shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the Consumer Price Index for the full calendar month immediately preceding the date of such adjustment, and the denominator of which shall be the Consumer Price Index for the calendar month during which the Commencement Date occurred. The "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, New York - Northeastern New Jersey Area, All Items (1982-84 = 100), or any successor index thereto, appropriately adjusted. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other similar index as Landlord designates shall be substituted for the Consumer Price Index.

## ARTICLE 6

### LATE CHARGES

If (a) any payment of Rental or any other payment due hereunder is not received by Landlord within ten (10) days after the day on which it first becomes due, or (b) Landlord has made a payment required to be made by Tenant hereunder, a late charge on the sums so overdue or paid by Landlord, calculated at the Late Charge Rate from the date such Rental first becomes due or the date of payment by Landlord, as the case may be, to the date on which actual payment of the sums is received by Landlord, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. Any payment made by check shall be deemed not received by Landlord if returned unpaid by the bank. Tenant shall pay to Landlord, within ten (10) days after demand, which may be made from time to time, all late charges. No failure by Landlord to insist upon the strict performance by Tenant of its obligation to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods, or to waive any of Landlord's rights and remedies, provided for in Article 24 hereof.

## ARTICLE 7

### INSURANCE

#### Section 7.01. Insurance Requirements.

(a) Liability Insurance. At all times during the Term, Tenant, at its sole expense, shall carry or cause to be carried insurance against all liability with respect to the Premises and the operations related thereto, whether conducted on or off the Premises (i) in an amount not less than \$3,000,000 per occurrence and designating Landlord as named insured and (ii) in an amount not less than \$5,000,000 (except during any Construction Work, during which the amount shall be no less than \$10,000,000) per occurrence, designating Tenant as named insured and designating Landlord as additional insured. Such insurance shall meet all of the standards, limits, minimums and requirements set forth in Section 7.07 of this Lease. Neither Tenant nor any other person shall be designated as an insured or additional insured under any policy of insurance procured or maintained pursuant to clause (i) of this subsection. The insurance required by clause (ii) of this subsection shall be primary and the insurance required by clause (i) shall be excess. If, during any year, it appears that the amount of liability resulting from insured occurrences may exceed any annual aggregate applicable to the insurance required by this subsection, Tenant shall procure and maintain for the remainder of such year insurance against future-arising claims meeting the requirements of this subsection in all regards, including required amounts.

(b) Construction Insurance. From the Commencement of Construction and also from the commencement of any Construction Work performed in connection with a Restoration or a Capital Improvement, the estimated cost of which exceeds the sum of one million dollars (\$1,000,000), Tenant shall carry or cause to be carried, until final completion of such work, the insurance described in Section 7.08 of this Lease.

(c) Property and Other Insurance. At all times during the Term, Tenant shall carry or cause to be carried insurance protecting Tenant and Landlord against loss to the Improvements and meeting all of the standards, limits, minimums and requirements described in Section 7.09 of this Lease.

(d) Mortgagees. No Mortgagee shall be named under any insurance policy to be carried hereunder, either as an additional named insured or under a mortgagee endorsement, and no Mortgagee shall be a beneficiary thereunder pursuant to a standard New York mortgagee clause or otherwise, unless such Mortgagee is a Recognized Mortgagee.

**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, who shall hold the insurance proceeds with respect to such loss in trust for the purpose of paying the cost of the Restoration, and shall apply such proceeds to the payment in full of the cost of such Restoration.

(b) **Proceeds of Rent Insurance.** Rent Insurance referred to in Section 7.09(b) hereof shall be carried in the name of Landlord 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 for the period from the occurrence of the damage or destruction until Substantial Completion in connection with the Restoration as determined in accordance with the provisions of Section 13.06 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 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. Landlord shall also cause the City to cooperate in connection with the collection of such moneys and to execute, acknowledge and deliver such proofs of loss or other instruments as may be required of the City for the purpose of collecting such moneys or causing same to be applied in accordance with the provisions of this Lease.

(d) **Adjustments for Claims.** All 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 and, in the case of property insurance, all Recognized Mortgagees.

**Section 7.03. General Requirements Applicable to Policies**

(a) **Insurance Companies.** All of the insurance required by this Article shall be with 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:X or better or another comparable rating reasonably acceptable to Landlord.

(b) **Required Forms.** All references to forms and coverages in this Article shall be those used by the Insurance Services Offices of New York or equivalent forms approved by the Insurance Department of the State of New York.

(c) **Required Certificates.** Certificates of insurance evidencing the issuance of all insurance required by this Article, describing the coverage and guaranteeing sixty (60) days prior notice to Landlord of cancellation or non-renewal, shall be delivered to Landlord upon issuance of such insurance or, in the case of new or

renewal policies replacing any policies expiring during the Term, not later than thirty (30) days before the expiration dates of any expiring policies. The certificates of insurance shall be issued by the insurance company and signed by an officer 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. Promptly after any insurance policy required by this Lease is issued, Tenant shall submit to Landlord the original of such policy (if Landlord is named insured) or a certified copy thereof (if Landlord is not named insured).

(d) Compliance With Policy Requirements. Tenant shall not violate or 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 the conditions, provisions and requirements of the 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 act or omission of Tenant or Landlord shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, and (ii) if the insurer would otherwise have a right to subrogation, a written acknowledgment by the insurance company that its right to subrogation has been waived with respect to all of the named insureds and additional insureds and any Recognized Mortgagees named in such policy.

Section 7.04. Increases in Coverage. Upon at least thirty (30) days notice to Tenant, Landlord shall have the right to amend or add to the insurance requirements, limits, sublimits, minimums and standards set forth in Sections 7.07, 7.08, 7.09 and 7.10 to conform the coverage required by this Article to coverages as at the time are commonly carried by owners of comparable buildings. From time to time, but not more frequently than once per year, Landlord may require Tenant to increase or cause to be increased the amount of coverage provided under the policies of insurance, provided, however, that the amount of such increased coverage shall not exceed the amounts of similar coverages as at the same time are commonly carried by or for the benefit of prudent owners of comparable buildings.

Section 7.05. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Landlord that such insurance is in any respect adequate.

**Section 7.06. Blanket and/or Master Policies.** The insurance required to be carried by Tenant pursuant to the provisions of this Article shall not be effected by blanket and/or master policies without Landlord's prior written consent.

**Section 7.07. Liability Insurance Requirements.** The insurance required by Section 7.01(a) of this Lease shall consist of liability insurance including bodily injury liability, property damage liability and personal injury liability in the broadest form customarily required by landlords for projects similar to the Improvements, provided that in all events such insurance shall:

- a) include a Broad Form Comprehensive General Liability Endorsement;
- b) contain blanket contractual liability insurance covering written and oral contractual liability;
- c) contain contractual liability insurance specifically covering 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 a sixty (60) day notice of cancellation or non-renewal clause specifically including notice of cancellation or non-renewal for non-payment of premium;
- h) contain an unintentional errors and omissions clause;
- i) contain coverage for suits arising from the use of reasonable force to protect persons and property;
- j) contain a cross liability endorsement;
- k) contain coverage for non-owned automobiles with respect to the insurance required by clause (i) of Section 7.01(a) and coverage for owned and non-owned automobiles with respect to the coverage required by clause (ii) of Section 7.01(a);
- l) and contain no exclusions other than those included in the basic forms described unless approved by Landlord.

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

**Section 7.08. Construction Insurance Requirements.** The insurance required by **Section 7.01(b)** of this Lease shall consist at least of the following:

- a) Insurance in an amount not less than \$10,000,000 combined single limit for bodily injury and property damage protecting Tenant, Landlord and the general contractor against all legal liability claims, customarily insured against by or on behalf of prudent landlords in comparable circumstances resulting from work being performed by or for general contractors (including Tenant if it operates as its own general contractor) and subcontractors engaged to work 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 \$10,000,000; and
- c) Owners and Contractors Protective Liability insurance, with a combined single limit of not less than \$3,000,000, naming Landlord as sole named insured.
- d) The insurance specified in **Section 7.08(a)** and **(b)** above shall be in the broadest form customarily required by landlords for projects similar to the Improvements, provided that in all events it shall contain:
  - i) Products Liability/Completed Operations coverage;
  - ii) a broad form property damage endorsement;
  - iii) explosion, collapse and underground property damage coverage;
  - iv) independent contractors coverage;
  - v) blanket contractual liability, written and oral coverage;
  - vi) specific contractual liability specifically covering any indemnification agreement protecting Tenant, Landlord and the City (if the City is no longer Landlord).

**Section 7.09. Property and Other Insurance Requirements.**

The insurance required by **Section 7.01(c)** of this Lease shall consist at least of the following:

- a) Insurance covering all Improvements in the amount of the full replacement value of the Improvements in the broadest form customarily required by landlords for projects similar to the Improvements, provided that such insurance shall in all events include the following coverages or clauses:

- i) coverage for all insurable risks of physical loss or damage to the Improvements;
  - ii) a replacement cost valuation without depreciation or obsolescence clause;  
debris removal coverage;  
provision for a deductible of not more than \$10,000 per loss;
  - 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 with a sublimit equal to the maximum coverage available under the federal flood insurance program;
  - x) earthquake coverage, if obtainable at commercially reasonable rates;  
coverage for explosion caused by steam pressure-fired vessels;  
a sixty (60) day prior notice of cancellation or non-renewal clause specifically including cancellation or non-renewal for non-payment of premium; and
  - xiii) a clause designating Landlord, Tenant and any Recognized Mortgagee as loss payee or insured, as their interests may appear.
- b) Insurance covering loss of income from the Premises, including the full Base Rent, in such an amount as will protect the expected income of Landlord, Tenant and New York City from the Premises for a period of not less than one (1) year. The insurance specified in this subsection (b) shall be in the broadest form available covering loss of income and shall:
- i) provide coverage against all risks of physical loss or damage to the Improvements customarily insured against by or on behalf of landlords with respect to premises similar to the Premises;
  - ii) provide for a twenty-four (24) month coverage period;

- iii) contain flood coverage (with the same sublimit as provided in Section 7.09(a)(ix) above);
  - iv) contain earthquake coverage, if obtainable at commercially reasonable rates;
  - v) contain explosion caused by steam pressure-fired vessels coverage;  
  
contain a thirty (30) day notice of cancellation or non-renewal clause specifically including notice of cancellation of non-renewal for non-payment of premium;  
  
provide for a deductible of not more than \$10,000; and
  - viii) designate Landlord and Depositary as loss payees.
- c) 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, including Employers Liability coverage in an amount not less than the statutory minimum.

## ARTICLE 8

### DAMAGE, DESTRUCTION AND RESTORATION

#### Section 8.01. Notice to Landlord

Tenant shall notify Landlord immediately if the Premises are damaged or destroyed in whole or in part by fire or other casualty.

#### Section 8.02. Casualty Restoration.

(a) Obligation to Restore. If all or any portion of the Premises is damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, in accordance with the provisions of this Article and Article 13 hereof, restore the Premises to the extent of the value and as nearly as possible to the character of the Premises 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 has been insured or was 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.

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration and within one hundred twenty (120) days of the damage or destruction, Tenant shall, by notice pursuant to Article 25 hereof, furnish Landlord with an estimate, prepared by the Architect, of the cost of such Construction Work. Landlord, at its election and at its own cost, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Construction Work. If Landlord shall fail to disapprove Tenant's estimate of such cost within sixty (60) days of receipt of such estimate, Tenant's estimate shall be deemed approved. If Landlord shall dispute the estimated cost of such Construction Work, the dispute shall be resolved by a licensed professional engineer chosen by agreement of Landlord and Tenant, which engineer shall resolve the dispute by choosing either Landlord's or Tenant's estimate, which choice shall be binding on the parties.

(c) Commencement of Construction Work. Subject to Unavoidable Delays, Tenant shall commence the Construction Work in connection with a Casualty Restoration within one hundred twenty (120) days of the damage or destruction.

#### 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 and Landlord therefrom to the extent of the necessary and proper expenses (including, without limitation,

reasonable attorneys' fees and disbursements) paid or incurred by Depository or Landlord in the collection of such Restoration Funds.

**(b) Disbursement of Restoration Funds.**

(i) Application for Disbursement. Subject to the provisions of Sections 8.03(a), 8.03(b)(ii), 8.04, 8.05 and 11.06(b) hereof, Restoration Funds held by Depository shall be paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depository and Landlord showing Restoration costs including professional fees (and other construction-related soft costs), construction labor costs and the cost of materials, fixtures and equipment that have either (A) been incorporated in the Premises 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 Premises but have been purchased since the last previous application and paid for by Tenant (or payments that are then due and owing) and insured by Tenant for one hundred percent (100%) of the cost thereof and stored at a secure and safe location on the Premises or at such other location as shall be reasonably satisfactory to Landlord ("Restoration Costs"). The Depository shall not make any installment payment to Tenant for materials, fixtures and equipment purchased but not yet incorporated in the Premises 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.

(ii) Holdback of Restoration Funds. The amount of any installment of the Restoration Funds to be paid to Tenant shall be equal to ninety percent (90%) of the amount by which (A) the product derived by multiplying the Restoration Funds by a fraction, the numerator of which shall be the total Restoration Costs already paid or owed (including any amounts that may have been retained by Tenant from any contractors), and the denominator of which shall be the total estimated Restoration Costs, exceeds (B) all prior installments of Restoration Funds paid to Tenant. Upon completion of the Restoration, and upon application for final payment submitted by Tenant to Depository and Landlord and compliance with the conditions set forth in Section 8.04 hereof, the remaining portions of the Restoration Funds shall be first paid to each of Tenant's contractors in payment of the amounts due and remaining unpaid on account of work performed in connection with the Restoration and any amounts retained under such contracts.

(c) Disbursement of Remaining Restoration Funds. Any Restoration Funds remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 13.02 and 13.05 hereof shall be paid to Tenant subject to the rights of Recognized Mortgagees.

**Section 8.04. Conditions Precedent to Disbursement of Restoration Funds.**

The following are conditions precedent 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 Depositary 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 in connection with the Casualty Restoration 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 received by Tenant;

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

(iv) The use of the materials, fixtures and equipment, for which payment is being requested pursuant to Section 8.03(b)(i)(B) hereof, is substantially in accordance with the Plans and Specifications;

(v) Except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depositary (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; and

(vi) In the case of the final request for payment by Tenant, the Construction Work in connection with a Restoration shall have been completed in accordance with the provisions of Sections 13.03 and 13.06 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) vendor's, mechanic's, laborer's or materialman's 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 satisfaction of Landlord by a bond, letter of credit or similar security instrument.

(c) Defaults. No Default or Event of Default shall exist.

(d) Compliance with Bank's Mortgage Requirements. Tenant shall have complied with the requirements under the Bank's Mortgage, to the extent not inconsistent herewith, relating to the performance of the Casualty Restoration.

**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 (a) is one percent (1%) of the Replacement Value or more in the aggregate, and (b) exceeds the net Restoration Funds 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 ten (10) 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.

**Section 8.07. Effect of Casualty on This Lease.**

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 or partial destruction of, the Premises, or by reason of the untenability of the Premises or any part thereof, nor for any reason or cause whatsoever. Tenant's obligations hereunder, including the payment of Rental, shall continue as though the Premises had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

**Section 8.08. 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 Premises. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

**Section 8.09. Effect of Events of Default**

**Notwithstanding anything to the contrary contained herein, if an Event of Default shall have occurred and be continuing, the Depository shall pay any Restoration Funds then held by it in accordance with Landlord's directions.**

## ARTICLE 9

### CONDEMNATION

#### Section 9.01. Substantial Taking.

(a) Termination of Lease for Substantial Taking. If all or Substantially All of the Premises is taken (excluding a taking of the fee interest in the Premises if, after such taking, Tenant's rights under this Lease are not affected) for any public or quasi-public purpose by any lawful power or 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, this Lease shall terminate on the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned and paid to the Date of Taking.

(b) Disbursement of Award. If all or Substantially All of the Premises is taken or condemned as provided in Section 9.01(a) hereof, the entire award paid in connection with such taking or condemnation shall be apportioned as follows: (i) there shall first be paid to Landlord so much of the award which is for or attributable to the value of that part of the land and adjacent air space constituting the Premises taken in such proceeding, considered as unimproved and unencumbered by this Lease; (ii) there shall next be paid to the Recognized Mortgagee which holds a first lien on Tenant's interest in this Lease so much of the balance of such award as shall equal the unpaid principal indebtedness secured by such Recognized Mortgage with unpaid interest thereon at the rate specified therein to the date of payment; (iii) there shall next be paid to Landlord so much of the award which is for or attributable to the value of Landlord's reversionary interest in that part of the Premises taken in such proceeding; and (iv) subject to rights of any Recognized Mortgagees, Tenant shall receive the balance of the award, if any.

#### (c) Definitions

(i) "Date of Taking" means the earlier of (A) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable law or (B) the date on which title to all or Substantially All of the Premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable law.

(ii) "Substantially All of the Premises" means such portion of the Premises as, when so taken (or in the event of a casualty, when damaged or destroyed), would leave a balance of the Premises that, due either to the area so taken (or damaged or destroyed) or the location of the part so taken (or damaged or destroyed) in relation to the part not so taken (or damaged or destroyed), would not, under economic conditions, zoning laws and building regulations

then existing, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein, or by law required to be observed by Tenant, readily accommodate a new or reconstructed building or buildings and other improvements of a type generally similar to the Improvements existing at the Date of Taking (or immediately prior to the casualty). Tenant shall make the initial determination as to whether or not "Substantially All of the Premises" has been taken (or damaged or destroyed) and shall notify Landlord, on the Date of Taking (or promptly upon occurrence of the casualty), in writing of its determination. If Landlord disputes such determination, Landlord shall give notice of such dispute to Tenant within 30 days after its receipt of notice of Tenant's initial determination; in such case, such dispute as to whether or not "Substantially All of the Premises" has been taken (or damaged or destroyed) shall be resolved by arbitration in accordance with the provisions of Article 34 hereof. More than seventy-five percent (75%) of the Premises shall be deemed to constitute "Substantially All of the Premises".

**Section 9.02. Less Than A Substantial Taking.**

(a) Taking of Less than Substantially All of the Premises. If less than Substantially All of the Premises is taken for any public or quasi-public purpose by any lawful power or 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, this Lease shall continue for the remainder of the Term without diminution of any of Tenant's obligations hereunder or any abatement of Rental.

(b) Obligation to Restore the Premises. If less than Substantially All of the Premises is taken as provided in Section 9.02(a) hereof, Tenant shall, as required by Section 9.02(d) hereof, restore the remaining portion of the Premises not so taken so that it shall consist of rentable, self-contained architectural units in good condition and repair and, to the extent feasible, of a size and condition substantially similar to the size and condition of, and of character similar to the character of, the Premises as they existed immediately before such taking (or, if the taking is prior to Substantial Completion, then the Premises as described in the Plans and Specifications) (a "Condemnation Restoration"), and Landlord shall in no event be called on to restore any remaining portion of the Premises not so taken or to pay any costs or expenses thereof. No holder of any Mortgage 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 Mortgage to the extent that this Lease requires that Tenant restore the portion of the Premises remaining after such taking.

(c) Payment of Award. In the event of any taking pursuant to Section 9.02(a), the entire award for or attributable to the land and adjacent air space constituting the Premises so taken, considered as

unimproved and unencumbered by this Lease, shall be first paid to Landlord, and the balance of the award, if any, shall be paid to Depositary.

(d) 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 Depositary shall be done, determined, made and governed in accordance with the provisions of Article 13 and Sections 8.02(b), 8.03 (except Section 8.03(c) hereof), 8.04 and 8.05 hereof. If the portion of the award paid to Depositary or Tenant under Section 9.02(c) above is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, Tenant shall nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work. Any balance of the award, and the proceeds of any security deposited with Depositary pursuant to Section 8.05, remaining after completion of such Construction Work shall be divided by Landlord and Tenant based on their interests in, respectively, the reversionary interest in the Premises and the tenancy interest in the Premises.

#### Section 9.03. Temporary Taking.

(a) Notice of Temporary Taking. If the temporary use of the whole or any portion of the Premises is taken for a public or quasi-public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give Landlord notice within five (5) days thereof. The Term shall not be reduced or affected in any way by reason of such temporary taking and Tenant shall continue to pay to Landlord the Rental without reduction or abatement.

(b) Temporary Taking Not Extending Beyond the Term. If the temporary taking is for a period not extending beyond the Term (including a taking restricted entirely to Tenant's interest in the Lease and not affecting Landlord's interest in any way), the award or payment therefor shall be paid to, and held by, Depositary as a fund that Depositary shall apply from time to time, first to the payment of the Rental payable by Tenant hereunder as and when due and payable and any remaining balance shall be paid to Tenant. Notwithstanding the foregoing, if the taking results in changes or alterations in the Improvements that would necessitate an expenditure to restore the Improvements to their former condition then after application to payments of Rental as required in the preceding sentence, Depositary shall apply the proceeds of the payment or award to restoration of the Improvements in the same manner, and subject to the same terms and conditions, as if such restoration were a Condemnation Restoration, before paying the remaining balance to Tenant.

(c) Temporary Taking Extending Beyond the Expiration of the Term. If the temporary taking is for a period extending beyond the Expiration of the Term, the award or payment shall be apportioned between Landlord and Tenant as of the Expiration of the Term and Tenant's share thereof shall be paid and applied in accordance with the provisions of Section 9.03(b) hereof. If this Lease shall terminate for any reason before completion of a restoration of the Improvements required as provided in Section 9.03(b), Depository shall pay Landlord all remaining Restoration Funds.

**Section 9.04. Governmental Action Not Resulting in a Taking.**

In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental. Any award payable thereunder shall be applied first to reimburse Tenant for any Construction Work performed by Tenant resulting from such governmental action and any balance shall be shared by Tenant and Landlord based upon the value of their respective interests in the Premises at that time. Notwithstanding the foregoing, however, Tenant hereby waives any and all claims, and releases and relinquishes all of its interest in and to any award, damages or other compensation of any kind resulting from or predicated upon a change of grade or street widening, unless such change of grade or widening materially and adversely affects access to the Premises or the value thereof.

**Section 9.05. Collection of Awards.**

Each of the parties shall execute such documents as may be reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article.

**Section 9.06. Tenant's Approval of Settlements.**

Landlord shall not settle or compromise any taking or other governmental action creating a right to compensation in Tenant as provided in this Article without the consent of Tenant if the settlement or compromise adversely affects Tenant's right to compensation for the taking.

**Section 9.07. Negotiated Sale.**

In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

**Section 9.08. Intention of 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 condemnation or taking of less than Substantially All of the Premises except as provided in Section 9.02(c) hereof. 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 or Enter into a Sublease.

(a) Landlord's Consent. Tenant shall not, without the prior written consent of Landlord, enter into any Capital Transaction. Tenant shall not enter into any Capital Transaction where the Assignee, Transferee or Subtenant is a Prohibited Person.

#### (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.

"Assignee" means an assignee under an Assignment.

(iii) "Capital Transaction" means an Assignment, a Transfer or a Sublease.

(iv) "Commercial Sublease" or "Commercial Subtenant" means a Sublease or Subtenant of all or a portion of the Commercial Building or the Detention Space.

"Prohibited Person" means:

(A) Any Person that is or has been, within the preceding five years, (x) in default or in breach, beyond any applicable grace period, of any of its obligations under any written agreement with the City, or (y) directly or indirectly in control of, controlled by, or under common control with a Person that is in default or in breach, beyond any applicable grace period, of any of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City.

(B) Any Person (x) 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 (y) 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. 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.

(C) 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.

(D) 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 of 1917, as amended.

(E) Any Person that is in default in the payment to New York City of any Taxes, sewer rents or water charges unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

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

(vii) "Subtenant" means any subtenant (including a sub-subtenant or any further level of subtenant), operator, licensee, franchisee, concessionaire or other occupant of the Premises or any portion thereof.

(viii) "Transfer" means (A) the sale, assignment or transfer of the controlling stock ownership (defined as at least 20% of the outstanding stock) of any corporation that is Tenant or that is a general partner of any partnership that is Tenant, or (B) the issuance of additional stock in any corporation that is Tenant or that is a general partner of any partnership that is Tenant, if the issuance of such additional stock would result in a change of more than twenty (20) percent in vote or value of the stock ownership of such corporation from the time when such corporation became Tenant or a general partner of any partnership that is Tenant, or (C) the sale, assignment, redemption or transfer of any general partner's interest in a partnership that is Tenant or a partnership that is a general partner in Tenant.

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

(c) Notice to Landlord. Tenant shall notify Landlord of its intention to enter into any Capital Transaction not less than ninety (90) days before the proposed effective date of such Assignment, Transfer or Sublease. The notice required by this Section 10.01(c) shall contain the following information:

(i) in the case of a proposed corporate Assignee, Transferee or Subtenant, or in the case of a corporate general partner of a partnership that is the proposed Assignee, Transferee or Subtenant (other than a corporation whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or other regulated exchange), a certificate of an authorized officer of such corporation giving the names, addresses and federal taxpayer identification numbers of all directors and officers of the corporation and Persons having more than a five percent (5%) interest in such Assignee, Transferee or Subtenant;

(ii) in the case of a proposed partnership Assignee, Transferee or Subtenant, a certificate of the managing general partner or other authorized general partner of the proposed Assignee, Transferee or Subtenant giving the names, addresses and federal taxpayer identification numbers of all general and limited partners of the partnership;

(iii) a certification by Tenant's authorized officer, managing general partner, or other authorized general partner, whichever shall be applicable, to the effect that to his or her knowledge the Capital Transaction does not involve a Prohibited Person; and

(iv) a proposed form of the applicable instrument described in Section 10.01(f) below.

(d) Objections and Waiver. Landlord shall notify Tenant, within a reasonable time after receipt of notice from Tenant pursuant to the provisions of Section 10.01(c) hereof whether Landlord's consent to such Capital Transaction is given or denied.

(e) Limitations on Right to Assign, Transfer or Enter into a Sublease. Tenant shall in any event (and irrespective of Section 10.01(d) above) have no right to enter into a Capital Transaction (and any Capital Transaction entered into shall be void):

(i) If on the effective date of such Capital Transaction there is an uncured Default, notice of which has been given to Tenant, or an Event of Default; or

(ii) If the proposed Assignee, Transferee or Subtenant is a Prohibited Person.

(f) Capital Transaction Instruments. Tenant shall deliver to Landlord, or shall cause to be delivered to Landlord, within thirty (30) days after the execution thereof, (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 Tenant's obligations under this Lease, to be in form and substance reasonably satisfactory to Landlord, (ii) in the case of a Transfer, an executed counterpart of the instrument of Transfer, and (iii) in the case of a Sublease, an executed counterpart of the Sublease.

(g) Invalidity of Transactions. Any Capital Transaction (i) entered into without Landlord's consent as required in this Article (subject to the provisions of Section 11.10 hereof), (ii) sought to be entered into without the execution, and delivery to Landlord within thirty (30) days thereafter, of the applicable instrument provided in Section 10.01(f) hereof, or (iii) which in any other respect fails to comply with the provisions of this Article, shall have no validity and shall be null and void and without effect.

