

**AGREEMENT OF LEASE**

**between**

**THE CARNEGIE HALL CORPORATION,  
Landlord**

**and**

**CARNEGIE HALL TOWER LIMITED PARTNERSHIP,  
Tenant**

**Premises**

**Portion of Block 1009, Lot 1  
Rembrandt Site**

**County of New York, New York**

**Dated as of December 21, 1987**

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AGREEMENT OF LEASE, made as of the 21st day of December, 1987, between THE CARNEGIE HALL CORPORATION, a New York corporation, having its principal office and place of business at 881 Seventh Avenue, New York, New York 10019, as landlord, and CARNEGIE HALL TOWER LIMITED PARTNERSHIP, a Delaware limited partnership, having an office and place of business at 309 East 45th Street, New York, New York 10017, as tenant.

W I T N E S S E T H

WHEREAS, the Land (as hereinafter defined) is owned by the City (as hereinafter defined) and is leased to Landlord (as hereinafter defined) pursuant to a lease from the City to Landlord dated June 30, 1960, and recorded in the Office of the City Register, New York County (the "Clerk's Office") on January 8, 1985 on Reel 864 at page 247, as restated in its entirety on December 21, 1987 and intended to be recorded in the Clerk's Office prior to the recording of this Lease (as hereinafter defined) (such lease from the City to Landlord, as same has been and may be further modified, amended and/or restated to the extent not prohibited by the terms of this Lease, is hereinafter referred to as the "Master Lease"); and

WHEREAS, pursuant to a letter from Landlord and the City to Tenant dated May 15, 1985 (such letter, as amended by a letter from Landlord and the City to Tenant dated January 21, 1986 is hereinafter referred to as the "Designation Letter"), Landlord and the City designated Tenant to develop the Land pursuant to the terms of the Designation Letter;

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 1

DEFINITIONS

For all purposes of this Lease and all schedules and exhibits hereto, the capitalized terms used in this Lease and not otherwise defined herein shall have the meanings set forth in Exhibit A.

## 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, benefits and privileges now or hereafter belonging or appertaining to the Premises and to Landlord in respect of the Premises, subject only to those matters affecting title set forth in Exhibit B hereto (the "Title Matters") and the terms and provisions of this Lease.

TO HAVE AND TO HOLD unto Tenant, its successors and permitted assigns, for a term (the "Term") commencing on the date hereof (the "Commencement Date") and expiring at 11:59 P.M. on the date which is one day prior to the 99th anniversary of the Commencement Date (the "Fixed Expiration Date"), or on such earlier date upon which this Lease is terminated as hereinafter provided (the "Expiration Date").

## ARTICLE 3

### RENT

#### Section 3.01. General Provisions.

(a) Throughout the Term, Tenant shall pay to Landlord, without notice or demand except as otherwise expressly provided in this Lease, at Landlord's office or such other place as Landlord shall from time to time designate by notice to Tenant, (i) "Base Rent", as provided in Section 3.01(b) and Section 3.02, and (ii) "Additional Rent", consisting of "Development Rent", as provided in Section 3.03, "Percentage Rent", as provided in Section 3.04, "Capital Transfer Rent", as provided in Section 3.05, and "Shortfall Rent", as provided in Section 3.06. Base Rent and Additional Rent are collectively referred to herein as "Rent". In the event of a conflict between the terms and provisions of Sections 3.10 and/or 3.11, on the one hand, and any of the other terms or provisions of this Article 3, on the other hand, the terms and provisions of Sections 3.10 and 3.11 shall control.

(b) Base Rent shall be payable in equal monthly installments (prorated for any period of less than a month) in advance on the first day of each calendar month during the Term, except that if the Commencement Date does not fall upon the first day of a month, Base Rent with respect to the calendar month in which the Commencement Date occurs shall be paid upon the execution and delivery of this Lease, and to the extent not previously paid Base Rent for the period, if any, between the Base Rent Stepup Date and the first day of Rental Year 1 shall be paid on the Base Rent Stepup Date. Additional Rent shall be payable at such times as are specified in Sections 3.03, 3.04, 3.05 and 3.06. Subject to the provisions of Section 42.02, Tenant's obligation to pay Rental with respect to the Term pursuant to the terms of this Lease shall survive the expiration or termination of this Lease.

(c) For all purposes of Sections 3.04 and 3.05, all items includable in Gross Commercial Rents, Gross Assignment Proceeds, Gross Refinancing Proceeds and Gross Transfer Proceeds shall be deemed to be received by Tenant when and if the same shall first be received by Tenant, or by any Affiliate or agent of Tenant, but no item shall be included in Gross Commercial Rents, Gross Assignment Proceeds, Gross Refinancing Proceeds or Gross Transfer Proceeds more than once. The calculation of Gross Commercial Rents, Gross Assignment Proceeds, Gross Refinancing Proceeds and Gross Transfer Proceeds shall accordingly not be affected by any transfer of revenues, receipts, proceeds or other amounts by any such Person to any other Person after any such revenues, receipts, proceeds or other amounts shall have first been received by any such Person.

(d) In the event of any dispute or uncertainty with respect to the payment of Rent, Tenant shall in any event timely pay the full amount ascertainable and not in dispute, and upon the

determination of the correct Rent, Tenant shall pay within 30 days the balance of Rent due together with interest thereon at the Late Charge Rate from the respective due dates through the date of payment. If, in the event of any dispute or uncertainty with respect to the payment of Rent, Tenant shall pay the amount of Rent claimed to be due by Landlord and it is subsequently determined that the correct Rent is less than the amount so paid by Tenant, Landlord shall repay within 30 days the amount of the overpayment to Tenant with interest thereon at the Late Charge Rate from the date of the overpayment through the date such amount is repaid to Tenant. Compliance with the first sentence of this Section 3.01(d) shall not prevent the occurrence of a Default or Event of Default arising from the failure to timely pay the Rent due under this Lease, except that no Default or Event of Default shall be deemed to occur with respect to any delay in the payment of Rent to the extent that such delay is permitted under and complies with the terms and provisions of Sections 3.02(f), 3.04(a), 3.04(c) and 3.05.

**Section 3.02. Base Rent.**

(a) For the period commencing on the Commencement Date and ending on the day immediately preceding the Base Rent Stepup Date, Base Rent shall be payable at the rate of \$15,000 per month

(b) During the period commencing on the Base Rent Stepup Date and ending on the last day of Rental Year 1, and during Rental Years 2 through 24, Base Rent shall be payable in the amounts set forth below and at the times set forth in Section 3.01:

During the period, if any, commencing on the Base Rent Stepup Date and ending on the last day prior to the first day of Rental Year 1, an amount equal to \$4,909.59 per day.

Rental Year 1 - \$1,792,000 per annum

Rental Year 2 - \$1,892,000 per annum

Rental Year 3 - \$1,892,000 per annum

Rental Year 4 - \$1,992,000 per annum

Rental Year 5 - \$2,092,000 per annum

Rental Year 6 - \$2,500,000 per annum

Rental Year 7 - \$2,500,000 per annum

Rental Year 8 - \$2,500,000 per annum

Rental Year 9 - \$2,500,000 per annum

Rental Year 10 - \$2,500,000 per annum

For Each of Rental Years 11-24 - the greater of (x) Full Taxes as of the first day of each of such Rental Years, or (y) \$3,010,350 per annum

(c) With respect to the portion of the Term occurring after the last day of Rental Year 24, Base Rent shall be adjusted as of the first day of each Adjustment Period, so as to equal the greater of (i) then current Full Taxes, or (ii) the then current Base Amount (as determined with respect to each Adjustment Period pursuant to the provisions of this Lease). Base Rent as so adjusted shall be payable throughout each Adjustment Period.

(d) Tenant shall be entitled to contest the Assessed Value from time to time in accordance with the applicable provisions of this Lease; provided, however, that pending the resolution of any such contest, Tenant shall pay to Landlord Base Rent calculated as if no such contest existed. Upon resolution of any such contest in Tenant's favor, Tenant shall be entitled to have and shall receive a credit against the next payment(s) of Rent equal to the amount of any overpayment of Base Rent which Tenant shall have made by reason of Tenant having paid Base Rent based on such disputed Assessed Value, together with interest on such overpayment, calculated in the same manner and at the same rate as is then generally utilized by the City with respect to the overpayment of real estate taxes (the "Refund Rate").

(e) Not less than 120 days nor more than 180 days prior to the commencement of each Adjustment Period, Landlord shall submit to Tenant a written report, prepared by a Qualified Appraiser selected by Landlord with the approval of the Fee Owner ("Landlord's Appraiser"), which shall set forth an amount which in the judgment of Landlord's Appraiser equals FMV as of a date which shall not in any event be more than 210 nor less than 120 days prior to the commencement of the relevant Adjustment Period. Such report shall set forth in detail the basis for the conclusions of Landlord's Appraiser. Any such report submitted by Landlord to Tenant shall be accompanied by a notice from Landlord to Tenant directing Tenant's attention to the provisions of this Section 3.02(e) and stating that under the provisions of this Section 3.02(e) any failure by Tenant to respond to such report, as hereinafter required within 90 days after the receipt of such report and notice from Landlord could be prejudicial to Tenant. Within 90 days after Tenant receives such report of Landlord's Appraiser, Tenant shall notify Landlord whether or not Tenant contests the findings of Landlord's Appraiser. If within such 90-day period Tenant notifies Landlord that Tenant contests the findings of Landlord's Appraiser, Tenant shall submit to Landlord, within such 90-day period, a written report, prepared by a Qualified Appraiser selected by Tenant ("Tenant's Appraiser"), which shall specify FMV in the judgment of Tenant's Appraiser as of the date as of which FMV shall have been determined by Landlord's Appraiser (which date, as provided above, shall not in any event be more than 210 nor less than 120 days prior to the commencement of the relevant Adjustment Period). Any such report



prepared by Tenant's Appraiser shall set forth in detail the basis for the conclusions of Tenant's Appraiser. If Tenant does not notify Landlord within such 90-day period that Tenant contests the findings of Landlord's Appraiser, or does not submit to Landlord such report prepared by Tenant's Appraiser, Tenant shall be deemed to have accepted the findings of Landlord's Appraiser provided, however, that such 90-day period shall be deemed to be extended for 60 days after Landlord gives Tenant a reminder notice specifying the time within which Tenant may exercise its rights under this Section 3.02(e), which reminder notice may not be given more than 10 days in advance of the expiration of the original 90-day period. If Tenant notifies Landlord within such 90-day period (as the same may be extended as provided above) that Tenant accepts or does not contest the findings of Landlord's Appraiser, or if Tenant is deemed to have accepted the findings of Landlord's Appraiser, the product of the amount specified in the report of Landlord's Appraiser as FMV and the then applicable Conversion Factor shall be the new Base Amount, effective as of the first day of the applicable Adjustment Period. If within such 90-day period (as the same may be extended as provided above) Tenant notifies Landlord that Tenant contests the findings of Landlord's Appraiser, and timely submits to Landlord a report prepared by Tenant's Appraiser as aforesaid, Landlord's Appraiser and Tenant's Appraiser shall thereafter seek to agree upon FMV within 15 days after Tenant submits to Landlord such report prepared by Tenant's Appraiser. Such agreement may be arrived at on the basis of facts, opinions and circumstances revealed by their respective reports, through reasonable compromise, or otherwise. If Landlord's Appraiser and Tenant's Appraiser do not reach such agreement within such 15-day period, then Landlord's Appraiser and Tenant's Appraiser, not later than 25 days after Tenant shall have submitted to Landlord the above-described report of Tenant's Appraiser, shall seek to agree upon and appoint a third Qualified Appraiser (the "Independent Appraiser") who shall be independent and disinterested, and who shall, within 30 days after he or she is appointed, select as FMV either Landlord's Appraiser's or Tenant's Appraiser's determination of FMV (as set forth in their respective written reports, which shall be supplied to the Independent Appraiser). If Landlord's Appraiser and Tenant's Appraiser have not appointed the Independent Appraiser within such 25-day period, the Independent Appraiser shall, upon request of either Landlord or Tenant, be appointed by the Appointing Authority. If the Independent Appraiser has not determined FMV as aforesaid within 30 days following his or her appointment, either Party may seek the appointment (either by the Appointing Authority, or by Landlord's Appraiser and Tenant's Appraiser acting jointly) of a successor Independent Appraiser to act as provided herein. The agreement of Landlord's Appraiser and Tenant's Appraiser as to FMV, or, if they do not agree within the 15-day period specified above, the decision of the Independent Appraiser as to FMV as aforesaid shall be conclusive and binding upon the Parties and the Fee Owner, to the same extent as if such

issue had been submitted for binding arbitration under the rules of the American Arbitration Association (or any successor thereto), and the Base Amount shall be determined accordingly, effective as of the first day of the applicable Adjustment Period. If any appraiser selected hereunder shall fail, cease or be unable to serve as such appraiser by reason of death or any other cause, voluntary or involuntary, a successor appraiser shall be appointed and shall serve as such appraiser, the successor appraiser to be appointed in the same manner as the predecessor appraiser was appointed. Landlord shall pay any fees and expenses of Landlord's Appraiser, Tenant shall pay any fees and expenses of Tenant's Appraiser, and Landlord and Tenant shall share equally any fees and expenses of the Independent Appraiser. Tenant's Appraiser and the Independent Appraiser shall not have any liability to Landlord, or the Fee Owner, or to any Person claiming through Landlord, or the Fee Owner, by reason of his or her participation in any determination regarding FMV or the Base Amount hereunder, and Landlord shall indemnify and defend all Persons acting in such capacity hereunder against any and all claims asserted against such Persons by reason of their participation in any such determination brought by Landlord or the Fee Owner (or any Person claiming through either of them). Landlord's Appraiser and the Independent Appraiser shall not have any liability to Tenant, or to any Person claiming through Tenant, by reason of his or her participation in any determination regarding FMV or the Base Amount hereunder, and Tenant shall indemnify and defend all Persons acting in such capacity hereunder against any and all claims asserted against such Persons by reason of their participation in any such determination brought by Tenant (or any Person claiming through Tenant). Landlord and Tenant shall each indemnify the other from any breach of their respective covenants or indemnities contained in the immediately preceding two sentences.

(f) If any determination of the Base Amount provided for herein shall be delayed beyond the first day of the relevant Adjustment Period, by reason of dispute or otherwise, Tenant shall in any event be required to pay Base Rent during the duration of such delay monthly in advance as herein provided, based upon the higher of (i) a Base Amount equal to the product of (x) the average of FMV as theretofore most recently determined by Landlord's Appraiser and Tenant's Appraiser in accordance with the provisions of this Section 3.02, and (y) the then applicable Conversion Factor, or (ii) Full Taxes as of the first day of such Adjustment Period. Upon the determination of the applicable Base Amount after any such delay, Tenant shall immediately pay to Landlord the amount of any underpayment of Base Rent which shall have occurred during the course of such delay, with interest thereon at the Late Charge Rate from the respective due dates through the date of payment, and Tenant shall be entitled to have and shall receive a credit against Tenant's next due payment or payments of Base Rent equal to the amount of any overpayment which

shall have occurred during the course of such delay with interest thereon at the Late Charge Rate from the respective date or dates of such overpayment through the date or dates such credit is utilized. From and after the date of such determination of the Base Amount through the last day of such Adjustment Period, Tenant shall pay Base Rent as if the Base Amount had been determined on the first day of such Adjustment Period.

(g) Notwithstanding the provisions of Section 3.02(f), if for any reason Landlord shall fail to deliver the report and notice required by Section 3.02(e) on or before the 120th day prior to the commencement of any Adjustment Period, and the determination of the Base Amount provided for herein shall be delayed beyond the first day of the relevant Adjustment Period, then any increase in the Base Amount resulting from such determination shall not become effective until the date that shall follow the commencement of the relevant Adjustment Period by the same number of days as the date upon which Landlord delivers such report and notice to Tenant follows the 120th day prior to the commencement of such Adjustment Period.

### Section 3.03. Development Rent.

(a) Development Rent shall be payable by Tenant to Landlord as follows:

(i) \$2,420,000 on the sixth monthly anniversary of the Starting Date;

(ii) \$4,258,000 on the eighteenth monthly anniversary of the Starting Date;

(iii) \$47,000 on the thirtieth monthly anniversary of the Starting Date; and

(iv) \$52,000 on the forty-second monthly anniversary of the Starting Date.

(b) The dollar amounts payable pursuant to Section 3.03(a) shall be Subject to Indexing for the period between December 1, 1986 and the first day of the month in which the Starting Date occurs, provided that (i) in no event shall any payment of Development Rent be reduced by the application of the foregoing provisions of this Section 3.03(b), and (ii) in no event shall the application of the provisions of this Section 3.03(b) cause any of the payments called for in Section 3.03(a) to increase at a rate of more than 10% per annum (for example, if the Starting Date occurs two years after June 1, 1986 and the application of the first portion of this sentence would result in increases in Development Rent of 15% for the first year and 8% for the second year, the application of clause (ii) of this sentence shall reduce the increase to 10% for the first year and leave the

increase of 8% for the second year unchanged). Tenant shall have and receive a credit in the amount of \$35,000 against the first installment of Development Rent payable under this Section 3.03.

#### Section 3.04. Percentage Rent.

(a) Subject to the provisions of Section 3.09, Percentage Rent shall be payable by Tenant to Landlord with respect to each Lease Quarter (or portion thereof) during which Gross Commercial Rents shall be received by Tenant (and with respect to which Tenant was not previously required to pay Percentage Rent hereunder), in an amount equal to (i) 5% of Gross Commercial Rents with respect to the period commencing on the first date upon which Gross Commercial Rent is first receivable by Tenant (the "Percentage Rent Startup Date") and ending on the tenth anniversary of the Percentage Rent Startup Date, (ii) 4% of Gross Commercial Rents with respect to the period commencing on the first day following the tenth anniversary of the Percentage Rent Startup Date, and ending on the thirty-fifth anniversary of such date, and (iii) 3% of Gross Commercial Rents with respect to the remainder of the Term. Percentage Rent shall be payable quarterly in arrears as hereinafter provided in this Section 3.04(a). Within 30 days following the last day of each Lease Quarter occurring after the Percentage Rent Startup Date, Tenant shall (x) pay all Percentage Rent payable with respect to such Lease Quarter, or (y) make an estimated payment of Percentage Rent with respect to such Lease Quarter in an amount equal to not less than 90% of the Percentage Rent payable with respect to the immediately preceding Lease Quarter (or if no Percentage Rent was payable with respect to the immediately preceding Lease Quarter, 90% of Tenant's good faith estimate of the Percentage Rent payable with respect to the subject Lease Quarter). If Tenant avails itself of the option set forth in clause (y) of the immediately preceding sentence, Tenant shall pay the Percentage Rent that is due with respect to such Lease Quarter but not previously paid (together with interest on the amount not previously paid, i.e., the amount of the underpayment, at the Late Charge Rate from the 30th day following the last day of such Lease Quarter through the date of payment) on or before the 90th day following the last day of such Lease Quarter. In any event, Tenant shall pay all Percentage Rent that is payable with respect to any Lease Quarter within 90 days following the last day of such Lease Quarter, together with interest at the Late Charge Rate from the 30th day following the last day of such Lease Quarter on all Percentage Rent payable with respect to such Lease Quarter that was not paid within such 30 day period.

(b) Each payment of Percentage Rent (except for estimated payments made pursuant to clause (y) of Section 3.04(a)) shall be accompanied by a detailed written statement setting forth Gross Commercial Rents for the applicable period, and indicating the manner in which the amount payable to Landlord shall have been

calculated, including an itemized statement setting forth all amounts ("Excluded Amounts") excluded by Tenant pursuant to the second sentence of the definition of Gross Commercial Rents in the calculation by Tenant of the amount of Gross Commercial Rents. If no Percentage Rent shall be payable with respect to any Lease Quarter, Tenant shall so notify Landlord within 30 days after the last day of such Lease Quarter.