Section 10.02. [Intentionally Omitted]

Section 10.03. Borough Board Resolution.

All Commercial Subleases, in addition to being subject to Landlord's prior written approval as provided in Section 10.01, shall comply, to the extent applicable, with the terms and conditions set forth in the April 10, 1986 Resolution of the Borough Board of Manhattan Regarding Approval of the Chung Pak Ground Lease, a copy of which is attached hereto as Exhibit K.

Section 10.04. Required Commercial Sublease Clauses.

All Commercial Subleases shall be substantially in the form of Exhibit J hereto and shall provide as follows:

(a) They are subordinate and subject to this Lease

(b) All increases in Base Rent due in any Revaluation Period shall be passed through to the Commercial Subtenants as increased rent.

(c) Except for security deposits and any other amounts deposited with Tenant or with any Recognized Mortgagee in connection with the payment of insurance premiums, 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 one (1) month in advance (unless Landlord gives its consent to a longer period).

(d) At Landlord's option, on the termination of this Lease pursuant to Article 24 hereof, the Subtenant shall attorn to, or shall

enter into a direct lease on terms identical to its Sublease with, Landlord for the balance of the unexpired term of the Sublease.

(e) With respect to those Subleases providing for the payment of percentage rent by such Subtenants to Tenant, Subtenant shall maintain full and accurate books of account 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.

(f) With respect to those Subleases providing for the payment of percentage rent by such Subtenants to Tenant, Landlord or Landlord's agents or representatives, from time to time during regular business hours, upon reasonable notice and in a manner minimizing disruption of the Subtenant's business, 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 reproduction, if requested, by Landlord.

**Section 10.05. Subtenant Violation.**

During the Term, Tenant shall make reasonable efforts to cause all Subtenants to comply with their obligations under their Subleases. 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 relieve Tenant of Tenant's obligation to cure such violation or breach.

**Section 10.06. Collection of Subrent by Landlord.**

After an Event of Default, 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 10.07. Sublease Assignment**

(a) Assignment of Subleases to Landlord. As additional security for the full performance of all of Tenant's obligations hereunder, Tenant hereby assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents made in connection with any Recognized Mortgage, all of Tenant's right, title and interest in and to all Subleases and 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, 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 of an Event of Default and not before.

(b) Schedule of Subleases. At any time upon Landlord's demand, Tenant shall deliver to Landlord, within ten (10) days, (i) a schedule of all Subleases (however, with respect to sub-subleases, and all further levels of sub-subleasing, only those of which Tenant is aware), 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 (however, after the first demand therefor only those executed, amended or assigned since the previous demand, and with respect to sub-subleases, and all further levels of sub-subleasing, only those of which Tenant is aware). Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Subleases available to it.

#### Section 10.08. Subtenant Non-Disturbance.

Landlord, for the benefit of any Subtenant whose Sublease was made in accordance with the applicable provisions of this Article, shall recognize (and at the Subtenant's request execute an agreement in form satisfactory to Landlord confirming such recognition) such Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to the provisions of Article 24 hereof, provided (a) either a Recognized Mortgagee has executed a non-disturbance agreement with respect to the same Sublease or 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 the rent and other moneys payable by the Subtenant throughout the term of its Sublease, after taking into account any escalations, 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; (b) the Sublease confers no greater rights upon Subtenant than are conferred upon Tenant under this Lease; and (c) at the time of the termination of this Lease (i) 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 (ii) 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 (including, without limitation, the then defaulting landlord),

(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 the current month (unless Landlord has given its 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, real property taxes and assessments and other similar charges or expenses, to the extent such security deposits or other deposits have actually been transferred to Landlord,

(D) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof demised by the Sublease,

(E) bound by any obligation to make any payment to the Subtenant, 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 (except to the extent equitably reflecting a reduction in the space covered by the Sublease), or changes the term thereof, or otherwise materially affects the rights of Landlord thereunder, made without the written consent of Landlord.

## ARTICLE 11

### MORTGAGES

#### Section 11.01. Effect of Mortgages.

(a) No Mortgage shall extend to, affect, or be a lien or encumbrance upon, the estate and interest of Landlord in the Premises or any part thereof.

(b) "Mortgage" means any mortgage or deed of trust, and all extensions, modifications and amendments thereof, that 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, 11.06 and 11.07 hereof, the execution and delivery of a Mortgage or a Recognized Mortgage shall not give or 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) that is held by a Person which is, at the time the Mortgage is recorded, an Institutional Lender that is not a Prohibited Person, (ii) which shall be subject to the provisions of this Lease (including without limitation the restoration provisions of Articles 8 and 9 hereof) and (iii) a photostatic copy of which has been delivered to Landlord, together with a certification by Tenant and the Mortgagee confirming that the photostatic copy is a true copy of the Mortgage and giving the name and post office address of the holder thereof.

#### 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 certification referred to in Section 11.02(b) hereof, or in any subsequent notice given by the Recognized Mortgagee to Landlord, and otherwise in the manner provided by 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 a period of (i) ten (10) days more, in the case of a Default in the payment of Rental, and (ii) thirty (30) days more, in the case of any other Default, than is given Tenant under the provisions of this Lease to cure the Default, cause it to be cured, or cause action to cure a

Default mentioned in Section 24.01(f) hereof to be commenced, provided such Recognized Mortgagee delivers to Landlord, within ten (10) 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 a Default hereunder, notice of its intention to take the action described in clauses (d)(i) and (d)(ii) herein.

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

(i) In the case of a Default that is curable without possession of the Premises by the Recognized Mortgagee, commenced in good faith to cure the Default and is prosecuting such cure to completion with diligence and continuity, or

(ii) 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, if a Recognized Mortgagee has initiated, and is diligently pursuing, steps to acquire Tenant's interest in this Lease by foreclosure, power of sale or other enforcement proceedings under its Recognized Mortgage, or by obtaining an assignment of Tenant's interest in this Lease in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (any of the foregoing being referred to as an "Enforcement Proceeding"), or to otherwise obtain possession of the Premises, immediately 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, notice of its intention to take the action described in clause (i) or this clause (ii), as the case may be, and further provided that during the period in which such action is being taken and/or any Enforcement Proceedings are pending, no Event of Default shall exist under Section 24.01(a) (excluding payment of such portion of Rental payable pursuant to Section 42.01(b) hereof) hereof. At any time after the delivery of the aforementioned notice, such Recognized Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute Enforcement Proceedings or, if such proceedings shall have been commenced, that it has discontinued such proceedings, and, in such event, Landlord (subject to the right, if such Recognized Mortgagee was the first Recognized Mortgagee to notify Landlord of

its intent to cure such Default, of one and only one other Recognized Mortgagee to use the procedures of this clause (ii)) shall have the unrestricted right to terminate the Term 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 or Tenant's bankruptcy, Landlord shall give prompt notice thereof to each Recognized Mortgagee.

(b) Request for and Execution of New Lease. If, within thirty (30) days of 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 Sections 11.04(c) and 11.05 hereof, within thirty (30) 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 designee or nominee of the Recognized Mortgagee approved by Landlord. The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease, provided, however, (i) 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, (ii) any covenants which are not susceptible of being performed by the Recognized Mortgagee (or its designee or nominee) shall be excluded and (iii) the Recognized Mortgagee (or its designee or nominee) shall be permitted to assign the new lease without Landlord's consent, provided that the assignee (x) shall not be a Prohibited Person and (y) as the new tenant under the new lease, shall deliver to Landlord, within thirty (30) days after the execution thereof, the appropriate instrument provided in Section 10.01(f) hereof.

(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 unless the Recognized Mortgagee (i) shall pay to Landlord, concurrently with the execution and delivery of the new lease, all Rental (excluding such portion of rental payable pursuant to Section 42.01(b) hereof) due under this Lease up to and including the date of the commencement of the term of the new lease and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such new lease, (ii) except in the case of a Default or Event of Default described in Sections 24.01(f) through (j) hereof, shall, promptly after execution of the new lease, cure all Defaults

then existing under this Lease (as though the Term had not been terminated), 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(f) through (j) and as provided for in Section 11.04(d) hereof) 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, 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 to get 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 Depositary Proceeds. Concurrently with the execution and delivery of a new lease pursuant to the provisions of Section 11.04(b) hereof, Landlord shall assign to the tenant named therein all of its right, title and interest in moneys (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Landlord or Depositary that Tenant would have been entitled to receive but for the termination of this Lease. Any sums then held by, or payable to, Depositary shall be deemed to be held by, or payable to, Depositary as depositary 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 shall be assigned and transferred, without recourse, by Landlord to the tenant named in the new lease. Between the date of termination of this Lease and the date of the execution and 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) without the consent of the Recognized Mortgagee.

**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 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 parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined (at the expense of the disagreeing Recognized Mortgagees) by a title insurance company chosen by Landlord, and such determination shall bind the parties.

**Section 11.06. 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 awards toward the payment of the sum secured by its Mortgage.

(b) However, in the event of damage or destruction of all or Substantially All of the Premises, if (i) the Casualty Restoration cannot reasonably be expected to be completed before three (3) months prior to the maturity date of the First Permanent Loan or (ii) at the time of the casualty Tenant has been in default for more than six (6) months in payment of Debt Service under the First Permanent Loan, Landlord and the Bank shall negotiate in good faith to permit the insurance proceeds to be applied in a manner most beneficial to all the parties.

**Section 11.07. Appearance at Condemnation 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.

**Section 11.08. Rights Limited to Recognized Mortgagees.**

The rights granted to a Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

**Section 11.09. Landlord's Right to Mortgage its Interest**

Landlord shall have the right to mortgage its fee interest in the Premises, as long as (a) such mortgage is subject and subordinate to this Lease, and any new lease executed pursuant to the provisions of Section 11.04 hereof and (b) the holder of such mortgage on

Landlord's fee interest in the Premises (a "Fee Mortgage") shall agree not to join Tenant or a Recognized Mortgagee as a party defendant in any action or proceeding to foreclose the Fee Mortgage.

**Section 11.10 Recognized Mortgagee's Assignment Rights**

(a) Notwithstanding anything contained in Article 10 hereof to the contrary, the foreclosure of a Recognized Mortgage, or any sale of this Lease thereunder, whether by judicial proceedings or by virtue of any power contained in a Recognized Mortgage, or any assignment or transfer of this Lease:

(i) by Tenant to a Recognized Mortgagee (or its designee or nominee) pursuant to an Enforcement Proceeding; or

(ii) by a Recognized Mortgagee (or its designee or nominee) to a purchaser of this Lease at a foreclosure sale of a Recognized Mortgage or after receiving an assignment of this Lease pursuant to an Enforcement Proceeding; or

(iii) by a direct purchaser or assignee of this Lease from a Recognized Mortgagee (or its designee or nominee) in any event described in clause (ii) above, provided that such direct purchaser's or assignee's assignment or transfer shall occur within one (1) year following the initial purchase or assignment in such described event (any such assignee or transferee of Tenant's interest in this Lease as described in clauses (i), (ii) and (iii) referred to herein as a "Foreclosure Transferee"), shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon any such foreclosure, assignment, sale or transfer, Landlord shall recognize the Recognized Mortgagee (or its designee or nominee) or the Foreclosure Transferee, as applicable, as Tenant hereunder, provided, however, that (x) no Foreclosure Transferee shall be a Prohibited Person and (y) such new tenant shall deliver to Landlord, or shall cause to be delivered to Landlord, within thirty (30) days after the execution thereof, the appropriate instrument provided in Section 10.01(f) hereof (subject to the provisions of Section 11.10(b) hereof).

(b) Notwithstanding anything contained in this Lease to the contrary, no Recognized Mortgagee or Foreclosure Transferee shall be liable under this Lease unless and until such time as it becomes Tenant hereunder, and then only for so long as it remains Tenant hereunder.

**Section 11.11. Consent to Security Interest in Personalty and Collateral Assignment of Subleases.** Landlord consents to Tenant's grant, if any, to each Recognized Mortgagee of a security interest in the personal property owned by Tenant and located at the Premises and/or a collateral assignment of Subleases by Tenant and the rents, issues and profits therefrom, if any, and agrees that any interest that Landlord may have in such personal property or Subleases, as

the case may be, whether granted pursuant to this Lease or by statute, shall be subordinate to the interest of any such Recognized Mortgagee.

**ARTICLE 12**

**[INTENTIONALLY OMITTED]**

## ARTICLE 13

### CONSTRUCTION WORK

#### Section 13.01. Construction of the Premises.

##### (a) Definitions.

(i) "Commence Construction" or "Commencement of Construction" means the occurrence of all of the following: (A) all excavation work on the Land shall have been completed; (B) the pouring of the foundation of the Commercial Building shall have commenced; and (C) a noncancelable commitment for steel or equivalent structural material for the Commercial Building shall have been ordered and a copy of such contract shall have been delivered to Landlord.

(ii) "Construction Commencement Date" means April 1, 1991.

(iii) "Construction" or "Construction of the Premises" means the construction on the Land of the Commercial Building and in the Detention Space of the Detention Space Improvements, substantially in accordance with the Plans and Specifications and this Lease.

(iv) "Plans and Specifications" means the drawings and plans and specifications for the Commercial Building and the Detention Space Improvements, prepared by the Architect and approved by Landlord in accordance with Section 13.01(c) hereof.

(v) "Scheduled Completion Date" means the date which is twenty (20) months after the Construction Commencement Date, subject to Unavoidable Delays.

(vi) "Schematics" means the schematic and other drawings which have been approved by Landlord, being more particularly identified in Exhibit H hereto.

(vii) "Substantial Completion" or "Substantially Complete" means that (A) the Commercial Building and the Detention Space Improvements shall have been substantially completed in accordance with the Plans and Specifications, as certified by a supervising architect chosen by a Recognized Mortgagee (or if there is no such supervising architect, then to the reasonable satisfaction of Landlord), (B) the New York City Department of Buildings shall have issued pursuant to Section 645 of the New York City Charter, or any successor statute of similar import, either temporary or permanent certificates of occupancy for at least 50% of the Premises, and (C) Landlord shall have received the certificates and plans referred to in clauses (a) and (b) and, if such are available, (c) of Section 13.05 hereof.

(b) Commencement and Completion of Work. Tenant shall (i) Commence Construction on or before the Construction Commencement Date (subject to Unavoidable Delays), (ii) thereafter continue to prosecute Construction with diligence and continuity, subject to Unavoidable Delays, and (iii) Substantially Complete the Commercial Building and the Detention Space Improvements on or before the Scheduled Completion Date (subject to Unavoidable Delays). In no event shall Unavoidable Delays together aggregate more than twenty-four (24) months, unless prior to the end of such aggregate period of Unavoidable Delays the Commercial Building has been fifty percent (50%) completed, as reasonably determined by Landlord.

(c) Submission and Review of Plans and Specifications. As soon as practicable, but in no event later than ten (10) days after the date hereof, Tenant shall submit to Landlord, for Landlord's approval, the Plans and Specifications in their most recent state of completion. Landlord shall notify Tenant of its approval or disapproval of such Plans and Specifications (and, if such determination is disapproval, then the specific objections thereto in reasonable detail) within thirty (30) days of the date of Tenant's submission. If Landlord disapproves of submitted Plans and Specifications, Tenant shall within thirty (30) days of its receipt of Landlord's notice of disapproval, submit revised Plans and Specifications, revised to meet Landlord's objections, which shall be reviewed by Landlord as provided in this Section.

(d) Modification of Approved Plans and Specifications. If Tenant desires to modify the Plans and Specifications, after they have been initially prepared, in such a way that they would become inconsistent with previously approved Plans and Specifications (as such may have been subsequently modified by approved Plans and Specifications), 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 shall comply with all applicable Requirements. It is Tenant's responsibility to assure such compliance. Landlord's approval in accordance with this Article of any Plans and Specifications shall not be, and shall not be construed as being, or relied upon as, a determination that such comply with the Requirements.

(f) Landlord's Right to Use Field Personnel. Landlord reserves the right to maintain its field personnel at the Premises to observe Tenant's construction methods and techniques and Landlord shall be entitled to have its field personnel or other designees attend Tenant's job and/or safety meetings. 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

out under the supervision of the Architect.

Section 13.04. Conditions Precedent to Tenant's Commencement of Any 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 all necessary permits, consents, certificates and approvals of all Governmental Authorities, and (ii) Tenant shall have delivered to Landlord certified copies, certificates or memoranda of the policies of insurance required to be carried pursuant to the provisions of Article 7 hereof.

(b) Cooperation of Landlord in Obtaining Permits. Landlord shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by Section 13.05(a) hereof and any necessary utility easements, and shall sign any 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 out-of-pocket cost or expense incurred by Landlord (in its capacity as Landlord, not in its governmental capacity) in obtaining the permits, consents, certificates, approvals and easements required by Section 13.05(a) hereof.

(c) Approval of Plans and Specifications. Tenant shall neither (i) commence Construction of the Premises unless and until Landlord shall have approved the Plans and Specifications as required above, nor (ii) if applicable to the Construction Work being performed, commence any other Construction Work unless and until Landlord shall have reviewed and, if required hereunder, approved the proposed plans and specifications in the manner provided herein. However if Tenant chooses to perform any Construction Work on a "fast-track" basis, Tenant may receive the necessary approval of Landlord in

stages and perform that portion of the Construction Work which has been approved, even if progress plans and specifications for other portions of the Construction Work have not yet been prepared.

(d) Additional Conditions with Respect to Construction. Prior to Commencement of Construction (i) Tenant shall obtain, or cause to be obtained, and furnish to Landlord, (A) payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor as obligor and Landlord, Tenant and each Recognized Mortgagee as co-obligees, each in a penal sum equal to the amount of the contract for the Construction (or if there shall be no construction contractor, Landlord may require payment and performance bonds from each subcontractor designated by Landlord, each in a penal sum equal to the amount of such subcontract) or (B) other security reasonably satisfactory to Landlord, including, without limitation, a letter of credit, provided the amount, form and issuer shall have been approved by Landlord, and (ii) a building loan Mortgage in an amount sufficient, in Landlord's reasonable judgment, to assure completion of Construction shall have been made by a Recognized Mortgagee for the refinancing of such construction.

#### Section 13.05. Completion of Construction Work.

Upon substantial completion of any Construction Work, Tenant shall furnish Landlord with (a) a certification of the Architect (certified to Landlord) that it has examined the applicable plans and specifications (that shall include the Plans and Specifications in the case of Construction Work done in connection with the Construction of the Premises or a Casualty 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 Commercial Building and/or the Detention Space Improvements, as the case may be, comply with the Building Code of New York City and all other applicable Requirements, (b) if required, a copy or copies of the temporary or permanent (whichever is applicable) certificate(s) of occupancy for the Premises (or portion thereof) issued by the New York City Department of Buildings, and (c) a complete set of "as built" plans and a survey showing the Premises. Landlord shall have an unrestricted license to use such "as built" plans and survey for any purpose without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Premises, as such rights exist in law or may appear in the Architect's contract.

#### Section 13.06. Title to the Improvements and Materials.

Materials to be incorporated in the Improvements shall, upon their purchase and at all times thereafter, constitute the property of Landlord, and upon Construction of the Premises or any 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 otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase 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. Title to the Improvements shall be and vest in Landlord.

**Section 13.07. Names of Contractors, Materialmen, etc.**

Tenant shall furnish Landlord, within ten (10) days of Landlord's demand, with a list of all Persons performing any labor, or supplying any materials, the cost of which is over \$100,000, in connection with any Construction Work. The list shall state the name and address of each Person and in what capacity each Person is 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.

**Section 13.08. Construction Agreements.**

(a) Required Clauses. All Construction Agreements shall include the following provisions (or language substantially similar thereto which is approved in advance by Landlord):

(i) ["Contractor"/["Subcontractor"/["Materialman"]] hereby agrees that, immediately upon the purchase from ["contractor"/["subcontractor"/["materialman"]] of any building materials to be incorporated in the Premises (as defined in the lease pursuant to which the contract purchaser hereunder acquired a leasehold interest in the property (the "Lease")), such materials shall become the sole property of the City of New York, notwithstanding that such materials have not been incorporated in, or made a part of, the Premises at the time of such purchase; provided, however, that the City of New York shall not be liable in any manner, for payment or otherwise, to ["contractor"/["subcontractor"/["materialman"]] by reason of such materials becoming the sole property of the City of New York."

(ii) ["Contractor"/["Subcontractor"/["Materialman"]] hereby agrees that notwithstanding that ["contractor"/["subcontractor"/["materialman"]] performed work at the Premises or any part thereof, the City of New York shall not be liable in any manner for payment or otherwise to ["contractor"/["subcontractor"/["materialman"]] in connection with the work performed at the Premises."

(iii) "All covenants, representations, guarantees and warranties of ["contractor"/["subcontractor"/["materialman"]] hereunder shall be deemed to be made for the benefit of the

Landlord (as defined in the Lease) and shall be enforceable by said Landlord."

(iv) "The City of New York is not party to this ["agreement"] ["contract"] and will in no way be responsible to any party for any claims of any nature whatsoever arising or which may arise from such ["contract"] ["agreement"]."

(b) Definition.

"Construction Agreement(s)" means an agreement to do Construction Work.

Section 13.09. Demolition of the Premises.

Except as hereinafter provided, Tenant shall not demolish portion of the Premises during the Term.

Section 13.10. Development Sign

Within thirty (30) days after the Commencement Date, Tenant shall furnish and install a project sign, the design and location of which shall be reasonably satisfactory to Landlord. Tenant shall extend to Landlord and any of its designees 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.

## ARTICLE 14

### REPAIRS, SIDEWALKS, UTILITIES AND WINDOW CLEANING

#### Section 14.01. Maintenance of the Premises, Etc.

(a) Maintenance and Repair. Tenant shall take good care of the Premises, the alleys, sidewalks and curbs in front of or adjacent to the Premises, water, sewer and gas connections, pipes and mains, 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, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in good and safe order and condition, however the necessity or desirability therefor may arise. Tenant shall neither commit nor suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with the Requirements. As used in this Section, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions.

(b) Cleaning of Adjacent Areas. Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the sidewalks, grounds, parking facilities, plazas, common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs or any other space in front of, or adjacent to, the Premises.

#### Section 14.02. Removal of Equipment.

Tenant shall not, without the consent of Landlord, remove or dispose of any Equipment unless such Equipment (a) is promptly replaced by Equipment of at least 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 performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises.

#### Section 14.03. No Obligation To Repair or to Supply Utilities.

Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to the Premises, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises. The provisions of this Section 14.03 shall apply only to Landlord in its proprietary role as owner of

the Premises and shall have no effect on any legal obligations of the City as a governmental entity.

**Section 14.04. Window Cleaning.**

Tenant shall not clean, and shall not allow to be cleaned, any window in the Premises from the outside in violation of Section 202 of the New York State Labor Law or of the rules of the New York State Industrial Board or any other Governmental Authority.

## ARTICLE 15

### CAPITAL IMPROVEMENTS

#### Section 15.01. Capital Improvements.

(a) Tenant's Right to Make Capital Improvements. Effective upon the Substantial Completion Date, Tenant shall have the right to make a Capital Improvement as long as Tenant shall comply with the following requirements:

(i) If the estimated cost of a Capital Improvement (determined in the manner provided in Section 8.02(b) hereof) is three percent (3%) of the Replacement Value or more in the aggregate in any Lease Year, Tenant shall deposit with Depository a bond, cash, letter of credit from an Institutional Lender (in form satisfactory to Landlord) or (at Tenant's option) other security, such as a personal guaranty, reasonably satisfactory to Landlord, in an amount equal to the amount by which the estimated cost of the Capital Improvement exceeds the net proceeds, if any, of any loan made to, or committed to be made in a written commitment to, Tenant to finance construction of such Capital Improvement, to be held and applied by Depository in accordance with the provisions of Section 8.03(b) hereof, to assure completion of the Capital Improvement, and if such Capital Improvement would affect any portion or aspect of the Premises for which Landlord review and consent were required pursuant to Article 13, then Tenant shall obtain the Landlord's prior written consent to the making of the Capital Improvement; and

(ii) The 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 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 Improvements other than a Restoration.

## ARTICLE 16

### REQUIREMENTS

#### 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 its obligations hereunder, Tenant shall 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, or involving or requiring any structural changes or additions in or to 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.

#### (b) Definition.

"Requirements" means:

(i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Authorities applicable to the Premises or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Premises or any vault in, or under the Premises (including, without limitation, the Building Code of New York City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions) provided such laws, rules, etc. are of general application (i.e. not adopted by Landlord in its governmental capacity for the purpose of affecting only the Premises), and

(ii) the certificate or certificates of occupancy issued for the Premises as then in force.

(iii) the City's Design Guidelines for the Premises, attached as Exhibit M, as may be amended from time to time.

(iv) all requirements of the City as to the qualifying and selection of Subtenants.

## ARTICLE 17

### DISCHARGE OF LIENS; BONDS

#### Section 17.01. Creation of Liens.

Tenant shall neither create nor 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 above, Tenant shall have the right to execute 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, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) is filed against the Premises or any part thereof, 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, Tenant shall, within fifteen (15) days after the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be 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 lien 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 satisfactory to Landlord) or other security (such as a personal guaranty) reasonably satisfactory to Landlord, in an amount sufficient to pay 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 immediately cause such lien to be discharged of record or Landlord may 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 Article 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 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 agreements to provide, that to the extent enforceable under New York law, the City 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.

Each of Landlord and Tenant 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.

#### Section 18.02. Tenant's Acknowledgment of No Other Representations.

Tenant acknowledges, represents and confirms that it has visited the Premises and is fully familiar therewith, the physical condition thereof and the leases and occupancies, if any, and Title Matters affecting the Premises. Tenant accepts the Premises in existing condition and state of repair and Tenant confirms that: (a) except for the representation contained in Section 18.01 hereof, 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 status of title thereto, the physical condition thereof, the tenants and occupants thereof, the zoning or other laws, regulations, rules and orders applicable thereto or the use that may be made of the Premises, (b) Tenant has relied on no such representations, statements or warranties, and (c) Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

#### Section 18.03. No Payments

Tenant represents and warrants that no officer, agent, employee or representative of the City of New York has received 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 any interest, directly or indirectly, in this Lease or the proceeds thereof. Tenant acknowledges that Landlord is relying upon this representation and warranty in entering into this Lease and would not enter into this Lease absent the same.

**ARTICLE 19**

**LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.**

**Section 19.01 Landlord not Liable for Injury or Damage, Etc.**

(a) 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 Premises, hatches, openings, installations, stairways or hallways or other common facilities, and the streets or sidewalk areas within the Premises) or that may arise from any other cause whatsoever, unless caused by its or its agents' or employees' negligence or tortious acts.

(b) 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 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 caused by its, or its agents' or employees', negligence or tortious acts.

**Section 19.02 Notice of Injury.** Tenant shall notify Landlord within thirty (30) days of any accident at the Premises which could give rise to a claim of \$25,000 or more, whether or not any claim has been made, complaint filed or suit commenced.

## ARTICLE 20

### INDEMNIFICATION OF LANDLORD AND OTHERS

#### Section 20.01. Obligation to Indemnify.

Tenant shall not 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 any Person or property or to any liability by reason of any violation of law or of any legal requirement of any public authority, but shall exercise such control over the Premises as to fully protect 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 the City if the City is not Landlord, but the City only in its proprietary capacity as owner of the Premises, not in its governmental capacity) and its officers, directors, employees, agents and servants (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 of the Indemnitees by reason of any of the following:

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

(b) Ownership. The ownership or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises or any part thereof or of any street, alley, sidewalk, curb, vault, passageway, subway or space comprising a part thereof or adjacent thereto;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant or any Subtenant or any of its or their respective 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 street, alley, sidewalk, curb, vault, passageway, subway or space comprising a part thereof or adjacent thereto;

(e) Rental Obligations. Tenant's failure to pay Rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and the proper exercise by Landlord of any remedy provided in this Lease with respect thereto;

(f) Lien, Encumbrance or Claim Against Premises. Any lien or claim that may be alleged to have arisen against or on the Premises, or any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their officers, agents, contractors, servants, employees, 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) Default of Tenant. Any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) Recording Fees. Any tax attributable to the execution, delivery or recording of this Lease or a memorandum thereof or any other instrument relating to the Premises;

(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 Indemnitee by reason of any event to which reference is made in Section 20.01 hereof, then, upon demand by Landlord or such Indemnitee, 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. The foregoing notwithstanding, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee'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 Indemnitee.

**Section 20.04 Survival Clause**

**The provisions of this Article shall survive the Expiration of the Term.**

**ARTICLE 21**  
**[INTENTIONALLY OMITTED]**

## ARTICLE 22

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

#### Section 22.01. Landlord's Right to Perform Tenant's Obligations.

If there is an Event of Default Landlord may, but shall be under no obligation to, perform the obligation, the breach of which gave rise to such Event of Default, without waiving or releasing Tenant from any of its obligations contained herein.

#### Section 22.02. Construction Work.

If (a) this Lease expires or is terminated for any reason before the completion of any Construction Work, or (b) Tenant fails, after the notice and opportunity to cure provided in Section 24.01(b), to Commence Construction within the time period provided in this Lease or fails to commence any Construction Work (i) in accordance with the provisions of Article 8 hereof, in the event of damage or destruction, or (ii) in accordance with the provisions of Article 9 hereof, in the event of a taking, or (c) having commenced any Construction Work, Tenant fails, after the notice and opportunity to cure provided in Section 24.01(c), to complete such Construction Work in accordance with Article 13 hereof or fails diligently and continuously to prosecute any Construction Work to completion, then Landlord may commence or complete such Construction Work at Tenant's expense, and without any liability to any Person, including Tenant, by reason thereof.

#### Section 22.03. Right to Use Deposited Funds.

Upon Landlord's election to commence or complete any such Construction Work as provided in Section 22.02 above, (a) Tenant shall pay immediately or cause to be paid immediately to Landlord all insurance proceeds that have been received by Tenant in connection with a casualty, reduced by those amounts that Tenant has applied to the Construction Work, and if such sums are insufficient to complete the Construction Work, Tenant, on Landlord's demand, shall pay the deficiency to Depositary, and (b) Depositary shall pay all undisbursed moneys held by it to Landlord.

#### Section 22.04. Discharge of Liens

If Tenant fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, providing the underlying tax is an obligation of Tenant by law or by a provision of this Lease) or any public improvement lien to be discharged in accordance with the provisions of Article 17 hereof, Landlord may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lienor and the payment of the

amount of the judgment in favor of the lienor with interest, costs and allowances.

**Section 22.05. Reimbursement For Amounts Paid by Landlord Pursuant to this Article.**

Any amount paid by Landlord in performing Tenant's obligations as provided in this Article, including all costs and expenses incurred by Landlord in connection therewith, shall constitute additional rent hereunder and shall be reimbursed to Landlord on Landlord's demand, together with a late charge on amounts actually paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

**Section 22.06. 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 and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

**Section 22.07. Proof of Damages.**

Landlord shall not be limited, in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease, to the amount of the insurance premium or premiums not paid. Furthermore, Landlord shall be entitled to recover, as damages for such Default or Event of Default, the uninsured amount of any loss or damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

#### Section 23.01. Type of Use.

Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises continuously and without interruption throughout the Term as provided herein. Tenant shall use the Detention Space and the first and second story space in the Commercial Building for office, retail and accessory uses, and the third story space in the Commercial Building for community service uses, substantially as provided in the Plans and Specifications. In any event, the Premises shall only be used in accordance with the certificate(s) of occupancy therefor.

#### Section 23.02 Prohibited Uses.

(a) 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 of the following ("Prohibited Uses"):

- (i) for any unlawful or illegal business, use or purpose;
- (ii) for any purpose, or in any way, in violation of the provisions of Section 23.01 or Article 16 hereof or the certificate(s) of occupancy for the Premises;
- (iii) in such manner as may make void or voidable any insurance then in force with respect to the Premises;
- (iv) for any activity involving the manufacture, assembly storage or sale/lease of guns or ammunition;
- (v) for any activity which generates high noise levels for a sustained length of time;
- (vi) for any activity which involves the storage or use of large amounts of potentially explosive materials such as (without limitation) oxygen or acetylene; or
- (vii) for any activity which involves the storage or use of large quantities of chemicals.
- (viii) in any manner that interferes with the New York City Transit Authority's use, operation, maintenance and repair of its easement, and facilities therein, referred to in Exhibit D.

(b) Immediately upon its discovery of any such Prohibited Use, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants.

## 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) if Tenant fails to make any payment (or any part thereof) of Rental as due hereunder and such failure continues for a period of ten (10) days after notice;

(b) if Tenant fails to Commence Construction on or before the Construction Commencement Date (subject to Unavoidable Delays) and such failure continues for a period of thirty (30) days after notice thereof from Landlord, or if Tenant fails to diligently prosecute the Construction to completion (subject to Unavoidable Delays) and such failure continues for thirty (30) days after notice (if it is the first time Tenant has so failed to diligently prosecute the Construction), ten (10) days (if it is the second time), or three (3) days (if Tenant has failed more than two times);

(c) if Tenant fails to Substantially Complete the Construction of the Premises on or before the Scheduled Completion Date (subject to Unavoidable Delays) and such failure continues for a period of thirty (30) days after notice thereof from Landlord;

(d) if Tenant enters into (or permits to be entered into) a Capital Transaction or any other transaction without compliance with the provisions of this Lease and such Capital Transaction or other transaction is not made to comply with the provisions of this Lease or cancelled within thirty (30) days after Landlord's notice thereof to Tenant;

(e) if Tenant fails to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure continues 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-day period, in which case no Event of Default shall be deemed to exist as long as Tenant has commenced curing the same within the thirty-day period and diligently and continuously prosecutes the same to completion);

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

(g) to the extent permitted by law, if Tenant makes an assignment for the benefit of creditors;

(h) to the extent permitted by law, if Tenant files a voluntary petition under Title 11 of the United States Code or if such petition is filed against Tenant and an order for relief is entered, or if Tenant files 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 seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant takes any partnership or corporate action in furtherance of any action described in Sections 24.01(f), 24.01(g) or 24.01(h) hereof;

(i) to the extent permitted by law, if, within sixty (60) 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 has not been dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment has not been vacated;

(j) if any of the representations made by Tenant in Section 4.01 or Article 18 hereof is proved to be or becomes false or incorrect in any material respect; or

(k) if a levy under execution or attachment is made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment is not vacated or removed by court order, bonding or otherwise within a period of thirty (30) days.

#### **Section 24.02. Enforcement of Performance.**

If an Event of Default occurs, Landlord may elect to proceed by appropriate judicial action, 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 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(h) or (i) hereof 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-day period this Lease shall expire and terminate 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 using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

(c) If this Lease is terminated as provided in Section 24.03(a) hereof:

(i) Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the date upon which the Term shall have expired and come to an end; 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 necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let 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 (and in addition to the Security Deposit) Landlord shall (A) first, pay to itself the cost and

expense of termination of 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 cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (B) second, pay to itself the cost and expense of completing any Construction Work required to be performed by Tenant hereunder, (C) third, pay to itself the cost and expense sustained in securing any new tenants and other occupants, including in such costs brokerage commissions, legal expenses and reasonable 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 on account of the liability of Tenant to Landlord. Landlord shall in no way be responsible or liable for any failure to relet any portion(s) of the Premises or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

**Section 24.04. Waiver of Rights of Tenant.**

To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise that would have the effect of limiting or modifying any of the provisions of this Article. Tenant shall execute, acknowledge and deliver, within ten (10) days after request by Landlord, any instrument that Landlord may request, evidencing such waiver or release.

**Section 24.05. Receipt of Moneys after Notice or Termination.**

No receipt of money 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 Service**

Tenant hereby expressly waives the 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 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 termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings.

#### **Section 24.07. Strict Performance**

No failure by Landlord to insist upon Tenant's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord by reason of a Default or Event of Default, and no payment or acceptance of full or partial Rental during the continuance (or with Landlord's knowledge of the occurrence) of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other 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, 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 Tenant's Default or threatened Default, Landlord 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 otherwise, other remedies that may be available to Landlord notwithstanding. In the event of any default or threatened default by Landlord in any of its covenants under this Lease, Tenant 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 otherwise, other remedies that may be available to Tenant notwithstanding. Each right and remedy of Landlord and Tenant 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 Landlord or Tenant 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 Landlord or Tenant 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 24.09. Payment of All Costs and Expenses.**

Tenant shall pay Landlord all 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. 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 (provided that it is ultimately determined or agreed that Tenant was in fact not conforming with a covenant or provision hereof). All of the sums paid or obligations incurred by Landlord, with interest and costs, shall be paid by Tenant to Landlord within ten (10) days after demand.

**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 adequately protect 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 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 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 continue to use the Premises in the manner required by this Lease;

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

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

(e) 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; and

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

**Section 24.11. Funds Held by Depositary.**

If this Lease terminates as a result of an Event of Default and no new lease has been requested under the new lease provisions of Section 11.04 hereof, any funds held by Depositary shall be paid to Landlord as liquidated damages, free of any claim by Tenant, or any Person claiming through Tenant; provided, however, that acceptance of such funds as liquidated damages shall not foreclose Landlord, at its option, from seeking and proving additional actual damages.

**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 has 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 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 undistributed proceeds from any sale or financing, any undistributed 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, (ii) Affiliates, in payment of amounts then due and owing by Tenant to such Affiliates for items and services provided to Tenant in connection with its operations conducted at the Premises or any portion thereof, only to the extent such amounts do not exceed that which is customarily and reasonably paid in arms-length transactions to Persons who are not Affiliates for comparable items and services, and (iii) 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.

## ARTICLE 25

### NOTICES

#### Section 25.01. All Notices, Communications, etc. in Writing.

Whenever it is provided herein that notice 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 with respect hereto or to the Premises, each such notice shall be in writing and shall be effective for any purpose only if given or served as follows:

(a) If by Landlord, by mailing the same to Tenant by certified mail, postage prepaid, return receipt requested, addressed to Tenant, c/o Chinese-American Planning Council, 65 Lispenard Street, Fourth Floor, New York, NY 10013, with a copy to Yungman F. Lee, Esq., Lee, Lee & Ling, 8 Chatham Square, Suite 500, New York, N.Y. 10038 or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord in the manner provided in this Section 25.01.

(b) If by Tenant, by mailing the same to Landlord by certified mail, postage prepaid, return receipt requested, addressed to The City of New York, Department of General Services, Division of Real Property, 2 Lafayette Street, New York, New York 10007, attention Deputy Commissioner, with copies thereof to The New York City Law Department, 100 Church Street, New York, New York 10007, Att.: Chief, Economic Development Division, or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant by certified mail.

Section 25.02. Service. Every notice hereunder shall be deemed to have been given or served five (5) days after the time that the same shall have been actually deposited in the United States mails, postage prepaid, as aforesaid.

**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. This Lease and the leasehold estate of Tenant created hereby and all rights of Tenant hereunder are and shall be subject to the Title Matters.

## ARTICLE 28

### EXCAVATIONS AND SHORING

If any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, Tenant, at its option, shall either:

(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 for the purpose of doing such work as may be necessary to preserve any of the walls of the Building or other structures on the Premises 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 and 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, to the extent possible, with minimum interference with the on-going operations of Tenant and Subtenants; or

(b) perform or cause to be performed, at Landlord's or such other Person's expense, all such work as may be necessary to preserve any of the walls of the Building or other structures on the Premises from injury or damage and to support them by proper foundations.

## ARTICLE 29

### CERTIFICATES BY LANDLORD AND TENANT

#### Section 29.01. Certificate of Tenant

Tenant shall, within fifteen (15) days after notice by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, 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, and (b) stating (i) whether Tenant has given Landlord written notice of any default, or 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.

#### Section 29.02. Certificate of Landlord.

Landlord shall, within fifteen (15) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a 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, and (b) stating (i) whether an Event of Default has occurred 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.

#### Section 29.03. Commencement of Construction Certificate.

Within ten (10) days of the occurrence of Commencement of Construction, Tenant, shall deliver to Landlord a certificate of the Architect, certifying to Landlord that Commencement of Construction has occurred.

## ARTICLE 31

### SURRENDER AT END OF TERM

#### 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 good order, condition and repair, reasonable wear and tear excepted, free and clear of all Subleases, liens and encumbrances other than Subleases to which Landlord has given recognition 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 then in effect and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy 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 in the Premises (such to be delivered without representation or warranty by Tenant), together with a duly executed assignment thereof to Landlord in form suitable for recording, 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 and the condition of the Improvements.

#### Section 31.03. Personal Property.

Any personal property of Tenant or of any Subtenant which remains on the Premises for ten (10) days after the termination of this Lease 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, 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 after the expiration of such ten-day period.

**Section 31.04. 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, express or implied, between them other than as expressly set forth herein and therein 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 Landlord.

## ARTICLE 34

### APPRAISAL AND ARBITRATION

#### Section 34.01. Procedure for Appraisals.

In each instance under this Lease where appraisal is necessary or required, such appraisal shall be conducted as follows:

(a) With respect to appraisals required by Section 3.02 hereof, Landlord and Tenant shall each give notice to the other no more than six (6) months and no less than three (3) months before each Revaluation Date, specifying therein the name and address of the person designated to act as appraiser on its behalf and the appraisal value determined by such appraiser. With respect to any other appraisals required hereunder, the party desiring such appraisal shall give notice to that effect to the other party, specifying therein the name and address of the person designated to act as appraiser on its behalf, and, within fifteen (15) days after the service of such notice, the other party shall give notice to the first party specifying the name and address of the person designated to act as appraiser on its behalf. If either party fails to notify the other party of the appointment of its appraiser and the appraisal value, as aforesaid, within or by the time above specified, then the appointment of the second appraiser shall be made in the same manner as hereinafter provided for the appointment of a third appraiser in a case where the two appraisers appointed hereunder and the parties are unable to agree upon such appointment.

(b) If the two appraisal values are within ten percent (10%) of each other, the appraisal value finally adopted shall be the average of the two appraisal values. If the difference between the two appraisal values is greater than ten percent (10%), then Landlord and Tenant can mutually agree on the amount of the new Base Rent, or they themselves shall appoint a third appraiser. Within a period of thirty (30) days after the appointment of such third appraiser, such third appraiser shall determine an appraisal value which shall be binding on the parties.

(c) In the event the two parties are unable to agree upon the appointment of a third appraiser within fifteen (15) days after their being unable to agree upon a valuation, then either party, on behalf of both, may apply to the Supreme Court of New York County for the appointment of such third appraiser, and the other party shall not raise any question as to that court's full power and jurisdiction to entertain the application and make the appointment.

(d) Any appraiser selected or appointed pursuant to this Section shall be a member of the American Institute of Real Estate Appraisers (or a successor organization), shall be an appraiser, and shall have been doing business as such in New York City for a period of at least fifteen (15) years before the date of this appointment.

Any appraiser designated by Landlord hereunder may be an employee of the City. All appraisers chosen or appointed pursuant to this Section shall be sworn fairly and impartially to perform their duties as such appraiser. In the event of the failure, refusal or inability of any appraiser to act, his successor shall be appointed within ten (10) days by the party who originally appointed him; in the event such party fails so to appoint such successor, and in case of the third appraiser, his successor shall be appointed as hereinabove provided.

(e) The reasonable costs of all appraisals shall be paid by Tenant.

#### Section 34.02 Procedure for Arbitration.

Every dispute between the parties which is specifically required 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 on its behalf. Within ten days, the other party by notice to the original party shall appoint a second person as arbitrator on its behalf. Each arbitrator shall be fit and impartial and shall have at least ten years experience in the City of New York 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 rules of the American Arbitration Association (or any organization successor thereto) ("AAA"). The arbitrators shall render their decision and award in writing within thirty (30) days after the appointment of the second arbitrator.

If the two arbitrators appointed by the parties are unable to agree within such thirty-day period then either party may, upon notice to the other, request the appointment of a third arbitrator by the AAA and the matter in dispute will be determined by the decision of a majority of the three arbitrators. Each party shall pay the fees and expenses of the arbitrator appointed by such party, and the fees and expenses of the third arbitrator appointed by the AAA, if so appointed, 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 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 34.02 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 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. However, during any period in which both (i) the City has ceased to be Landlord and (ii) PILOT has not yet ceased to be less than Taxes (a "Landlord Contest Period") Tenant shall only exercise the preceding contest rights after consent to each such exercise by Landlord, not to be unreasonably withheld or delayed, and provided further that during the Landlord Contest Period, if any, Landlord shall have the same rights to contest assessments, at Landlord's sole cost and expense, as are given to Tenant in the preceding sentence, provided that Tenant consents to each exercise thereof, such consent not to be unreasonably withheld or delayed. During the Landlord Contest Period, neither Landlord nor Tenant shall enter into any settlement of an assessment contest without the consent of the other, not to be unreasonably withheld or delayed. During the Landlord Contest Period Landlord and Tenant may agree to share costs of a contest which is undertaken jointly or which might benefit both parties.

#### 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 3.06 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof would, by reason of such postponement or deferment, be, 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 deposited with Depositary cash in the amount so contested and unpaid or, alternatively, at Tenant's option, an irrevocable letter of credit drawn on an Institutional Lender (in form satisfactory to Landlord) or other security (for example, a personal guaranty) satisfactory to Landlord, 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 the pendency of such proceedings. Upon the termination of such proceedings, Tenant shall 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, Depositary shall return any amount or other security deposited with it with respect to such Imposition, together with the interest, if any, earned thereon. However, if Depositary is so requested by Tenant, Depositary shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable. If at any time during the continuance of such proceedings Landlord, in its reasonable judgment, deems insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Landlord's demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord reasonably may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, shall, upon demand by Landlord, be applied by Depositary to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any 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 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.

#### **Section 35.03. Requirement Contest.**

Tenant shall have the right to contest the validity of any Requirement, other than those enumerated at Section 16.01(b)(iii)-(v) above, or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that, before instituting any such proceeding, Tenant shall furnish Depositary with a surety company bond or, alternatively at Tenant's option, a cash deposit, an irrevocable letter of credit drawn on an Institutional Lender or other security (e.g., a personal guaranty), in form and amount satisfactory to Landlord, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The

furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 16.01(a) hereof if, in Landlord's reasonable judgment, the Premises, or any part thereof, are in danger of being forfeited or Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith.

**Section 35.04. Landlord's Participation in Contest Proceedings.**

Landlord shall not be required to join in any action or proceeding referred to in this Article 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. 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 costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Landlord in connection therewith.

## ARTICLE 36

### INVALIDITY OF CERTAIN PROVISIONS

If any provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Lease, and the application of such 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

### FINANCIAL REPORTS AND RECORDS

#### Section 37.01. Statements.

Tenant shall furnish to Landlord the following:

(a) as soon as practicable after the end of each of the first three (3) calendar quarters in each Lease Year (or, in the case of a Lease Year which is not a full calendar year, after the end of each calendar quarter, other than the October through December quarter, occurring during such Lease Year), and, in any event, within twenty-five (25) days thereafter, a statement of Tenant, signed by the chief operating officer or managing general partner of Tenant or the designee, approved by Landlord, of such chief operating officer or managing general partner, estimating receipts from and expenses of operations of the Premises during the preceding calendar quarter based on review of payments and collections during said quarter;

(b) as soon as practicable after the end of each Lease Year and, in any event, within ninety (90) days thereafter, financial statements of Tenant and of the operations of the Premises (including, without limitation, balance sheets, income statements and funds statements showing changes in financial position) and setting forth, in accordance with Accounting Principles, in comparative form, the corresponding figures for the previous Lease Year, all in reasonable detail and examined and reported upon in accordance with generally accepted auditing standards by a Certified Public Accountant, who shall render a written report thereon to Landlord; and

(c) for as long as the City is Landlord and to the extent that City Administrative Code Section 11-208.1 (or successor thereto) is then in force and effect and has not been judicially declared invalid, 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 said 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 shall be submitted notwithstanding that the City holds fee title to the Premises, that the Premises may therefore not be "income-producing property" as that concept is used in Section 11-208.1, or that PILOT rather than real estate taxes are being paid with respect to the Premises.

#### Section 37.02. Maintenance of Books and Records.

Tenant shall keep and maintain at an office in New York City complete and accurate books and records of accounts of the operations of the Premises from which Landlord may determine for each Lease Year the items to be shown or set forth on the statements to be

delivered to Landlord pursuant to Section 37.01 hereof and shall preserve, for a period of at least six (6) years after the end of each applicable period of time, the records of its operations of the Premises. However, if, at the expiration of such six-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. Tenant shall also promptly furnish to Landlord, upon request, copies of all operating statements and financial reports from time to time furnished to each Recognized Mortgagee.

**Section 37.03. Books and Records.**

(a) 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 twenty-four (24) hours notice, to inspect, audit, and, at its option, duplicate, at Landlord's expense, all of Tenant's books and records and all other papers and files of Tenant relating in any manner to the Premises or to this Lease.

**Section 37.04. Survival.**

The obligations of Tenant under this Article shall survive the Expiration of the Term.

**ARTICLE 38**

**RECORDING OF LEASE**

Tenant shall cause this Lease and any amendments hereto, or a memorandum hereof or thereof, 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**

**[INTENTIONALLY OMITTED]**

## ARTICLE 40

### NONDISCRIMINATION: AFFIRMATIVE ACTION; REFUSAL TO TESTIFY

#### Section 40.01. No Discrimination and Affirmative Action; Refusal to Testify.

Tenant shall:

(a) comply with the provisions of Executive Order No. 50 of the Mayor of the City of New York (April 25, 1980), or any successor thereto, and the regulations issued thereunder to the extent applicable, including, inter alia, that it shall: treat and take affirmative action to assure that all employees and applicants for employment are treated without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference in all employment decisions, including, but not limited to, recruitment, recruitment advertising, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, and all other terms and conditions of employment, except as provided by law;

(b) submit to the City of New York's Bureau of Labor Services ("BLS") a completed employment report, in form and substance reasonably satisfactory to BLS prior to Commencement of Construction or commencement of any Construction Work;

(c) file periodic employment reports in such form and frequency as BLS may reasonably direct by regulations to determine whether Tenant is in compliance with the requirements of said Executive Order No. 50;

(d) state in all solicitations for employment that all qualified applicants shall receive consideration for employment without regard to race, color, religion, national origin, sex, sexual orientation or affectional preference, and such further provisions as may be directed by regulations of BLS; and

(e) include in every contract with a contractor, consultant, or expert to which it becomes a party the nondiscrimination provisions of this Article, and such additional language as BLS may in writing require, which shall be annexed to, and made a part of, all such contracts.

The foregoing provisions of this Section 40.01 shall not apply with respect to sex or age where either is a bona fide occupational disqualification, nor shall it apply with respect to age where a bona fide retirement plan prevents employment of persons above a stated age or where there is a statutory requirement imposing age limitations. Without limiting the foregoing, Tenant shall neither

commit nor permit discrimination or segregation by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status, sexual orientation or affectional preference in the sale, transfer or assignment of its interest under this Lease or in the subletting, use or occupancy of the Premises or any part thereof, or in connection with any Construction Work or in any other instrument, covenant, agreement or transaction affecting the Premises or this Lease, and it shall comply with all federal, state and municipal laws, ordinances, rules, codes, orders, and regulations regarding discrimination or segregation and/or requiring affirmative action with respect to the same.

**Section 40.02. 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 the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that 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, New York City Public Development Corporation or any other 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, the State of New York, or any political subdivision thereof or any local development corporation,

then the commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, 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 40.03. Adjournments of Hearing, etc.**

If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 40.05 below without the City incurring any penalty or damages for delay or otherwise.

**Section 40.04. 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; and/or

(b) The cancellation or termination of any and all such existing City 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 incurring any penalty or damages on account of such cancellation or termination.

**Section 40.05. 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 40.04 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 40.04 above gives notice and proves that such interest was previously acquired. Under either circumstance 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 40.06. 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 "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.

(c) The term "member" shall mean any Person associated with another Person or entity as a partner, director, officer, principal or employee.

**Section 40.07 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.

(a) Within seven (7) days after execution of this Lease, Tenant, if it has not already done so, shall complete and deliver to the City a questionnaire, on the form prescribed by the City, setting forth, in substance, how many and what types of jobs Tenant in good faith estimates will be created at the Premises when Construction is complete and the Premises are ready for occupancy, and such supplementary documentation as may be required by the form (the "Questionnaire").

(b) Tenant shall cause each subtenant of the Premises to furnish employment reports to the City and to cooperate with City employment opportunity programs in the manner more particularly set forth below. Tenant shall include in each Sublease entered into before the tenth (10th) anniversary of Substantial Completion a covenant by the Subtenant, for itself, its Subtenants and any assignee (i) to complete and return to the City at the time of execution of the Sublease a Questionnaire with respect to employment to be retained or created at the premises demised under the Sublease; (ii) 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 demised premises; (iii) to provide the City and such entities with the opportunity (A) to refer candidates who are City residents having the requisite experience for the positions in question, and (B) to create a program to train City residents for those jobs; and (iv) until the fifth (5th) anniversary of the commencement of the Sublease and within thirty (30) days after demand (A) to report to the City, on an annual basis, the actual number of jobs then created at the demised premises and the Subtenant's response to any proposals, personnel referrals and training programs made and/or created by the City and/or City-related entities, as described in clauses (ii) and (iii) above, and (B) to deliver to the City any and all forms required to be delivered pursuant to the Questionnaire. The Subtenant shall explicitly acknowledge in the Sublease that the covenants referred to above are made for the benefit of the City and shall agree that such covenants may be enforced at the expense of the Subtenant by the City as a third party beneficiary.

(c) 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 Premises is of material concern to Landlord and agrees that Tenant's covenants in this Article 41 are a material inducement for Landlord to enter into this Lease. Tenant agrees to cooperate fully with Landlord in enforcing against Subtenants the covenants referred to in paragraph (b) of this Section 41.01. Upon demand made by the

City, Tenant shall assign to the City Tenant's cause of action to enforce such covenants.