(c) Within 120 days after the end of each Lease Year beginning with the Lease Year in which the Percentage Rent Startup Date occurs, Tenant shall deliver to Landlord and the Fee Owner a clear and detailed statement prepared and certified as correct by the Certified Public Accountant, with respect to the calculation of and showing all Gross Commercial Rents for the applicable Lease Year (including a statement setting forth and explaining the computation of all Excluded Amounts). If any such annual statement shall reveal any error in the calculation of Gross Commercial Rents resulting in an incorrect payment of Percentage Rent with respect to any Lease Quarter comprising a part of the subject Lease Year, any underpayment shall immediately be payable by Tenant to Landlord, without notice, with interest thereon at the Late Charge Rate from thirty (30) days after the end of such Lease Quarter to the date of payment, and any overpayment with interest thereon at the Refund Rate from the date or dates of such overpayment(s) through the date or dates credited shall be credited to Tenant by Landlord against the next due installment(s) of Rent. In calculating the amount of any payment or credit to be made pursuant to the immediately preceding sentence, all underpayments and overpayments of Percentage Rent respecting Lease Quarters in the subject Lease Year (with accrued interest thereon at the Late Charge Rate or the Refund Rate, respectively) shall be netted against one another as of the earliest possible date so as to minimize (i) the accrual of interest, and (ii) any payments or credits to be made after the end of the subject Lease Year. All Gross Commercial Rents shall be subject to audit by Landlord or the Fee Owner (or their agents) or both of them to the extent provided in Article 37.

#### **Section 3.05. Capital Transfer Rent.**

(a) Except as otherwise specified in Section 3.05(g), Capital Transfer Rent shall be payable by Tenant to Landlord in the manner and at the times provided in Sections 3.05(a)-(f) in connection with any Assignment or Transfer and the Initial Refinancing in an amount equal to (i) 2.5% of the Adjusted Assignment Proceeds, Adjusted Transfer Proceeds or the Adjusted Refinancing Proceeds attributable to an Assignment, Transfer or the Initial Refinancing, as the case may be, if the same occurs on or before the last day of the 25th Lease Year (the fact that a portion of the Gross Assignment Proceeds, Gross Transfer Proceeds or Gross Refinancing Proceeds attributable to such Assignment, Transfer or the Initial Refinancing might be received by Tenant

after such date notwithstanding), or (ii) 1.25% of the Adjusted Assignment Proceeds, Adjusted Transfer Proceeds or the Adjusted Refinancing Proceeds attributable to an Assignment, Transfer or the Initial Refinancing, as the case may be, if the same occurs on or after the first day of the 26th Lease Year (such 2.5% or 1.25%, as the case may be, being hereinafter referred to as "Landlord's Percentage"). Landlord's Percentage of Adjusted Assignment Proceeds, Adjusted Transfer Proceeds or Adjusted Refinancing Proceeds shall be paid to Landlord within 10 days after the same or any portion of the same are received by or on behalf of the Assignor, in the case of Adjusted Assignment Proceeds; the Transferor, in the case of Adjusted Transfer Proceeds; or Tenant, in the case of Adjusted Refinancing Proceeds. Additionally, Tenant shall pay to Landlord (as a part of Capital Transfer Rent) on (or at Tenant's election, at any time prior to) the tenth anniversary of the Initial Refinancing, 84.5% of the amount of Capital Transfer Rent payable with respect to the Initial Refinancing (such amount being Subject to Indexing from the date of the Initial Refinancing to the date of such payment). If, subsequent to an Assignment or Transfer by an Original Owner with respect to which Landlord is entitled to receive Capital Transfer Rent following an Initial Transfer Rent Payment, such Original Owner shall reacquire its interest in this Lease (in the case of an Assignment) or in Tenant (in the case of a Transfer) through a foreclosure or an assignment in lieu of foreclosure, Landlord shall participate in the proceeds of the first subsequent Assignment or Transfer by such Original Owner in the manner set forth in this Section 3.05, but such Original Owner shall be entitled to have and shall receive a credit against the amounts thus becoming due to Landlord in an amount equal to all Capital Transfer Rent theretofore paid to Landlord in connection with the Assignment or Transfer pursuant to which less than all of the Gross Assignment Proceeds or Gross Transfer Proceeds were received.

(b) Upon the closing of an Assignment, Transfer or the Initial Refinancing, there shall be (i) delivered to Landlord a good faith estimate of the Capital Transfer Rent that will be payable in connection therewith, and (ii) deposited in an interest bearing account opened and maintained by Depositary, a good faith estimate of the Capital Transfer Rent which, in accordance with the terms and provisions of Section 3.05(c), will be due to Landlord on the tenth day after such Assignment or Transfer or the Initial Refinancing (the amount so deposited with Depositary, together with all interest accrued thereon, is hereinafter referred to as the "Transfer Rent Fund").

(c) Within 10 days after an Assignment, Transfer or the Initial Refinancing and the receipt and collection by or on behalf of the Assignor, Transferor or Tenant of all or any portion of the Gross Assignment Proceeds, Gross Transfer Proceeds or Gross Refinancing Proceeds (as the case may be) then due with respect

thereto, there shall be delivered to Landlord a reasonably detailed statement (the "Transfer Rent Statement"), certified by the Assignor, Transferor or Tenant (as the case may be), setting forth the financial terms of such Assignment, Transfer or the Initial Refinancing, as the case may be, and specifying all Gross Assignment Proceeds, Gross Transfer Proceeds or Gross Refinancing Proceeds received (and collected) and thereafter expected to be received in respect thereof, all deductions from Gross Assignment Proceeds, Gross Transfer Proceeds or Gross Refinancing Proceeds claimed with respect to the calculation of Adjusted Assignment Proceeds, Adjusted Transfer Proceeds or Adjusted Refinancing Proceeds, and all Capital Transfer Rent payable or expected to be payable in connection with such Assignment, Transfer or the Initial Refinancing, accompanied by (i) a notice from Tenant to Depository directing Depository to release to Landlord such portion of the Transfer Rent Fund as is equal to the Capital Transfer Rent then due to Landlord or, if the amount of such fund is less than the Capital Transfer Rent then due to Landlord, all of the Transfer Rent Fund, and (ii) a bank or certified check payable to the order of Landlord for the excess, if any, of the Capital Transfer Rent then due to Landlord over the amount of the Transfer Rent Fund.

(d) Within 30 days after Landlord receives the Transfer Rent Statement, Landlord shall deliver to Tenant (in the case of the Initial Refinancing), Tenant and the Assignor (in the case of an Assignment) or Tenant and the Transferor (in the case of a Transfer) (i) Landlord's approval of the Transfer Rent Statement together with a notice directing Depository to release to Tenant the balance, if any, remaining in the Transfer Rent Fund, or (ii) a notice (the "Disagreement Notice") executed by Landlord's managing director or other duly authorized executive or operating officer stating that Landlord disagrees with the Transfer Rent Statement and setting forth in reasonable detail the reasons for and calculations supporting such disagreement. Promptly following demand by Landlord, Tenant shall cooperate with Landlord to explain the Transfer Rent Statement but if, for any reason whatsoever, Landlord shall fail to approve or disagree with the Transfer Rent Statement by giving notice to Tenant (in the case of the Initial Refinancing), Tenant and the Assignor (in the case of an Assignment) or Tenant and the Transferor (in the case of a Transfer) in the manner aforesaid within 30 days after Landlord's receipt of the Transfer Rent Statement, the Transfer Rent Statement shall be deemed approved in each and every respect and Tenant shall be entitled to the balance, if any, of the Transfer Rent Fund.

(e) If, within 30 days after Tenant (in the case of the Initial Refinancing), Tenant and the Assignor (in the case of an Assignment), and Tenant and the Transferor (in the case of a Transfer) receive the Disagreement Notice, the Parties and the Assignor (in the case of an Assignment) or the Transferor (in the

case of a Transfer) fail to agree as to the amount of Capital Transfer Rent then due to Landlord, any of them may initiate arbitration to be conducted in accordance with the terms and provisions of Article 34 in order to determine the amount of Capital Transfer Rent then due to Landlord in connection with the Initial Refinancing, the Assignment or the Transfer that is the subject of the Transfer Rent Statement with which Landlord disagreed. If the Parties and the Assignor (in the case of an Assignment) or the Transferor (in the case of a Transfer) agree that additional Capital Transfer Rent is then due to Landlord, or if, as a result of such arbitration, it is determined that additional Capital Transfer Rent is then due to Landlord, Tenant (in the case of the Initial Refinancing), the Assignor (in the case of an Assignment) or the Transferor (in the case of a Transfer) shall, not later than 10 days after such agreement or 30 days after the announcement of the arbitrators' decision (as the case may be), pay the amount then due to Landlord, or Tenant shall authorize Depositary to release such amount then due to Landlord (or, at Tenant's election, a combination of both) against a receipt from Landlord for the amount paid or authorized to be paid. If Landlord has then received the amount then due to Landlord, such receipt shall be accompanied by an acknowledgement by Landlord that the full amount of Capital Transfer Rent then due has been paid and an authorization by Landlord to Depositary to release the balance of the Transfer Rent Fund, if any, to Tenant. If any sum is due to Landlord as a result of the arbitrators' decision, it shall be paid together with interest from the tenth day after the date of the Assignment, Transfer or the Initial Refinancing, as the case may be, to the date of payment, calculated at the Refund Rate if the amounts paid to Landlord within 10 days after such Assignment, Transfer or the Initial Refinancing on account of the Capital Transfer Rent then due equalled or exceeded 95% of the amount ultimately determined to be due, or calculated at the Late Charge Rate if less than 95% was so paid.

(f) If, with respect to an Assignment, Transfer or the Initial Refinancing, any Capital Transfer Rent is payable to Landlord subsequent to the payment referred to in Section 3.05(d) (the "Initial Transfer Rent Payment") the same shall be accompanied by an explanatory statement similar to the Transfer Rent Statement. Concurrently with any Assignment or Transfer with respect to which Capital Transfer Rent shall be payable to Landlord after the Initial Transfer Rent Payment (because Adjusted Assignment Proceeds or Adjusted Transfer Proceeds are to be paid subsequent to the date of the Assignment or Transfer), the Assignor (in the case of an Assignment) or the Transferor (in the case of a Transfer) shall (i) deliver to Landlord copies of all documents evidencing and securing the sums to be paid by the Assignee or Transferee to the Assignor or Transferor subsequent to the date of such Assignment or Transfer with respect to the same, and (ii) execute and deliver to Landlord a participation agreement



(the "Participation Agreement") in recordable form with respect to any such documents which is reasonably satisfactory in form and content to Landlord, which Participation Agreement shall evidence and secure Landlord's right to receive Landlord's Percentage of the Adjusted Assignment Proceeds or Adjusted Transfer Proceeds (including the interest component thereof, if any), as the case may be, to be paid after the Initial Transfer Rent Payment is made. Should Landlord and the Assignor (in the case of an Assignment) or Transferor (in the case of a Transfer) be unable to agree upon the terms and provisions of the Participation Agreement, (a) the contemplated Assignment or Transfer may nevertheless be consummated, but all of the documents that were to be the subject of the Participation Agreement shall be delivered to Depositary upon the effective date of such Assignment or Transfer, and the right to enforce such documents and receive the benefits thereunder shall be and be deemed to have been assigned to Depositary pending the execution and delivery by Landlord and the Assignor (in the case of an Assignment) or the Transferor (in the case of a Transfer) of the Participation Agreement, (b) Depositary shall hold the sums paid under the documents that are to be the subject of the Participation Agreement for the benefit of Landlord and the Assignor or Transferor (as the case may be) pending execution of the Participation Agreement, and (c) such disagreement shall be resolved by arbitration initiated by any party to such disagreement and conducted in accordance with the terms and provisions of Article 34, and any documents and sums held by Depositary pursuant to this Section 3.05(f) shall be distributed as appropriate.

(g) Notwithstanding any other provision of this Lease to the contrary, no Capital Transfer Rent shall be payable with respect to: (i) any Assignment by any Subsequent Tenant, or with respect to any Transfer which consists of a sale, assignment or other transfer of an interest in a Subsequent Tenant or an interest of or in a Person who was not an original shareholder or partner in the Original Owner except to the extent that any payment or tangible or intangible property in connection with such Assignment or Transfer shall be given to the Original Owner; (ii) an Assignment by Tenant or a Transfer of any interest in Tenant, to an entity wholly owned and controlled (whether directly or indirectly) by, or an Assignment or Transfer of an interest in Tenant to, any one or more of the guarantors under the Guaranty, or the spouses, siblings, children or parents of any one or more of the guarantors under the Guaranty; any children, parents, siblings or spouses of any of the foregoing individuals or any of their children or spouses; or one or more trusts for the sole benefit of all or any one or more of the individuals identified in this clause (ii); (iii) an Initial Syndication; (iv) the proceeds of any financing obtained by an Assignee or Transferee and utilized by such Assignee or Transferee to acquire its interest under this Lease or in Tenant, as the case may be; (v) any Refinancing other than the Initial Refinancing; (vi) a Transfer of

an interest in any Tenant described in clause (ii) above to another Person identified in such clause (ii); (vii) any Assignment or Transfer to or by a Recognized Mortgagee in connection with or following a default under a Recognized Mortgage; or (viii) any insurance proceeds paid or any Award made in respect of or in connection with the Premises or any part thereof. Landlord may elect not to participate in the proceeds of a Refinancing with respect to which Adjusted Refinancing Proceeds are less than 20% of Gross Refinancing Proceeds.

(h) For purposes of this Section 3.05 and Article 24, if an Assignor or Transferor shall fail to make the Initial Transfer Rent Payment within 10 days after the same is due, Tenant shall be deemed to have been obligated to and failed to make such payment. The Initial Transfer Rent Payment due from any Assignor or Transferor to Landlord pursuant to Section 3.05(d) shall be deemed a component of Rental. Arbitrations arising under this Section 3.05 and conducted pursuant to the provisions of Article 34 shall be binding on an Assignor or Transferor as well as the Parties.

Section 3.06. Shortfall Rent. Shortfall Rent shall be payable by Tenant to Landlord in the amount, if any, by which (i) \$30,103,500 exceeds (ii) the sum of all Base Rent, Percentage Rent and Capital Transfer Rent received by Landlord with respect to the first 10 Rental Years (or which would have been received by Landlord during such period but for credits against such Rents received by Tenant pursuant to the terms and provisions of this Lease). Shortfall Rent shall be payable by Tenant to Landlord in 10 equal installments (without interest) on the 180th day of each of Rental Years 11 through 20.

Section 3.07. Special Provisions Regarding Rental. All of the amounts payable by Tenant pursuant to this Lease as Rent, and any other sums, costs, expenses or deposits which Tenant in any of the provisions of this Lease assumes or agrees to pay to and/or deposit with Landlord, shall constitute rent under this Lease and, in the event of Tenant's failure to pay any portion of Rental, Landlord (in addition to all of its other rights and remedies) shall have all of the rights and remedies provided for herein, by law or in equity in the case of non-payment of rent. All Rental payable to Landlord shall be paid in currency which at the time of payment is legal tender for payment of public and private debts in the United States of America. Tenant's obligation to pay Rental hereunder shall be absolute and unconditional under any and all circumstances, except as may be expressly provided to the contrary in this Lease. Such obligation shall not (except to the extent provided to the contrary in Sections 4.01(e) and 4.05) be reduced by taxes, assessments or other charges paid or required to be paid by Tenant, and, except as may be expressly provided to the contrary in this Lease, shall

not be affected by any circumstance of any character, including, without limitation:

(a) any set-off, counterclaim, recoupment, defense or other right whatsoever which Tenant may have;

(b) any loss or destruction of, or damage to, or condemnation or other taking of the Premises or any part thereof or interruption or cessation in the use or possession thereof by Tenant for any reason whatsoever and of whatever duration;

(c) any restriction on, prevention or curtailment of, or interference with, any use of the Premises, or any part thereof;

(d) any insolvency, bankruptcy, reorganization or similar proceeding by or against Tenant; or

(e) any Requirements now or hereafter in force. It is intended that this Lease shall yield, net to Landlord, the Rent in each year during the term of this Lease, and that, except as may be expressly provided to the contrary in this Lease, all costs, expenses and charges of every kind and nature relating to the Premises which may arise or become due or payable during or after (but attributable pro rata to a period falling within) the Term shall be paid by Tenant, and that Landlord shall be indemnified by Tenant against, and held harmless by Tenant from, Tenant's failure to timely pay the same. No payment or acceptance of any overdue payment or late charge shall constitute a waiver of, or otherwise affect (except as provided to the contrary in Article 6), any of Landlord's rights under this Lease or otherwise.

Section 3.08. Payment of Rent to City. If at any time Tenant receives a certificate executed by or on behalf of the City stating that the City is entitled to receive a specified amount of Rental from Tenant pursuant to paragraph (vi) of Article 2c of the Master Lease, Tenant is authorized and directed to pay Rental to the City (in lieu of to Landlord) to the extent specified by the City in such certificate. Tenant shall be fully protected in relying upon any such certificate, shall not be required to inquire into or be responsible for the authenticity or the due execution of any such certificate, and shall be relieved of its obligation to pay Rental to Landlord pursuant to the terms of this Lease to the extent that such Rental is paid to the City pursuant to any such certificate.

Section 3.09. Subordination of Percentage Rent.

(a) Any provision of this Lease to the contrary notwithstanding, if a Recognized Mortgagee has (i) instituted a foreclosure proceeding against Tenant and a receiver has been

appointed with respect to this Lease, the Building or the Premises, or (ii) become the Tenant (or caused its wholly-owned subsidiary to become the Tenant) under this Lease (through a foreclosure or an assignment in lieu thereof) or under a lease made pursuant to Section 11.04, then (x) during the pendency of such receivership and foreclosure proceeding (in the case of clause (i) above), and/or (y) while such Recognized Mortgagee (or its wholly-owned subsidiary) is the Tenant under this Lease or the tenant under a lease made pursuant to Section 11.04 (in the case of clause (ii) above), such receiver and/or Recognized Mortgagee (or its wholly-owned subsidiary) shall only be obligated to pay Percentage Rent to Landlord to the extent that Gross Commercial Rents with respect to a Lease Quarter exceed the sum of (A) periodic payments of interest and principal allocable to such Lease Quarter ("Debt Service") under (1) all Recognized Mortgages during the period described in clause (x) above, and/or (2) such Mortgagee's Recognized Mortgage and all Recognized Mortgages superior thereto as if the same continued to exist (but in the case of both clauses (1) and (2) above exclusive of any amounts payable as a result of any acceleration of principal payments, or any late charges, default or penalty interest, or other similar amount or charge), and (B) all costs actually incurred in the operation of the Premises for such Lease Quarter ("Operating Costs").

(b) Any provision of this Lease to the contrary notwithstanding, if a Recognized Mortgagee (or one of its wholly-owned subsidiaries) acquires the tenant's interest under this Lease through foreclosure or by an assignment in lieu of foreclosure or becomes the tenant under a lease made pursuant to Section 11.04, and such Recognized Mortgagee (or one of its wholly-owned subsidiaries) then or at any time thereafter transfers its interest under this Lease or such new lease (by assignment or otherwise) in a bona fide arms length transaction to a Person (the "Benefitted Transferee") unrelated to the Tenant hereunder immediately prior to such foreclosure, assignment in lieu of foreclosure or execution of such new lease, such Benefitted Transferee shall only be obligated to pay Percentage Rent to Landlord with respect to periods subsequent to the earlier of (i) the third anniversary of the Benefitted Transferee's acquisition of the tenant's interest under this Lease or such new lease, or (ii) the last day of the first Lease Quarter during which Gross Commercial Rents for such Lease Quarter exceeds the Benefitted Transferee's periodic payment of interest and principal with respect to all Recognized Mortgages for such Lease Quarter. In no event shall any Assignee, Transferee of all or substantially all of the interest in the Benefitted Transferee or other successor to the Benefitted Transferee be entitled to any benefit under this Section 3.09.