(d) Tenant acknowledges that Landlord would have no adequate remedy at law if Tenant or any Subtenant should fail to observe the covenants continued in this Article 41. In such event, Landlord shall be entitled to injunctive relief.

**ARTICLE 42**

**[INTENTIONALLY OMITTED]**

**ARTICLE 43**

**MISCELLANEOUS**

**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, and 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 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. [Intentionally Omitted]**

**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, including without limitation the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of part or all of the Premises, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. In no

event 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 relating to the Premises 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 powers or rights or Landlord's actions in its governmental capacity; or (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.

(b) Tenant's Exculpation. Except for (i) liability for conversion, fraud or breach of trust, (ii) liabilities of Tenant when Landlord is acting in or pursuant to its governmental capacity, (iii) liability with respect to Tenant's obligation to pay Rental that has accrued but not yet been paid, and except with respect to any rights or remedies in equity, the liability of Tenant hereunder for damages or other monetary amounts shall be limited to Tenant's interest in the Premises, including, without limitation, any then present or future rents or profits, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant or partners of a partnership constituting a partner of Tenant shall have any liability (personal or otherwise) hereunder, with the exceptions set forth in (i) through (iii) in the preceding sentence, beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant or partners of a partnership constituting a partner of Tenant shall be subject to levy of execution or other enforcement procedure for the satisfaction of Landlord's remedies hereunder.

(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. Landlord's Remedies Cumulative**

Each right and remedy of Landlord 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 Landlord 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 Landlord 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 execute 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 part 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 Expense.**

When Tenant exercises any of the rights, or renders or performs any of its obligations hereunder, Tenant hereby acknowledges that it shall so do at Tenant's sole cost and expense.

**Section 43.10. 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. Landlord agrees that it shall not accept a surrender of this Lease without the prior written consent of each Recognized Mortgagee.

**Section 43.11. 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 43.12. Transfer of Lease Interest.**

In the event of any sale or sales, assignment or assignments, or transfer or transfers of the Landlord's interest in 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, whether accruing before or after the date of such sale, assignment or transfer, 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.

**Section 43.13. Governing Law.**

This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

**Section 43.14. 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 43.15. 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, and in the event of an inconsistency or conflict between this Lease and any such instrument, this Lease shall control.

**Section 43.16. Landlord's Bankruptcy.**

(a) In the event Landlord or any trustee, custodian, receiver or other similar official shall reject this Lease pursuant to an applicable provision of the Federal Bankruptcy Code, as amended (U.S.C. Title 11) (the "Code"), including, without limitation, Section 365 (h)(1) of the Code, (i) Tenant shall without further act or deed be deemed to have elected, under Section 365 (h)(1) of the Code, to remain in possession of the Premises for the balance of the Term and (ii) any exercise or attempted exercise by Landlord of a right to treat this Lease as terminated, canceled or surrendered pursuant to applicable provisions of the Code, including, without limitation, Section 365 (h)(1), without the Recognized Mortgagee's prior written consent, shall be void.

(b) For purposes of Section 365 (h)(1) of the Code, the term "possession" shall mean the right to possession of the Premises granted to Tenant under this Lease whether or not all or any part of the Premises have been subleased.

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 General Services

ATTEST:

[SEAL]

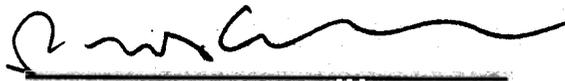
  
\_\_\_\_\_  
City Clerk      First Deputy and Acting City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Acting Corporation Counsel

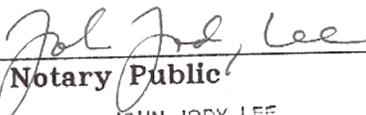
By   
\_\_\_\_\_  
Robert E. Wilson III  
Deputy Commissioner  
Division of Real Property

WALKER STREET-CHUNG PAK  
LOCAL DEVELOPMENT  
CORPORATION

By   
\_\_\_\_\_  
David Chen  
Chairperson

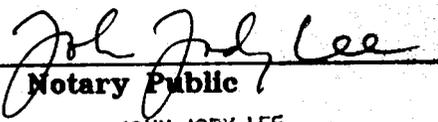
STATE OF NEW YORK )  
  : SS.  
COUNTY OF NEW YORK )

On this *18th* day of December 1990, before me personally came Robert E. Wilson III, to me known and known to me to be Deputy Commissioner of the Department of General Services, Division of Real Property, of The City of New York and the same person who executed the foregoing instrument, and he acknowledged that he executed the foregoing instrument on behalf of The City of New York and pursuant to the authority vested in him by resolution of the Board of Estimate adopted April 11, 1988 (Cal. No. 350), as modified by Mayoral Authorization dated November 15, 1990.

  
\_\_\_\_\_  
Notary Public  
JOHN JODY LEE  
Notary Public, State of New York  
No. 41-4821762  
Qualified in Queens County  
Commission Expires April 30, 1992

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

On this *18th* day of *December* 19*90*, before me personally came Raymond C. Teatum, with whom I am acquainted and known to me the 1st. Deputy and Acting City Clerk of the City of New York, being by me duly sworn, deposes and say; that he resides at 45 East End Avenue, New York, NY 10028; that he is the 1st Deputy and Acting City Clerk of the City of New York, the municipal corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that it was so affixed as provided by law; and that he signed his name thereto as 1st. Deputy and Acting City Clerk by like authority.

  
Notary Public

JOHN JODY LEE  
Notary Public, State of New York  
No. 41-4921702  
Qualified in Queens County  
Commission Expires April 30, 19*92*



**EXHIBIT A**  
**DETENTION SPACE**

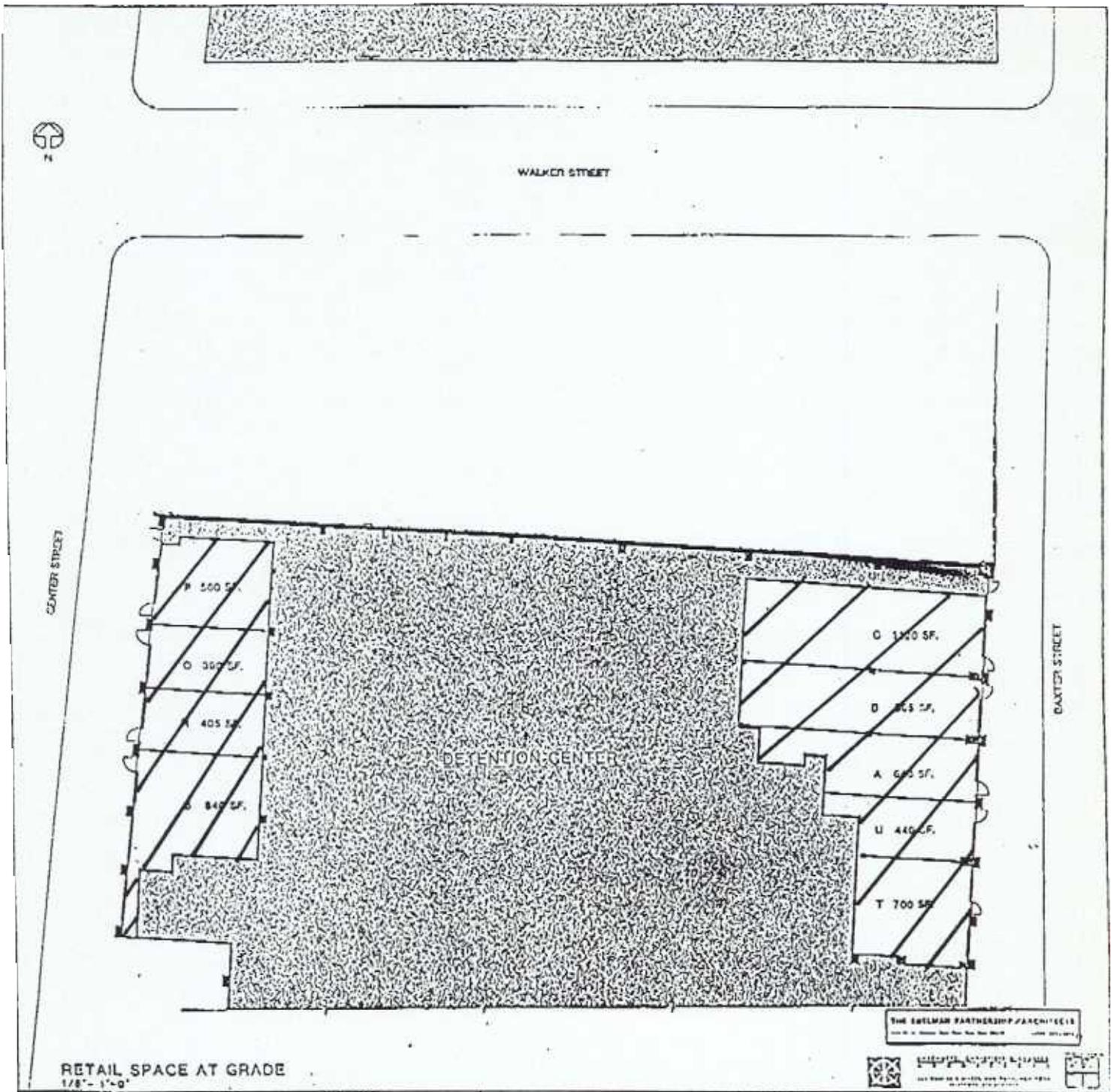
**DESCRIPTION OF DETENTION SPACE:**

Approximately 5,950 square feet of space located on the grade level of the Department of Correction of The City of New York's Manhattan House of Detention located on Baxter and Centre Streets, New York, New York (Block 198, Lot 1) consisting of:

1. approximately 2,195 square feet of space fronting on Centre Street for a distance of approximately 95 feet, consisting of six (6) structural bays. The five northern bays form a rough rectangular shape approximately 80 feet long and approximately 27 feet deep. The remaining bay forms a rectangular shape approximately 15 feet long and approximately 3 feet deep; and

2. approximately 3,765 square feet of space fronting on Baxter Street for a distance of approximately 95 feet, consisting of six (6) structural bays. This space is irregularly formed at the back (western) wall. The space is roughly shaped into two sections: the three northerly bays being at a depth of approximately 58 feet; and the three southerly bay s being at a depth of approximately 28 feet,

as such space is shown cross-hatched on the annexed floor plan.



"Detention Space" is shown cross-hatched.  
 Square footage references are approximate.

**EXHIBIT B**

**LAND**

## **CELLAR**

Elevation 2'-8" and 3'-11" to Elevation varies (See Drawing)

## **DESCRIPTION**

Beginning at a point on the westerly side of Baxter Street and a line 31.5 feet south of and parallel to Walker Street;

Running thence westerly from said point of beginning along a line parallel to Walker Street, a distance of 19.66 feet to a point;

Running thence southerly along a line forming an angle with Walker Street of  $90^{\circ} 0' 0''$ , a distance of 6.83 feet to a point;

Running thence westerly along a line parallel to Walker Street, a distance of 49.58 feet to a point;

Running thence southerly along a line forming an angle with Walker Street of  $90^{\circ} 0' 0''$ , a distance of 28.75 feet to a point;

Running thence westerly along a line forming an interior angle with Baxter Street of  $86^{\circ} 04' 13''$ , a distance of approximately 92.50 feet to a point defined by said line and the line of the subway easement;

Running thence northeasterly along the line of the subway easement to a point defined by said line of subway easement and a line running along the southerly side of Walker Street;

Running thence easterly along the southerly line of Walker Street to a point defined by the southerly line of Walker Street and the westerly line of Baxter Street;

CELLAR. cont.

Running thence southerly along the westerly line of Baxter Street a distance of 31.50 feet to the point of beginning.

## **1ST FLOOR**

Elevation varies to Elevation 33'-4" (See drawing)

## **DESCRIPTION**

Beginning at a point on the westerly side of Baxter Street formed by the intersection of the westerly side of Baxter Street and a line 32.25 feet south of and parallel to Walker Street;

Running thence westerly from said point of beginning along a line parallel to Walker Street, a distance of 28.91 feet to a point;

Running thence northerly along a line forming an angle with Walker Street of  $90^{\circ} 0' 0''$ , a distance of 3.75 feet to a point;

Running thence westerly, along a line parallel to Walker Street, a distance of 19.25 feet to a point;

Running thence southerly, along a line forming an angle of  $90^{\circ} 0' 0''$  with Walker Street, for a distance of 10.67 feet to a point;

Running thence westerly, along a line parallel to Walker Street, for a distance of 14.50 feet to a point;

Running thence southerly, along a line at an angle of  $90^{\circ} 0' 0''$  to Walker Street, for a distance of 25.5 feet to a point;

Running thence westerly, along a line forming an interior angle with Baxter Street of  $80^{\circ} 04' 13''$ , a distance of 135.95 feet to a point;

**1ST FLOOR. cont.**

Running thence northerly along a line parallel to and along the easterly side of of Center Street for a distance of 58.17 feet to a point;

Running thence easterly, along a line parallel to and along the southerly side of Walker Street, for a distance of 191.67 feet to a point;

Running thence southerly, along a line parallel to and along the easterly side of Baxter Street, a distance of 35.25 feet to the point of the beginning.

## **2ND FLOOR**

Elevation 33'-4" to Elevation 44'-4" (see 3rd Floor Plan)

### **DESCRIPTION**

Beginning at a point formed by the intersection of Baxter and Walker Streets;

Running thence southerly from said point of beginning along the westerly side of Baxter Street, a distance of 72.10 feet to a point;

Running thence westerly along a line forming an interior angle with Baxter Street of  $86^{\circ} 04' 13''$ , a distance of 198.70 feet to a point;

Running thence northerly along a line parallel to and along the easterly side of Centre Street for a distance of 58.17 feet to a point;

Running thence easterly along a line parallel to and along the southerly side of Walker Street for a distance of 191.67 feet, to the point of beginning;

and with the exception of an area bounded by

Beginning at a point formed by the intersection of a line 42.5 feet south of the southerly side of Walker Street and a line 29.62 feet west of the intersection of the southerly side of Walker Street and the westerly side of Baxter Street;

Running thence southerly from said point of beginning along a line forming an angle with Walker Street of  $90^{\circ} 0' 0''$ , a distance of 15.66 feet to a point;

Running thence westerly along a line parallel to Walker Street, a distance of 21.1 feet to a point;

2ND FLOOR. cont.

Running thence northerly along a line forming an angle with Walker Street of  $90^{\circ} 0' 0''$ , a distance of 8.33 feet to a point;

Running thence easterly along a line parallel to Walker Street, a distance of 2.0 feet to a point;

Running thence northerly along a line forming an angle with Walker Street of  $90^{\circ} 0' 0''$ , a distance of 4.0 feet to a point;

Running thence westerly along a line parallel to Walker Street, a distance of 3.33 feet to a point;

Running thence northerly along a line forming an angle with Walker Street of  $90^{\circ} 0' 0''$ , a distance of 3.66 feet to a point;

Running thence easterly along a line parallel to Walker Street, a distance of 22.42 feet to the point of beginning.

### **3RD FLOOR**

Elevation 44'-4" to Elevation 54'-4"

### **DESCRIPTION**

Beginning at a point on the southerly side of Walker Street formed by the intersection of the southerly side of Walker Street and a line 112.25 feet, as measured along Walker Street, west of and parallel to Baxter Street;

Running southerly from said point of beginning along a line forming an angle of  $90^{\circ} 0' 0''$  with Walker Street, a distance of 20.33 feet to a point;

Running thence easterly along a line parallel to Walker Street, a distance of 3.0 feet to a point;

Running thence southerly along a line forming an angle of  $90^{\circ} 0' 0''$  with Walker Street, a distance of 18.0 feet to a point;

Running thence easterly along a line parallel to Walker Street, a distance of 50.71 feet to a point;

Running thence southerly along a line forming an angle of  $90^{\circ} 0' 0''$  with Walker Street, a distance of 2.25 feet to a point;

Running thence easterly along a line parallel to Walker Street, a distance of 2.0 feet to a point;

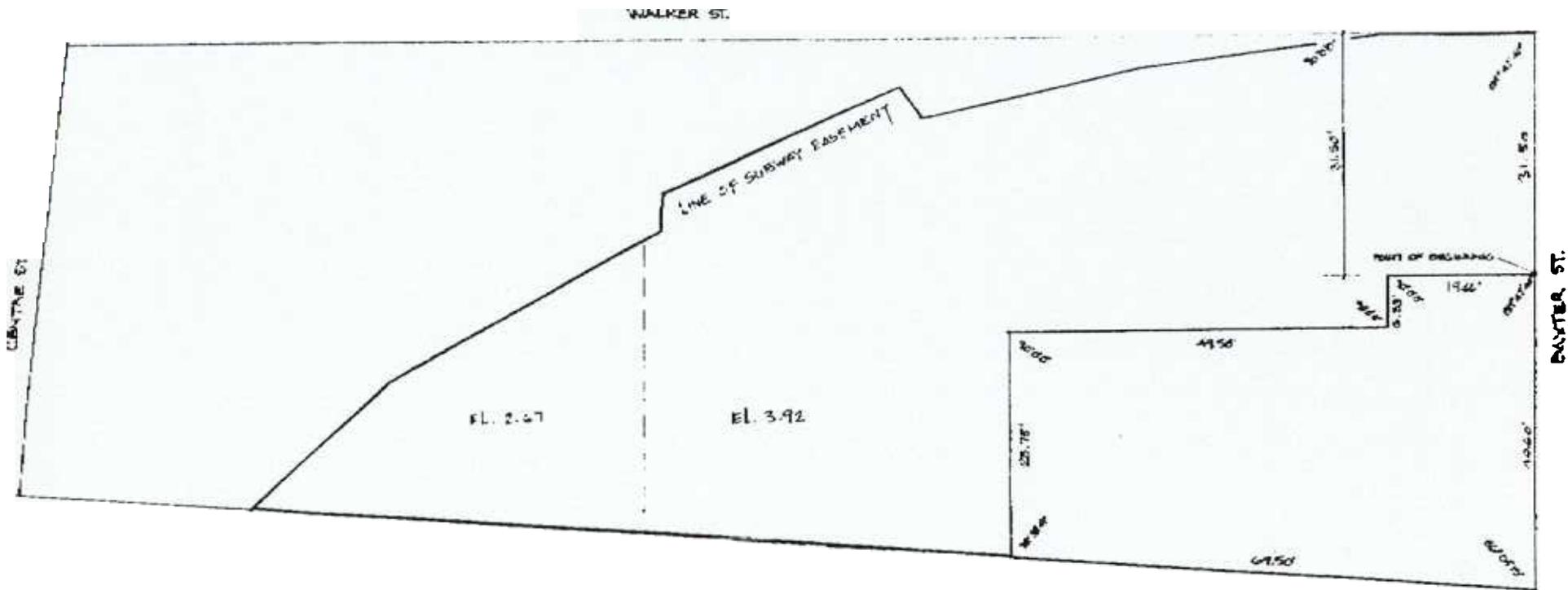
Running thence southerly along a line forming an angle of  $90^{\circ} 0' 0''$  with Walker Street, a distance of 27.75 feet to a point;

Running thence westerly along a line forming an interior angle with Baxter Street of  $86^{\circ} 04' 13''$ , a distance of 141.90 feet to a point;

**3RD FLOOR. cont.**

Running thence northerly along a line parallel to and along the easterly side of Centre Street, a distance of 58.17 feet to a point;

Running thence easterly along a line parallel to and along the southerly side of Walker Street, a distance of 79.42 feet, to the point of the beginning.



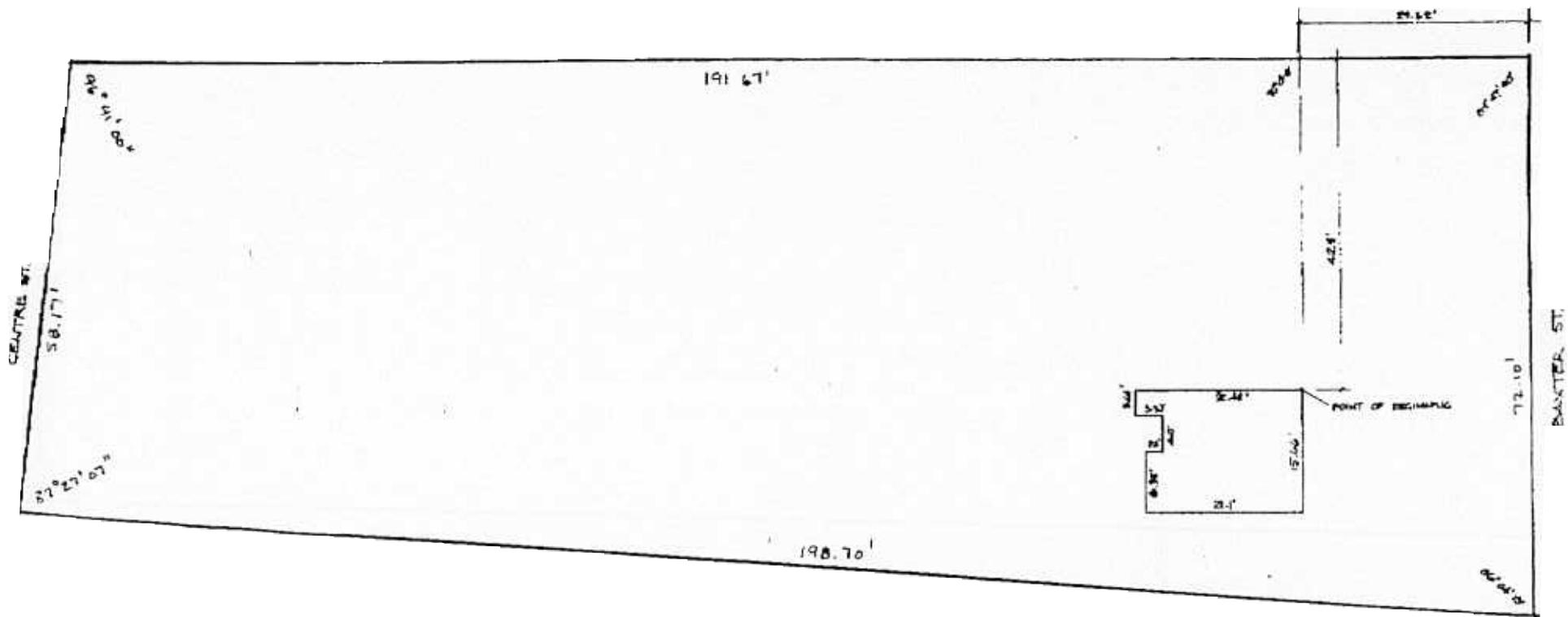
NOTE: ELEVATIONS SHOWN REFER TO HIGHWAY & SEWER DEPT. DATUM WHICH IS 2.75 FT. ABOVE MEAN SEA LEVEL AT SANDY HOOK, N.J.



CHUNG PAK / EVERLASTING PINES  
CELLAR

ELEVATION 2.67' & 3.92' TO EL. VARIES.  
26 NOV. 90





NOTE: ELEVATIONS SHOWN REFER TO HIGHWAY & SEWER DEPT. DATUM WHICH



CHING PAK/BREAKFAST PINES

SECOND FLOOR ELEVATION 35.30' TO FINISH 45.30' & +4.33'

72.10' 0"



**EXHIBIT C**

**DEFINITION OF "FLOOR AREA"**

## Floor area

"Floor area" is the sum of the gross areas of the several floors of a *building* or *buildings*, measured from the exterior faces of exterior walls or from the center lines of walls separating two *buildings*. In particular, *floor area* includes:

(a) *Basement space*, except as specifically excluded in this definition

(b) Elevator shafts or stairwells at each floor

(c) Floor space in penthouses

(d) Attic space (whether or not a floor has been laid) providing structural headroom of eight feet or more

(e) Floor space in *galleries*, *covered plazas* and interior balconies, mezzanines, or bridges

(f) Floor space in open or roofed terraces, exterior balconies, bridges, breezeways or porches, if more than 50 percent of the perimeter of such terrace, balcony, breezeway, or porch is enclosed, and provided that a parapet not higher than three feet, eight inches, or a railing not less than 50 percent open and not higher than four feet, six inches, shall not constitute an enclosure

(g) Any other floor space used for dwelling purposes, no matter where located within a *building*, when not specifically excluded

(h) Floor space in *accessory buildings*, except for floor space used for *accessory* off-street parking

(i) Floor space used for permitted or required *accessory* off-street parking spaces located more than 23 feet above *curb level*, and floor space in excess of 250 square feet per parking space used for required *accessory* parking within a *residential building* not more than 32 feet in height in R4 and R5 districts.

(j) Floor space used for *accessory* off-street loading berths in excess of 200 percent of the amount required by the applicable district regulations

(k) Floor space within an existing *building* which is or becomes unused or inaccessible.

(l) floor space which has been eliminated from the volume of an existing *building* in conjunction with the *development* of a new *building* or in the case of a major *enlargement* of another *building* on the same *zoning lot*.

(m) Any other floor space not specifically excluded.

However, the *floor area* of a *building* shall not include:

(a) *Cellar* space, except that *cellar* space used for retailing shall be included for the purpose of calculating requirements for *accessory* off-street parking spaces and *accessory* off-street loading berths

(b) Elevator or stair bulkheads, *accessory* water tanks, or cooling towers

(c) Uncovered steps

(d) Attic space (whether or not a floor actually has been laid) providing structural headroom of less than eight feet

(e) Floor space in open or roofed terraces, exterior balconies, bridges, breezeways or porches, provided that not more than 50 percent of the perimeter of such terrace, balcony, breezeway, or porch is enclosed, and provided that a parapet not higher than three feet, eight inches, or a railing not less than 50 percent open and not higher than four feet, six inches, shall not constitute an enclosure

(f) Floor space used for permitted or required *accessory* off-street parking spaces located not more than 23 feet above *curb level*, except where such floor space used for *accessory* off-street parking spaces is contained within a *public parking garage*.

However, in a *residential building* not more than 32 feet in height in an R4 or R5 district, floor space used for *accessory* off-street parking occupying in excess of 250 square feet per required parking space shall not be excluded from the definition of floor area.

(g) Floor space used for *accessory* off-street loading berths, up to 200 percent of the amount required by the applicable district regulation

(h) Floor space used for mechanical equipment

(i) Except in R4 and R5 districts, the lowest *story* (whether a *basement* or otherwise) of a *residential building*, provided that:

(1) Such *building* contains not more than two *stories* above such *story*, and

(2) Such *story* and the *story* immediately above it are portions of the same *dwelling unit*, and

(3) Such *story* is used as a furnace room, utility room, auxiliary recreation room, or for other purposes for which *basements* are customarily used, and

(4) Such *story* has at least one-half its height below the level of the ground along at least one side of such *building*, or such *story* contains a garage.

(j) The lowest *story* (whether a *basement* or otherwise) of one, two, or three-family residences not more than 32 feet in height in R4 and R5 districts which received a certificate of occupancy prior to December 1, 1972.