(c) The term "Percentage Rent Shortfall" shall equal the aggregate difference between the Percentage Rent which would

be payable by the Benefitted Transferee pursuant to Section 3.04 without regard to Section 3.09(b), and Percentage Rent as the same may be reduced by the provisions of Section 3.09(b). Tenant shall pay to Landlord sums equal in the aggregate to Percentage Rent Shortfall (and interest thereon at the Late Charge Rate from the due date of the first payment under this Section 3.09(c) through the date of payment) in twenty quarterly payments commencing on the first day of the first Lease Quarter following the earlier to occur of the events set forth in clauses (i) and (ii) of Section 3.09(b). The principal component of each such payment shall be equal to 5% of Percentage Rent Shortfall, and the interest component of each such payment shall equal all accrued and unpaid interest through the date of such payment.

(d) To the extent that a receiver, Recognized Mortgagee (or wholly-owned subsidiary thereof) or a Benefitted Transferee claims that Percentage Rent otherwise payable under Section 3.04 is not payable as and when payable under Section 3.04 due to the provisions of this Section 3.09, such receiver, Recognized Mortgagee (or wholly-owned subsidiary thereof) or Benefitted Transferee shall deliver to Landlord within 30 days following the last day of the relevant Lease Quarter a detailed statement, prepared by a certified public accountant setting forth the Gross Commercial Rents, Debt Service and in the case of a receiver or Recognized Mortgagee (or a wholly-owned subsidiary thereof), Operating Costs with respect to such Lease Quarter.

#### Section 3.10. Zoning Sunset Rent Provisions.

(a) The provisions of Section 3.10(b) and (c) shall apply if and only if (i) one or more Unavoidable Delays occurs on or prior to May 13, 1988 that (x) prevents Tenant from filing an application with the New York City Board of Standards and Appeals ("BSA") pursuant to Section 11-331 of the Zoning Resolution requesting an extension of time to permit the completion of the foundations for the Building after May 12, 1988 (the "Section 11-331 Application"), and/or (y) affects the Construction of the Building (including, without limitation, a Negative BSA Decision), so that Tenant is not permitted by the Zoning Resolution or other applicable Requirements to construct the Building with the Floor Area shown on the Schematic Drawings, the Proposed Plans and Specifications or the Plans and Specifications, whichever has been last approved by Landlord (the condition and circumstances described in this clause (i) being hereinafter referred to as a "Building Prohibition") and Tenant, on or before June 1, 1988, gives Landlord notice of the occurrence of such Building Prohibition, or (ii) the Section 11-331 Application is filed by Tenant with BSA on or before June 1, 1988 and no decision is made by BSA thereon until after May 13, 1988. For purposes of this Section 3.10 and Section 3.11 (and the definitions referred to therein), a decision by BSA on the Section 11-331 Application shall include not only a decision by BSA but also a decision or

other action by a court or other body having jurisdiction respecting whether or not completion of the foundations for the Building after May 12, 1988 is permitted pursuant to applicable law so as to permit Construction of the Building with the Floor Area shown on the Schematic Drawings, the Proposed Plans and Specifications or the Plans and Specifications, whichever was last approved by Landlord. To the extent that the provisions of Section 3.10(b) and (c) apply, they shall govern and control notwithstanding anything to the contrary elsewhere in Article 3 or in Article 39 or elsewhere in this Lease.

(b) Base Rent shall be forgiven and shall not be payable for the periods for which Development Rent and Tax Savings payments are postponed as provided in the next sentence. Tenant's payments of Development Rent (pursuant to Section 3.03) and Tax Savings (pursuant to clause (iii) of Section 39.01) shall be postponed (but not forgiven) by the number of days in the period between May 13, 1988 and: (i) the date of a Favorable BSA Decision, in the case of such decision by BSA; or in the case of the occurrence of a Building Prohibition, notice of which is given by Tenant to Landlord on or before June 1, 1988, and in the case of any Negative BSA Decision, (ii) the earlier to occur of (x) the date on which there has been a determination of Reduced Financial Terms pursuant to Section 3.11, and (y) June 1, 1989, provided that if the determination of Reduced Financial Terms is delayed beyond June 1, 1989, due to any failure by Landlord to perform any of its obligations under Section 3.11, the June 1, 1989 date shall be extended for a period equal to the period of such delay caused by such failure. If clause (ii) of the preceding sentence is applicable and there is a determination of Reduced Financial Terms on or before the date described in clause (y) of the preceding sentence, all Base Rent, Development Rent and Tax Savings payments thereafter due from Tenant shall be made by Tenant to the extent and at the times required by such determination. If clause (ii) of the next preceding sentence is applicable and there is no determination of Reduced Financial Terms on or before the date described in clause (y) of the next preceding sentence: Base Rent shall be paid by Tenant as provided in Section 3.02 from and after such date (and the payments so made shall be considered in the determination of Reduced Financial Terms as provided in clause (vi) of Section 3.11); all Development Rent and Tax Savings payments shall be made by Tenant (until and except to the extent otherwise provided by any determination of Reduced Financial Terms) on the dates required under Sections 3.03 and 39.01, respectively, as such dates are postponed pursuant to the second sentence of this Section 3.10(b) (and the payments so made shall be considered in the determination of Reduced Financial Terms as provided in clause (vi) of Section 3.11); and Base Rent, Development Rent and Tax Savings payments due from Tenant on or after the date on which there is a determination of Reduced Financial Terms shall be made by Tenant to the extent and at the times required by such determination.

(c) Any Base Rent that Tenant has paid to Landlord on account of the period described in the first sentence of Section 3.10(b) (such as Base Rent paid before the commencement of such period) shall be promptly refunded by Landlord to Tenant, and any Base Rent payable by Tenant for a portion of a month after the end of such period shall be paid within 10 days after the date on which such period expires. Base Rent shall be paid by Tenant to Landlord in accordance with the terms and provisions of Sections 3.01 and 3.02 except as otherwise expressly provided above in this Section 3.10(c) and in the first sentence of Section 3.10(b) or elsewhere in this Lease. From and after a Favorable BSA Decision, all Development Rent and Tax Savings payments shall be made by Tenant to Landlord in accordance with the terms and provisions of Sections 3.03 and 39.01 respectively, after application of the provisions of the second sentence of Section 3.10(b) and the other applicable portions of this Lease.

(d) If there is no Building Prohibition of which Tenant gives Landlord notice on or before June 1, 1988 (it being understood that a Building Prohibition includes (but is not limited to) a Negative BSA Decision being made on or prior to May 13, 1988 or Tenant being prevented from filing the Section 11-331 Application on or before May 13, 1988 due to Unavoidable Delays) and if the Section 11-331 Application is not filed by Tenant with BSA before June 1, 1988, then the provisions of Section 3.10(b) and (c) shall have no force or effect and shall not affect the obligations of Tenant to pay Base Rent, Development Rent and Tax Savings payments in accordance with Sections 3.01 and 3.02, 3.03 and 39.01, respectively.

Section 3.11. Reduced Financial Terms. The following provisions of this Section 3.11 shall apply if (a) a Building Prohibition occurs and Tenant gives Landlord notice thereof on or before June 1, 1988, or (b) there is a Negative BSA Decision after May 13, 1988 and Tenant gives Landlord notice thereof. If either of the foregoing occurs, all of the terms and provisions of this Lease having any financial effect on or consequences for the Parties (excluding, however, Articles 30 and 42, but including, without limitation, Articles 3, 5, 7, 15 and 39 and all definitions where appropriate) shall be equitably revised at the request of either Landlord or Tenant to reflect in full all financial loss and prejudice to the Parties with respect to the Parties' rights and obligations under this Lease as a result of the Building Prohibition or such Negative BSA Decision, as the case may be (the result of such revision being herein referred to as "Reduced Financial Terms"). If the Parties are unable to agree upon Reduced Financial Terms within 60 days after such request by either Landlord or Tenant, such disagreement shall be resolved by arbitration initiated at the request of either Party and conducted in accordance with the terms and provisions of Article 34 (it being agreed that such dispute does not entail or constitute a

Construction Approval), except that the arbitrators shall be and hereby are directed to consider in reaching their determination of Reduced Financial Terms (i) that the Parties intend that the Land shall be improved by Tenant constructing a building thereon (A) containing the maximum as-of-right Floor Area then permitted under applicable law (but with no increase in Floor Area in excess thereof) and (B) which, to the maximum extent practicable (considering all Requirements and other circumstances then in existence), is consistent with the Schematic Drawings and Schedule V, (ii) the reduction in the size of the building permitted to be constructed on the Land (and all lost economies of scale and prestige concomitant therewith) as compared to the size of the Building contemplated by the Schematic Drawings, (iii) that the cost to Tenant of providing the Expansion Space for Landlord must be defrayed by Tenant in the same manner as was previously true although Gross Commercial Rents will be decreased due to the decreased Floor Area of the Building, (iv) the architectural, engineering, legal and other professional fees incurred by the Parties in connection with, among other things, the redesign of the Building, any Section 11-331 Application, any public review processes and any additional financing arrangements, (v) additional interest, commitment, brokerage, managing agent and construction fees and charges incurred and that may be incurred by Tenant, (vi) the amount of Rental previously paid by Tenant, and (vii) all other relevant factors. The Parties shall comply with the provisions of Article 34 concerning such arbitration and shall cooperate and use all reasonable efforts to cause the determination of Reduced Financial Terms to be made as soon as possible pursuant to such arbitration.



## ARTICLE 4

### IMPOSITIONS

#### Section 4.01. Payment of Impositions.

(a) Tenant's Obligation to Pay Tenant's Impositions. Tenant shall pay or cause to be paid, in the manner provided in Section 4.01(c), all Impositions that at any time are assessed, levied, confirmed, imposed upon, or grow out of, become due and payable out of, or with respect to, or are charged 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 of the Premises, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder, or (vii) any Recognized Mortgage or other document to which Tenant is a party creating or transferring an interest or estate in the Premises (except any document to which Tenant becomes a party pursuant to Landlord's or the Fee Owner's request), or (viii) the use and occupancy of the Premises, or (ix) this Lease (collectively, "Tenant's Impositions"). Any provision of this Lease to the contrary notwithstanding, Tenant's Impositions shall not include and Tenant shall not in any event be obligated to pay (1) New York State Real Property Transfer Gains Taxes or New York City Real Property Transfer Taxes payable by Landlord pursuant to Section 4.01(d), (2) Landlord's Impositions (including, without limitation, Impositions with respect to the Expansion Space from and after the Expansion Space Completion Date), (3) Impositions with respect to any properties adjoining the Premises, and (4) franchise, income, profit, inheritance, succession, unincorporated business and similar taxes, whether municipal, state or federal imposed on Landlord or any Person other than Tenant or an Affiliate of Tenant.

(b) Landlord's Obligation to Pay Landlord's Impositions. Landlord shall pay, if, when and to the extent required by the last two sentences of this Section 4.01(b), all Impositions that at any time are assessed, levied, confirmed, imposed upon, or grow out of, become due and payable out of, or with respect to, or are charged with respect to (i) Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), or (ii) the sidewalks or streets in front of or adjoining Carnegie Hall, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of Carnegie Hall, or (v) any personal property or other facility used in the operation of Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), or (vi) any rent or other sums payable by Landlord under or pursuant to the Master Lease, or (vii) any document to which

Landlord is a party (except this Lease and any document to which Landlord becomes a party pursuant to Tenant's request), or (viii) the use and occupancy of Carnegie Hall, including the Expansion Space from and after the Expansion Space Completion Date (collectively, "Landlord's Impositions"). Notwithstanding any other provision of this Lease, Landlord's Impositions shall not include, and Landlord shall not be required to pay, any Impositions with respect to any properties adjoining Carnegie Hall (other than the Expansion Space from and after the Expansion Space Completion Date). Unless a dispute respecting Landlord's Impositions arises between Landlord and any Governmental Authority imposing any of Landlord's Impositions, Landlord shall pay all of Landlord's Impositions before the later of the date the same become a lien or otherwise encumber the Premises or the date same are payable, but if a lien is filed against or otherwise encumbers the Premises, and such lien was created or caused by Landlord's failure to pay Landlord's Impositions, Landlord shall, within 30 days after notice from Tenant following the filing of such lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Landlord shall not be required to discharge any such lien if Landlord shall have (x) furnished Tenant (or a Recognized Mortgagee if such Recognized Mortgagee requires security with respect to such lien pursuant to the terms and provisions of its Recognized Mortgage) with a cash deposit, bond or other security reasonably satisfactory to Tenant (or such Recognized Mortgagee, as the case may be), in an amount sufficient to pay the lien with interest and penalties, and (y) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if despite Landlord's efforts to seek discharge of the lien, such lien creates a default under any Recognized Mortgage or Tenant (or such Recognized Mortgagee, as the case may be) reasonably believes such lien is about to be foreclosed and Tenant (or such Recognized Mortgagee) so notifies Landlord, Landlord shall immediately cause such lien to be discharged of record, failing which Tenant (or such Recognized Mortgagee, as the case may be) may use the security furnished by Landlord in order to (A) bond the lien, or (B) if Tenant (or such Recognized Mortgagee, as the case may be) has received written advice from an attorney that an imminent foreclosure of the Premises is likely or that the lien cannot be discharged of record by bonding, to otherwise discharge the lien.

(c) Payments of Tenant's Impositions. Subject to the provisions of Section 35.02, each of Tenant's Impositions or any installment thereof shall be paid not later than the due date thereof. However, if by law, at the payor's option, any of Tenant's Impositions may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Tenant's Impositions), Tenant may exercise the option to pay Tenant's Impositions in such installments, and shall be responsible for the payment of all such installments, together with any interest or

other charges with respect thereto. If, other than as a result of its contest of Tenant's Impositions in accordance with the terms and provisions of Section 35.02, Tenant fails on more than one occasion in any twelve-month period to make any payment of one or more of Tenant's Impositions (or any installment thereof) on or before the due date thereof, Tenant shall, at Landlord's request made within 60 days following any such failure, pay all of Tenant's Impositions or installments thereof payable by Tenant during the twelve-month period following Landlord's request not later than 10 days before the due date thereof. Any such request by Landlord shall be in addition to (and not in lieu of) any other remedies available to Landlord.

(d) Gains and Transfer Taxes. Notwithstanding anything to the contrary contained in this Lease or otherwise, but subject to the last sentence of Section 38.01, Landlord shall pay all New York State Real Property Transfer Gains Taxes and New York City Real Property Transfer Taxes, if any, assessed or levied as a result of (i) the execution, delivery and/or recording in connection therewith of this Lease (or a memorandum hereof), (ii) the execution, delivery and/or recording in connection therewith of a lease entered into pursuant to Section 11.04(b) (or a memorandum thereof), (iii) the execution, delivery and/or recording in connection therewith of amendments, modifications or restatements of this Lease pursuant to Sections 10.01(a), 3.10 and/or 3.11, and/or (iv) the execution, delivery and/or recording in connection therewith of confirmatory memoranda confirming or clarifying this Lease. Any provision of this Lease to the contrary notwithstanding, any New York State Real Property Transfer Gains Taxes or New York City Real Property Transfer Taxes assessed or levied in the future for any reason or with respect to any event except those set forth in clauses (i) through (iv) of the first sentence of this Section 4.01(d) shall not be part of either Landlord's Impositions or Tenant's Impositions, and the terms and provisions of this Lease shall not govern the responsibility to pay the same.

(e) Breach By Landlord. If Landlord breaches or defaults in the performance of all or any one of its obligations under Section 4.01(b) and fails to cure such breach or default within 30 days after notice from Tenant, Tenant may pay Landlord's Impositions for the account of Landlord, and Tenant shall be entitled to have and shall receive a credit against the next payment(s) of Rental due to Landlord in an amount equal to the amount of Landlord's Impositions so paid by Tenant and interest thereon at the Late Charge Rate from the date of payment through the date such credit is received by Tenant.

Section 4.02. Evidence of Payment. Unless Tenant is contesting Tenant's Impositions in accordance with the terms and provisions of Section 35.02, Tenant shall furnish Landlord, within 45 days after the date when each of Tenant's Impositions is due

and payable, cancelled checks or, at Tenant's option, other evidence reasonably satisfactory to Landlord, evidencing the timely payment thereof. Additionally, if requested by Landlord, Tenant shall furnish to Landlord, as soon following Landlord's request as is reasonably practicable, official receipts of the appropriate taxing authority (or other proof reasonably satisfactory to Landlord) evidencing the timely payment of such Tenant's Impositions.

Section 4.03. 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 was due and unpaid at the time of the making or issuance of such certificate, advice or bill, or at the time or date stated therein.

Section 4.04. Apportionment of Imposition. Any of Tenant's Impositions 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 between Landlord and Tenant as of the Commencement Date or the Expiration of the Term, as the case may be, so that Tenant shall pay that portion (and only that portion) of such Tenant's Impositions which that part of such fiscal period included in the Term bears to the fiscal period of the taxing authority. Any Imposition with respect to the Expansion Space which is partially attributable to a period before the Expansion Space Completion Date and partially attributable to a period after the Expansion Space Completion Date shall be apportioned between Landlord and Tenant as of the Expansion Space Completion Date so that Tenant shall bear that portion (and only that portion) of such Imposition which is attributable to the period during the Term before the Expansion Space Completion Date and Landlord shall bear that portion of such Imposition attributable to the period after the Expansion Space Completion Date.

Section 4.05. Taxes. Landlord hereby represents that the Fee Owner is obligated, pursuant to the terms of the Master Lease, to timely pay, cancel or otherwise satisfy and discharge of record any and all Taxes, and that Landlord will not change, alter, amend or modify such provisions without Tenant's prior written consent. If and to the extent the Fee Owner shall fail to timely pay, cancel or otherwise satisfy and discharge any and all Taxes, then Tenant may pay such Taxes, together with any interest or penalties thereon, and deduct such payment (together with interest thereon at the Late Charge Rate from the date of payment through the date such payment is deducted from Rent) from the next installment(s) of Rent.

Section 4.06. Separate Tax Lots. Either Party may seek to cause the Premises, on the one hand, and Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), on the other hand, to be treated as separate and independent tax lots (and the other Party shall cooperate with such effort in all reasonable respects), it being the desire of the Parties that the calculation, assessment and payment of Tenant's Impositions and Landlord's Impositions (and governmental enforcement of the payment thereof) shall be separate and independent. Nothing in this Section 4.06 shall be deemed to affect Section 35.05.

Section 4.07. Allocation of Impositions. If and to the extent that an Imposition imposed against both the Premises and Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) is not separately allocated to the Premises, on the one hand, and Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), on the other hand, such Imposition shall be equitably allocated between Landlord's Impositions and Tenant's Impositions. If the Parties shall fail to agree upon such equitable allocation then, upon the request of either Party, such allocation shall be determined by arbitration conducted in accordance with the provisions of Article 34. The Parties shall cooperate with each other in all reasonable respects regarding the payment of any Imposition which is imposed against both the Premises and Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date).

## ARTICLE 5

### THROUGH BLOCK CONNECTION AND SUBWAY WORK

Section 5.01. Sidewalk and Subway Work. Tenant shall perform the work described in Paragraph 3(1) of the Restrictive Declaration (the "Subway Work") in accordance with the terms and provisions thereof.