## **EXHIBIT D**

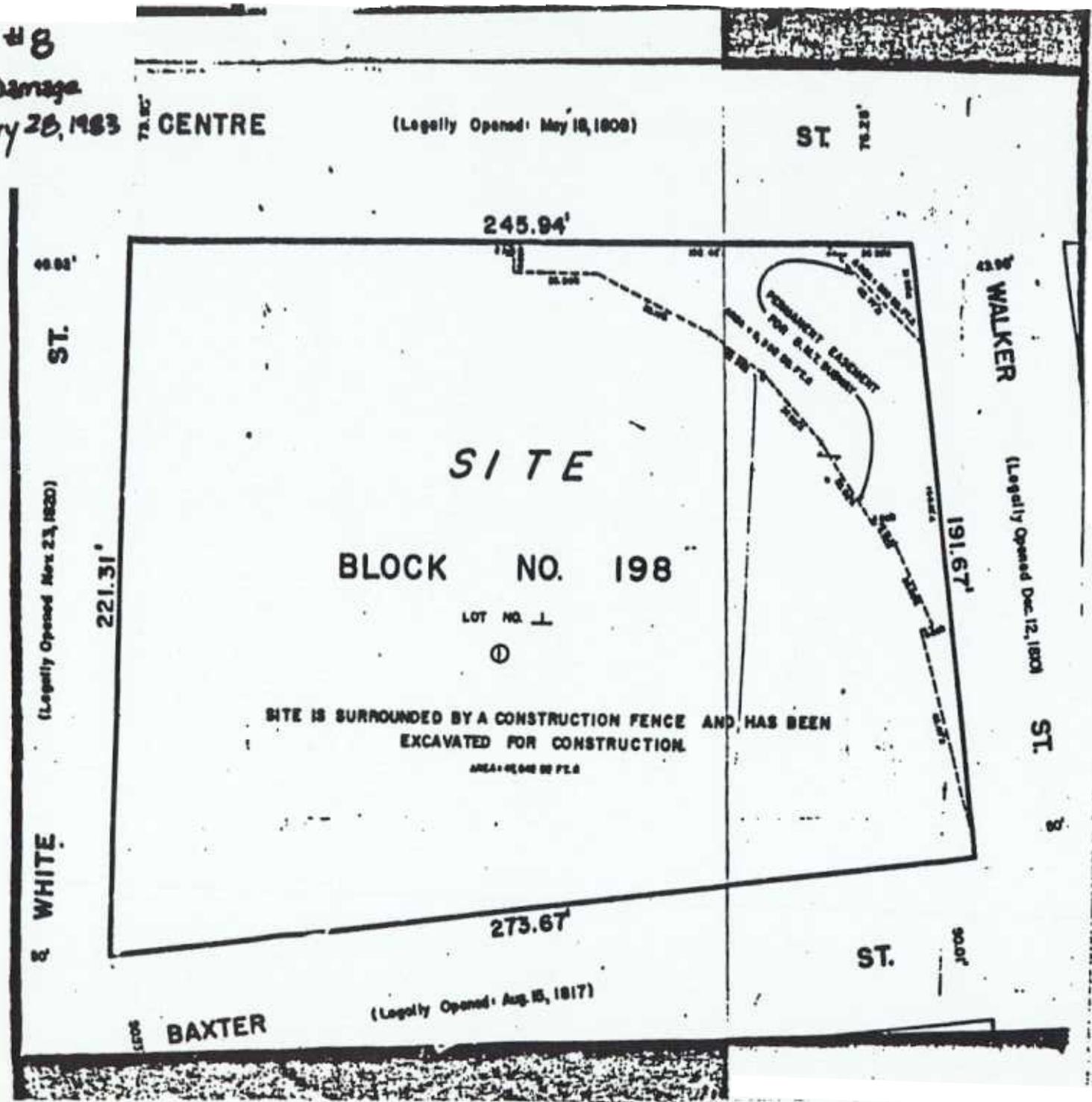
### **TITLE MATTERS**

1. Any title exceptions, encumbrances or other matters appearing as exceptions from title insurance or for information in a title insurance policy respecting the Premises to be issued simultaneously with the delivery of this Lease, by a title insurance company selected by Tenant and approved by Landlord in its sole discretion.

2. The New York City Transit Authority's easement shown on the attached drawings.

3. All rights reserved and restrictions imposed by DOC, as set forth in Exhibit M hereto, Design Guidelines.

Exhibit #8  
Acquisition/Damage  
Map - February 26, 1983

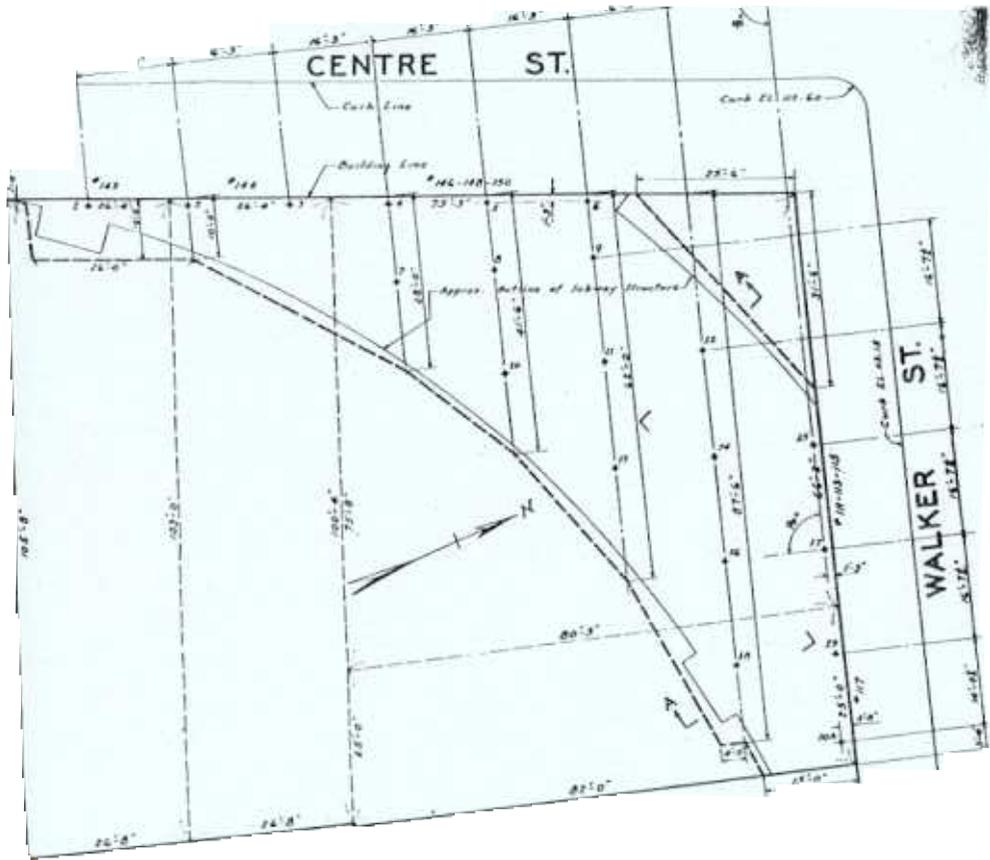


CA 44

THE CITY OF LOS ANGELES

37





**CITY OF NEW YORK  
BOROUGH OF MANHATTAN  
SECTION NO. I  
BLOCK NO. 198**

**NOTES**

Represents easement lines where not coincident with property or building lines. In order to permit slight variations in construction, the permanent easement limits are outside of, and do not follow the irregularities of the subway structure. The space between the easement lines and the structure may be utilized by the owner of the property, subject to the conditions of loading given below.

The permanent easement limits shall be considered as permitting the application of thrusts against the sidewalks and loads upon the roof of the subway structure not exceeding the following:

The subway structure is designed to withstand in addition to the roof load as hereinafter described, a side thrust from earth pressure on each square foot of subway sidewalk equal to one-third the weight of a column of earth one square foot in area and a height equal to the vertical distance between each particular square foot of subway sidewalk and the elevation of the curb referred to in determining the vertical limit of the permanent easement the weight of earth being taken as 100 lbs. per cubic foot, plus a uniformly distributed live load of 100 lbs. per square foot on the ground surface adjacent to the subway structure.

Where earth is removed in excavating for a building cellar or cellars, adjacent to the subway structure (and below the elevation of the curb referred to in determining the vertical limit of the permanent easement) a building load uniformly distributed may be applied at the level of the lowest cellar floor equal to the weight of earth at 100 lbs. per foot of depth removed. If such load is not uniformly distributed, the load per square foot on the area of the building foundation may be increased, depending upon its size and location with respect to the subway sidewalk provided the stresses due to the side thrust of said building loads combined with a thrust due to earth pressure, do not exceed the stresses resulting from earth pressures as described in the preceding paragraph.

Building loads applied below a plane intersecting the subway sidewalk at an angle of 45° shall not be considered as exerting thrust against the sidewalk.

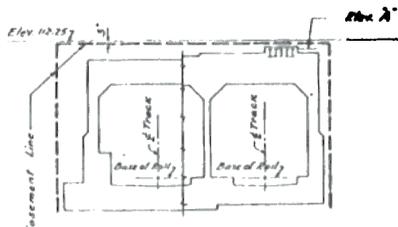
Indicates location on subway roof where provision has been made for loads as indicated by the schedule entitled "Allowable Building Loads" by grade affixing, other arrangements and loading of columns may be used, provided the scheduled loads are not exceeded thereby.

In addition to the scheduled loads and live load to the level of the street surface the subway roof will support a uniformly distributed live load of 300 lbs. per square foot.

Before any work of excavation or construction of any building or structure within and adjacent to the easement area herein described shall be begun plans showing the proposed construction shall be submitted to the Board of Transportation or its successors, for approval as to method of distributing the loads so that the load bearing capacity of the subway structure may be used advantageously and that the safety of the proposed building may be assured.

All elevations in this schedule are theoretical and subject to the effect of settlement of the structure.

COLUMN NO.	LOAD in LBS.	ELEV. 'A'
1	420,000	109.12
2	469,000	110.49
3	442,000	111.06
4	414,000	109.85
5	350,000	111.03
6	376,000	110.98
7	403,000	111.06
8	376,000	109.85
9	347,000	111.16
10	446,000	111.12
11	444,000	110.30
12	563,000	111.25
13	446,000	111.12
14	444,000	109.61
15	466,000	111.06
16	446,000	111.25
17	466,000	111.19
18	444,000	109.82
19	466,000	111.01
20 A	233,000	111.34



**SECTION A-A**

Dress, J. C. K.  
Vinton  
By J. H. McCarney  
Engineer

RECORDS DEPARTMENT  
Case 8-10-45

**BOARD OF TRANSPORTATION  
OF THE CITY OF NEW YORK  
ENGINEERING BUREAU  
ROUTE NO. 9-0-2  
BOROUGH OF MANHATTAN  
MAP SHOWING EASEMENT RETAINED  
BY THE CITY OF NEW YORK IN  
PROPERTY AT THE SOUTHEAST CORNER  
OF CENTRE & WALKER STS.**

Scale 1" = 10'  
Date Sept 16, 1939  
A. Robinson  
Acting District Engineer

J. E. Phelan  
Chief Engineer  
File No. 5  
Dep. No. 737

**EXHIBIT E**

**TENANT'S CERTIFICATE OF INCORPORATION**

8225648

CERTIFICATE OF INCORPORATION

OF

WALKER STREET-CHUNG PAK  
LOCAL DEVELOPMENT CORPORATION

(UNDER SECTION 1411 OF THE NOT-FOR-PROFIT CORPORATION LAW)

LAW OFFICES:

Lloyd Neal Merrill, Esq.  
11 Park Place, Suite 1200  
New York, New York 10007  
(212) 349-8181

8  
5/10

**CERTIFICATION OF INCORPORATION OF**  
**WALKER STREET-CHUNG PAK**  
**LOCAL DEVELOPMENT CORPORATION.**

Under Section 1411 of the Not-for Profit Corporation Law

We, the undersigned, desiring to associate ourselves together to form a local development corporation, do hereby certify:

FIRST: The name of the corporation shall be WALKER STREET-CHUNG PAK Local Development Corporation.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of section 102 of the Not-for-Profit Corporation Law, and is a local development corporation pursuant to Section 1411 of said Law.

THIRD: The purposes for which the corporation is formed are as follows:

A) To plan and promote, and if necessary, to coordinate and execute programs in the County of New York, within the area specified in paragraph SIXTH, aimed at improving the quality of life of its residents by developing new approaches and methods where necessary and proper.

B) To achieve certain educational, charitable objectives, and public purposes of relieving and reducing adult unemployment, promoting and providing for additional and maximum adult employment, bettering and maintaining adult job opportunities within the above area by the following activities:

- (1) residential rehabilitation and development;
- (2) developing, operating and maintaining commercial and recreational facilities;
- (3) constructing, acquiring, rehabilitating and improving for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted;
- (4) assisting financially in such constructions, acquisition, rehabilitation and improvement and maintaining such plants for others in such territory;

- (5) obtaining municipal improvements and improved transportation services;
- (6) providing managerial, technical, administrative advice, counselling and training and financial aid to assist residents of the County of New York to develop necessary business skills and other business enterprises;
- (7) exercising all other powers conferred by paragraph (c) of section 1411 of the Not-for-Profit Corporation Law.

(C) To provide all other services deemed necessary in furthering any of the foregoing public purposes.

(D) To do any other act or things incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 and 14 of the Not-for-Profit Corporation Law.

FOURTH: The corporation shall be a Type C corporation under section 201 of the Not-for-Profit Corporation Law.

FIFTH: The lawful public or quasi-public objectives which each business purposes will achieve are the following: the training of community residents in the development of their business skills; the reduction of adult unemployment; the promotion of maximum adult employment by bettering and maintaining adult job opportunities; the stimulation of the economic growth of the community.

SIXTH: All income and earnings of such corporation shall be used exclusively for its corporation purposes, within the areas of Community Boards nos. 1, 2, & 3, and specifically the neighborhoods of greater Chinatown and Little Italy, or accrue and be paid to the New York State Job Development Authority.

SEVENTH: No part of the income of the corporation shall inure to the benefit of any member, trustee, director, officers of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, trustee, officer, of the corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

EIGHTH: In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to such organizations, preferably within the areas specified in paragraph SIXTH, as shall

qualify under section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, subject to an order of a Justice of the Supreme Court of the State of New York.

NINTH: No part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

TENTH: If the corporation accepts a mortgage loan from the New York Development Authority, the Corporation shall be dissolved in accordance with the provision of section 1411 (g) of the Not-for-Profit Corporation Law upon the repayment or other discharge in full by the corporation of all such loans.

ELEVENTH: The office of the corporation shall be located in the City of New York, County of New York, State of New York.

TWELFTH: The territory in which the corporation's activities are principally to be conducted is the County of New York, including, but not limited to the boundaries of Community Boards Nos. 1, 2, & 3, and specifically the site bounded by Centre, Walker, Baxter, and White Streets.

THIRTEENTH: The names and address of the initial directors until the first annual meeting, each of whom is of full age, are as follows:

1. Lop B. Lee, 1427 35th St., Brooklyn, NY 11218
2. Lloyd N. Merrill 77 Fulton St., New York, NY 10038
3. Allan B. Cohen, c/o M.C.P. Co., 13 Elizabeth St., NYC 10013
4. Pak-Tsun So, 610 W. 148 St., New York, NY 10031
5. Virginia S. Tong, c/o Lower East Side Family Union  
91 Canal Street, New York, New York 10002
6. Sien Wong, c/o Local 23-25, ILGWU, 275 7th Avenue  
New York, New York 10001
7. Po-Ling Ng, 115 Chrystie St., New York, NY 10002
8. Alfred Sui Hung Lui, 67-09 Fresh Meadow Lane,  
Fresh Meadow, New York 11365
9. Tom C. S. Li, c/o Chinese Garment Makers Association,  
220 Canal Street, New York, New York 10013

10. Anne Compocia, 80 N. Moore St., New York, NY 10013
11. Virginia Kee, 19 Oliver St., New York, NY 10038
12. Daisy Cheung, 131 Broome St., New York, NY 10002
13. Archer Dong, c/o P.S.131, 100 Hester St., NY, NY 10002

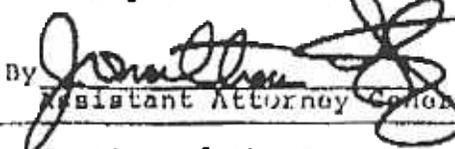
FOURTEENTH: The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The Post Office address to which the Secretary shall mail a copy of any process against the corporation served him is: Corporation, c/o Community Board #1, 51 Chamber Street, New York, NY 10007

Notice of Application Waived from the Attorney General (This is not to be deemed an approval on behalf of any Department of Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: March 14, 1985  
THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

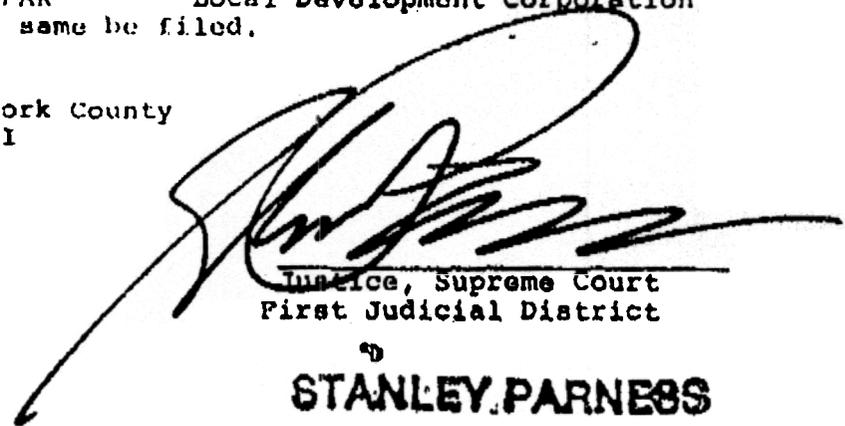
ROBERT ABRAMS, ATTORNEY GEN,  
STATE OF NEW YORK

Hon. Robert Abrams,  
Attorney General

By   
Assistant Attorney General

I, **STANLEY PARNES**, a Justice of the Supreme Court of the State of New York, First Judicial District, do hereby approve the foregoing Certificate of Incorporation of WALKER STREET-CHUNG PAK Local Development Corporation and consent that the same be filed.

Dated: MAR 28 1985  
Supreme Court, New York County  
Special Term, Part II  
New York, New York

  
Justice, Supreme Court  
First Judicial District  
**STANLEY PARNES**

~~7~~ 7

IN WITNESS WHEREOF, we, the undersigned incorporators being all of full age, have made, subscribed and acknowledged this certificate this 31st day of December, 1984

*Lop B. Lee*

Lop B. Lee  
1427 31st St. NY 10017

*Sien (Sam) Wong*

Sien (Sam) Wong  
215-1th Ave NY NY

*Virginia M. Kee*

Virginia M. Kee  
100th St NY NY

*Allen B. Cohen*

Allen B. Cohen  
131-11th Ave NY NY

*Daisy Cheung*

Daisy Cheung  
121-11th Ave NY NY

*Tom C. S. Li*

Tom C. S. Li  
220 Canal St NY NY

*Archer W. Dong*

Archer W. Dong  
100 W 23rd St NY 10002

*Pak-Tsun So*

Pak-Tsun So  
610 W 148 St NY NY

*Virginia S. Tong*

Virginia S. Tong  
110 Canal St NY NY

*Alfred Lui*

Alfred Lui  
41-07 13th Ave NY NY

*Lloyd N. Merrill*

Lloyd N. Merrill  
77 Fulton St NY NY

*Po-Ling Ng*

Po-Ling Ng  
115 Carystie St NY NY

*Anne Compoccia*

Anne Compoccia  
20 N. Moore St NY 10013

STATE OF NEW YORK  
COUNTY OF NEW YORK SS.:

On this 31st day of December, 1984, before me personally came: Lop B. Lee, Sien (Sam) Wong, Virginia M. Kee, Allen B. Cohen, Daisy Cheung, Tom S. C. Li, Archer W. Dong, Pak-Tsun So, Virginia S. Tong, Alfred Lui, Po-Ling Ng, and Anne Compoccia, to me known and known to me to be the individuals described in and who executed the foregoing certificate and acknowledged to me that they executed the same.

LLOYD MERRILL  
Notary Public, State of N.Y.  
No. 31-780928  
Qualified in N.Y. County  
Commission Expires March 31, 1985

*Lloyd N. Merrill*  
Notary Public

STATE OF NEW YORK  
COUNTY OF NEW YORK SS.:

On this 26 day of March, 1985, before me personally came: Lloyd N. Merrill, to me known and known to me to be the individual described in and who executed the foregoing certificate and acknowledged to me that he executed the same.

JAY MARTIN HALPERT  
Notary Public, State of New York  
No. 31-187223  
Qualified in New York County  
Commission Expires March 31, 1987

*Jay Martin Halpert*  
Notary Public

Supreme COURT  
STATE OF NEW YORK, COUNTY OF New York

Index No Year 19

8  
B225643

IN THE MATTER OF THE APPLICATION OF  
WALKER STREET - CHUNG PAK LOCAL DEVELOPMENT CORPORATION  
FOR APPROVAL OF THE CERTIFICATE OF INCORPORATION  
UNDER SECTION 1411 OF THE NEW YORK STATE NOT-FOR-PROFIT  
CORPORATION LAW.

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 13 1985

CERTIFICATE OF INCORPORATION

AMT. OF CHECK \$ 71  
FILED \$ 50  
TAX \$  
COUNTY FEE \$  
COPY \$ 11  
CERT \$  
REFUND \$  
SPEC HANDLE \$ 10

LLOYD NEAL MERRILL

Attorney(s) for WALKER STREET-CHUNG PAK LDC

Office and Post Office Address, Telephone

11 PARK PLACE  
NEW YORK, N. Y. 10007

(212) 640-0101

BY: [Signature] p/New York Type C

To: (1) NYS ATTORNEY GENERAL  
(2) SUPREME COURT, NEW YORK COUNTY

Service of a copy of the within  
is hereby admitted.

Dated: ..... 19.....

MB - Type C

Attorney(s) for

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an order  
will be presented for settlement to the HON.  
within named Court, at

of which the within is a true copy  
one of the judges of the

on ..... 19 at ..... M.

Dated. 58. MV 85 7 58 AM '85

Yours, etc.

FILED

MAY 9 4 PM '85

LLOYD NEAL MERRILL

528949

MAR 21 1985  
MAR 21 1985

**EXHIBIT F**  
**TENANT'S BY-LAWS**

BY-LAWS

WALKER STREET - CHUNG PAK LOCAL DEVELOPMENT CORP.

Article I

Name and Office

1.1 Name. The name of the Corporation shall be WALKER STREET - CHUNG PAK LOCAL DEVELOPMENT CORP.

1.2 Office. The principal office of the Corporation shall be located in the City of New York, County of New York.

Article II

Membership

2.1 Members. The Board of Directors may provide for such class or classes of members of the Corporation as may be determined advisable and in the best interest of the Corporation

Article III

Directors

3.2 Powers. All corporate powers shall be exercised by the Board of Directors, but the Directors shall act only as a Board and the individual Directors shall have no power as such.

3.2 Board of Directors. The Board of Directors shall ~~consist of representatives of community organizations,~~ but at no time shall there be less than three (3) nor more than twenty-one (21). Each Director shall serve until a temporary Certificate of Occupancy is granted to the senior citizen housing/commercial project on the site bounded by Walker, Centre, Baxter & White Streets. Thereafter, each Director shall serve for a two (2) year term through appointment by their respective community organization, and approval by the L.D.C. Board of Directors. Notwithstanding the foregoing, at any time, a Director may be removed for cause by a 2/3 vote of all Directors then in office, or by order of the U.S. Dep't. of Housing & Urban Development, or the NYC Commissioner of General Services.

3.3 Regular and Special Meeting. One regular meeting of the Board of Directors shall be held quarterly at such place within New York and times as may be fixed from time to time by resolution of the Board of Directors. Unless otherwise required by resolution of the Board of Directors, ten days notice of any such regular meeting shall be given. The President or the Recording Secretary may call, and upon written request signed by any three (3) Directors, the Recording Secretary shall call, special meetings of the Board of Directors. Any special meetings of the Board of Directors may be held within New York as designated in the notice or waiver of notice of such meeting.

✓ 3.4 Notice of Special Meetings. Notice of special meetings of the Board of Directors shall be in writing, signed by the President or the Recording Secretary, and shall be sent to each Director by mail addressed to his last known address, or personal delivery, at least five (5) days but no more than thirty (30) days before the time designated for such meeting.

3.5 Waiver of Notice. Any meeting of Directors and any action otherwise properly taken therefore shall be valid if notice of the time, place and purpose of such meeting: (a) shall be waived in writing (including telegraph) before, at or after such meeting by all Directors to whom timely notices were not sent as provided in these By-Laws, or (b) shall be given to a quorum of Directors at a meeting immediately preceding the meeting in question, and the remaining Directors are notified by phone at least one day in advance.

3.6 Quorum. A majority of the Directors in office, present in person, shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board of Directors, but a smaller number may adjourn any such meeting to a later date. At least one day's notice if in person, or five (5) days by mail of such adjourned meeting shall be given in the manner provided in section 3.4 and 3.5 of this Article to each Director who was not present at such meeting.

Any action required or permitted to be taken by the Board of Directors or any Committee thereof may be taken without a meeting if all members of the Board or such Committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or Committee shall be filed with the minutes of the proceedings of the Board of Committee.

Any one or more members of the Board of Directors or any Committee thereof may participate in a meeting of the Board or such Committee by means of a conference telephone or similar communication equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

3.7 Action by Majority Vote. Except as otherwise expressly required by law or by these By-Laws, the act of majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors

✓ 3.8 Proxies. A Director may not give or appoint a proxy for performance of his/her duty as a Director, except that an alternate may represent the absent Director's community organization.

✓ 3.9 Filling Vacancies. Any vacancy in the Board of Directors, whether caused by death, resignation, disqualification, increase in number of Directors, removal or otherwise, may be filled by a majority vote of the remaining Directors, provided that the provisions of section 3.6 of this Article are satisfied.

#### Article IV

##### Officers

4.1 Officers. The officers of the Board of Directors and the Corporation shall be a Chairman of the Board, First Vice Chairman, Second Vice Chairman, a Recording Secretary, a Board Secretary and a Trasurer, each to have such duties or functions as are provided in these By-Laws or as the Board may from time to time determine. Officers must be chosen from among the Directors, and shall be elected at the first meeting of the Board and thereafter, annually in December by the Board of Directors of the Corporation. The Board of Directors may elect such other additional officers or assistant officers as the Board may from time to time determine. A person may hold only one of the foregoing offices.

✓ 4.2 Term. The term of the office of each officer shall be one year and until his successor is elected and qualifies.

4.3 Removal. Any officer may be removed either with or without cause by resolution passed by the Board of Directors at any regular or special meeting of the Board of Directors, by a majority vote of all the Directors then in office.

4.4 Resignations. Any officer may resign at any time, in writing, by notifying the Board of Directors, the Chairman, or the Secretary of the Board. Such resignation shall take effect at the next meeting of the Board, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

4.5 Vacancies. A vacancy in any office caused by death, resignation, removal, disqualification or otherwise shall be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

4.6 The Chairman of the Board. The Chairman of the Board shall preside at all meeting of the Board of Directors and the Executive Committee. He shall have such authority as may be granted to him and such other duties as may be assigned to him by the Board of Directors, and shall be an ex-officio member of all committees.

4.7 (A) First Vice Chairman. In the absence or disability of the Chairman, the First Vice Chairman shall preside at all meetings of the Board of Directors, or the Executive Committee thereof. He shall also co-sign with the Treasurer all checks and disbursements authorizations, and perform all such other duties as may from time to time be assigned to him by the Board of Directors or by the Chairman.

(B) Second Vice Chairman. In the absence or disability of the First Vice Chairman, the Second Vice Chairman shall perform his duties, and shall be an alternate co-signer of all checks and disbursements authorizations, in the absence of the Treasurer or First Vice Chairman. He will also perform such other duties as may from time to time be assigned to him by the Board of Directors or by the Chairman.

4.8 The Treasurer. The Treasurer shall collect and keep an account of the money received and expended for the use of the Corporation; shall deposit sums received by the Corporation in the name of the Corporation in such depositories as shall be approved by the Board of Directors; shall make annual reports of finances of the Corporation and when called upon by the Chairman, and shall perform such other duties as shall be directed by the Board of Directors

or by the Chairman. The funds, books and vouchers in the hands of the Treasurer shall at all times be subject to the inspection, supervision, and control of the Board of Directors and the Chairman, and at the expiration of his term of office the Treasurer shall turn over to his successor in office all books, moneys and other properties in his possession.

4.9 The Recording Secretary. The Recording Secretary shall act as Secretary of all meetings of the Board of Directors, and shall keep the minutes thereof in the proper book or books to be provided for that purpose; he shall see that all notices required to be given by the Corporation are duly given and served; he shall have charge of the other books, records and papers of the Corporation; he shall see that the reports, statements and other documents required by law are properly kept and filed; and shall in general perform all the duties incident to the office of Secretary and such other duties as may from time to time be assigned to him by the Board of Directors or by the Chairman.

4.10 The Board Secretary. The Board Secretary shall co-sign with the Chairman all Contracts, Agreements and applications which are duly authorized by the Board of Directors, shall serve as chairman of the Legal Committee, and perform such other duties as may from time to time be assigned to him by the Board of Directors or by the Chairman. In the absence or disability of the Recording Secretary, he shall perform such duties as may be required by the Recording Secretary.

## Article V

### Committees

5.1 (A) Executive Committee. The Board of Directors shall establish an Executive Committee, consisting of the following: the officers of the Board of Directors and the Chairman of all Committees of the Board. The Executive Committee shall be chaired by the Chairman of the Board of Directors.

✓ (B) During the intervals between meetings of the Board of Directors, the Executive Committee shall exercise such powers in the management of the business affairs of the Corporation, other than the power to adopt, amend, or repeal these By-Laws, as may be delegated to the Executive Committee. In addition, the Executive Committee shall prepare agendas and notices for Board of Directors meetings.

(C) The Executive Committee may fix its own rules of procedures, but in every case the presence of not less than one-half (1/2) of the Executive Committee, shall be necessary and sufficient to constitute a quorum for the transaction of business. The Executive Committee shall have the power to fill any vacancy in its own number, but any Director so chosen shall serve as a member of the Executive Committee only until the next meeting of the Board of Directors.

(D) The Executive Committee shall submit a written report on its activities at each Board of Directors' meeting.

✓ 5.2 (A) Finance & Audit Committee. The Board of Directors may establish a Finance and Audit Committee which shall consist of no less than three (3) members of the Board of Directors, appointed by the Chairman of the Board with the consent of the Board of Directors. Members of the Committee shall hold office for one year and until a successor is elected and qualifies. The responsibilities of the Committee, in addition to the powers and duties delegated to the Committee from time to time by the Board of Directors, shall include:

a. maintenance of the accounting records of the Corporation,

b. oversight of the fiscal integrity of the Corporation

c. recommendation regarding the fund-raising and disbursing activities of the Corporation,

d. recommendation regarding loans or other indebtedness undertaken in the name of the Corporation,

e. recommendation regarding project needs, feasibility, and financing,

f. submitting budgets to the Board,

g. supervision and retention of auditors (certified public accountants).

(B) Legal Committee. The Board of Directors may establish a Legal Committee which shall consist of no less than three (3) members of the Board of Directors, appointed by the Chairman of the Board with the consent of the Board of Directors. The Chairman of the Committee shall be the

Board Secretary, and members of the Committee shall hold office for one year or until a successor is elected and qualifies. The responsibilities of the Committee, in addition to the powers and duties delegated to the Committee from time to time by the Board of Directors, shall include:

a. Supervision and retention of all legal counsel,

b. Review of all contracts and agreements prior to their presentation to the Board of Directors.

5.3 Building and Maintenance Committee. The Board of Directors may establish a Building and Maintenance Committee which shall consist of no less than three (3) members of the Board of Directors, appointed by the Chairman of the Board of Directors with the consent of the Board of Directors. Members of the Committee shall hold office for one year and until a successor is elected and qualifies. The duties and responsibilities of the Committee, in addition to the powers and duties delegated to the Committee from time to time by the Board of Directors, shall include the following:

a. the duty to oversee the design, construction, and maintenance of projects undertaken by the Corporation,

b. the duty to make recommendations, upon consultation with members of the staff, to the Board of Directors, regarding building and maintenance policies to be adopted by the Corporation.

5.4 Residential Tenants Committee. The Board of Directors may establish a Residential Tenants Committee which shall consist of no less than three (3) members of the Board of Directors, appointed by the Chairman of the Board with the consent of the Board of Directors. Members of the Committee shall hold office for one year and until a successor is elected and qualifies. The duties and responsibilities of the Committee, in addition to the powers and duties delegated to the Committee from time to time by the Board of Directors, shall include the responsibility for recommending policy guidelines to the Board, and implementing same with regard to the selection and supervision of Residential Tenancies in projects undertaken by the Corporation.

5.5 Non-Residential Tenants Committee. The Board of Directors may establish a Non-Residential Tenants Committee which shall consist of no less than three (3) members of the Board of Directors, appointed by the Chairman of the Board with the consent of the Board of Directors. Members of the Committee shall hold office for one year and until a successor is elected and qualifies. The duties and responsibilities of the the Committee, in addition to the powers and duties delegated to the Committee from time to time by the Board of Directors, shall include the responsibilities for recommending policy guidelines to the Board and implementing same with regard to the selection and supervision of Non-Residential Tenancies in projects undertaken by the Corporation.

5.6 Other Committees. The Board of Directors from time to time may establish other committees, boards, and councils, which shall have such duties and the members of which shall hold office for such period as the Board of Directors from time to time may determine. The rules of procedures of all committees, boards, and councils, shall be determined from time to time by the Board of Directors. Any such committee, board or council may be abolished or any member thereof removed, with or without cause, at any time by the Board of Directors.

5.7 Term of Office. Each member of any committee established pursuant to the By-Laws shall serve for one year until a successor is appointed and qualifies, unless the committee shall be abolished, or unless member shall be removed, or unless such member ceases to qualify as a member thereof.

5.8 Vacancies. Vacancies on committee shall be filled by the appointment of the Chairman of the Board of Directors with the consent of the Board of Directors.

5.9 Quorum. The presence, in person, of a majority of the members of a committee including the Chairman thereof shall be necessary and sufficient to constitute a quorum for the transaction of business by the committee.

5.10 Notice of Meetings. Notice of all committee meetings shall be given by the Committee Chairman to the members thereof. Each committee shall keep regular minutes of its proceedings, and shall report briefly on its activities at each Board of Directors' meeting.

5.11 Ex-Officio Members of Committee. The Chairman of the Board shall be Ex-Officio member of all standing committees with power to vote on matters before the committee.

5.12 Supremacy of Board of Directors. Except for powers specifically delegated to the Committees by these By-Laws and/or the Board of Directors, all recommendations from said committees must be approved by the full Board of Directors.

## Article VI

### Compensation of Officers and Directors

6.1 Compensation of Officers and Directors. Each Officer and Director, in consideration of his serving as such, shall be entitled to receive reimbursement for expenses incurred by him in connection with the performance of his duties. "Expenses" is to be construed as those costs necessarily incurred to enable a Director to travel to and from meetings by the most economical means conveniently available together with such incidental expenses which but for Director's duties would not have to be borne by him.

## Article

### Indemnification

7.1 The Directors and Officers of the Corporation, in the event of an action or proceeding commenced against them, whether in the right of the Corporation or otherwise, shall be entitled to indemnification to the fullest extent permitted under Article 7 of the New York Not-For-Profit Corporation Law.

## Article

### Special Provision

8.1 Contracts Involving Interested Directors and Officers. No contract or other transaction between the Corporation and one or more of the Directors or Officers of the Corporation, or between the Corporation and any other organization in which any such Director or Officer of the Corporation is affiliated or has a substantial financial interest, shall be void and voidable for this reason alone, or by reason alone that any such Director or Officer is present at a meeting of the Board of Directors which authorizes such contract or transaction, or that his/her

vote is counted for such purpose, provided that the material facts as to such Director's or Officer's interest in such contract or transaction and as to any common directorship, officership, trusteeship or financial interest are disclosed in good faith or are known to the Board of Directors, and ~~the Board of Directors~~ authorizes such contract or ~~transaction by a vote sufficient for such purpose without counting the vote of any~~ such interested Director or Officer.

Article IX

Amendment of By-Laws

✓ 9.1 Amendments by Directors. These By-Laws or any one or more of the provisions thereof, including the Article of Incorporation, may also, at any regular or special meeting of the Board of Directors at which, a quorum is present, by a two-third (2/3) vote of the Directors present at such meeting, be amended by changing, altering, suspending, supplementing, or repealing the same, provided written notice has been given at least seven (7) days but not more than thirty (30) days, before the meeting at which the amendments are offered.

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Certification By Recording Secretary

The undersigned Recording Secretary of the Corporation hereby affirms that the above By-laws were adopted by unanimous votes, at duly called meetings of the Board of Directors held on February 6, 1985, and April 23, 1986.

\_\_\_\_\_  
Virginia Tong,  
Recording Secretary

**EXHIBIT J**

**COMMERCIAL SUBLEASE**

**STANDARD FORM OF STORE LEASE**  
The Real Estate Board of New York, Inc.

**Agreement of Lease**, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between  
party of the first part, hereinafter referred to as OWNER, and

party of the second part, hereinafter referred to as TENANT,

**Witnesseth:** Owner hereby leases to Tenant and Tenant hereby hires from Owner

in the building known as \_\_\_\_\_  
in the Borough of \_\_\_\_\_, City of New York, for the term of \_\_\_\_\_  
(or until such term shall sooner cease and expire as hereinafter provided) to commence on the \_\_\_\_\_  
day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_, and to end on the \_\_\_\_\_  
day of \_\_\_\_\_, nineteen hundred and \_\_\_\_\_  
both dates inclusive, at an annual rental rate of \_\_\_\_\_

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first \_\_\_\_\_ monthly installment(s) on the execution hereof (unless this lease be a renewal).

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

- Rent:** 1. Tenant shall pay the rent as above and as hereinafter provided.  
**Occupancy:** 2. Tenant shall use and occupy demised premises for

and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat and clean condition.

**Alterations:** 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within ten days thereafter, at Tenant's expense, by filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner in Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's rights thereto and to have them removed by Tenant, in which event, the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately and at its expense, repair and store the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner at Tenant's expense.

**Repairs:** 4. Owner shall maintain and repair the public portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, or a hoist, lift or sidewalk elevator for the exclusive use of Tenant, Tenant shall maintain such exterior installations in good appearance and shall cause the same to be operated in a good and workmanlike manner and shall make all repairs thereto necessary to keep same in good order and condition, at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Article 8. Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein, and the sidewalks adjacent thereto, and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted. If the demised premises be or become infested with vermin, Tenant shall at Tenant's expense, cause the same to be exterminated from time to time to the satisfaction of Owner. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. The provisions of this article 4 with respect to the making of repairs shall not apply in the case of fire or other casualty which are dealt with in article 9 hereof.

**Window Cleaning:** 5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

**Requirements of Law, Fire Insurance:** 6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders,

rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the premises, if the premises are on the street level, whether or not arising out of Tenant's use or manner of use thereof, or with respect to the building if arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall pay all costs, expenses, fines, penalties or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article. If the fire insurance rate shall, at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant, to comply with the terms of this article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises.

**Sub-ordination:** 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lease or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall execute promptly any certificate that Owner may request.

**Tenant's Liability Insurance Property Loss, Damage, Indemnity:** 8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by Counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**Destruction, Fire and Other Casualty:** 9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner, subject to Owner's right to elect not to restore the same as

hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant given within 90 days after such fire or casualty specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance and also, provided that such a policy can be obtained without additional premiums. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

**Eminent Domain:** 10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease.

**Assignment, Mortgage, Etc.:** 11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of the covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**Electric Current:** 12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

**Access to Premises:** 13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform, in the premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to

Rider to be added if necessary.

perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein, provided they are within the walls. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers of mortgages of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six months period, place upon the premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property and such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building and to change the name, number or designation by which the building may be known.

**Vault, Vault Space, Area:** 14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

**Occupancy:** 15. Tenant will not at any time use or occupy the demised premises in violation of, Articles 2 or 37 hereof, or of, the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations whether or not of record.

**Bankruptcy:** 16 (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four per cent (4%) per annum. If such premises or any part thereof be re-let by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by

reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

**Default:** 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within fifteen (15) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written five (5) days notice upon Tenant specifying the nature of said default and upon the expiration of said five (5) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said five (5) day period, and if Tenant shall not have diligently commenced curing such default within such five (5) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written three (3) days notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

**Remedies of Owner and Waiver of Redemption:** 18. In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration. (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant or any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**Fees and** 19. If Tenant shall default in the observance or per-

may accept such check or payment without prejudice to Owner's

**Fees and Expenses:** 19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder, and if Owner, in connection therewith or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to attorney's fees, in instituting, prosecuting or defending any actions or proceedings, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within five (5) days of rendition of any bill or statement to Tenant therefor, and if Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

**No Representations by Owner:** 20. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition, and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**End of Term:** 21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

**Quiet Enjoyment:** 22. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 33 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

**Failure to Give Possession:** 23. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants, or if the premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for the inability to obtain possession) until after Owner shall have given Tenant written notice that the premises are substantially ready for Tenant's occupancy. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except as to the covenant to pay rent. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

**No Waiver:** 24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner

may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed in acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

**Waiver of Trial by Jury:** 25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding.

**Inability to Perform:** 26. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Owner is prevented or delayed from so doing by reason of strike or labor troubles, government preemption in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency, or when, in the judgement of Owner, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.

**Bills and Notices:** 27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

**Water Charges:** 28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewerage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner as additional rent, on the first day of each month, % (\$ ) of the total meter charges, as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease.

**Sprinklers:** 29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as

required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$ \_\_\_\_\_, on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

**Heat, Cleaning:** 30. As long as Tenant is not in default under any of the covenants of this lease Owner shall, if and insofar as existing facilities permit furnish heat to the demised premises, when and as required by law, on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall at Tenant's expense, keep demised premises clean and in order, to the satisfaction to Owner, and if demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such times as Owner may elect and shall be due and payable when rendered, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building.

**Security:** 31. Tenant has deposited with Owner the sum of \$ \_\_\_\_\_ as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent. Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**Captions:** 32. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

**Definitions:** 33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays (except such portion thereof as is covered by specific hours in Article 30 hereof), Sundays and all days

designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

**Adjacent Excavation—Shoring:** 34. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

**Rules and Regulations:** 35. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within ten (10) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

**Class:** 36. Owner shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. Owner may insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner. Bills for the premiums therefor shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent.

**Pornographic Uses Prohibited:** 37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of the premises for nude modeling, rap sessions, or as a so-called rubber goods shops, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by any sublessee or assignee of the premises. This Article shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial matter with prurient appeal or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal Law §235.00.

**Estoppel Certificate:** 38. Tenant, at any time, and from time to time, upon at least 10 days' prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates which the rent and additional rent have been paid, and stating whether or not there exists any defaults by Owner under this lease, and, if so, specifying each such default.

**Successors and Assigns:** 39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

☞ Space to be filled in or deleted.

**In Witness Whereof,** Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner: ..... [L.S.]



Witness for Tenant: ..... [L.S.]



**ACKNOWLEDGMENTS**

**Corporate Owner**  
 State of New York, ) m.:  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me  
 personally came \_\_\_\_\_  
 to be known, who being by me duly sworn, did depose and say that  
 he resides in \_\_\_\_\_  
 that he is the \_\_\_\_\_ of \_\_\_\_\_  
 the corporation described in and which executed the foregoing  
 instrument, as OWNER; that he knows the seal of said corporation;  
 that the seal affixed to said instrument is such corporate seal; that it  
 was so affixed by order of the Board of Directors of said  
 corporation, and that he signed his name thereto by like order.

**Individual Owner**  
 State of New York, ) m.:  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day \_\_\_\_\_, 19\_\_\_\_, before me  
 personally came \_\_\_\_\_  
 to me known and known to me to be the individual described in  
 and who, as OWNER, executed the foregoing instrument and  
 acknowledged to me that he executed the same.

**Corporate Tenant**  
 State of New York, ) m.:  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me  
 personally came \_\_\_\_\_  
 to me known, who being by me duly sworn, did depose and say that  
 he resides in \_\_\_\_\_  
 that he is the \_\_\_\_\_ of \_\_\_\_\_  
 the corporation described in and which executed the foregoing in-  
 strument, as TENANT; that he knows the seal of said corporation;  
 that the seal affixed to said instrument is such corporate seal; that it  
 was so affixed by order of the Board of Directors of said  
 corporation, and that he signed his name thereto by like order.

**Individual Tenant**  
 State of New York, ) m.:  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me  
 personally came \_\_\_\_\_  
 to me known and known to me to be the individual described in  
 and who, as TENANT, executed the foregoing instrument and  
 acknowledged to me that he executed the same.

**RULES AND REGULATIONS ATTACHED TO AND  
 MADE A PART OF THIS LEASE  
 IN ACCORDANCE WITH ARTICLE 35.**

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress and egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any tenant or by jobbers, or others in the delivery or receipt of merchandise, any hand trucks except those equipped by rubber tires and safeguards.
2. If the premises are situated on the ground floor of the building Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of said premises clean and free from ice, snow, etc.
3. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed.
4. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors and/or vibrations or interfere in any way with other Tenants or those having business therein.
5. No sign, advertisement, notice or other letting shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Signs on interior doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant and shall be of a size, color and style acceptable to Owner.
6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring,

cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations or the lease of which these Rules and Regulations are a part.

8. Owner reserves the right to exclude from the building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and holidays all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such person.

9. Owner shall have the right to prohibit any advertising by any Tenant which, in Owner's opinion, tends to impair the reputation of Owner or its desirability as a building for stores or offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

10. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

11. Tenant shall not place a load on any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient in Owner's judgement to absorb and prevent vibration, noise and annoyance.

**GUARANTY**

The undersigned Guarantor guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the agreements to be performed and observed by Tenant in the attached Lease, including the "Rules and Regulations" as therein provided, without requiring any notice to Guarantor of nonpayment or nonperformance, or proof, or notice of demand, to hold the undersigned responsible under this guaranty, all of which the undersigned hereby expressly waives and expressly agrees that the legality of this agreement and the agreements of the Guarantor under this agreement shall not be ended, or changed by reason of the claims to Owner against Tenant of any of the rights or remedies given to Owner as agreed in

the attached Lease. The Guarantor further agrees that this guaranty shall remain and continue in full force and effect as to any renewal, change or extension of the Lease. As a further inducement to Owner to make the Lease Owner and Guarantor agree that in any action or proceeding brought by either Owner or the Guarantor against the other on any matters concerning the Lease or of this guaranty that Owner and the undersigned shall and do waive trial by jury.

..... Guarantor

Address Premises	TO	STANDARD FORM OF   	19____ Dated _____ Rent per Year _____ Rent per Month _____ Term From _____ To _____ Drawn by ..... Checked by ..... Entered by ..... Approved by .....
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LEASE RIDER

Owner THE WALKER STREET - CHUNG PAK LOCAL DEVELOPMENT CORPORATION

Tenant: \_\_\_\_\_

Date of Lease \_\_\_\_\_

Demised Premises Store C1 and Store C2 (leased as one unit)

40 Rider

The rider portion of this Lease shall read in conjunction with the printed standard form of lease to which this Rider is annexed. If there should be an inconsistency or ambiguity between the terms of the rider portions of this Lease and the standard form of lease, then the rider portions of this Lease shall prevail.

41. Term; Minimum Rent; Commencement Date

A. The lease term shall be fifteen (15) years from the "Commencement Date" as set forth herein.

B. The annual minimum rent to be paid by Tenant to Owner thereunder (the annual minimum rent) shall be as follows:

(1) For lease years one through five the annual minimum rent shall be \$111,690.

(2) For lease years six through ten the annual minimum rent shall be \$134,028.

(3) For lease years eleven through fifteen the annual minimum rent shall be \$160,834.

C. The "Commencement Date" shall be the date after the Owner delivers the Demised Premises to the Tenant, and after the "fix up period" as set forth in Paragraph 45(D). Such delivery shall be deemed to be made twenty (20) days after Owner has mailed to Tenant, by certified mail, return receipt requested, notice of the issuance of a temporary Certificate of Occupancy by the New York City Buildings Department for the Demised Premises to be used and occupied by the Tenant.

44 Additional Rent

A. Real Estate Taxes

(1) Tenant covenants and agrees to pay as Additional Rent, without set-off or deduction, its Pro Rata Share, as hereinafter defined, of all items included within Real Estate Taxes, as hereinafter defined, and any increases in such items imposed on the land and/or building thereon of which the Demised Premises are a part for each and every fiscal year or portion thereof during the term of this Lease. "Real Estate Taxes" shall be defined as including the following items: (a) real estate taxes; (b) assessments (including, without limitation, assessments for public improvements or benefits whether or not commenced or completed during the term of this Lease); (c) water charge and/or sewer rents, which may be assessed, levied, confirmed or imposed on or in respect of, or be a lien upon, such land and/or building; (d) any tax assessment levied, assessed or imposed against such land and/or building or the rents or profits therefrom to the extent that the same shall be in lieu of all or any portion of any item set forth above. Since the ground lease Landlord is the City of New York, the term "real estate taxes" shall also mean all PILOT payments (payments in lieu of taxes) pursuant to said ground lease.

(2) If by virtue of any application or proceeding brought by Owner or by Tenant on behalf of Owner, there shall be a reduction of the assessed valuation of the land and/or building containing the Demised Premises for any fiscal year which affects the Real Estate Taxes, or part thereof, for which Additional Rent has been paid by Tenant pursuant to this Paragraph, such Additional rent payment shall be recomputed on the basis if any such reduction and Owner will credit against the next accruing installments of rent due under this Lease, after receipt by Owner of a tax refund, any sums paid by Tenant in excess of the recomputed amounts, less a sum equal to the percentage hereinabove set forth, of all costs, expenses and fees, including, but not limited to reasonable attorneys' fees incurred by Owner in connection with such application or proceeding.

B. Building Operating Costs. Tenant covenants and agrees to pay as Additional Rent, without set-off or deduction, for each calendar year or portion thereof during the term of this Lease, Tenant's Pro Rata Share, as hereinafter defined, of the annual Building Operating Costs, as hereinafter defined. "Building Operating Costs" shall include the actual costs to Owner, as they relate to the demised premises for: normal maintenance and ordinary and normal repairs (except elevator maintenance and repairs), casualty and liability insurance maintained by Owner, reasonable management fees allocated on a pro-rata square foot basis amongst the commercial base on Walker Street

(approx. 30,000 sq. ft.) and Baxter and Centre Street stores (approx. 6,000 sq. ft.), and other recurring expenses necessarily, reasonably, and customarily incurred by Owner in the proper operation of the Demised premises. Owner shall determine at least annually at the time of the preparation of its annual budget, the annual Building Operating Costs and shall notify Tenant in writing of the Additional Rent payable by Tenant on account of its Pro Rata Share of Building Operating Costs, together with an itemized statement thereof. Tenant shall, within thirty (30) days of such notice, include in its monthly rental payment to Owner one-twelfth of its share of the annual Building Operating Costs. The annual Building Operating Costs and the Additional Rent due hereunder may be adjusted by Owner as it reasonably deems necessary during its fiscal year. At the end of each such fiscal year, Owner shall reconcile the actual and budgeted costs for the preceding year. Tenant shall receive through credit or payment, the benefit of any overpayment and shall pay to Owner as Additional Rent any underpayment. Tenant shall have the right to inspect Owner's cost records and service contracts within a one-year period after the end of Owner's fiscal year.

Deleted

D. Additional Rent Billing. Except as otherwise provided herein, any amount payable under this Paragraph 44 shall be billed by Owner to Tenant as Additional Rent and shall be due and payable within thirty (30) days after Owner renders a bill therefor to Tenant. Bills or other correspondence from the taxing jurisdiction for any items included in Real Estate Taxes shall be sufficient evidence of the amount of Real Estate Taxes and for the purposes of the calculation of the amount of Additional Rent to be paid by Tenant pursuant to this Paragraph. Any Additional Rent payable pursuant to this Paragraph for any partial fiscal or calendar year, as the case may be, at the commencement or at the expiration of the term hereof, shall be adjusted in proportion to the number of days in such partial fiscal or calendar year during which this Lease is in effect. The obligation of Tenant with respect to any Additional

Rent pursuant to this Paragraph applicable to the Lease fiscal or calendar year and/or partial fiscal or calendar year of the term of this Lease shall survive the expiration of the term of this Lease. The failure of Owner to render bills for Real Estate Taxes under the provisions of this Paragraph shall not prejudice the right of Owner to thereafter render said bill or bills for such fiscal or calendar year or any subsequent fiscal or calendar years.

E. Non Payment. All costs and expenses which Tenant assumes or agrees to pay pursuant to this Lease shall, at Owner's election, be treated as Additional Rent, and, in the event of nonpayment, Owner shall have all the

rights and remedies herein provided for in the case of nonpayment of rent or a breach of condition. If Tenant shall default in performing any term, covenant or condition of this Lease which shall involve the expenditure of money by Tenant, Owner, at Owner's election, may, but shall not be obligated to, make such payment on behalf of Tenant, expend such sum as may be necessary to perform and fulfill such term, covenant or condition, and any and all sums so paid or expended by Owner, with simple interest thereon at the rate of two percent (2%) per month, but in no event to exceed the maximum legal rate of interest from the date of such payment or expenditure, shall be and be deemed to be Additional Rent due Owner and shall be repaid by Tenant to Owner on demand, but no such payment or expenditure by Owner shall be deemed a waiver of Tenant's default nor shall it affect any other remedy of Owner by reason of such default.