### Section 5.02. After-Hours Operation Of Through Block Connection.

(a) Extended Hours. If and to the extent Tenant is required pursuant to the Restrictive Declaration to keep the Through Block Connection open at times (the "Extended Hours") other than the periods of time required pursuant to the applicable provisions of the Zoning Resolution from time to time, Landlord shall bear all of the actual out-of-pocket incremental expenses incurred by Tenant due solely to the operation of the Through Block Connection during Extended Hours (the "Incremental Expenses"). Landlord hereby acknowledges that (i) the currently applicable provision of the Zoning Resolution is Section 81-462(e) which provides that a "through block connection shall be accessible to the public from 8:00 a.m. to 7:00 p.m. on the days the building or development is open for business", and accordingly (ii) if the Building is open for business at times similar to the times typical first-class office buildings located in Manhattan are open for business as of the date hereof, the Zoning Resolution as of the date hereof would require the Through Block Connection to be open only from 8:00 a.m. to 7:00 p.m. Monday through Friday and not on major holidays. For the purposes of this Section 5.02, the Zoning Resolution shall be deemed to mandate the initial opening of the Through Block Connection to the public on the same day as the Through Block Connection is actually first opened to the public.

(b) Payment Provisions. Tenant shall submit to Landlord, not more than 120 days following the end of each Lease Year during which there are Incremental Expenses, a statement prepared and certified as correct by the Certified Public Accountant, setting forth in reasonable detail the amount and a description of the Incremental Expenses with respect to such Lease Year. Within 10 business days following its receipt of each such statement, Landlord shall, subject to the provisions of Section 5.02(c), pay to Tenant the amount of Incremental Expenses thereon stated to be due, together with interest on such amount calculated at the Cost of Funds Rate from September 1 of the Lease Year covered by such statement through the date of payment. If, within 30 days following receipt of such statement, Landlord fails to notify Tenant that Landlord does not agree with such statement,

or, if having timely notified Tenant of its disagreement with such statement, Landlord fails within 60 days after giving Tenant such notice to provide the documentation with respect to such disagreement that is hereinafter required in this Section 5.02(b), such statement shall be controlling as to the Incremental Expenses for such Lease Year. If, however, Landlord shall timely notify Tenant that Landlord disagrees with such statement and shall within 60 days thereafter deliver to Tenant an independent certified public accountant's statement explaining in reasonable detail the reasons for (and amount of) such disagreement, Landlord and Tenant shall attempt to agree on Incremental Expenses with respect to the relevant Lease Year for a period of 20 days following Tenant's receipt of such statement. If Landlord and Tenant fail to so agree within such 20 day period, Incremental Expenses with respect to the relevant Lease Year shall, upon the request of either Party, be determined by arbitration conducted in accordance with Article 34. If Landlord and Tenant agree, or if it is determined in such arbitration, that the amount set forth as Incremental Expenses in the statement submitted by Tenant to Landlord and paid or credited by Landlord was in excess of the actual Incremental Expenses, any such excess shall be paid to Landlord by Tenant within 10 business days following such agreement or determination, together with interest at the Late Charge Rate on such excess from the date(s) paid or credited by Landlord through the date of repayment by Tenant. Tenant shall promptly provide Landlord or its agents with such information as Landlord or its agents may reasonably request from time to time with respect to Incremental Expenses, and shall cooperate (and cause the Certified Public Accountant to cooperate) in all reasonable respects with the independent certified public accountant's preparation of the above-mentioned statement on behalf of Landlord.

(c) Credits in Lieu of Payments. Any provision of Section 5.02(b) to the contrary notwithstanding, Landlord may elect, by notice given to Tenant not later than the due date of any payment required by Section 5.02(b), to credit all or any part of Incremental Expenses payable by Landlord pursuant to Section 5.02(b) against the next installment(s) of Percentage Rent payable by Tenant (in which case the interest payable at the Cost of Funds Rate with respect thereto shall run through the date of such credit), and to the extent of such credits, Landlord shall be relieved of its payment obligations under Section 5.02(b).

(d) Reduction of Extended Hours. Either or both of Landlord and Tenant may, at their own expense, endeavor to cause the Restrictive Declaration to be amended so as to reduce or eliminate the requirement for operation of the Through Block Connection during Extended Hours, and the other Party shall cooperate in all reasonable respects with any efforts made by a Party with regard thereto.

Section 5.03. Credits Against Tax Savings Payments. As compensation for accepting title to the Premises subject to the Tea Room Encroachments and the Tea Room Agreement, constructing a slab in the Expansion Space as specified in Schedule V and performing the Subway Work, Tenant shall be entitled to have and shall receive a \$485,000 credit (the "Tax Savings Credit") against the amounts otherwise payable by Tenant pursuant to Article 39, provided however, that if, prior to commencing or contracting for the Subway Work, Tenant is entirely relieved in writing by Landlord, the Fee Owner and the City (acting through both its Department of Cultural Affairs and Department of General Services) of Tenant's obligation to perform the Subway Work, the Tax Savings Credit shall be reduced to \$360,000.



## ARTICLE 6

### LATE CHARGES

If any payment of Rental due to Landlord is not received by Landlord on or before the tenth day following the day on which it becomes due in accordance with the terms and provisions of this Lease, then Landlord may, in lieu of any other administrative, interest or other charge or money damages in connection with the late payment of Rental, but in addition to (and without prejudice to) all of Landlord's other rights and remedies under this Lease and otherwise, charge Tenant a late charge on the Rental so overdue, calculated at the Late Charge Rate from the day following the day such Rental became due through the date on which actual payment of such Rental is unconditionally tendered to or received by Landlord. Tenant shall pay Landlord, within 10 days after demand, which may be made from time to time, all late charges. No failure by Landlord to request the payment of a late charge or to insist upon the strict performance by Tenant of its obligations 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 or limit the grace periods or notice periods provided in Article 11, Article 24, or elsewhere in this Lease.

## ARTICLE 7

### INSURANCE

#### Section 7.01. Insurance Requirements

##### (a) Commencement Date Insurance Coverage Requirements.

From the Commencement Date until the first date on which any excavation or other work on the Land with respect to Construction of the Building by, for or on behalf of Tenant shall have commenced (the "Starting Date"), Tenant shall carry (or, in lieu thereof, cause to be carried by Subtenants, contractors, licensees, agents or other third parties), and keep (or, in lieu thereof, cause to be kept) in full force and effect itself (or in lieu thereof by any of the aforementioned parties without any need for duplication or any requirement that any one party or any particular party supply all or any particular part of the requisite insurance coverage), insurance coverage of the types and in minimum limits as follows:

(i) Liability Insurance. Comprehensive General Liability Insurance with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, against liability for personal injury, including bodily injury and death, and property damage. Such comprehensive general liability insurance shall be on an occurrence basis, and shall specifically include:

Contractual Liability covering Tenant's obligation to indemnify Tenant's Indemnitees (to the extent they have insurable interests) as required under Article 20; and

Motor Vehicle Liability coverage for all owned and non-owned vehicles.

All insurance against liability for personal injury, including bodily injury and death, and property damage specified in this Section 7.01(a)(i) shall be written for a combined single limit of not less than \$25,000,000, except that automobile liability and property damage coverages shall have a minimum combined single limit of not less than \$5,000,000.

(ii) Statutory Workers' Compensation and Disability Insurance. Statutory Workers' Compensation Insurance and New York Disability Benefits Insurance covering such individuals as are required by applicable laws and regulations to be so covered.

(iii) Miscellaneous Insurance. If the Starting Date does not occur within 120 days following the Commencement Date, such other insurance in such amounts as from time to time reasonably may be required by Landlord against such other insurable hazards as at the time are commonly insured against in the case of premises similar to the Premises.

(b) Construction Insurance Coverage Requirements. From the Starting Date until Construction of the Building is completed, Tenant shall, subject to the terms and provisions of Section 7.01(f), provide (or, in lieu thereof, cause to be provided by Subtenants, contractors, licensees, agents or other third parties), and keep (or, in lieu thereof, cause to be kept) in full force and effect itself (or, in lieu thereof, by any of the aforementioned parties without any need for duplication or any requirement that any one party or any particular party supply all or any particular part of the requisite insurance coverage), insurance coverage of the types and in minimum limits as follows:

(i) Contractor's Comprehensive/Motor Vehicle. Contractor's Comprehensive and Motor Vehicle Liability Insurance for a combined single limit of not less than \$50,000,000 for personal injury, including bodily injury and death, and property damage, such insurance to be on an occurrence basis and to include Operations Premises Liability, Contractor's Protective Liability on the operations of all subcontractors, Completed Operations, Contractual Liability (designating the indemnity provisions of the Construction Agreements), and Motor Vehicle Liability for all owned and non-owned vehicles, and, if the contractor is undertaking foundation, excavation or demolition work, an endorsement that such operations are covered and that the "XCU Exclusions" have been deleted.

(ii) Statutory Workers' Compensation and Disability Insurance. Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance covering such individuals as are required by applicable laws and regulations to be so covered.

(iii) Builder's Risk. Builder's Risk Insurance (standard "All Risk") written on a completed value (nonreporting) basis, naming Tenant as an insured and Landlord, the Fee Owner and the general contractor or construction manager, if any, and all subcontractors employed by Tenant or the general contractor or construction manager, if any, as additional named insureds, as their respective interests may appear. Such insurance policy (A) shall contain a written acknowledgment (annexed to the policy) by the insurance

company that its right of subrogation has been waived with respect to all of the insureds and any Recognized Mortgagees named in such policy, and an endorsement stating that "permission is granted to complete and occupy", and (B) if any off-site storage location is used, shall cover, for full insurable value, all materials and equipment at any off-site storage location used with respect to the Premises.

(iv) Demolition/Increased Cost of Building Codes. Insurance (provided by endorsement) in an amount not less than \$10,000,000 against subsequent costs of demolition and against increased costs of construction attributable to building code requirements in the event that any hazard insured against hereunder results in a loss.

(v) Indemnification. Contractual Indemnification Insurance covering Tenant's obligation to indemnify Tenant's Indemnitees (to the extent they have insurable interests) as required under Article 20.

(vi) Miscellaneous Insurance. Such other insurance in such amounts as from time to time reasonably may be required by Landlord (with Fee Owner Input) against such other insurable hazards as at the time are commonly insured against in the case of premises similar to the Premises and construction and other operations of a size and nature similar to the construction and other operations being conducted at the Premises. If Tenant disputes such requirement, upon the request of either Party such dispute shall be resolved by arbitration conducted in accordance with Article 34. If such dispute is not resolved within 90 days after the same first arose, Tenant shall procure the insurance required by Landlord pending the resolution of such dispute. If such requirement is subsequently determined to have been unreasonable, Landlord shall reimburse Tenant for all increased or additional insurance premiums actually incurred by Tenant to comply with such requirement within 20 days following Tenant's demand therefor, together with interest on such amount at the Late Charge Rate from the date first paid through the date repaid by Landlord (or credited) to Tenant. If Landlord fails to pay Tenant such amounts as set forth in the preceding sentence, Tenant shall be entitled to have and shall receive a credit against the next payment(s) of Rent equal to such amounts.

(c) Insurance Coverage Requirements During Occupancy. From the first date upon which any occupancy of the Building by a Subtenant occurs until the Expiration of the Term, Tenant shall,

subject to the terms and provisions of Section 7.01(f), carry (or, in lieu thereof, cause to be carried by Subtenants, agents or other third parties), and shall keep (or, in lieu thereof, cause to be kept) in full force and effect itself (or in lieu thereof, by any of the aforementioned parties without any need for duplication or any requirement that any one party or any particular party supply all or any particular part of the requisite insurance coverage), insurance coverage of the types and in minimum limits as follows:

(i) Property Insurance. To the extent such coverage is not provided by Builder's Risk Insurance carried pursuant to Section 7.01(b)(iii), insurance on the Building under an "All Risk of Physical Loss" policy including, without limitation, coverage for loss or damage by water, flood, subsidence and earthquake (excluding, at Tenant's option, from such coverage normal settling only) and, when and to the extent obtainable from the United States government or any agency thereof, war risks; such insurance to be written on an "Agreed Amount" basis, in an amount of not less than 90% of full replacement value of the Building (the "Replacement Value") from time to time. If not otherwise included within the "All Risk of Physical Loss" coverage specified above, Tenant shall carry or cause to be carried, by endorsement to such "All Risk of Physical Loss" policy, coverage against damage due to water and sprinkler leakage, flood, collapse and earthquake. Coverage with respect to losses caused by flood or earthquake shall be in an amount of not less than \$10,000,000 and coverage against damage due to water and sprinkler leakage or collapse shall be written with limits of coverage of not less than 90% of the Replacement Value per occurrence. The Replacement Value shall include the cost of debris removal and the value of foundations, shall not in any event be reduced by depreciation or obsolescence of the Building, and shall be initially determined at Tenant's option by (x) an appraiser selected by Tenant and approved by Landlord with Fee Owner Input (which approval shall not be unreasonably withheld or delayed), or (y) Tenant's primary property insurer with respect to the Building. The amount of insurance provided under this Section shall be not less than 90% of the actual Replacement Value from time to time without regard to any determination of the Replacement Value by Tenant. At least once every 5 years following the date of Initial Occupancy, Tenant shall notify Landlord of the Replacement Value. In addition to its other rights and remedies under this Lease, if Landlord contests the initial or any subsequent determination of the Replacement Value within 30 days after receiving notice

of the same, Landlord may (with Fee Owner Input) elect to have the Replacement Value determined by appraisal conducted in accordance with Article 34. Pending such determination by appraisal, Tenant shall maintain insurance based on its determination of the Replacement Value. Notwithstanding the previous sentence, if at any time, Tenant's determination of the Replacement Value is less than the Replacement Value effective prior to such determination, Tenant shall not reduce its insurance coverage based upon its determination of the Replacement Value unless and until Landlord notifies Tenant that it agrees with such lower determination of the Replacement Value, is deemed to have so agreed or the Replacement Value is determined by appraisal as provided in this Section 7.01(c)(i). Landlord shall be deemed to have agreed with Tenant's determination of Replacement Value if it does not otherwise notify Tenant within 30 days following notice to Landlord of the initial or any subsequent determination of the Replacement Value. Promptly after each such determination is made, the amount of insurance hereunder shall be adjusted in accordance with such determination and the requirements of this Section 7.01(c)(i). Such "All Risk of Physical Loss" policy hereunder shall state that the valuation of any loss to be determined thereunder shall be made on a replacement cost basis, and also shall contain an endorsement whereby the insurer waives all coinsurance requirements.

(ii) Liability Insurance. Comprehensive General Liability Insurance with respect to the Premises and the operations related thereto, whether conducted on or off the Premises, against liability for personal injury, including bodily injury and death, and property damage. Such comprehensive general liability insurance shall be on an occurrence basis and shall specifically include:

Garage Keeper's Legal Liability, if applicable;

Sprinkler Leakage Legal Liability, if applicable;

Contractual Liability (covering Tenant's obligation to indemnify Tenant's Indemnitees (to the extent they have insurable interests) as required under Article 20;

Water Damage Legal Liability;

Products Liability (if applicable); and

- (F) Motor Vehicle Liability coverage for all owned and non-owned vehicles.

All insurance against liability for personal injury, including bodily injury and death, and property damage specified in Section 7.01(c)(ii) shall be written for a combined single limit of not less than \$50,000,000, except that automobile liability and property damage coverage shall have a minimum combined single limit of not less than \$5,000,000.

(iii) Statutory Workers' Compensation and Disability Insurance. Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance covering such individuals as are required by applicable laws and regulations to be so covered.

(iv) Rent Insurance. Rent Insurance ("Rent Insurance") on an "All Risks of Physical Loss" basis in an amount equal to not less than 1 year's then current Base Rent, estimated (based on the preceding year) Percentage Rent, and insurance premiums.

(v) Boiler and Machinery Insurance. Boiler and Machinery Insurance in an amount not less than 85% of the replacement cost from time to time of such boilers, if any, and other machinery located on the Premises.

(vi) Demolition/Increased Cost of Building Codes. Insurance (provided by endorsement) in an amount of not less than \$10,000,000 against subsequent costs of demolition and against increased costs of construction attributable to building code requirements in the event that any hazard insured against hereunder results in a loss.

(vii) Miscellaneous Insurance. Such other insurance in such amounts as from time to time reasonably may be required by Landlord (with Fee Owner Input) upon not less than 60 days' notice to Tenant against such insurable hazards as at the time are commonly insured against in the case of premises similar to the Premises. If Tenant disputes any such requirement, upon the request of either Party such dispute shall be resolved by arbitration conducted in accordance with Article 34. If such dispute is not resolved within 90 days after the same first arose, Tenant shall procure the insurance required by Landlord pending the resolution of such dispute. If such requirement is subsequently determined to have been unreasonable, Landlord shall reimburse Tenant for all increased or additional insurance

premiums actually incurred by Tenant to comply with such requirement within 20 days following Tenant's demand therefor, together with interest on such amount at the Late Charge Rate from the date first paid through the date repaid by Landlord (or credited) to Tenant. If Landlord fails to pay Tenant such amounts as set forth in the preceding sentence, Tenant shall be entitled to have and shall receive a credit against the next payment(s) of Rent equal to such amounts.

(d) Named Insured. All insurance provided by or on behalf of Tenant pursuant to the provisions of this Article shall name Tenant as a named insured and, except for the insurance provided pursuant to Sections 7.01(a)(ii), 7.01(b)(ii) and 7.01(c)(iii), and except as otherwise provided in Section 7.02(b), shall also name Landlord, the Fee Owner and PDC (if it has an insurable interest) as additional named insureds. All insurance provided by or on behalf of Tenant pursuant to the provisions of Sections 7.01(a)(i) and 7.01(b)(i) shall also name the general contractor and construction manager (if any) as additional named insureds. Any insurance policy to be carried hereunder may name a Mortgagee either as an additional named insured or under a mortgagee endorsement only if such Mortgagee is a Recognized Mortgagee.

(e) Adjustment of Amounts. Not more often than once every 6 years Landlord may notify Tenant that Landlord believes the amounts of insurance required by Section 7.01(c)(ii) or (vi), or the amount of insurance required by Section 7.01(c)(i) covering losses caused by flood and earthquake should be increased so as to provide suitable insurance coverage in light of then current circumstances, which notice shall set forth the amount of such increases that Landlord believes are appropriate. If Tenant does not dispute the amount of the increases set forth in Landlord's notice within 30 days following Tenant's receipt thereof, the amounts of insurance required hereunder shall be increased as set forth in Landlord's notice. If Tenant shall timely dispute Landlord's notice and Landlord and Tenant fail to agree within 30 days thereafter as to the amounts of insurance to be maintained pursuant to such provisions, upon request of either Party, such dispute shall be resolved by arbitration conducted in accordance with Article 34, and the insurance required hereunder shall be adjusted in accordance with the determination of the arbitrators.

(f) Exception to Insurance Requirements. If and/or to the extent any insurance or the amount thereof required pursuant to the terms and provisions of Section 7.01(b) or (c) is at any time no longer commonly carried (or the amount of the deductible specified in Section 7.02(j) is no longer appropriate) with respect to premises similar to the Premises and operations of a size and nature similar to the operations conducted at the Premises due to changes in insurance practices in the New York



area or general unavailability, then Tenant shall so notify Landlord, and to such extent, Tenant shall be relieved of its obligations under Section 7.01(b) or (c) to carry such insurance (or under Section 7.02(j)) with respect to the amount of the deductible) upon the earlier to occur of (i) Landlord's agreement with Tenant as to the types and amounts of insurance that are no longer so commonly carried or are generally unavailable (or the amount of the deductible that should be set forth in Section 7.02(j)), or, if Landlord fails to so agree with Tenant within 30 days following Tenant's notice to Landlord, (ii) a determination by an arbitration conducted in accordance with Article 34 at the request of either Party of the types and/or amounts of insurance that are no longer so commonly carried or that are generally unavailable (or of the amount of the deductible that should be set forth in Section 7.02(j)).