F. Pro Rata Share. Tenant's Pro Rata Share shall be as follows  
Store B1 - 19%, Store B2 - 14.5%, Store B3 - 18.5%, Store B4 - 12%,  
Store C1 - 16.5 %, Store C2 - 20.5%.

G. Commencement of Additional Rent. Except as otherwise provided herein, all Additional Rent shall be due and payable by Tenant to Owner commencing on the Commencement Date, and thereafter, on the first day of each succeeding Lease Year, provided that Owner has at least thirty (30) days prior to the Commencement Date or the first day of each Lease Year notified Tenant in writing of the amount of Additional Rent due during the coming Lease Year, including the manner of calculation of same and any documentation reasonably requested by Tenant to support said calculation.

#### 45 Rental Payments in General

##### A. Time and Manner of Payment

All rent due under this Lease shall be paid to Owner at the address designated by it in writing on or before the first day of each month of the term hereof. Rent payments shall be deemed made on the day mailed by Tenant to Owner as indicated by the Postmark or certificate of mailing.

B. Late Payment. Interest shall accrue and be due to Owner at the rate of two percent (2%) per month, or portion thereof, on any and all rent payments due under this Lease which are not paid on or before the tenth day of the month in which they are due. In addition, where due to Tenant's default in the payment of any rent due hereunder, Owner has incurred costs and expenses, including reasonable attorneys fees, in a successful action to collect such rent, such costs and expenses shall be paid by Tenant to Owner;

provided however, that to the extent all rental payments due in a month, together with any interest thereon, are paid to Owner by Tenant on or before the 30th day of the month in which they are due, Tenant shall have no obligation to pay any of Owner's costs or expenses, including attorney's fees, in connection with a non-payment proceeding commenced by Owner to collect the rental payments made.

C. No Abatement. Except as otherwise provided in this Lease, no abatement, diminution or reduction of the Annual Minimum Rent, Additional Rent or other charges payable by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation or loss of business or otherwise, caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances, or regulations of the United States of America or of the State, county or city governments or of any municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any causes beyond the control of Owner, nor shall such lease be affected by such causes.

D. Fix Up Period. Notwithstanding anything to the contrary, the Tenant shall have a fix up period from the delivery of the Demised Premises to the Tenant, pursuant to Paragraph 41(c) herein, to fix up the store premises, by making any alterations, additions or improvements therein. During said fix up period the rent and additional rent herein shall be abated. The fix up period shall be determined by the amount of square feet (exclusive of basement) as follows:

Under 1,000 S.F..	75 days
Over 1,000 S.F...	90 days

The fix up period and the rent abatement related thereto shall not be affected by the Tenant's completion of said fixing of the store before or after the completion of the period set forth herein. In other words, if the Tenant has sixty (60) days to complete the fixing, and completes the fixing in fifty (50) days, then the Tenant will have a rent abatement for ten (10) days in addition to the actual fifty (50) days to fix up for a total of sixty (60) days. On the other hand, if the Tenant has sixty (60) days to complete the fixing, and it takes eighty (80) days, then the Tenant will owe rent for the period of twenty (20) additional days that is required to complete the fixing.

#### Use and Operation

A. Legal Purpose. Subject to paragraph D hereunder, the tenant shall use the Demised Premises as and for legal purposes only; as set forth below.

If the Tenant uses the Demised Premises for any use other than the permissible uses, Tenant shall have breached a primary covenant under the Lease wherein Tenant shall have a thirty (30) day period to cure said impermissible use. Said cure period to commence from the date of the Tenant's receipt of written notice thereof from Owner.

B. Prohibited Uses. The use of the Demised Premises for the purposes specified in this Lease shall not in any event be deemed to include, and Tenant shall not use, or permit the use of, the Demised Premises or any part thereof for:

(1) The sale of raw meat, raw fish, or seafood, or produce or any type of food other than the sale of prepared or packaged food in a restaurant, coffee shop, bakery, or convenience food store;

(2) An arcade, game room, or any facility which attracts "prohibited persons" under the terms of the Ground Lease with the City of New York;

(3) Any pornographic use as set forth in Paragraph 37;

(4) Any unlawful or illegal business, use or purpose;

(5) For any purpose, or in any way, in violation of the provisions of Section 23.01 or Article 37, hereof of the Ground Lease with the City of New York, or the Certificate of Occupancy for the Premises;

(6) In such manner as may make void or voidable any insurance then in force with respect to the Premises;

(7) For any activity involving the manufacture, assembly, storage or sale/lease of guns or ammunition;

(8) For any activity which generates high noise levels for a sustained length of time;

(9) For any activity which involves the storage or use of large amounts of potentially explosive materials such as (without limitation) oxygen or acetylene;

(10) For any activity which involves the storage or use of large quantities of chemicals.

(11) Any use which is consistent with or prohibited by the applicable law or regulation.

C. Tenant's Operation

(1) Tenant shall remain open for business a minimum of five (5) days per week year round.

(2) Tenant shall keep its store continuously, fully stocked with saleable merchandise.

(3) Tenant shall keep its store fully staffed with employees.

(4) Tenant shall operate its store in conformity with standards of practice followed by businesses with the same or similar uses in the vicinity in which the Demised Premises is located.

(5) Tenant shall use its best efforts to achieve a maximum volume in the Demised Premises.

(6) Tenant shall, at least sixty (60) days prior to the Commencement Date provide to Owner the trade name under which it will conduct business at the Demised Premises. Said name and any changes thereto shall be subject to Owner's approval, which shall not be unreasonably withheld. If the Owner does not respond to a trade name request within forty-five (45) days, the trade name shall be considered approved by the Owner.

D. Change of Use

(1) The Tenant intends to use the demised premises for general merchandise; chinese art and antiques; packaged and prepared food; chinese beverages; beer, wine and liquor products, etc. Landlord shall not rent or consent to any request to sublet or assign any store or lease to another tenant for use as a pharmacy for any and all commercial space which is owned, operated, or leased by, or assigned to Chung Pak Local Development Corp., its successors or assigns, except the foregoing shall not apply to the upper floors on Walker Street or the ground floor spaces on Walker Street. If the Tenant wishes to change the above intended use, it must give the Owner sixty (60) days written notice prior to opening for business.

(2) After opening for business, Tenant may only change the use subject to consent of the Owner which shall not be unreasonably withheld.

47 Compliance

Tenant shall observe and comply promptly with all present and future legal requirements and insurance underwriter requirements relating to or affecting the Demised Premises, or any sign of Tenant, or the use and occupancy of the Demised Premises.

48 Changes, Improvements and Alterations

It is anticipated that Tenant, at its sole cost and expense, will be making certain changes, improvements and alterations in and to the Demised Premises. In connection therewith:

A. Tenant covenants and agrees that all changes improvements and alterations shall be done in a good and workmanlike manner.

B. Prior to the commencement of any changes, improvements and alterations, Tenant shall submit to Owner, such plans and specifications as may be required by governmental authorities having jurisdiction (to be prepared by and at the expense of Tenant) of any and all proposed changes, improvements and alterations, in detail satisfactory to Owner. Tenant shall not commence or make such proposed changes, improvements and alterations without the prior approval of Owner and no amendments or additions to such plans and specifications shall be made without the prior approval of Owner. Owner's approval shall not be unreasonably withheld.

C Dele:

D. Tenant hereby covenants and agrees that such changes, improvements and alterations will be made with the least possible disturbance to the structural and mechanical parts of the building and Tenant further covenants and agrees that Tenant will, at Tenant's own cost and expense, leave all structural and mechanical parts of the building, which shall or may be affected by such changes, improvements and alterations, in good and workmanlike operating condition. Tenant covenants and agrees that such changes, improvements and alterations will be made with the least possible disturbance to the occupants of other parts of the building.

E. Tenant, in making changes, improvements and alterations, shall and will, at Tenant's own cost and expense, promptly comply with all laws, rules and regulations of all public authorities having jurisdiction with reference to such changes, improvements and alterations, whether ordinary or extraordinary, structural or otherwise, foreseen or unforeseen, and will not call upon Owner for any expenses connected therewith, and will reimburse Owner for any expenses incurred on account of failure by Tenant to comply with any requirement of law, rules and regulations, of any public authority, whether involving structural changes or not.

F. Tenant shall install a shop-front at Tenant's sole cost and expense in accordance with the plans attached hereto and made a part hereof.

G. Tenant shall promptly pay and discharge all costs and expenses of such changes, improvements and alterations and shall not do or fail to do any act which shall or may render the premises of which the Demised Premises are a part liable to any mechanic's lien or other lien or charge or chattel mortgage or conditional bill of sale or title retention agreement. If any such lien, other charge, chattel mortgage, conditional bill of sale or title retention agreement be filed against said premises of which the Demised Premises are a part, or against such changes, improvements and alterations, or any part thereof, Tenant will, at Tenant's sole cost and expense, promptly remove the same of record within thirty (30) days after the receipt by Tenant of notice of the filing of any such lien or liens or other charge or chattel mortgage or conditional bill of sale or title retention agreement. Tenant covenants and agrees to indemnify and save harmless Owner of and from all claims, counsel fees, loss, damage and expense whatsoever by reason of any liens, charges, chattel mortgages, conditional bills of sale, title retention agreements or payments of any kind whatsoever that may be incurred or become chargeable against Owner, or the premises of which the Demised Premises are a part, or said changes, improvements and alterations, or any part thereof, by reason of any work done or to be done or materials furnished or to be furnished to or upon the Demised Premises in connection with such changes, improvements and alterations.

H. Unless caused by the negligence of landlord, the tenant hereby covenants and agrees to indemnify and save harmless Owner of and from all claims, counsel fees, loss, damage and expenses whatsoever by reason of any injury or damage, whatsoever caused, to any person or property occurring prior to the completion of such changes, improvements and alterations or occurring after such completion, as a result of anything done or omitted to be done in connection therewith or arising out of any fine, penalty or imposition or out of any other matter or thing connected with any work done or to be done or materials furnished or to be furnished in connection with such changes, improvements and alterations.

I. Tenant agrees that it will not, either directly or indirectly, use any contractors and/or labor and/or material if the use of such contractors and/or labor and/or material would or will create any difficulty with other contractors, subcontractors, and/or labor then engaged by Tenant or Owner or others in the construction, maintenance and operation of said building or any part thereof. Tenant and its contractors and mechanics may, prior to the Entry Date set forth in Paragraph 49, enter upon the Demised Premises at reasonable hours, at the sole risk of Tenant, for the purpose of making such changes, improvements and alterations, provided that the Tenant and its contractors and mechanics do not interfere with Owner, its contractors or with the occupants of these parts of said building.

J. Owner shall be entitled to have a representative or representatives on the site to inspect such changes, improvements and alterations and such representative or representatives shall have free and unrestricted access to any and every part of the Demised Premises.

K Deleted.

49. Entry

Tenant is hereby granted the privilege to enter upon the Demised Premises during the Fix Up period as set forth in Paragraph 45(D) above. Monthly rental installments shall begin on the Commencement Date. The Fix Up Period shall be for the purpose of rendering the Demised Premises fit for its intended purpose. Nothing contained herein is intended to or shall prohibit Tenant from opening its business prior to the Commencement Date, as long as Tenant has complied with all governmental rules and regulations.

50 Utilities

Except as otherwise provided herein, prior to the Entry Date set forth in Paragraph 49, Owner, at its own expense, shall cause to be provided to the building in which the Demised Premises is located conduits and other facilities necessary to supply the demised premises with water, sewer, gas and electric services. Thereafter, the tenant is responsible for the distribution of utility services within the demised premises and the installation of said distribution system, and its further responsibilities shall be as follows:

A. Electric Service. Tenant shall cause an electric meter to be installed for the Demised Premises and shall keep that meter or any other meter measuring the electric current consumed at the Demised Premises in good order and repair. Tenant shall pay for all electricity consumed at the Demised Premises. If Tenant installs any electrical equipment that overloads the lines in the Demised Premises, Owner may require Tenant to make whatever changes to the lines as may be necessary to render them same in good order and repair, and in compliance with all applicable legal and insurance requirements.

B. Water and Water Meter. Tenant shall install a water meter at the Demised Premises and shall keep the meter and any related equipment in good order and repair. Tenant shall pay for water consumed at the Demised Premises as shown on the meter.

C. Heat. Tenant shall install a heater and distribution system, if needed, subject to Government regulations.

D. Hot Water. Tenant shall install a hot water heater and shall keep same in good order and repair. Generally, the water heater shall be either ceiling-mounted or placed under a sink. Tenant shall pay all costs related to the installation and operation of the hot water heater.

E. Air Conditioning. Tenant shall supply its own air-conditioning unit with respect to the Demised Premises, and install at its own cost and expense any required duct work.

F. Bathrooms. Tenant may install one or more bathroom facilities, subject to Owner's approval, which shall not be unreasonably withheld, of all plans and specifications for such installation. Tenant agrees to pay all costs, direct or indirect, in connection with such installation. If the above conditions have been met, Owner shall provide a capped waste line and plumbing vent to the Demised Premises.

#### 51 Maintenance

Tenant shall, at its own expense, keep and maintain the Demised Premises in a clean, sightly, sanitary order and in good condition and repair except as to damage due to fire, earthquake, flood, wind-storm and other casualty. Tenant shall not cause or permit any waste or nuisance in or about the Demised Premises. Tenant shall clean the windows of the Demised Premises at least once each week.

#### 52 Vermin

Tenant, at its own expense, shall keep the Demised Premises free from vermin, rodents or anything of like objectionable nature. In the event of Tenant's failure to keep the Demised Premises free from vermin, Owner shall have the right, at Tenant's expense, to take all necessary or proper measures to eradicate any and all vermin from the Demised Premises. Any expense incurred by Owner in taking such measures as are provided for herein shall be deemed Additional Rent payable by Tenant within thirty (30) days next following the rendition of a statement or a bill therefor.

#### Repairs

A. Repairs by Tenant. Except for the repairs Owner is specifically obligated to make as stated herein, tenant shall make all repairs to the Demised Premises which are necessary or desirable to keep the Demised Premises in good order and repair and in a safe, dry and tenantable condition. Without limiting the generality of the forgoing, Tenant is specifically required to

make repairs (1) to the portion of any pipes, ducts, wires or conduits contained within and serving the Demised Premises; (2) to windows, plate glass, doors and any fixtures or appurtenances composed of glass; (3) to Tenant's sign; (4) to any heating or air conditioning equipment installed in the Demised Premises; and (5) to the Demised Premises when repairs to the same are necessitated by any act or omission of Tenant, or the failure of Tenant to perform its obligations under this Lease. Tenant shall keep the demised Premises in a clean and sanitary condition and free from offensive odors.

B. Repairs by Owner. Upon reasonable notice from Tenant, Owner shall make necessary structural repairs to the roof, ceilings, floors, foundations, exterior walls, load-bearing interior walls, pipes, ducts, wires, conduits, heating and air conditioning equipment, if these items were installed by Owner. For purposes of this paragraph, the term "Owner" shall include the over Tenant, the Local Development Corporation, and the Landlord, the City of New York, Department of General Services. In addition, the Owner shall keep in good order, condition and repair the down-spouts and gutters. However, Owner shall not be required to make any repairs to windows, plate glass, doors and any fixtures and appurtenances composed of glass and Owner shall not be required to repair any damage caused by any act, omission or negligence of Tenant, Tenant's agents or Tenant's invitees.

C. Emergency Repairs. If, in an emergency, it shall become necessary to make promptly any repairs or replacements which under the provisions of this Paragraph are Tenant's responsibility, Owner may re-enter the Demised Premises and proceed forthwith to have the repairs or replacements made and pay the cost thereof. Any expense incurred by Owner in making the repairs shall be deemed Additional Rent payable by Tenant within thirty (30) days following the rendition of a statement or a bill therefor.

#### 34 Insurance

Tenant shall procure and keep in force, at all times, during the term of this Lease, at its expense, public liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000.00) for personal injury to any one person; One Million Dollars (\$1,000,000.00) for personal injuries arising out of any one accident. Owner shall be named as one of the insured parties. All insurance policies shall provide that they shall not be cancelable without prior written notice to Owner. When requested by Owner, Tenant shall furnish Owner with a certificate, or certificates, issued by the insurance carrier evidencing such insurance. Tenant shall not create any hazards to Owner's improvements on the Demised Premises which would cause an increase in the existing rate of fire or extended coverage insurance thereof.

Tenant understands and agrees that Owner will not be obligated to carry insurance of any kind on any personal property in the Demised Premises regardless of whether such property shall be owned by Tenant and including, but not limited to, Tenant's goods, supplies, furnishings, furniture, fixtures, equipment, improvements, betterments, installations or appurtenances. Tenant hereby waives any and all right of recovery which it might otherwise have against Owner, any fee owner or mortgagee and their respective officers, directors, agents, contractors, servants and employees for loss or damage to such property or any part thereof, to the same extent that tenant's insurer's right of subrogation would be waived if insurance coverage with waiver of subrogation provisions were being maintained by Tenant upon all of such property. The provisions of this Paragraph shall also apply to each permitted assignee, if any, at any time occupying the Demised Premises or any part thereof.

55. Waiver of Claims

Tenant hereby waives any and all claims against Owner or Owner's agents or employees for any loss of, or damage to, personal property, or for any injury sustained in or about the Demised Premises arising from any injury sustained in or about the Demised Premises arising from any failure of Owner to keep said premises in repair unless such damage shall be the result of Owner's negligence. Tenant waives any and all claims against Owner for any damage or injury arising from any act, omission or negligence of co-tenants, other occupants of the same building, or of adjoining or contiguous buildings, and owners of adjacent or contiguous property.

56. Indemnification

Tenant covenants and agrees to indemnify and save harmless, Owner and any fee owner and any mortgagee and any lessor under any ground or underlying lease, and their respective contractors, agents and employees, licensees and invitees, from and against any and all liability (statutory or otherwise), claims, suits, demands, judgments, costs, interest and expenses (including, but not limited to, counsel fees and disbursements incurred in the defense of any action or processing), to which they may be subject or which they may suffer by reason of, or by reason of any claim for, any injury to, or death of, any person or persons (including, without limitation, Owner, its agents, contractors, employees, licensees and invitees) or damage to property (including any loss of use thereof) or otherwise arising from or in connection with the occupancy or use of or from any work, installation or thing whatsoever done in, at or about the Demised Premises prior to or during, the

term of this Lease or arising from any condition of the Demised Premises arising from Tenant's negligence or resulting from any default by Tenant in the performance of Tenant's obligations under this Lease or from any act, omission or negligence of Tenant or any of Tenant's officers, directors, agents, contractors, employees, subtenants, licensees or invitees.\*

\* Notwithstanding anything to the contrary, the Tenant shall not be liable for the negligence of Owner, or Owners' agents.

57. Owner's Liability Waiver

The officers, Board of Directors, employees or agents of the Owner, or any successor in interest, (which term is used herein includes aggregates of individual, such as joint ventures, general or limited partnerships or associations), shall be under no personal liability with respect to any of the provisions of this Lease, and if such individual hereto is in breach or default with respect to its obligations under this Lease, Tenant shall look solely to the Demised Premises for the satisfaction of Tenant's remedies and in no event shall Tenant attempt to secure any personal judgment against any officer, Board member, partner, employee or agent of Owner by reason of such default by Owner.

58. Real Estate Brokerage

Tenant represents and warrants to Owner that it has not dealt with any real estate agent or broker in connection with this Lease and/or the building, that this Lease was not brought about or procured through the use or instrumentality of any agent or broker and that all negotiations with respect to the terms of this Lease were conducted between Owner and Tenant. Tenant covenants and agrees to indemnify and hold Owner harmless from and against any and all claims for commissions and other compensation made by any agent or broker and expenses incurred by Owner in resisting such claims (including, without limitation, attorneys' fees).

59. Hold Over

Should Tenant hold over in possession after the expiration or sooner other termination of this Lease, such holding over shall not be deemed to extend the term of renew this Lease, but such holding over thereafter shall continue upon the covenants and conditions herein set forth, except that the charge for use and occupancy of such holding over for each calendar month or part thereof (even if such part shall be a small fraction of a calendar month) shall be the sum of:

A. 1/12 of the highest Annual Minimum Rent set forth in Paragraph 41 of this Lease times 1.5, plus.

B. Those other items of Additional Rent pursuant to this Lease had this Lease not expired, which total sum Tenant agrees to pay to Owner promptly upon demand, in full, without set-off.

Tenant acknowledges the extreme importance to Owner that possession of the Demised Premises be surrendered at the expiration or sooner termination of this Lease. Tenant agrees to indemnify and save Owner harmless against any and all costs, claims, losses or liabilities directly or indirectly resulting from delay by Tenant in so surrendering the Demised Premises, including without limitation, any claims made by any succeeding tenant founded on such delay; loss of profits suffered by Owner and expenses incurred by Owner due to the cancellation or modification of a new lease for the succeeding term; and any other extra expenses of reletting the Demised Premises. The rights and obligations set forth in this Paragraph shall survive after the termination or expiration of this Lease.

60. Licenses, Permits, Orders

Tenant shall secure and maintain, at its own cost and expense, such licenses, permits or orders of any Federal, State or municipal government or any agency thereof as shall be necessary for the lawful conduct of Tenant's business in the Demised Premises, and Tenant shall comply with all rules and regulations of any governmental body relating thereto. Tenant's obligation under this Lease shall not be abridged, impaired or lessened by reason of Tenant's inability to obtain or maintain such licenses, permits, or orders.

61 Signs

Owner shall have the right to establish a uniform plan of signage for the commercial portion of the building of which the Demised Premises is a part, including but not limited to the design, dimensions, material, location and installer of such signage. In the absence of the establishment by Owner of such a uniform plan, Tenant may, subject to Owner's approval\* of the design, dimensions, material, location, content and installer, establish such a plan and install the sign. In any event, Tenant shall be responsible for the cost of producing and installing any signage, including the cost of all permits and licenses required in connection thereto. Tenant shall obtain all permits and licenses required in connection with a sign and deliver to Owner within a reasonable time from the day they are issued copies of all such permits and licenses. Other than set forth above, Tenant shall not have the right to

maintain or install any other signs in the Demised Premises. Notwithstanding the above, Tenant shall have the right to have no signage at the Demised Premises.

\* Which shall not be unreasonably withheld.

62 Attornment

If at any time or times during the term of this Lease, the Owner shall be holder of a leasehold estate covering the premises of which the Demised Premises are a part, and if such leasehold estate shall end or terminate for any reason, Tenant shall, at the election and demand of any owner of the premises of which the Demised Premises are a part, or of any mortgagee in possession thereof, attorn to said owner or mortgagee upon the terms and conditions set forth herein for the remainder of the term of this Lease. The forgoing provision shall inure to the benefit of any such owner or mortgagee and in the event of any such election and demand, be self-operative eliminating the necessity of the execution of any further instruments; provided, however, that Tenant agrees upon the demand of any such owner or mortgagee to execute, acknowledge and deliver any instrument or instruments concerning such attornment. The forgoing provisions shall not be construed to limit or preclude any other rights which such owner or mortgagee may then have under law or otherwise.

63 Assignment; Sublease

A. If Tenant desires to assign/sublet this Lease, it shall submit to and be received by Owner, at least thirty (30) days prior to the proposed effective date of the assignment or sublease, written notice of its intent to assign/sublet, a statement containing the name and business address of the proposed assignee/sublessee and the business to be conducted by same in the Demised Premises under this Lease, together with the following documentation:

(1) A fully executed Instrument of Assignment/Sublease and Assumption;

(2) A verifiable letter of credit worthiness regarding either the proposed assignee/sublessee or the principals of the proposed assignee/sublessee which has been issued by an officer of a banking institution licensed to do business in New York State;

(3) A letter of recommendation from the prior landlord of the proposed assignee/sublessee, if any, or a list of such assignee/sublessee's prior landlords during the prior five (5) year period, if any; or copies of cancelled rent checks.

(4) Compliance with all conditions of the Ground Lease with the City of New York, including, but not limited to: submission of personal background material for review by the Office of Inspector General, or any other City Agencies.

B. Owner shall have thirty (30) days in which to review and respond to the same, and failing thereof the assignment/sublet shall be deemed approved. Owner's response to the documentation provided shall be determined in accordance with the following guidelines:

(1) Owner may reject any proposed assignee/sublessee who provides materially inaccurate information with respect to significant matters concerning the determination by the Owner as to whether to approve the proposed assignee/sublessee.

(2) Owner may reject any proposed assignee/sublessee whose bank reference is not reasonably satisfactory, as to such items as: overdrafts, bad checks, etc.

Owner's consent to a proposed assignment/sublease, of the Demised Premises shall not be withheld provided Tenant shall not be in default under this Lease on the date Owner's consent to any such assignment/sublease is requested and on the effective date of the proposed assignment/sublease; and provide further that all other conditions hereinafter set forth in this Paragraph shall be fully complied with.

All reasonable expenses incurred by the Owner for processing the assignment/sublease and assumption, shall be borne by the Tenant, including, but not limited to: legal fees, etc. A transfer of fifty one (51%) percent or more of the shares of a corporate tenant, or the transfer of an interest of fifty one (51%) percent or more in the general partners interest in a partnership, shall constitute an assignment pursuant to this paragraph.

C. Each and every form of assignment/sublease which may be prepared and given pursuant to this Paragraph shall contain a provision to the effect that:

(1) The assignment/sublease shall in no respect alter or diminish the liability of Tenant for the full performance of all of the terms, covenants and provisions of this Lease, on Tenant's part to be kept, observed or performed, including, but not limited to the payment of Annual Minimum Rent, Additional Rent and any rent adjustments;

(2) No other or further assignment/sublease shall be made except in compliance with the terms, covenants and provisions of this Paragraph;

(3) The document of assignment/sublease shall state that the assignee/sublessee assumes the performance of all of the terms, covenants and provisions of this Lease, on the part of Tenant to be kept, observed or performed, and

(4) The proposed use shall be in conformance with the provisions of Paragraph 46. Any proposed use which is not in such conformance shall be approved or rejected at the sole discretion of the Owner.

64 Abandonment of Personal Property

In the event any personal property such as furnishings, fixtures and any other property which Tenant may remove from the Demised Premises at the expiration or sooner termination of this Lease, shall remain in the Demised Premises other than by reason of Tenant's default, Owner may, at its option, deem such property as its own or may dispose of such property in any manner in which Owner may deem fit. If such property or any part thereof shall be sold, Owner shall receive and retain the proceeds of such sale and may apply the same at its option (i) against the cost of removing and storage, (ii) any indebtedness of any kind due Owner from Tenant under this Lease, and (iii) any damages to which Owner may be entitled under this Lease or pursuant to law.

65 Modifications

If, in connection with obtaining financing or refinancing for which the Demised Premises form a part, a banking, insurance or other institutional lender shall request reasonable modifications to this Lease as a condition to such financing or refinancing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder (except, perhaps, to the extent that Tenant may be required to give notices of any defaults by Owner to such lender and/or permit the curing of such defaults by such lender, together with the granting of such additional time for such curing as may be required for such lender to obtain possession of the said building) or materially adversely affect the leasehold interest hereby created.

66 Failure to Perform

Except as otherwise expressly provided herein, Owner shall have the right, but not the obligation to perform any covenant of Tenant which Tenant fails to timely perform as provided in this Lease on twenty (20) days' written notice to Tenant or without notice in the event of any emergency.

67 Subordination

Except as set forth in Paragraph 73, this Lease is subject and subordinate to all ground or underlying leases and to all mortgages (inclusive of the liens of all construction and permanent financing) which may now or hereafter affect such leases or the real property of which Demised Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lease or by any mortgagee, affecting any lease or the real property of which the Demised Premises are a part. In confirmation of such subordination, Tenant shall execute promptly any certificate that Owner may reasonably request.

68 Right of First Refusal

Prior to the expiration of the term herein, the Owner shall give its Tenant a thirty (30) day notice of its right of first refusal to renew the Lease on the terms and conditions as set forth by the Owner therein which shall be a bona fide offer from a third party (whose name and address shall be set forth by Landlord) and which notice shall include copy of the offer of rental made by the third party. If the Tenant accepts the terms and conditions in the right of first refusal, then said right of first refusal shall continue and prior to the expiration of the renewal lease, the Owner shall give the Tenant thirty (30) days notice of its right of first refusal to further renewal as set forth above. This right of first refusal shall be ongoing and continuing as long as the Tenant is not in default of the terms of the lease herein, or any succeeding renewal lease.

69. Owner shall provide Tenant with interior dividing walls to separate the Demised Premises from adjacent store space. Said walls to be of 8 inch thick concrete block, or its equivalent, with all finishing work to be done by Tenant.

70 Notices

A. To Owner. All payments of rent, and any notice or demands to Owner under or in connection with the Lease shall be sent to Owner at:

The Walker Street - Chung Pak Local Development Corp.  
65-69 Lispenard Street, 2nd Floor  
New York, New York 10013

B. To Tenant. All notices or demands to Tenant under or in connection with this Lease shall, prior to the Commencement Date, be sent to Tenant at:

Subsequent to the Commencement Date, such notices or demands to Tenant shall be sent to Tenant at the address of the Demised Premises.

C. All notices which a party is required or may desire to give shall be sent by certified or registered mail, return receipt requested and shall be deemed to have been given on the date delivered or deposited at a United States Post Office during its business hours.

71 Assignment to Corporation

Notwithstanding anything to the contrary, the Tenant, may up to within six months from the commencement date of this lease, assign this lease to a corporation in which the individual Tenant(s) are fifty percent (50%) or more shareholder(s), and thereafter the Tenant(s) shall have no further individual or personal liability.

72 Owner's Consent or Approval

Even if stated to be in Owner's sole discretion, whenever a provision of this Lease calls for the consent or approval or determination of Owner as a prerequisite to an action being taken by Tenant, such provision should be read to state that Owner's consent or approval, as the case may be, shall not be unreasonably withheld, or such determination shall mean landlord's reasonable determination. All references in this Lease to the consent or approval of Owner shall be deemed to mean the written consent of Owner, or the written approval of Owner shall be effective for any purpose unless such consent or approval is set forth in a written instrument executed by Owner.

73 Security Deposit

Tenant shall deposit with Owner one month's rent upon the signing of this lease, and one month's rent upon delivery of the demised premises as security for the faithful performance and observance by Tenant of the terms, provisions, and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent. Owner may use, apply or retain the whole or any part of the security so

deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages, or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new

Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrances.

#### 74 Non-Disturbance of Tenant

With respect to, and in modification of the provisions of Paragraph 7 of the printed form, the Landlord agrees that it will not place a mortgage on the property in which the Demised Premises are located unless such mortgage (or the note or bond which it secures) contains a "Non-Disturbance" clause to the effect that the mortgagee or its assigns will not, in any action to foreclose its mortgage, seek to foreclose Tenant's interest in such property created hereby, or in any other way disturb the Tenant's right to quiet enjoyment as in Paragraph 22 of the printed form, so long as the Tenant is not in violation or default of any of the provisions of this Lease. Upon the written request of the mortgagee then holding the senior-most mortgage lien on the property in which the Demised Premises are located, if the Landlord is then in default in performing its obligations under such mortgage or the mortgage note (or bond or other obligation) which it secures, the Tenant shall pay all or such part of the rent payable by it hereunder as such senior-mortgagee shall direct, to such senior-mortgagee on account of all obligations owed by the Landlord to such senior-mortgagee under the term of such senior mortgage or of the note (or bond or other obligation) which it secures.

75. Entire Agreement

This Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Lease. The Lease may not orally be changed, modified or discharged, in whole or in part, and no executory agreement shall be effective to change, modify or discharge this Lease or any obligations hereunder, in whole or in part, unless such agreement is set forth in a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

THE WALKER STREET - CHUNG PAK  
LOCAL DEVELOPMENT CORPORATION

BY \_\_\_\_\_

\_\_\_\_\_

Tenant

PRELIMINARY SCHEDULE A  
CONDITIONS

The configuration, location and size of the Demised Premises as set forth in the Preliminary Schedule A are pre-construction estimates only and are subject to and will be modified by a final "as built" drawing to be prepared at the completion of construction. At that time, the Preliminary Schedule A shall be replaced by a Final Schedule A which will reflect the actual configuration, location and size of the Demised Premises.

2. Subject to a final survey of the property on which the Demised Premises will be located, Owner shall use its best efforts to maintain the configuration, location and size of the Demised Premises as shown in the Preliminary Schedule A in the Final Schedule A.
3. The estimated number of square feet set forth in the Preliminary Schedule A includes ground floor area (mid-wall to mid-wall, including the entrance vestibule).
4. In the event the square footage of the Demised Premises as set forth in the Preliminary Schedule A is greater or lesser than the square footage set forth in the Final Schedule A by more than three percent (3%), Tenant's Annual Minimum Rent under Paragraph 41 shall be increased or decreased proportionately by an amount equal to the product of the cost per square foot of the Annual Minimum Rent under Preliminary Schedule A times the difference in the number of square feet in the Preliminary Schedule A and the Final Schedule A.

**EXHIBIT K**

**MANHATTAN BOROUGH BOARD RESOLUTION**

April 10, 1966

RESOLUTION OF THE  
BOROUGH BOARD OF MANHATTAN  
REGARDING  
APPROVAL OF THE CHUNG PAK GROUND LEASE

WHEREAS, there is an 88 unit housing development with a Section 201 financing commitment that is proposed to be built in Chinatown known as the "Chung Pak" Project, and

WHEREAS, portions of the development will be used for retail space and community facilities for which a dire need exists in Chinatown, and

WHEREAS, approval of a ground lease is required in connection with this Project, now therefore be it;

RESOLVED, that the Borough Board recommends approval of the ground lease subject to the following terms and conditions:

I. DEVELOPMENT AND USE OF SECOND FLOOR SPACE

A. Design

The LDC has re-designed the second floor so as to attract and accommodate retail merchants. A copy of the proposed floor plan is attached hereto. If the retail merchant demand is for smaller space, the space will be redesigned to accommodate the demand to the extent it does not conflict with the need for windows of significant size and existing beams.

As a result of the re-design, additional construction costs will be incurred. LDC will revise its financing structure to reflect these increased costs being passed along to all of the tenants of the unleased retail spaces including the tenant(s) for the adjacent detention facility space.

B. Use Limitations

Space will not be leased to merchants dealing in seafood, meat, produce or other perishable food stuffs.

C. Lease Term

Five (5) year lease term with a 5 year option to renew at a base rent equal to the original base rent escalated by 100% of the cumulative Consumer Price Index. The L.D.C. will reserve the right to refuse to renew the lease of any tenant who is in default under the original lease or who has not conducted his business in accordance with lease conditions.

**D. Rental Rate and Other Occupancy Costs**

A basic annual rental rate of \$79 per square foot will be charged .

Tenants will be individually metered for electricity

Tenants will pay their pro rata share of real estate taxes and ground rent

Tenants will pay their pro rata share of common area maintenance costs which will cover all common area expenses, including, but not limited to (a) common area utilities (b) cleaning (c) trash removal (d) security, maintenance and management (e) common area real estate taxes and ground rent.

The above is conditioned on the first floor tenants having to pay the same types of common area maintenance costs, real estate taxes and ground rent.

**E. ALTERNATIVE USE**

If by June 15, 1986, a minimum of 70% of the net leasable second floor rental area is not pre-leased in the manner set forth in Section II (B) below, the LDC may at its option, consider alternative uses and designs for the entire second floor.

**II. MARKETING PLAN**

**A. Task Force**

The LDC will create a Retail Space Task Force which will be composed of four to six members, half of which will be representatives of the LDC and half of which will be representatives of Concerned Committee.

**B. Solicitation**

The Task Force will advertise the availability of the retail space in local Chinatown newspapers and through other methods calculated to reach the local merchant community.

Applications will be made available at convenient locations including the offices of Community Boards 1 and 3.

The Task Force will prepare a pre-lease fact sheet which will be made available to all interested parties for distribution.

Applications for pre-lease space must be received by no later than May 15, 1986.

Tenants will be interviewed and selected by the Task Force based upon review of credit and business background. Tenant selection will also be based upon the type of business of each merchant, with the goal to maintain a diversity of uses.

In the event that there is more than one (1) qualified tenant with the same use for a particular store, a public lottery will be held to select the winning tenant.

Immediately upon notification of selection, the pre-lease tenant will deposit an amount equal to \$58.00 per square foot of store area into an interest bearing escrow account. —

These funds will be held by the L.D.C. as good faith money, and returned to the tenant three months after the tenant takes occupancy, after deduction of three (3) months' security deposit.

There will be no special preference given to any applicants.

There will be no leasing commissions paid to any party.

Pre-lease tenants may not assign their lease without L.D.C. approval, nor may they sub-lease their premises under any circumstances.

---

The maximum amount of space which may be leased to any one merchant or retailing establishment shall be 1,000 square feet.

### III. COMMUNITY SPACE

The Concerned Committee and LDC concur in the need to provide space for use by community groups. LDC and the Concerned Committee have agreed that first preference will be given to use the space for day-care/child care programs, provided there are legal obstacles to said use.

The space shall be provided at a cost not to exceed \$5.00 per square foot. The charges for use of community space shall be offset by any surplus funds realized by revenues generated from use of the other floors. ✓

In the event the space cannot be used for child care purposes, LDC and Concerned Committee shall jointly agree upon a appropriate community use.

#### IV. COST CERTIFICATION AND CONTAINMENT

LDC will make every effort to contain construction and development costs generated by the Project. In the event any savings are realized over current projected costs, the savings will be used to reduce the rental costs of the third floor community space.

LDC will secure cost certifications from the appropriate professionals for all costs incurred during the development and construction process and make said certifications available for review by Concerned Committee and public officials.

#### V. ADDITIONAL CONDITIONS

##### A. Representation

LDC will offer the Concerned Committee a seat on the LDC Board of Directors. The action shall be taken at the next meeting of the LDC Board but in no event later than April 30, 1986.

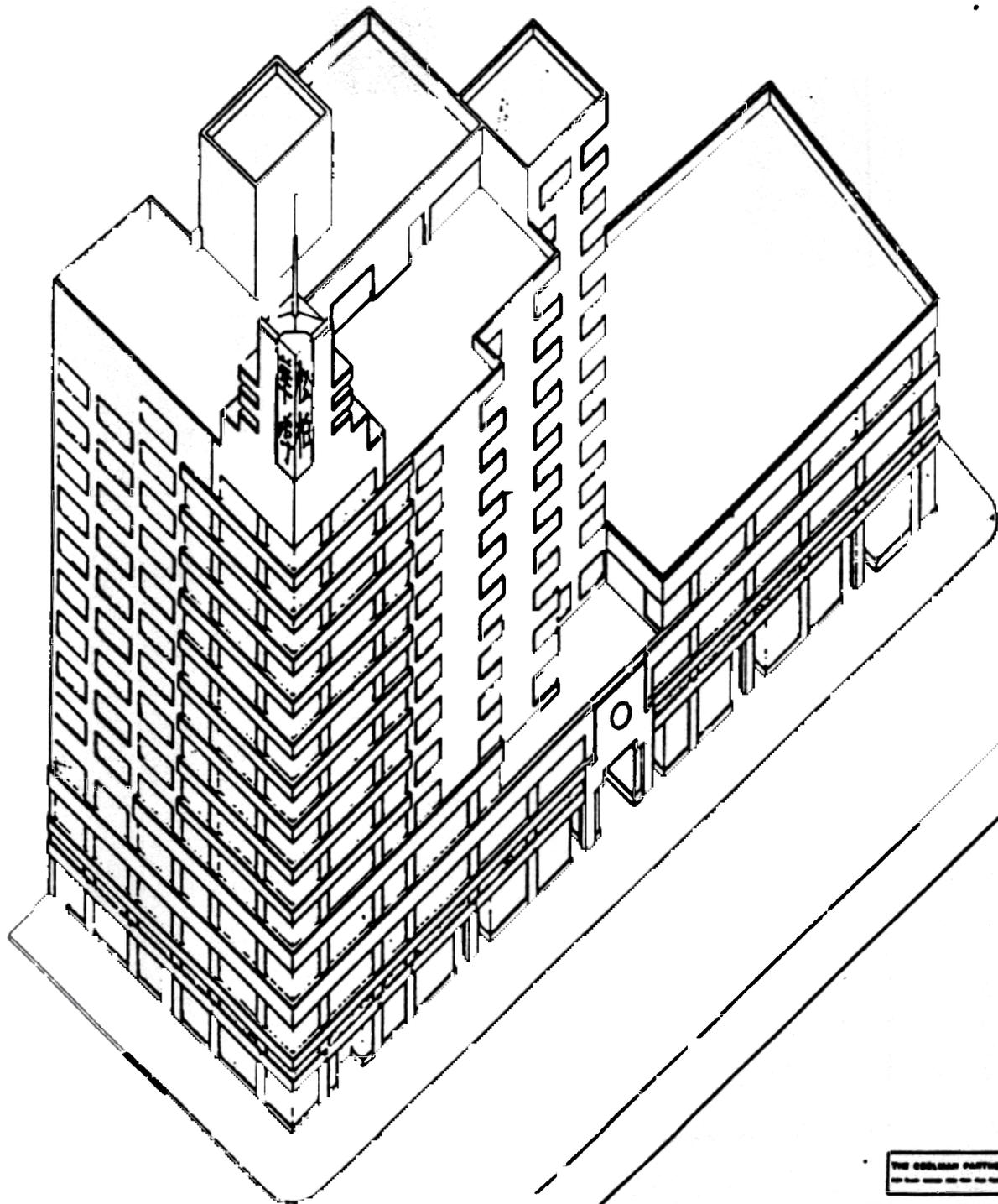
##### B. Post Office Negotiations

The United States Post Office has currently agreed to lease approximately 4500 square feet of first floor space. LDC and Concerned Committee have met with P.O. representatives to determine their willingness to lease a site fronting on Baxter Street instead of ~~East~~ <sup>Walker</sup> Street. We are currently awaiting a written response from the P.O. on this proposal. In the event the P.O. elects to lease space, the LDC will be required to lease it at the same per square foot rental as was charged to the original six tenants with pre-leases, i.e., \$50 per square foot.

##### C. Economic Feasibility

LDC will comply with the above-listed terms and conditions to the extent financially and economically feasible. The Borough President of Manhattan will determine when compliance is not economically feasible.

**EXHIBIT L**  
**SCHEMATICS**

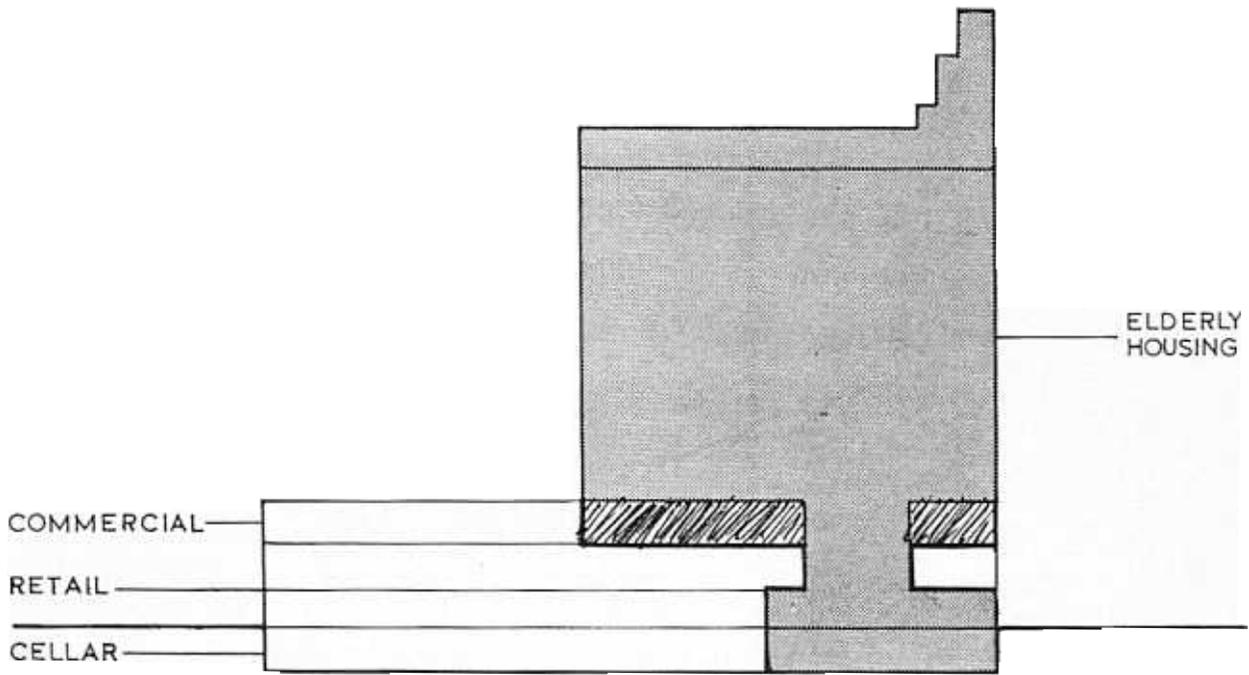


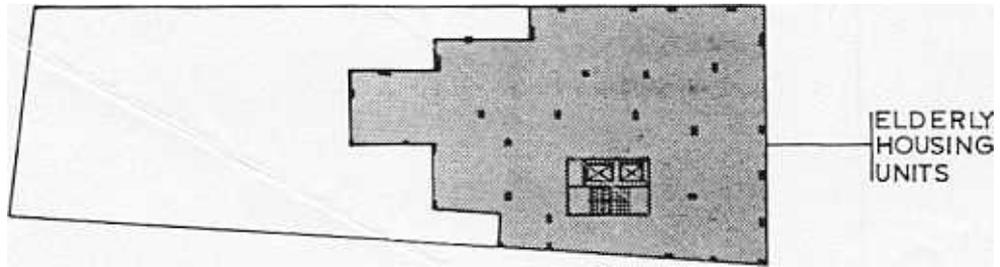
AXONOMETRIC VIEW

THE COLLEGE ARCHITECTURE / ARCHITECTS

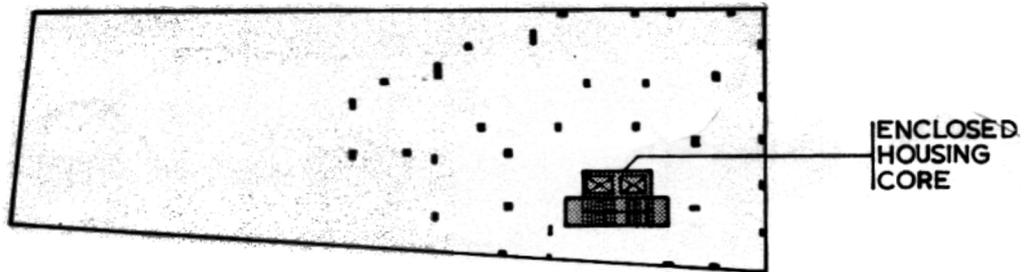
1000 10th Street, N.W.  
Washington, D.C. 20004  
Tel: 202-638-1000  
Fax: 202-638-1001  
www.collegearchitects.com



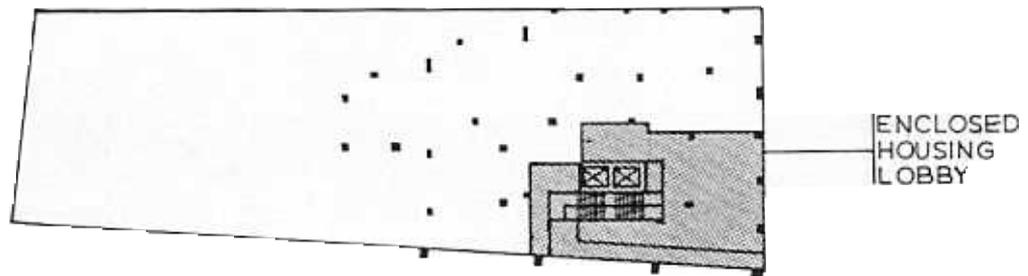




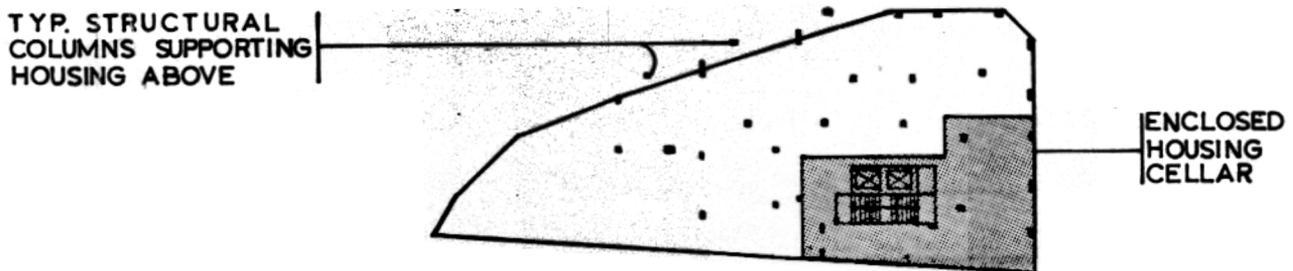
THIRD FLOOR PLAN



SECOND FLOOR PLAN



FIRST FLOOR PLAN



CELLAR PLAN



ROBERT M. LITKE  
COMMISSIONER

CITY OF NEW YORK  
DEPARTMENT OF GENERAL SERVICES  
DIVISION OF PUBLIC STRUCTURES  
MUNICIPAL BUILDING  
16TH FLOOR  
NEW YORK, N.Y. 10007

GREGORY JOHNSON  
DEPUTY COMMISSIONER

DESIGN GUIDELINES FOR COMMERCIAL DEVELOPMENT

The two principal factors in establishing design guidelines for commercial development of the designated portion of the detention facility site relate to:

Security Considerations

Urban Design Considerations

Security considerations require that the design of commercial space not restrict the operations of the Department of Correction in maintaining secure custody of the detention facility and its occupants, both from within and without. In this regard, it is imperative that the commercial development not contribute to the vulnerability of the detention facility to approach and attack by unauthorized persons.

Urban design considerations require that the site be developed as a contiguous building project, with the commercial portion of the site compatible with the architecture of the detention facility and relating sympathetically to the fabric of the civic center and community. The problems of scale, street wall height setbacks, facade treatment and materials all must be solved in context with the total project.

General Criteria for Commercial Development

1. The commercial portion of the site shall be bounded by Walker Street on the North, Baxter Street on the East, Centre Street on the West and the most northerly portion of the new detention facility on the South. Approximately 6,000 square feet of additional street level raw commercial space is being provided by the City along the East and West facades of the detention facility.
2. Commercial development will be based upon as-of-right zoning requirements, but must be limited in total height to no higher than 24 feet below the main roof recreation level. The main roof is at an approximate elevation of 157.0+. See drawing provided.
3. The height of any roof abutting the housing portion of the detention facility shall be approximately 20'-0 below the lowest cell window running the full distance to Walker Street. The lowest cell window level is at an approximate elevation of 62.0+. Average sidewalk elevation at Centre Street is 12.5+. See drawing provided.

4. No tower portion of the commercial development shall be closer than 25 feet to the housing portion of the detention facility.
5. The tower portion of the commercial development shall not have windows or other openings facing south or west.
6. All portions of roofs of the commercial structure shall be observable from the new detention facility.
7. The City shall have the right to install or cause the site developers to install any illumination, surveillance, security systems or devices they deem required on the commercial structure.
8. All walls of the commercial structure abutting the detention facility shall be of high security construction to prevent penetration. Wall construction must be approved by the City.
9. The Department of Correction shall reserve the right to unrestricted access to all roof areas.
10. The City shall exercise the right to design review and approval of the construction drawings for development at the various stages of their evolution. This is to insure a harmonious architectural relationship with the new detention facility, and to preserve the security of the detention facility.

Please Note:

1. There may be adjustments to detention facility elevations as more detailed information is developed during the schematic and preliminary stages of the work.
2. The architectural character of the detention facility is also in schematic development. The architects can be consulted to suggest the character of the commercial development and the linkage between the two site uses.

Attachments

cc: Robert M. Litke  
Edward Norton  
Ray Devine  
Bob Rivielle

SUMMARY OF RESTRICTIONS  
FOR THE DEVELOPMENT OF THE NORTHERN PORTION OF  
BLOCK 196, LOT 1, MANHATTAN

CEQR / PDS

Max. Dwelling Units - 100  
 Housing for the Elderly Proposal - 88 DU's / 97,140 SF

Max. Commercial Space - 32,000 SF  
 Housing for the Elderly Proposal - 29,384 SF

Parking and loading provisions were reviewed by CEQR; future parking and loading plans must comply with the conditions set forth in the Negative Declaration.

DGS SECURITY PROGRAMWINDOW RESTRICTIONS

There will be no windows on the south side of the structure and location of windows will be restricted in other locations so as to limit views either way between the housing/commercial project and the detention facility at the discretion of the Department of Corrections.

OUTDOOR RECREATION

Outdoor recreation for tower residents will be located on the northern side of the roof, prohibiting any exposure to the detention center.

HEIGHT LIMITATIONS

The residential tower shall be lower than the detention center so that no view of the roof of the detention center is possible from the roof of the tower.

The commercial base of Everlasting Pine which abuts the detention center on Centre Street is sufficiently below the lowest cell window and fully observable from the detention center.

The tower portion of the development will be no less than 25 feet from the housing portion of the detention facility.

The wall adjacent to the detention center will be designed to the requirements of the Department of Corrections, for strength and resistance to breakthrough.

Any other special illumination, surveillance, security systems or devices the City deems necessary shall be installed either by the City or developer.

TRANSIT EASEMENT

There is a Transit easement on the western half of the site which limits construction below ground level and limits the load that can be placed over that portion of the site.

WALKER STREET