**Section 7.02. Application of Proceeds and  
General Requirements Applicable  
to Policies.**

(a) Proceeds of Insurance in General. Any proceeds received pursuant to the property, boiler and machinery, builder's risk, and demolition/increased cost of building codes insurance coverages required by this Article 7 (and proceeds of any other types of insurance required to be maintained pursuant to Sections 7.01(b)(vi) or 7.01(c)(vii), except to the extent such proceeds are paid directly to third parties) shall be payable (i) to Tenant, as trustee, if the amount thereof, when aggregated with all such proceeds then held by Tenant, is less than \$2,500,000 (Subject to Indexing) or, (ii) to Depositary if the amount thereof exceeds the limit set forth in clause (i) of this sentence, and shall be deposited by Depositary in an interest-bearing account. If insurance proceeds payable with respect to a property loss are payable to Tenant, Tenant, in accordance with and subject to the provisions of Article 8 (and notwithstanding any contrary provision in any Mortgage), (x) shall hold the insurance proceeds received by it with respect to such loss in trust for the purpose of paying the cost of the Casualty Restoration, and (y) shall apply such proceeds to the payment in full of the cost of such Casualty Restoration before using any part of the same for any other purpose.

(b) Proceeds of Rent Insurance. Rent Insurance shall be carried in the name of Landlord as named insured and shall be payable to Depositary. Depositary shall pay proceeds of Rent Insurance to Landlord, at the times and in the manner Rent is to be paid pursuant to Article 3, such proceeds to be applied first on a dollar for dollar basis to Rent, Tenant's Impositions and other sums payable by Tenant to Landlord under this Lease and allocable to the period from the occurrence of the damage or destruction until substantial completion of the Casualty Restoration as determined in accordance with the provisions of

Section 13.05. The balance of Rent Insurance proceeds, if any, after their application in accordance with the provisions of this Section 7.02(b), shall be paid immediately to Tenant. Tenant shall be relieved of its obligation to pay Rental, Tenant's Impositions and other sums payable by Tenant under this Lease to the extent that Depositary pays such sums to Landlord (or, in the case of Tenant's Impositions, to the appropriate Person) within 10 days after same are due.

(c) Insurance Carriers and Form of Policies. All insurance required by this Article shall be issued by insurance companies licensed or authorized to do business in the State and rated by Bests Insurance Reports (or any successor publication of similar standing) as "B-9" or better (or the equivalent of such rating). All insurance policies required by this Article shall be obtained by Tenant for periods of not less than 1 year (or if such policies are not then available for periods of at least 1 year in the case of premises similar to the Premises, then for the longest period then commonly obtained). A true and complete copy, signed by an authorized representative of the insurer, of each such policy shall be delivered to Landlord and the Fee Owner within 10 business days following its receipt by Tenant or its Affiliate from any insurance company or companies, except that if any insurance carried by Tenant is effected by one or more blanket policies, then, with respect to such insurance, true abstracted policies relating to the Premises shall be so delivered to Landlord and the Fee Owner. True and complete copies of new or renewal policies replacing any policies expiring during the Term shall be delivered to Landlord and the Fee Owner as soon as is reasonably practicable following the expiration of expired policies, and evidence of renewal policies, in the form of binders that cannot be modified so as to reduce coverage or be cancelled for any reason (including failure to pay premiums and any other charges) without at least 25 days prior written notice to Landlord, shall be delivered to Landlord not less than 25 days before the expiration dates of all expiring policies.

(d) Payment of Premiums. Tenant shall pay, cause to be paid, or otherwise satisfy the premiums for all insurance required hereunder at such times and in such manner so that there shall be no lapse or interruption in coverage under such insurance. Tenant shall provide to Landlord promptly after demand by Landlord (which may be made at any time and from time to time) evidence reasonably satisfactory to Landlord (with Fee Owner Input) that the requirements with respect to premiums for the insurance required to be maintained under Section 7.01 have been satisfied.

(e) Cooperation in Collection of Proceeds. Tenant, the Fee Owner and Landlord shall cooperate in connection with the collection of any insurance moneys that may be payable in the event of loss, and Tenant, the Fee Owner and Landlord shall execute and deliver such proofs of loss and other instruments as

may be required of Tenant, the Fee Owner or Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys. The Fee Owner shall execute documents, endorse checks and otherwise comply with the provisions of this Section 7.02(e), and shall upon request provide Landlord and Tenant with the name and address of an individual or entity authorized and directed to so act.

(f) Separate Property Insurance. Tenant shall not carry separate property insurance concurrent in form or contributing in the event of loss with that required by this Lease unless Landlord is named thereon as an additional insured, with loss payable as provided in this Lease. Tenant shall notify Landlord promptly if it is carrying such separate insurance, and shall cause true and complete copies of such policies or true copies of abstracts of such policies to be delivered to Landlord promptly after such policies become effective and are received by Tenant.

(g) Adjustments for Claims. All property insurance policies required by this Article shall provide that all adjustments for claims with the insurers involving a loss of less than \$2,500,000 (Subject to Indexing) per claim shall be made with Tenant only. All adjustments for claims with the insurers involving a loss of \$2,500,000 (Subject to Indexing) or more per claim shall be made with Tenant (subject to the rights of all Recognized Mortgagees), but shall require the consent of Landlord (with Fee Owner Input) which shall not be unreasonably withheld, and, in any event, Landlord shall not withhold its consent to any adjustment of a claim approved by one or more Recognized Mortgagees holding Recognized Mortgage(s) with a then current principal balance of more than 50% of the then current Replacement Value. If the parties are unable to determine, mutually in advance of an adjustment, whether the loss is less than \$2,500,000 (Subject to Indexing), then the estimated cost of the Restoration, as estimated in accordance with the provisions of Section 8.02(b), shall be conclusive for purposes of determining with whom the adjustments are to be made. All loss proceeds, however, shall be payable to Tenant or Depositary, as provided in Section 7.02(a), based upon the actual amount of the loss as such amount has been determined by adjustment with the insurer.

(h) Compliance With Policy Requirements. Tenant shall not violate or knowingly permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article 7. 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 and the companies writing such policies so that, at all times, companies meeting the criteria set forth in Section 7.02(c) provide and maintain in full force and effect the insurance required by this Article 7.

(i) Required Insurance Policy Clauses. To the extent from time to time available, each policy of insurance required to be carried pursuant to the provisions of this Article 7 shall contain (A) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (B) an agreement by the insurer that such policy shall not be cancelled, modified or denied renewal for any reason (including, without limitation, failure to pay premiums and other charges) without at least 25 days' prior written notice to Landlord and the Fee Owner, and (C) a waiver by the insurer of any right to recover the amount of any loss resulting from the negligence of Landlord, the Fee Owner, or their agents or employees.

(j) Amount of Deductible. To the extent that any insurance required to be carried under this Article 7 provides for a deductible, such deductible shall not exceed \$100,000 (Subject to Indexing) per occurrence or 2% of the insured amount in the case of flood and earthquake insurance.

Section 7.03. Blanket and/or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Article 7 may, at Tenant's option, be effected by blanket and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and expressly allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all parties required to be named as insureds hereunder, without possibility of reduction of the amounts payable with respect to the Premises below the levels required by this Article 7, or coinsurance by reason of, or because of damage to, any other properties named therein (or claims with respect thereto). If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord and the Fee Owner true and complete copies of such policies as provided in this Article 7, together with schedules (provided by the issuing insurance company or an agent therefor who is authorized to do so) annexed thereto setting forth the amount of insurance applicable to the Premises. The provisions of Section 7.02(d) shall apply to the payments of premiums with respect to such blanket or umbrella policies.

## ARTICLE 8

### DAMAGE, DESTRUCTION AND RESTORATION

Section 8.01. Notice to Landlord. Tenant shall notify Landlord and the Fee Owner as soon as is practicable if the Building is damaged or destroyed in whole or in material part by fire or other casualty. Landlord shall notify Tenant and the Fee Owner as soon as is practicable if (a) the Expansion Space (from and after the Expansion Space Completion Date), (b) the means of access to and from the Expansion Space, and/or (c) the exterior of Carnegie Hall is damaged or destroyed in whole or material part by fire or other casualty.

### Section 8.02. Casualty Restoration.

(a) Obligation to Restore. If all or any portion of the Building 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 8 and Article 13, restore the Building to substantially its value, and, with respect to all Reviewable Matters (unless otherwise agreed to by Landlord), as nearly as possible to the character of all such Reviewable Matters, as existed immediately before such casualty (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 Casualty Restoration. Nothing contained in this Article 8 shall be construed to expand any rights Landlord may have to approve, disapprove or review Tenant's plans or specifications with respect to any Casualty Restoration.

(b) Estimate of Construction Work Cost. As soon as is practicable, but in any event within 75 days following damage to or destruction of all or a portion of the Building, Tenant shall furnish Landlord and the Fee Owner with an estimate of the cost of the Casualty Restoration with respect thereto prepared by (i) Tenant (if Tenant so elects) if Tenant in good faith estimates (after appropriate investigation) that the cost of such Casualty Restoration shall be less than \$1,250,000 (Subject to Indexing) or (ii) a Qualified Architect in all other cases. Landlord, at its election and cost, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Casualty Restoration. If Landlord shall dispute Tenant's or Tenant's Qualified Architect's estimated cost of such Casualty Restoration by sending to Tenant, within 15 days following its receipt of Tenant's or such Qualified Architect's estimate of the cost of such Casualty Restoration, a notice stating that there is a dispute and setting forth Landlord's estimate of the cost of

such Casualty Restoration, then upon the request of either Party the dispute shall be resolved by a licensed professional engineer or registered architect chosen by agreement of Landlord and Tenant, or, if Landlord and Tenant are unable to agree on the selection of such engineer or architect within 15 days following either Party's request to resolve such dispute, chosen by the Appointing Authority, provided that Landlord's estimate shall control for all purposes under this Lease pending the resolution of such dispute. Said engineer or architect shall resolve the dispute by choosing either the estimate of Landlord or Tenant (or the Qualified Architect retained by Tenant, as the case may be) estimate within 15 days following his or her appointment, which choice shall be binding on the Parties.

(c) Commencement of Casualty Restoration. Except as may be required to protect the safety of any person or property, to limit further damage, or to comply with any Requirements, Tenant shall not commence any Casualty Restoration until the earliest of (i) the date of Landlord's agreement (in writing) with Tenant's estimate of the cost of such Casualty Restoration, (ii) the expiration of the period during which Landlord may dispute such estimate, or (iii) the date of the delivery to Tenant of Landlord's estimate of the cost of such Casualty Restoration; but Tenant shall commence the Construction Work necessary for a Casualty Restoration within 90 days following the damage or destruction, which 90 day period shall be subject to extension for the duration of Unavoidable Delays and delays in obtaining all governmental, quasi-governmental and Landlord approvals and consents (which Tenant shall promptly apply for and diligently pursue in good faith).

#### Section 8.03. Restoration Funds.

(a) Reimbursement of Depositary's and Landlord's Expenses. Before paying any Restoration Funds to Tenant, Depositary shall reimburse itself and Landlord (and the Fee Owner if and to the extent that any insurance company paying any Restoration Funds required the Fee Owner's participation in the collection of the same) therefrom to the extent of the necessary and proper out-of-pocket expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Depositary and Landlord (and the Fee Owner if and to the extent that any insurance company paying any Restoration Funds required the Fee Owner's participation in the collection of the same) 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 and 8.05, and subject further to the rights of all Recognized Mortgagees, the Restoration Funds shall be

paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depositary (and Landlord and the Fee Owner for informational purposes only) showing the cost of labor and the cost of materials, fixtures and equipment that either have (x) been incorporated in the Building since the immediately preceding application (or in the case of the first application for payment, since the beginning of the Restoration) and paid for by Tenant, or for which payments are then due and owing, or (y) not been incorporated in the Building but have been purchased since the immediately preceding application (or in the case of the first application for payment, since the beginning of the Restoration) and paid for by Tenant, or payments for which are then due and owing, and insured by Tenant for 100% of the cost thereof and stored at a secure and safe location on the Premises or at another secure and safe location.

(ii) Holdback of Restoration Funds; Disbursement of Balance. Except in the case of the final application for payment, the amount of any installment of the Restoration Funds to be paid to Tenant shall not exceed 90% of the amount by which (x) the product derived by multiplying the Restoration Funds by a fraction, the numerator of which shall be the total cost (including any amounts that may have been retained by Tenant from any contractors) of all labor theretofore performed, and the cost of materials, fixtures and equipment incorporated in the Building or purchased, insured and stored as provided in Section 8.03(b)(i), and the denominator of which shall be the total estimated cost of the Construction Work in connection with such Restoration, exceeds (y) all prior installments of Restoration Funds received by or paid to Tenant. Upon completion of the Restoration, and upon application for final payment submitted by Tenant to Depositary (and Landlord and the Fee Owner for informational purposes only) and compliance with the conditions set forth in Section 8.04, the remaining portions of the Restoration Funds shall, subject to the rights of all Recognized Mortgagees, (A) be disbursed to Tenant if such final application for payment is for less than \$2,500,000 (Subject to Indexing), or (B) if such final application for payment is for \$2,500,000 (Subject to Indexing) or more, be disbursed by Depositary to all of Tenant's contractors, subcontractors and other Persons that provided labor or materials with respect to the Restoration in payment of the amounts due and remaining unpaid on account of work performed or materials furnished in connection with the Restoration, and the balance of the Restoration Funds shall, subject to the

rights of all Recognized Mortgagees, be disbursed promptly to Tenant. If the Fixed Expiration Date shall occur or if this Lease shall terminate by reason of Tenant's default or pursuant to the provisions of Section 8.06 before completion of any Restoration, Depositary shall pay Landlord immediately after such termination any and all funds held by Depositary but Landlord's rights with respect to such funds shall be subject to the terms and provisions of Section 11.04(e).

**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).

(a) **Certificate of Architect.** A certificate of a Qualified Architect shall be submitted to Depositary (and Landlord for informational purposes only) stating that to the best of its knowledge after appropriate investigation:

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

(iii) Except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depositary (including the amount of any bond, cash, guaranty, letter of credit or other security provided by Tenant in accordance with Section 8.05) shall be sufficient to pay for the remainder of the Restoration in full, and estimating, in reasonable detail, the remaining costs to complete such Restoration; and

(iv) In the case of the final request for payment by Tenant, the Restoration shall have been completed in accordance with the provisions of Article 13 respecting the performance of Construction Work, and that upon the application of the sums requested, the Restoration shall have been fully paid for.



(b) Certificate of Title Insurance. There shall be furnished to Landlord and the Fee Owner a report or a certificate of a title insurance company reasonably satisfactory to Landlord with Fee Owner Input (it being stipulated and agreed that any title insurance company insuring Tenant's interest in the Premises or a Recognized Mortgagee's interest under a Recognized Mortgage of not less than \$10,000,000 (Subject to Indexing) shall be deemed satisfactory to Landlord), or other evidence reasonably satisfactory to Landlord, showing that there are no (i) vendor's, mechanic's, laborer's or materialman's 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 Fee Owner, or the assets of, or any funds appropriated to Landlord or the Fee Owner, except those liens described in clauses (i) and/or (ii) above as will be discharged upon payment of all or any portion of the amount then requested to be withdrawn and the filing of the requisite documents.

(c) Defaults. Tenant shall not have received notice of a monetary Default which Default remains uncured and no Event of Default shall exist, unless all or part of such payment shall be paid directly by Depositary in order to cure such Default or Event of Default and shall be sufficient to do so.

(d) Certificates of Insurance. There shall be furnished to Depositary one or more certificates of insurance evidencing that all materials, fixtures and equipment purchased but not yet incorporated in the Building and covered by such application for payment are insured by or for the benefit of Tenant for 100% of the cost thereof.

Section 8.05. Restoration Fund Deficiency. If (a) the estimated cost (determined as provided in Section 8.02(b)) of any Restoration exceeds the net Restoration Funds received by Depositary by more than \$2,500,000 (Subject to Indexing), or (b) at any time after commencement of a Restoration it is reasonably determined by Landlord (with Fee Owner Input) that the cost to complete such Restoration exceeds the unapplied portion of the Restoration Funds by more than \$2,500,000 (Subject to Indexing), Tenant shall, before the commencement of such Restoration (if clause (a) above applies) or within 10 days following Landlord's request (if clause (b) above applies), deposit with Depositary a bond, Qualifying Guaranty, clean and irrevocable letter of credit issued by an Institutional Lender, cash or other security reasonably satisfactory to Landlord (with Fee Owner Input), in the full amount of the excess of the estimated cost to complete such Restoration over the unapplied portion of the Restoration Funds, to be held and applied by Depositary in accordance with the provisions of Section 8.03. If Tenant disputes any determination made by Landlord pursuant to clause (b) of the immediately

preceding sentence, then (i) Tenant shall promptly notify Landlord of such dispute, (ii) Tenant shall timely provide the full amount of the requested security, (iii) such dispute shall, upon the request of either Party, be resolved by arbitration conducted in accordance with Article 34, and (iv) to the extent it is determined in any such arbitration that Landlord was not entitled pursuant to the terms and provisions of this Section 8.05 to request security or that Landlord requested an excessive amount of security, such security or excess amount (as the case may be) shall be immediately returned or refunded to Tenant and Landlord shall promptly pay to Tenant the out-of-pocket costs actually incurred by Tenant with respect to the provision of the security that was determined in the arbitration to be improperly requested or excessive.

**Section 8.06. Effect of Casualty on This Lease.** This Lease shall not terminate, be forfeited, or be affected in any manner, nor shall there be a reduction or abatement of Rental payable to Landlord by reason of damage to, or total, substantial or partial destruction of, the Building, or by reason of the untenability of the Building or any part thereof, nor for any reason or cause whatsoever in connection with such casualty. Tenant's obligations hereunder, including the payment of Rental to Landlord, shall continue as though the Building had not been damaged or destroyed, and shall continue without abatement, suspension, diminution or reduction whatsoever. The foregoing provisions of this Section 8.06 notwithstanding, provided that there is not then an Event of Default under this Lease, Tenant may terminate this Lease by giving notice of such election within 60 days following the determination of the estimated cost of a Casualty Restoration (as determined in accordance with the provisions of Section 8.02(b)), if (a) the estimated cost of such Casualty Restoration is greater than 50% of the then current Replacement Value and the subject casualty occurs not more than 5 years prior to the Fixed Expiration Date, or (b) the estimated cost of such Casualty Restoration is greater than 60% of the then current Replacement Value and the subject casualty occurs not more than 10 years prior to the Fixed Expiration Date, or (c) the estimated cost of such Casualty Restoration is greater than 70% of the then current Replacement Value and the subject casualty occurs not more than 15 years prior to the Fixed Expiration Date, or (d) the estimated cost of such Casualty Restoration is greater than 80% of the then current Replacement Value and the subject casualty occurs not more than 20 years prior to the Fixed Expiration Date, or (e) the estimated cost of such Casualty Restoration is greater than 90% of the then current Replacement Value and the subject casualty occurs not more than 25 years prior to the Fixed Expiration Date. If Tenant exercises its right to terminate this Lease by timely giving notice of such election as provided above, (x) this Lease shall terminate on the 30th day following the date of such notice as if such date were the Fixed Expiration Date, (y) the Rental payable by Tenant shall be apportioned on the day

preceding such termination as of 11:59 P.M. of the day prior to the date of termination, and (z) all insurance proceeds, Restoration Funds and other sums payable in connection with the casualty precipitating such termination shall be paid to Landlord.

Section 8.07. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, Tenant hereby waives (to the fullest extent allowed by law) all rights to quit or surrender the Premises or any part thereof by reason of any casualty to the Building, except as expressly provided to the contrary in Section 8.06. 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, and shall govern and control in lieu thereof.

## ARTICLE 9

### CONDEMNATION

#### Section 9.01. Substantial Taking.

(a) Termination of Lease for Substantial Taking. If all of the Premises or Substantially All of the Premises is permanently taken (excluding a taking that has no effect whatsoever on Tenant's rights under or interest in this Lease) 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, the Fee Owner, Tenant and those authorized to exercise such right, this Lease shall terminate on the Date of Taking, and the Rental payable by Tenant shall be apportioned and paid to 11:59 P.M. of the day prior to the Date of Taking.

(b) Disbursement of Award. If all of the Premises or Substantially All of the Premises is taken or condemned as provided in Section 9.01(a), the entire Award in connection with such taking or condemnation shall be disbursed as follows: (i) there shall first be paid to Landlord (subject to the rights of the Fee Owner under the Master Lease) an amount equal to the Owner's Share (or if less than all of the Premises is so taken or condemned, the product of the Owner's Share and the percentage of the Premises so taken or condemned) as of the Date of Taking, but without regard to any diminution in value attributable to the occurrence or threat of such taking or condemnation; and (ii) subject to the rights of all Recognized Mortgagees, the remaining balance of the Award shall be paid to Tenant. Pending the determination of the Owner's Share, the entire Award shall be held by the Depositary.

#### Section 9.02. Less Than a Substantial Taking.

(a) Lease to Continue. If less than Substantially All of the Premises is permanently 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, the Fee Owner, Tenant and those authorized to exercise such right, this Lease shall continue for the remainder of the Term without abatement of Rental payable to Landlord or diminution of any of Tenant's or Landlord's obligations hereunder, provided, however, that Development Rent theretofore and thereafter payable by Tenant and Base Rent payable by Tenant with respect to the portion of the Term subsequent to the Date of Taking (and Shortfall Rent which would be otherwise payable under Section 3.06, to the extent the Date of Taking occurs prior to the last day of Rental Year 10) shall be equitably adjusted in accordance with the mutual agreement of the Parties.

In the event the Parties fail to reach an agreement regarding the adjustment of Base Rent (and Shortfall Rent and Development Rent, if applicable) within 60 days following the Date of Taking, upon the request of either Party such adjustment shall be determined by arbitration conducted pursuant to Article 34, it being agreed that the arbitrators shall be instructed that Development Rent is allocable to the first 25 Lease Years.

(b) Obligation to Restore the Premises. If less than Substantially All of the Premises is taken as provided in Section 9.02(a), Tenant shall, as required by Section 9.02(d), restore the remaining portion of the Building not so taken, so that the Building shall be a complete building, consisting of rentable, architectural units in good condition and repair, and, to the extent practicable, of a size and condition substantially similar to the size and condition of, and of a character and appearance similar to the character and appearance of, the Building as it existed immediately before such taking (a "Condemnation Restoration"), whether or not the Award (or portion thereof) received by Tenant for such taking is sufficient to pay in full the cost of such Condemnation Restoration, but nothing contained herein shall obligate Tenant to increase the size of the Building above its size immediately after such taking. In no event shall Landlord be called upon to restore any remaining portion of the Premises not so taken, or to pay any costs or expenses thereof. Nothing contained in this Section 9.02(b) shall (i) increase Tenant's obligations with respect to the Expansion Space, (ii) affect Tenant's obligations under clause (ii) of Section 14.01, or (iii) relieve Landlord of any of its obligations respecting the Expansion Space.

(c) Payment of Award. In the event of any taking of less than Substantially All of the Premises, (i) there shall first be paid to Depositary from the Award a sum estimated (in accordance with the provisions of Section 8.02(b) as if the Condemnation Restoration were a Casualty Restoration) to be sufficient for Tenant to pay for the Condemnation Restoration, unless such sum is less than \$2,500,000 (Subject to Indexing), in which case it shall be paid directly to Tenant (subject to the rights of Recognized Mortgagees), (ii) there shall second be paid to Landlord (subject to the rights of the Fee Owner under the Master Lease) from the Award a sum equal to the product of the Owner's Share (as of the Date of Taking) and the percentage of the Premises so taken, and (iii) the balance of the Award, if any, shall be paid to Tenant, subject to the rights of all Recognized Mortgagees.

(d) Performance of Condemnation Restoration. The performance of a Condemnation Restoration, submission of the estimated cost thereof by Tenant, approval of the Construction Work constituting a part of such Restoration by Landlord, Tenant's obligation to provide additional security, and disbursement of the

Award by Depositary shall be done, determined, made and governed in accordance with the provisions of Article 13 and Sections 8.02(b), 8.02(c), 8.03, 8.04 and 8.05 as if the Condemnation Restoration were a Casualty Restoration. If the portion of the Award made available to Tenant by Depositary is insufficient for the purpose of paying for the Condemnation Restoration, Tenant shall nevertheless be required to perform such Restoration as required by this Lease and pay any additional sums required for such Restoration. Any balance of the Award held by Depositary and any cash and the proceeds of any security deposited with Depositary pursuant to Section 8.05 remaining after completion of such Restoration shall, subject to the rights of all Recognized Mortgagees, be paid to Tenant.

**Section 9.03. Temporary Taking.**

(a) Notice of Temporary Taking. If the use of the whole or any portion of the Premises is temporarily 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 among Landlord, the Fee Owner, Tenant and those authorized to exercise such right, the first of Tenant or Landlord to receive notice of such taking shall give notice thereof to the other Party within 5 days following its receipt of notice of such taking. The Term shall not be reduced or affected in any way by reason of such temporary taking, and Tenant shall continue to pay the Rental payable to Landlord without reduction or abatement.

(b) Application of Award; Obligation to Restore. If the temporary taking is for a period not extending beyond the Fixed Expiration Date, the Award (i) shall be payable directly to Tenant (subject to the rights of all Recognized Mortgagees) if (x) the amount thereof when paid as a lump sum is less than \$2,500,000 (Subject to Indexing), (y) the Award, regardless of amount, is paid periodically on a monthly or more frequent basis, or (z) the amount of any installment thereof when paid less often than monthly is less than \$2,500,000 (Subject to Indexing), or (ii) shall be payable to Depositary in all other instances. If the Award is paid to Depositary pursuant to the immediately preceding sentence, Depositary shall (A) segregate a sum sufficient to pay all Rental payable to Landlord with respect to the period of such taking, (B) pay Rental to Landlord as and when such Rental is due and payable to Landlord, and (C) pay the balance of the Award not segregated pursuant to clause (A) of this Section 9.03(b) to Tenant, subject to the rights of all Recognized Mortgagees. If the taking results in changes or alterations to the Building that would necessitate an expenditure to restore the Building to its former condition, then Tenant shall restore the Building in the same manner, and subject to the same terms and conditions, as if such restoration were a Condemnation Restoration, but a sum estimated to be sufficient for Tenant to pay for such restoration shall be deducted from the Award prior to the allocation set forth

above in this Section 9.03(b), to be held by Depositary and paid to Tenant at the time such restoration is performed.

(c) Temporary Taking Extending Beyond the Expiration of the Term. If the temporary taking is for a period extending beyond the Fixed Expiration Date, the Award therefor shall be apportioned between Landlord and Tenant as of the Fixed Expiration Date, Landlord's share thereof shall be paid to Landlord, and Tenant's share thereof shall be disbursed and applied in accordance with the provisions of Section 9.03(b) as though Tenant's share constituted the entire Award for a taking ending on the Fixed Expiration Date. If this Lease shall terminate for any reason before completion of any Construction Work necessitated by such taking, Depositary shall pay Landlord upon such termination any remaining balance of the Award then held by Depositary, but Landlord's rights with respect to such sum shall be subject to the terms and provisions of Section 11.04(e). If Landlord and Tenant shall fail to agree on the apportionment described in the first sentence of this Section 9.03(c) within 30 days after the Date of Taking, upon the request of either Party, such apportionment shall be determined by arbitration conducted in accordance with Article 34.

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 the Rental payable to Landlord. Any amount payable pursuant to such right to compensation shall be applied first to reimburse Tenant for any Construction Work performed by Tenant in order to compensate for such governmental action, and any balance shall be shared by Tenant and Landlord in accordance with their mutual agreement, or if the Parties shall fail to so agree within 60 days following the date such amount is paid, the allocation of such balance between Landlord and Tenant shall upon request of either Party be determined by arbitration conducted pursuant to Article 34.

Section 9.05. Collection of Awards. Each of the Parties as well as the Fee Owner shall execute all documents that are reasonably required to facilitate collection of any Awards made in connection with any condemnation proceeding or governmental action referred to in this Article 9.

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 9 without the consent of Tenant (which shall not be unreasonably withheld), nor shall Landlord

unreasonably withhold consent to any settlement negotiated by Tenant respecting any such taking or other governmental action.

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 of such sale shall be distributed as if they were an Award paid with respect to a condemnation of the portion of the Premises so sold.

Section 9.08. Intention of Parties. 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 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 Major Sublease.

(a) Collateral Assignment; Modification of this Lease. Tenant may grant mortgages encumbering its interest in this Lease and/or assign its interest in this Lease as collateral security to Recognized Mortgagees at any time and from time to time. Nothing contained in this Article 10 or elsewhere in this Lease shall prohibit or be deemed to prohibit any Recognized Mortgagee from foreclosing a Recognized Mortgage, accepting an assignment in lieu thereof or otherwise exercising its rights to gain control of the collateral under a Recognized Mortgage. No Sublease, Assignment, or Mortgage, whether executed simultaneously with this Lease or otherwise, shall be deemed to modify this Lease in any respect, but if an Institutional Lender providing financing for the Construction of the Building or the Initial Refinancing shall require reasonable modifications to this Lease as a condition to providing Tenant with such financing, any consent to such modifications shall not be unreasonably withheld by Landlord (and the Fee Owner to the extent consent by the Fee Owner is required), to the extent consent may be given without additional action by the Board of Estimate of the City.

(b) Prior to the Substantial Completion Date. Prior to the Substantial Completion Date, Tenant shall not, without the consent of Landlord and the Fee Owner (which may be withheld for any or no reason), enter into or permit (i) an Assignment, (ii) a Transfer, or (iii) a Major Sublease, except that, Tenant shall be entitled to cause or permit a Transfer or enter into a Major Sublease prior to the Substantial Completion Date, provided that at all times prior to the Substantial Completion Date, one or more of the beneficial owners of Tenant or the partners of Tenant as of the date hereof, their minor children, spouses, or one or more trusts for the exclusive benefit of one or more of the foregoing maintains Effective Control. In any event, such transfer or the entrance into such Major Sublease must comply with the requirements of (and be accomplished in accordance with) subsections (c) (but excluding the requirements of Section 10.01 (c)(x)), (d), (e), (f), (g), and (h) of this Section 10.01 if the Transferee is not a Pre-approved Transferee, or sub-sections (d), (e), (f), (g), and (h) of this Section 10.01 if the Transferee is a Pre-approved Transferee, in which case the notice given by Tenant pursuant to Section 10.01(d) shall include reasonable documentation reasonably establishing that the Transferee is a Pre-approved Transferee.

(c) After the Substantial Completion Date. After the Substantial Completion Date, Tenant shall have the right, subject

to the provisions of this Article, to enter into an Assignment or a Major Sublease, or to permit a Transfer, as long as the Assignee, Transferee or Major Subtenant, including (I) any partner thereof having a 20% or greater ownership interest therein (if the Assignee, Transferee or Major Subtenant is a partnership), (II) any Person owning 20% or more of the then issued and outstanding voting stock thereof (if the Assignee, Transferee or Major Subtenant is a corporation), or (III) any Person owning 20% or more of the then issued and outstanding voting stock of any corporate general partner thereof (if the Assignee, Transferee or Major Subtenant is a partnership), is not:

(i) any Person that is then in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City or the State (including any agency, department, commission, board, bureau, instrumentality or political subdivision of the City or the State), unless (x) such default or breach has been waived in writing by the City or the State (or any agency, department, commission, board, bureau, instrumentality or political subdivision of the City or the State) as the case may be, (y) such default is being contested by such Person in proceedings in an appropriate court or other forum with due diligence, or (z) such Person, within a reasonable time following its receipt of notice of the default or breach in connection with the proposed Assignment, Transfer or Major Sublease, contests by such proceedings (which then are prosecuted with due diligence) or cures or corrects such default or breach;

(ii) any Person that (A) has been convicted in the preceding 10 years for a felony, or misdemeanor which concerns real estate and reflects adversely on reliability, integrity or financial responsibility in the operation of real estate, or (B) is an organized crime figure or has substantial business or other affiliations with an organized crime figure, or (C) directly controls or is controlled by a Person that is an organized crime figure or has substantial business or other affiliations with an organized crime figure;

(iii) any government, or any Person that is controlled 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 is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof;

(iv) any government, or any Person that 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;

(v) any Person that is in default in the payment to the City of any real property taxes, sewer rents or water charges, unless (x) such default has been waived in writing by the City, (y) such default is then being contested with due diligence in proceedings in an appropriate court or other forum, or (z) such Person, within a reasonable time following its receipt of notice of such default in connection with the proposed Assignment, Transfer or Major Sublease, contests by such proceedings (which are then prosecuted with due diligence) or cures or corrects such default or breach;

(vi) any Person that has owned at any time in the preceding 3 years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City;

(vii) any Person that is a South African Entity;  
or

(viii) any Person involved in litigation during the preceding 10 years which would impair a favorable reputation in the New York City business community for reliability, honesty, integrity or financial responsibility by reason of such litigation having been decided or settled adversely to such Person, and by reason of such litigation involving allegations against such Person that such Person has been involved in repeated instances, or a pattern, of fraud or misrepresentations, breach of business contracts, business torts, failure to comply with court orders, or conduct that would be covered by Section 10.01(c)(ii) if there had been a criminal prosecution by appropriate authorities rather than a civil litigation;

and provided further that

(ix) the Assignee, Major Subtenant or Transferee (in each case including Affiliates) shall have a net worth (A) when aggregated with the net worth of Tenant (including Affiliates), in the case of a Major Sublease,

or (B) when aggregated with the net worth of all other Persons (including Affiliates) who will comprise Tenant (including Affiliates) at the completion of the Transfer, in the case of a Transfer, of no less than \$12,500,000 (Subject to Indexing for the period between May 15, 1986 and the date of the proposed Assignment, Transfer or Major Sublease), which net worth may be established by a certificate from a certified public accountant, without disclosure to Landlord of such Person's financial statements (provided that the provisions of this Section 10.01(c)(ix) shall be deemed to have been satisfied if one or more of the beneficial owners of Tenant or the partners of Tenant as of the date hereof, their minor children, spouses, or one or more trusts for the exclusive benefit of one or more of the foregoing retain a direct or indirect ownership interest in Tenant of not less than 25% at the completion of the subject transaction); and

(x) the Assignee or Transferee (in each case including any one or more of its Affiliates) of a 50% or greater interest in Tenant, or the Major Subtenant under a Major Sublease covering more than 235,000 square feet of Floor Area of the Building or any of its Affiliates, shall have at least 5 years' experience in the ownership and operation of (A) first class office space in New York City or another major city in the United States with a substantial market for first class office space (e.g., Chicago, Houston, or Atlanta), and if such experience is not in New York City, such Assignee, Transferee or Major Subtenant shall have hired (and shall continue to employ for a period of not less than 2 years) one or more of the managing agents included on Schedule II or lists of managing agents periodically prepared by Tenant and approved by Landlord and the Fee Owner (such approval not to be unreasonably withheld), or, if the use of the Building has changed pursuant to Section 23.04, (B) a building with the same use as the Building located in New York City or another major city in the United States with a substantial market for space with such use, and if such experience is not in New York City, such Assignee, Transferee or Major Subtenant shall have hired (and shall continue to employ for a period of not less than 2 years) one or more managing agents that are reasonably acceptable to Landlord and the Fee Owner.

Any provision of this Section 10.01 to the contrary notwithstanding, (1) a proposed Assignee, Transferee or Major Subtenant shall be deemed not to satisfy the requirements of Section 10.01(c) if any general partner thereof (in the case of a partnership) or any person owning more than 20% of the stock of a corporate general partner thereof (in the case of a partnership)

or any person owning any of the stock thereof (in the case of a privately held corporation) or 5% or more of the stock thereof (in the case of a corporation whose stock is publicly traded) is a Person described in clause (B) of Section 10.01(c)(ii) (or directly controls or is controlled by such a Person), and (2) a Pre-approved Transferee shall be deemed to have satisfied all of the requirements of this Section 10.01(c) except for the requirements set forth in Section 10.01(c)(x), which requirements shall, in all events, be deemed to have been satisfied if such Pre-approved Transferee hires and retains for not less than 2 years one or more managing agents as set forth on Schedule II or otherwise approved by Landlord (which approval shall not be unreasonably withheld).

(d) Notice to Landlord. Tenant shall notify Landlord and the Fee Owner of its intention to enter into any Assignment, Transfer or Major Sublease not less than 15 days, in the case of a proposed Assignment, Transfer or Major Sublease to or with a Pre-approved Transferee and 35 days, in all other cases, before the date such Assignment, Transfer or Major Sublease is to become effective (without the requirement at that time of sending to Landlord or the Fee Owner any executed or final documents respecting the proposed Assignment, Transfer or Major Sublease). The notice required by this Section 10.01(d) shall be accompanied by the following certificates:

(i) in the case of a proposed corporate Assignee, Transferee of more than a 20% interest in Tenant, or Major Subtenant in each case which is not a Pre-approved Transferee, or in the case of a corporate general partner of a partnership that is the proposed Assignee, Transferee of more than a 20% interest in Tenant, or Major Subtenant (other than a corporation which is a Pre-approved Transferee or whose common stock is publicly traded), a certificate of an authorized officer of such corporation giving the names and addresses of all directors and officers of the corporation and Persons having an interest in such Assignee, Transferee or Major Subtenant;

(ii) in the case of a proposed partnership Assignee, Transferee of more than a 20% interest in Tenant or Major Subtenant in each case which is not a Pre-Approved Transferee, a certificate of the managing general partner or other authorized general partner of the proposed Assignee, Transferee or Major Subtenant giving the names and addresses of all limited partners of the partnership having a 20% or greater interest therein and all general partners thereof; and

(iii) a certification by an authorized officer, managing general partner, or other authorized general

partner of Tenant, whichever shall be applicable, to the effect that to the best of Tenant's knowledge the Assignment, Transfer or Major Sublease, as the case may be, does not violate the provisions of Section 10.01 (b) or (c).

(e) Objections and Waiver. Landlord shall notify Tenant, within 10 days in the case of a Pre-approved Transferee, or within 30 days, in all other cases, after receipt of notice from Tenant pursuant to the provisions of Section 10.01(d) whether, in the judgment of Landlord or the Fee Owner, the execution of the Assignment, Transfer or Major Sublease (or the effectiveness of the same if it has already been executed), whichever is applicable, would violate the provisions of Section 10.01(b) or (c) and its reasons therefor. Landlord and the Fee Owner shall be deemed to have waived their objections to the proposed Assignee, Transferee or Major Subtenant, and to any objections to the proposed Assignment, Transfer or Major Sublease based upon any of the provisions set forth in Section 10.01(b) or (c) (other than the requirements of Section 10.01(b) or (c) respecting other provisions of this Article 10 referred to therein or the requirement in Section 10.01(b) that Tenant maintain Effective Control) if Landlord shall fail to timely so notify Tenant as provided in this Section 10.01(e). Any approval (or deemed approval) by Landlord and the Fee Owner under this Section 10.01(e) or under Section 10.09 shall be valid for 180 days following its actual or deemed granting. The 10 and 30 day periods described in the first sentence of this Section 10.01(e) shall not be subject to extension pursuant to the first sentence of Section 29.05(d) or otherwise (but the foregoing provisions of this sentence shall not abrogate or otherwise affect the provisions of the second sentence of Section 29.05(d)).

(f) Determination of Fitness. In the event of any disagreement with Tenant as to whether a proposed Assignee, Transferee or Major Subtenant satisfies the requirements of Section 10.01(b) or (c), such disagreement shall be submitted for determination to (i) the then chair of the Board of Ethics of the City or to an individual designated by the chair of such Board (provided that the chair of such Board receives no compensation from the City for service in such capacity or for service in any other capacity as an employee or other official of the City, the chair of such Board is a member of the Bar of the State and the chair of such Board is not prevented from acting hereunder by reason of any conflict of interest), or if there shall be no such Board of Ethics or no chair thereof, or if neither the chair of such Board nor an individual designated by the chair of such Board is available to act, (ii) the then chair of the Real Estate Committee of the Bar Association of the City, or if there shall be no such Committee or no chair thereof, (iii) the then President of such Bar Association or to an individual designated by such President, such determination to be binding on Landlord, the Fee

Owner and Tenant. If no determination is made as described in the preceding sentence within 90 days after there is such disagreement with Tenant (such 90 day period to be extended by any delay in a determination of such disagreement due only to an unreasonable action or unreasonable failure to act by Tenant, but such period shall otherwise be of the essence of this Lease), the proposed Assignee, Transferee or Major Subtenant shall be deemed to have satisfied the requirement(s) involved in such disagreement.

(g) Limitations on Right to Assign, Transfer or Permit a Major Sublease. Tenant shall have no right to permit an Assignment, Transfer or Major Sublease to become effective if (i) on the effective date thereof there exists an Event of Default; or (ii) it has not been determined or deemed to have been determined under Sections 10.01(e) or (f) or Section 10.09 that the proposed Assignee, Transferee or Major Subtenant is not a prohibited Assignee, Transferee or Major Subtenant under Sections 10.01(b) and/or (c), as applicable.

(h) Assignment, Transfer or Major Sublease Instruments. Tenant shall deliver to Landlord and the Fee Owner or shall cause to be delivered to Landlord and the Fee Owner (i) in the case of an Assignment, an executed counterpart of the instrument or instruments (in recordable form) of assignment and assumption by the Assignee of Tenant's obligations under this Lease, to be delivered to Landlord and the Fee Owner no later than 10 business days after the Assignment becomes effective (and Landlord and the Fee Owner hereby agree to acknowledge receipt of the same if received), (ii) in the case of a Transfer, an executed counterpart of the instrument of Transfer, and if the Transfer is effected through admission of a new or substitute partner of Tenant, all relevant amendments to the partnership agreement (or, at the option of Tenant, such other evidence as is reasonably acceptable to Landlord setting forth the aspects of the Transfer that are relevant to Landlord pursuant to this Lease) and, if applicable a copy of the certificate of limited partnership, to be delivered to Landlord and the Fee Owner within 30 days after the effective date of the Transfer, and (iii) in the case of a Major Sublease, an executed counterpart of the Major Sublease to be delivered to Landlord and the Fee Owner no later than 10 business days after the date on which the Major Sublease becomes effective (and Landlord and the Fee Owner hereby agree to acknowledge receipt of the same if received). The documents to be delivered by Tenant pursuant to this Section 10.01(h) shall be duly authorized, shall not conflict with or violate any of the terms and provisions of this Lease, and in the case of (A) an Assignment shall (x) specify that Tenant is assigning its entire interest in this Lease and the Assignee is assuming all of Tenant's obligations hereunder, and (y) contain an agreement by the Assignee to comply with the limitations and requirements of this Lease, and (B) a Major Sublease, shall comply with the provisions of Section 10.05. If Tenant, at its option, submits such

documents to Landlord and the Fee Owner in final form (whether executed or not) prior to the proposed effective date of such transaction, Landlord and the Fee Owner shall notify Tenant within 15 days following their receipt of such documents if such documents fulfill the requirements of the preceding sentence or in what respect(s) such documents deviate from such requirements.

(i) [Intentionally Omitted]

(j) Unauthorized Assignment, Etc. Any Assignment, Transfer or Major Sublease which fails to fully comply with the provisions of this Article 10 (including, without limitation, Section 10.01(g)), shall have no validity and shall be null and void and without any effect.

(k) Compliance by Direct Subtenants. During the Term, Tenant shall make reasonable efforts to cause the Direct Subtenants to fulfill their material obligations under their respective Direct Subleases but nothing contained in this Section 10.01(k) shall (x) require Tenant to institute (or prevent Tenant from instituting) any proceeding or lawsuit against a Subtenant, or (y) render Tenant liable to Landlord for any loss of or decrease in Percentage Rent.

Section 10.02. Subtenant Violation. 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, except when the Subtenant is Landlord or an Affiliate of Landlord.

Section 10.03. Collection of Subrent by Landlord. After an Event of Default has been judicially determined to have occurred and while it is continuing, Landlord may, subject to the rights of all Recognized Mortgagees, collect rent and all other sums due under any Direct Subleases and apply the net amount collected to the Rental payable by Tenant hereunder, but any excess of the amounts so collected over the Rental due to Landlord shall be paid to Tenant on a quarterly basis or sooner if the Event of Default is cured prior to the Expiration Date. 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 (other than the obligations to pay the Rental so collected and applied by Landlord).

Section 10.04. Direct Sublease Assignment.

(a) Assignment of Direct Subleases to Landlord. As security for the performance of Tenant's obligations hereunder, Tenant hereby assigns, transfers and sets over unto Landlord,



subject (and subordinate) to any assignment of Direct Subleases and/or rents made now or hereafter in connection with any Recognized Mortgage, all of Tenant's right, title and interest in and to all Direct 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 Direct 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 possession of the Premises with neither responsibility nor liability to Tenant, its servants, employees, guests or invitees, or any Person whatsoever. This assignment, although presently effective, shall be operative only from and after (but not before) a judicial determination that an Event of Default has occurred and then only to the extent such Event of Default is continuing.

(b) Schedule of Direct Subleases. Tenant shall deliver to Landlord, within 30 days following Landlord's demand, which may be made not more often than once in any 12 month period (i) a schedule of all Direct Subtenants, a description of the space that has been sublet to them, the expiration dates of their respective Direct Subleases (as the same may be amended), and the respective rentals payable thereunder, and (ii) a photostatic copy of each of the Direct Subleases and/or amendments thereto, which copies shall be made by Tenant at Landlord's expense. Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Direct Subleases, but no more frequently than 3 times in any 12 month period.

Section 10.05. Required Direct Sublease Clauses; Etc.

(a) Each Direct Sublease shall provide in substance that:

(i) It is subordinate and subject to this Lease.

(ii) 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, construction deposits, payment and performance bonds and other similar charges or expenses, the Direct Subtenant shall not pay rent or other sums payable under the Direct Sublease to Tenant for more than 1 month in advance (or with respect to periods for more than 1 month in advance), provided, however, that payments by Direct Subtenants (x) with respect to escalations may be

made quarterly in advance if the relevant Direct Sublease so provides, and (y) may be made more than 1 month in advance if a bond, Qualifying Guaranty, clean and irrevocable letter of credit issued by an Institutional Lender, cash or other security for the payment of the Percentage Rent that is to be payable with respect thereto that is reasonably acceptable to Landlord and in a reasonable amount is posted with Landlord concurrently with Tenant's receipt and collection of all such payments.

(iii) At Landlord's option, on the termination of this Lease pursuant to Article 24, the Direct 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 its Direct Sublease.

(iv) Tenant shall cause each Direct Sublease to provide (x) that the Direct Subtenant shall not use the words "Carnegie Hall" in any advertising or for any other promotional or profit-making purpose (except by way of a solely geographical reference or a reference to the name of the Building or Tenant), and (y) that the Subleases of all Subtenants claiming by, through or under a Direct Subtenant (directly or through other Subtenants) shall contain a provision setting forth the substance of clause (x) of this Section 10.05(a)(iv) with respect to such Subtenants.

(b) Tenant shall use Reasonable Efforts to cause Direct Subleases to provide in substance that the Direct Subtenant thereunder shall, promptly following request of Landlord made not more often than once annually, deliver to Landlord a statement of the amounts paid to Tenant by such Direct Subtenant with respect to the prior year.

(c) In the case of each Direct Sublease pursuant to which the Direct Subtenant thereunder is required to pay to Tenant an amount based on a percentage of gross receipts or sales, such Direct Subtenant shall be prohibited from entering into any Sublease under which such Direct Subtenant is landlord and which provides for the receipt by such Direct Subtenant of amounts which depend in whole or in part on the income or profits derived by such Direct Subtenant's tenant or any other Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or sales). If any Direct Subtenant described above in this Section 10.05(c) enters into a Sublease under which such Direct Subtenant is landlord and under which such Direct Subtenant's tenant is required to pay to such Direct Subtenant an amount based on a percentage of gross receipts or sales, such Sublease shall be required to contain a provision prohibiting the Subtenant's tenant (or any

other Person claiming by, through or under such Subtenant) from entering into any lease with respect to any part of the Premises under which such Subtenant's tenant (or such other Person) is landlord and which provides for the receipt by such Subtenant's tenant (or such other Person) of amounts which depend in whole or in part on the income or profits derived by any Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or sales).

(d) If any Direct Sublease shall fail to include provisions setting forth in substance the terms described in Section 10.05(a), or if any Sublease described in Section 10.05(c) shall fail to include a provision meeting the requirements of such Section, the Subtenant under any such Sublease shall be deemed to have agreed to such provisions.

**Section 10.06. Subtenant Non-Disturbance.** Landlord shall not unreasonably refuse to enter into a Nondisturbance Agreement with any Subtenant whose Sublease was made in accordance with the applicable provisions of this Article 10 and, in any event, shall enter into Nondisturbance Agreements with every Subtenant (including, without limitation, Major Subtenants) whose Sublease (x) was entered into in an arms length transaction and was made in accordance with the applicable provisions of this Article 10, (y) obligates such Subtenant to pay to its landlord rent and other amounts that are not less than 75% of the fair market rental value of the premises demised thereunder, and (z) demises not less than 3500 square feet of Floor Area to such Subtenant. Landlord shall execute and deliver to Tenant Nondisturbance Agreements in recordable form to the extent required by the preceding sentence within 15 days after Landlord is supplied with the form thereof. For purposes of this Lease, a Nondisturbance Agreement shall be an agreement between Landlord and a Subtenant pursuant to which Landlord agrees to recognize such Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to the provisions of Article 24 (and any Subleases that are superior to such Subtenant's Sublease), provided that 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 or has delivered to Landlord an instrument (which may be the Sublease) 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 or other payment for more than the then current month that such Subtenant might have made to any prior landlord (including, without limitation, the then defaulting landlord) unless such sum has been transferred to Landlord or unless such payment is consistent with the provision required to be inserted in Direct Subleases pursuant to Section 10.05(a)(ii) (or a comparable provision in other Subleases);

(D) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof (including work to be performed by the then defaulting landlord in the space demised by the Sublease), provided however, that to the extent (x) such construction has not been performed by Tenant and is not performed by Landlord, and (y) the Subtenant's rent was based in part on the performance of such construction, the Subtenant's rent shall be equitably adjusted;

(E) bound by any obligation to make any payment to the Subtenant; or

(F) bound by any amendment of the Sublease 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 the services to be rendered by Tenant to the Subtenant pursuant thereto), or changes the term thereof, or otherwise materially and adversely affects the rights of the landlord thereunder, made without the written consent of Landlord which shall not be unreasonably withheld.

In no event shall Landlord be obligated to recognize any Subtenant as the direct tenant of Landlord with respect to any period subsequent to the Fixed Expiration Date.

#### Section 10.07. Prohibition on Net Profits Interests.

(a) In General. Tenant shall not enter into any Direct Sublease or effect or suffer any Assignment or Transfer which provides for the receipt by Tenant of amounts which depend in whole or in part on the income or profits derived by any Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or

sales). If Tenant violates the provisions of the preceding sentence, Tenant shall pay to the Fee Owner (as provided in the Joinder Agreement) an amount equal to the excess of (i) the amount Tenant would have been required to pay to Landlord if the definition of Gross Commercial Rents did not exclude amounts described in clause (vii) of the second sentence of such definition and if the definitions of Adjusted Assignment Proceeds, Adjusted Refinancing Proceeds and Adjusted Transfer Proceeds did not exclude amounts described in the last sentence of such definitions over (ii) the amount otherwise due and payable under this Lease.

(b) Effect of Receipt of Rents Based on Net Profits Interests. If Landlord determines that it has received any amount as Rent the determination of which depends in whole or in part on the income or profits derived by any Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or sales), Landlord shall promptly notify Tenant and the Fee Owner of such determination. Within 30 days after Landlord has notified Tenant and the Fee Owner of such determination, such amounts, which are excluded in the calculation of Rent pursuant to clause (vii) of the second sentence of the definition of Gross Commercial Rents and the last sentence of the definitions of Adjusted Assignment Proceeds, Adjusted Refinancing Proceeds and Adjusted Transfer Proceeds, shall be paid by Landlord, as agent for Tenant, to the Fee Owner.

(c) Applicability. Sections 10.07(a) and 10.07(b) shall not apply to the extent that Landlord determines (and notifies Tenant) for any reason that the receipt of amounts the determination of which depends in whole or in part on the income or profits derived by Tenant, any Subtenant or any other Person from the Premises or any portion thereof will not result in the imposition of Federal income tax on Landlord in accordance with Sections 511 and 512 of the Internal Revenue Code of 1986, as amended, or any corresponding provision of any successor Federal income tax statute. Landlord shall promptly notify Tenant and the Fee Owner of any such determination.

(d) Statement of Certified Public Accountant. In preparing and certifying the statements described in and required by Section 3.04(c) and Article 37, any Certified Public Accountant shall be entitled to rely on a statement of Tenant to the effect that Tenant has received no amounts described in clause (vii) of the second sentence of the definition of Gross Commercial Rents, or the last sentence of the definition of Adjusted Transfer Proceeds or Adjusted Assignment Proceeds.

Section 10.08. Effect of Assignment. If Tenant or any successor to its interest hereunder transfers or assigns its interest under this Lease in accordance with the terms and

provisions of this Article 10, then from and after the date of such assignment or transfer, the assignor or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed on or after the date of such transfer or assignment (other than the obligation of such assignor or transferor to pay Capital Transfer Rent in accordance with the terms and provisions of Section 3.05), and it shall be deemed and construed without further agreement between the Parties or their successors in interest that the transferee or assignee under such transfer or assignment has assumed and agreed to carry out any and all agreements, covenants and obligations of Tenant hereunder occurring from and after the date of such assignment or transfer. The term "transfer" as used in this Section 10.08 shall not mean "Transfer" as defined in this Lease.

**Section 10.09. Foreclosure.**

(a) Notwithstanding anything to the contrary in this Lease, if a Recognized Mortgagee shall have instituted any proceeding to foreclose a Recognized Mortgage, it shall have the right to request that Landlord and the Fee Owner approve one or more prospective bidders so that if such bidder is the successful bidder at a foreclosure sale such bidder may succeed to the tenant's interest under this Lease (i.e., become Tenant) without the need for obtaining any further or additional consents or approvals from Landlord and/or the Fee Owner or otherwise complying with any of the notice or other provisions of this Article 10 except that compliance with Section 10.01(h) shall be required. In connection with any such request for Landlord to approve a bidder, a Recognized Mortgagee shall submit or cause to be submitted to Landlord the following certificates and/or documentation (the request, together with such certificates and/or documentation, being referred to herein as the "Mortgagee's Request"):

(i) In the case of a bidder that is a Pre-approved Transferee, reasonable documentation reasonably establishing that the bidder is in fact a Pre-approved Transferee and, if the bidder would not fulfill the requirements of Section 10.01(c)(x), confirmation that the bidder will, at the time it is successful and succeeds to the interest of Tenant under this Lease, retain one or more managing agents identified on Schedule II or another managing agent that is reasonably acceptable to Landlord and the Fee Owner for a period of not less than 2 years.

(ii) In the case of a corporate bidder or in the case of a corporate general partner of a partnership that is a bidder (in either case which is not a Pre-approved Transferee), a certificate of an authorized

officer of such corporation giving the names and addresses of all directors and officers of the corporation and, in the case of a privately held corporation, the names and addresses of any person owning any of the stock thereof or, in the case of a corporation whose stock is publicly traded, the names and addresses of any person owning 5% or more of the stock thereof;

(iii) In the case of a partnership bidder that is not a Pre-approved Transferee, a certificate of the managing general partner or other authorized partner of the bidder giving the names and addresses of all limited partners of the partnership having a 20% or greater interest therein and all general partners thereof;

(iv) In the case of a bidder that is not a Pre-approved Transferee, (x) a certification of a certified public accountant (without disclosure to Landlord or the Fee Owner of such bidder's financial statements) that such bidder (including its Affiliates), has a net worth of no less than \$12,500,000 (Subject to Indexing for the period between May 15, 1986 and the date of the certificates), and (y) confirmation that if such bidder (including any one or more of its Affiliates) has not had at least 5 years experience in the ownership and operation of a building located in New York City with the same use as the Building, the bidder will hire one or more managing agents specified in Schedule II or otherwise approved by Landlord and the Fee Owner (such approval not to be unreasonably withheld) to manage the Premises for a period of not less than 2 years after such bidder becomes Tenant.

(b) Landlord and the Fee Owner shall notify the Recognized Mortgagee within 25 days (or 10 days in the case of a Pre-approved Transferee) after receipt of the Mortgagee's Request whether or not an Assignment to the bidder would violate the provisions of Article 10. If Landlord and/or the Fee Owner notifies the Recognized Mortgagee that an Assignment in favor of the bidder would violate the provisions of Article 10, Landlord and/or the Fee Owner, as the case may be, shall state their reasons therefor in reasonable detail in such notice to the Recognized Mortgagee. If, within said 25-day period (or 10-day period in the case of a Pre-approved Transferee), Landlord and/or the Fee Owner notifies the Recognized Mortgagee that they require additional specific information to make their determination, the Recognized Mortgagee may submit or cause to be submitted to Landlord and the Fee Owner such additional information and, within 5 days after the submission of such information to Landlord and the Fee Owner, Landlord and the Fee Owner shall notify the Recognized Mortgagee of their determination. Landlord and the Fee

Owner shall be deemed to have waived any objections to the Assignment to the bidder based upon any of the provisions set forth in Article 10 if Landlord and/or the Fee Owner shall fail to timely so notify the Recognized Mortgagee as provided in this Section 10.09. Nothing contained in Section 10.01(b) or elsewhere in this Lease shall or shall be deemed to prohibit (x) a Recognized Mortgagee from foreclosing a Recognized Mortgage or accepting an assignment in lieu thereof or (y) an Assignment of this Lease at or in connection with a foreclosure of a Recognized Mortgage or a sale conducted pursuant thereto provided that such Assignment complies with all other provisions of this Section 10.09 as if it were made after the Substantial Completion Date. The provisions of Section 10.01(g)(i) shall not apply if this Lease is assigned in connection with a foreclosure or an assignment in lieu thereof.



## ARTICLE 11

### MORTGAGES

Section 11.01. Effect of Mortgages. Tenant may grant Recognized Mortgages at any time and from time to time, but no Mortgage shall extend to, affect, or be a lien or encumbrance upon, the estate and interest of Landlord or the Fee Owner in the Premises or any part thereof. Without limiting the foregoing, Tenant shall not grant, or suffer to be granted, any Mortgages other than Recognized Mortgages.

Section 11.02. Mortgagee's Rights. Except as expressly provided to the contrary in this Lease, the execution and delivery of a Recognized Mortgage shall not give nor shall be deemed to give a Recognized Mortgagee any greater rights against Landlord than those granted to Tenant hereunder.

### Section 11.03. Notice and Right to Cure 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 the definition of Recognized Mortgage, or in any subsequent notice given by the Recognized Mortgagee to Landlord pursuant to the provisions of Article 25, a copy of each notice (i) referred to in Article 24 and (ii) respecting any failure or delay in the payment of Rental or any other Default at the same time as Landlord gives such notice to Tenant, and no such notice shall be deemed effective for the purposes of Section 11.03(b) (nor shall Landlord be entitled to terminate this Lease pursuant to Article 24) unless and until a copy thereof shall have been given to each Recognized Mortgagee. Any provision of this Lease to the contrary notwithstanding, if Landlord is late in giving any required notice to a Recognized Mortgagee, the exercise of Landlord's rights under this Lease shall be unaffected by reason of such failure to timely give such notice, except that the period of time required to elapse before Landlord is permitted to exercise the same, with respect to such Recognized Mortgagee, shall be extended to the extent such notice was not timely given.

(b) Right and Time to Cure. Subject to the provisions of Section 11.05, each Recognized Mortgagee shall have a period of (i) 10 days more, in the case of any Default in the payment of Rental, and (ii) 30 days more, in the case of any other Default, than is given Tenant under the provisions of this Lease to remedy such Default, cause it to be remedied, or cause action to remedy a Default mentioned in Section 24.01(c) or (e) to be commenced.

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

performance by (or on behalf of) 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) Performance by Recognized Mortgagee. If there shall occur a Default with respect to the payment of Rental, no Event of Default based upon such Default shall be deemed to have occurred if a Recognized Mortgagee (or a Person acting on behalf of a Recognized Mortgagee) shall cure such Default before the expiration of the period set forth in Section 11.03(b)(i). If any Recognized Mortgagee has undertaken in a writing delivered to Landlord to pay all Rent on an ongoing basis so as to prevent the occurrence of an Event of Default due to a Default in the payment of Rent, Landlord shall promptly notify all other Recognized Mortgagees if Landlord receives such undertaking and if such Recognized Mortgagee thereafter retracts such undertaking in writing. If there shall occur a Default (other than a Default in the payment of Rental payable to Landlord) which is not reasonably susceptible of cure within the period set forth in Section 11.03(b)(ii), no Event of Default based upon such Default shall be deemed to have occurred if a Recognized Mortgagee shall have:

(i) within the period set forth in Section 11.03(b)(ii), in the case of a Default that is curable without possession of the Premises by a Recognized Mortgagee, commenced in good faith to cure the Default, and a Recognized Mortgagee (or a Person acting on behalf of a Recognized Mortgagee) thereafter prosecutes such cure to completion with diligence and continuity, and timely pays or causes to be paid all Rental due to Landlord hereunder; 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, instituted foreclosure proceedings before the 30th day after the expiration of the period set forth in Section 11.03(b)(ii), and such Recognized Mortgagee thereafter continuously prosecutes the foreclosure proceedings with diligence and continuity to obtain possession of the Premises, and, upon obtaining possession of the Premises, promptly commences to cure the Default (other than a Default which is not susceptible of being cured by a Recognized Mortgagee) and thereafter prosecutes such cure to completion with diligence and continuity, and at all times after such Default timely pays or causes to be paid all Rental due to Landlord hereunder;

provided that such Recognized Mortgagee shall have delivered to Landlord, in writing, its agreement to take the actions described in clauses (i) and/or (ii) of this Section 11.03(d), as the case may be, and further provided that, during the period in which such action is being taken and/or any foreclosure proceedings are pending, no Event of Default shall exist under Sections 24.01(a) or (b). At any time after the delivery of the aforementioned agreement, such Recognized Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings shall have been commenced, that it has discontinued (or is in the process of discontinuing) such foreclosure proceedings, and, in such event, such Recognized Mortgagee shall have no further liability under such agreement with respect to any period from and after the date on which it delivers such notice to Landlord, and Landlord shall, after the expiration of 10 days after Landlord gives copies of such Recognized Mortgagee's notice to all other Recognized Mortgagees, have the unrestricted right to declare an Event of Default, terminate the Term and/or take any other action it deems appropriate by reason of any Event of Default unless within such 10 day period another Recognized Mortgagee that within the period set forth in Section 11.03(d)(ii) instituted foreclosure proceedings and thereafter continuously prosecuted such foreclosure proceedings with diligence and continuity, delivers to Landlord its written agreement to take the actions described in clauses (i) and/or (ii) of this Section 11.03(d), as the case may be, in which case the provisions of this Section 11.03 shall remain applicable. Upon any termination of this Lease by Landlord, the provisions of Section 11.04 shall apply.

#### Section 11.04. Execution of New Lease.

(a) Notice of Termination. If this Lease is terminated by reason of an Event of Default, Landlord shall give prompt notice thereof to each Recognized Mortgagee, together with a certificate from Landlord setting forth all known Defaults existing under this Lease immediately prior to its termination.

(b) Request for and Execution of New Lease. If, within 30 days following the giving of the notice referred to in Section 11.04(a), any Recognized Mortgagee shall request a new lease and agree to fulfill all of the conditions precedent set forth in Section 11.04(c), then subject to the provisions of Sections 11.04(c) and 11.05, within 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 most senior Recognized Mortgagee requesting such new lease and agreeing to fulfill all such conditions, or any designee or nominee of such Recognized Mortgagee who meets the criteria set forth in Section 10.01(c). The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease,

provided, however, (i) that the Fixed Expiration Date, the calculation of Lease Years, Rental Years and any other factors relevant to the determination of Rent shall be predicated upon the Commencement Date of this Lease, (ii) Landlord shall not be deemed to have represented or covenanted that such new lease shall be superior to the claims of Landlord's creditors, Tenant, its creditors or a judicially appointed receiver or trustee for Tenant, (iii) the Title Matters shall be deemed to be amended so as to reflect the then current state of title, and (iv) such new lease shall not be subordinate to any mortgage encumbering Landlord's or the Fee Owner's interest in the Premises or any other lien attributable to the Fee Owner's or Landlord's acts unless Tenant and all Recognized Mortgagees consented thereto in writing.

(c) Conditions Precedent to Landlord's Execution of New Lease. The provisions of Section 11.04(b) notwithstanding, Landlord shall not be obligated to enter into a new lease with a Recognized Mortgagee unless the Recognized Mortgagee (i) shall pay, concurrently with the execution and delivery of the new lease, all Rental then due under this Lease (or which would have been due as of such date if this Lease had not been terminated) up to the date of the commencement of the term of the new lease, and all reasonable expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Landlord in connection with the termination of this Lease, the preparation of such new lease, and the Default(s) and Event(s) of Default giving rise to the termination of this Lease, and (ii) shall deliver to Landlord a statement, in writing, acknowledging (x) 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 any Event of Default described in Sections 24.01(d), (f), (g), (h), (i), (j), (l) or (n)), notwithstanding that any such Default or Event of Default existed prior to the execution of such new lease, and (y) that the breached obligations which gave rise to the Default or Event of Default (other than those specifically referenced in clause (x) of this Section 11.04(c)) are also obligations under such new lease. The waiver of any Event of Default arising under Section 24.01(n) shall not be deemed a waiver of any requirement under this Lease to provide or maintain security.

(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 Defaults specifically referenced in clause (ii) of Section 11.04(c), the tenant under the new lease shall cure within the applicable periods set forth in Section 24.01 (which periods shall be deemed to have commenced upon the Commencement Date of such new lease) all Defaults existing under this Lease immediately prior to 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), Landlord shall deliver (if held by Landlord) or assign to the tenant named therein without recourse, representation or warranty, all of Landlord's right, title in and interest to moneys (including pre-paid rents, insurance proceeds and condemnation awards) not previously expended or applied in accordance with the terms and provisions of this Lease, 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), all Subleases that have been assigned to Landlord (and all unapplied security deposits held by Landlord pursuant thereto, and all rights in proceedings then pending against such Subtenants) shall be assigned and transferred, without recourse, representation or warranty, 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 pursuant to this Section 11.04, Landlord shall not cancel any Sublease or accept any cancellation, termination or surrender thereof (unless such termination is effected as a matter of law or by the terms of the Sublease upon the termination of this Lease) without the consent of such Recognized Mortgagee.

Section 11.05. Recognition of Most Senior Recognized Mortgagee. If more than one Recognized Mortgagee has exercised any of the rights afforded by Sections 11.03 or 11.04, 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 entitled under Sections 11.03 or 11.04 to exercise its rights under this Lease, 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 by a reputable title insurance company chosen by Landlord (provided that if such Recognized Mortgagees' interests in this Lease are insured by the same title company, such title company shall be deemed to have been chosen by Landlord), and Landlord shall be protected in relying upon such determination. Except to the extent expressly provided to the contrary in this Lease, the rights of all Recognized Mortgagees shall be deemed to run concurrently and not sequentially.

Section 11.06. Appearance at Condemnation Proceedings. All Recognized Mortgagees shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith, provided that in the event of a disagreement between such Recognized Mortgagees with regard thereto, the decision of the Recognized Mortgagee holding the most senior Recognized Mortgage shall control.

Section 11.07. Rights of Recognized Mortgagees. The rights granted to a Recognized Mortgagee under the provisions of this Article 11 shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

Section 11.08. Landlord's Right to Mortgage its Interest. Landlord shall have the right to mortgage its interest in the Premises, as long as such mortgage is subject and subordinate in all respects to this Lease and any new lease executed pursuant to the provisions of Section 11.04 (and all Recognized Mortgages encumbering either such lease). Upon request made by any Recognized Mortgagee or by Tenant on behalf of a proposed Recognized Mortgagee, Landlord shall deliver a duly executed and acknowledged certificate in recordable form addressed in the manner specified in the request confirming such subordination.

Section 11.09. Limitation On Benefits. The provisions of this Article 11 are solely for the benefit of Recognized Mortgagees, and in no event shall Tenant or any guarantor under the Guaranty, the Interim Guaranty or any other guaranty be entitled or empowered to assert any provision of this Article 11 as a defense to Landlord's claim of the occurrence, existence or continuance of a Default or Event of Default.

Section 11.10. Delegation of Tenant's Rights. Landlord hereby agrees to recognize the transfer, assignment and/or delegation by Tenant to one or more Recognized Mortgagees of the authority to exercise any rights of Tenant under this Lease pursuant to the terms of any such Mortgagee's Recognized Mortgage (or any other written instrument effecting such transfer, assignment or delegation provided that a copy of such instrument shall have been given to Landlord), and to permit Recognized Mortgagees to exercise such rights for and on behalf of Tenant.

## ARTICLE 12

### Indictment

Section 12.01. Assignment. If any grand jury impaneled by any federal or state court files an indictment with such court charging Tenant or any Principal of Tenant (such indicted Person is herein referred to as the "Indicted Party") with having committed an intentional felony in connection with the Premises or any other matter, then Landlord shall convene a hearing (the "Hearing") before a panel of 3 persons consisting of (i) the City's Deputy Mayor for Finance and Economic Development, (ii) the President of PDC, and (iii) the Corporation Counsel of the City, or a duly authorized designee of any of them, or such substitute persons as the City's Mayor may designate (the "Hearing Officers"). Such hearing shall be held upon not less than 30 days' written notice to the Indicted Party and Tenant for the purpose of determining whether it is in the best interest of the City to require the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be. At the Hearing, Tenant and the Indicted Party shall have the opportunity to be represented by counsel and to make a presentation to the Hearing Officers orally and in writing. The Hearing Officers shall consider and address in reaching their determination (x) the nexus of the conduct charged in the indictment to this Lease, (y) the deleterious effect which an assignment of the Indicted Party's interest in this Lease or in Tenant, as the case may be, would have on the economic development interests of the City which this Lease is intended to promote, and (z) any other relevant matters. The Hearing Officers shall render a decision in writing within 20 days of the last day of the Hearing. If the Hearing Officers decide by a majority vote that it is in the best interest of the City to require an assignment by the Indicted Party, then the Hearing Officers shall notify the Indicted Party in writing of the Hearing Officers' decision within 5 days of the date thereof. The limitations set forth in Article 10 notwithstanding, the Indicted Party shall assign its interest in this Lease or in Tenant, as the case may be, within 6 months after receiving notice of such decision by the Hearing Officers to an Assignee Reasonably Satisfactory to Landlord. The Indicted Party may receive the consideration for such sale in a lump sum or in installment payments, provided that such consideration shall be for a sum certain and that following such assignment the Indicted Party shall have no further interest in the Premises or in any profits therefrom.

Section 12.02. Trust Agreement. In the event of an assignment by an Indicted Party pursuant to this Article 12 to a Person acting as a trustee for the Indicted Party, there shall be a trust agreement between the Indicted Party and the trustee, which trust agreement shall be reasonably satisfactory to the City

and all Recognized Mortgagees. The trust agreement shall provide that:

(a) If (x) the Indicted Party is found not guilty of the felony for which it was indicted by a court of competent jurisdiction or (y) the felony charges against such Indicted Party are dismissed or reduced to a misdemeanor then the trustee shall reassign the Indicted Party's interest in Tenant or in this Lease, as the case may be, to the Indicted Party;

(b) If (x) the Indicted Party is found guilty of the felony for which it is indicted by a court of competent jurisdiction and such verdict is affirmed by the court having ultimate jurisdiction to hear an appeal of such conviction or the period of appeal expires or the Indicted Party waives any right to appeal such determination or (y) the Indicted Party pleads guilty to the felony for which it is indicted (either (x) or (y) above is herein referred to as a "Conviction"), then the trustee shall assign this Lease or the Indicted Party's interest in Tenant, as the case may be, within 12 months of the date of the Conviction to an Assignee Reasonably Satisfactory to Landlord within the meaning of clause (A) of the definition of such term; and

(c) During the pendency of any such trust, the Indicted Party shall exercise no control over the Premises, but may make contributions to Tenant or the Premises, as the case may be, and receive distributions therefrom.

Section 12.03. Failure to Assign. Any failure of (i) the Indicted Party to assign its interest in this Lease or in Tenant, as the case may be, or (ii) an Assignee Reasonably Satisfactory to Landlord, who is acting as a trustee, to assign the Indicted Party's interest in this Lease or in Tenant, as the case may be, following a Conviction, in either case within the time and in the manner provided hereunder, shall be deemed to be a Default by Tenant hereunder. Upon the occurrence of such Default, Landlord and all Recognized Mortgagees shall have all of the rights and remedies provided hereunder in the case of a Default by Tenant, except that if such Default thereafter becomes an Event of Default (pursuant to the terms of this Lease) no Recognized Mortgagee shall have any obligation to cure such Event of Default as a condition to exercising its right to obtain a new lease pursuant to Section 11.04, nor shall such an obligation to cure be a condition to an assignment of this Lease.



## ARTICLE 13

### CONSTRUCTION WORK

#### Section 13.01. Construction of the Building.

(a) Commencement and Completion of Work. Tenant shall (i) subject to Unavoidable Delays, Commence Construction of the Building as soon as is reasonably practicable, but in any event not later than 90 days following the Commencement Date, (ii) subject to Unavoidable Delays, prosecute Construction of the Building with diligence and continuity (provided, however, that Tenant may cease Construction Work for a period not to exceed 90 days promptly following the completion of foundations for the Building) and in accordance with a development and construction schedule consistent with the foregoing requirements of this clause (ii) prepared by Tenant and delivered to Landlord as soon as is practicable, but in any event within 90 days after the substantial completion of foundations for the Building, and (iii) Substantially Complete the Building on or before the Scheduled Completion Date.

(b) Delivery of Copies of Plans and Specifications. Plans and specifications which are required to be submitted to Landlord pursuant to this Section 13.01 may, at the option of Tenant, be delivered by hand to Landlord as provided in Article 25 without the requirement of submitting copies of such plans and specifications to the other parties set forth in Section 25.01(b), provided that Tenant shall, in any event, comply with the terms and provisions of Section 29.05(e).

(c) Submission and Review of Plans and Specifications. Tenant shall submit the Proposed Plans and Specifications to Landlord as soon as is reasonably practicable, but except for Unavoidable Delays, in no event later than 90 days following the Commencement Date. If Landlord determines that the Proposed Plans and Specifications are satisfactory to Landlord with respect to all Reviewable Matters, Landlord shall notify Tenant of Landlord's approval of the Proposed Plans and Specifications. If Landlord determines that the Proposed Plans and Specifications do not conform to the Schematic Drawings, or if the Proposed Plans and Specifications are not satisfactory to Landlord with respect to any other Reviewable Matter, Landlord shall so notify Tenant, specifying in reasonable detail in what respects the Proposed Plans and Specifications are unsatisfactory, and Tenant shall (subject to Tenant's right to contest Landlord's determination) make responsive revisions to such Proposed Plans and Specifications, and shall resubmit the Proposed Plans and Specifications to Landlord for review and approval. Landlord shall, as soon as is reasonably practicable, but in any event within 15 business days following the date of submission by Tenant

of the Proposed Plans and Specifications or any revisions thereof (whichever is applicable), approve or disapprove the plans and specifications (or revisions thereto) submitted to it. Each resubmission shall be made within a reasonable period of time following the date of the giving of Landlord's notice to Tenant stating that the Proposed Plans and Specifications (or revisions thereto) do not conform to the Schematic Drawings or are unsatisfactory with respect to any other Reviewable Matter and setting forth in reasonable detail Landlord's reasons therefor.

(d) Modification of Approved Plans and Specifications.

If Tenant desires to modify the Plans and Specifications with respect to any Reviewable Matter, Tenant shall submit the proposed modifications to Landlord for review and approval. If Landlord determines that the proposed modifications are acceptable, Landlord shall so notify Tenant, and Tenant shall perform its obligations under this Lease in accordance with the Plans and Specifications as modified by the modifications which have been so approved. If Landlord determines that the proposed modifications are not acceptable, Landlord shall so notify Tenant, specifying in reasonable detail in what respects they are not acceptable, and Tenant shall either (i) withdraw the proposed modifications, in which case Construction of the Building shall proceed on the basis of the Plans and Specifications previously approved by Landlord, or (ii) revise the proposed modifications in response to Landlord's objections, and resubmit them to Landlord for review and approval. Each review by Landlord under this Section 13.01(d) shall be carried out (and notice of the results thereof given to Tenant) as soon as is reasonably practicable, but in any event within 15 business days following the date of submission by Tenant of the proposed modifications to the Plans and Specifications, provided, however, that each review of a Change Order which does not affect any Reviewable Matter shall be carried out by Landlord in no more than 3 business days.

(e) Compliance with Requirements, Etc. Except as may be expressly provided to the contrary in Article 30, the Plans and Specifications (and any modification thereto) shall comply with the Requirements. Except as may be otherwise specified in this Lease (including, without limitation the exhibits and schedules hereto), it shall be Tenant's responsibility to assure such compliance. Landlord's approval of the Plans and Specifications (or any modification thereto) shall not be, nor shall be construed as being, or relied upon as, a determination that the Plans and Specifications (or any modification thereto) comply with the Requirements.

(f) Landlord's Right to Use Field Personnel. Provided that the same does not interfere with Tenant's Construction of the Building or cause any labor disputes or conflicts, Landlord shall have the right prior to the Substantial Completion Date, at Landlord's sole risk, cost and expense, to (i) maintain field

personnel at the Premises to observe Tenant's construction methods and techniques, (ii) examine the foundation of Carnegie Hall during Tenant's excavation of the Land and review controlled inspection records (it being understood that such rights of examination and review do not create a right of approval with respect to Tenant's excavation of the Land), and (iii) have such 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 comply with any Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the provisions of this Lease.

Section 13.02. Construction Work Involving Reviewable Matters. All Construction Work that affects Reviewable Matters shall be observed by a Qualified Architect. Any provision of this Lease to the contrary notwithstanding, if any Construction Work (other than Construction Work depicted or described by the Plans and Specifications) will affect any Reviewable Matters, the written approval thereof by Landlord shall be required before performance of such Construction Work, and Tenant shall submit to Landlord for approval at least 15 business days before commencement of such Construction Work complete plans and specifications prepared by the Architect for the proposed Construction Work. All plans and specifications submitted pursuant to this Section 13.02 shall be reviewed by Landlord in accordance with the terms and provisions of Sections 13.01(d) and 13.13, and the terms and provisions of Section 13.01(e) shall apply to such plans and specifications. In addition, Tenant shall submit to Landlord before commencing Construction Work having a cost in excess of \$50,000 (Subject to Indexing) which affects Reviewable Matters and which is not depicted or described by the Plans and Specifications and is not part of the Construction of the Building:

(a) a Construction Agreement in form assignable to Landlord, made with a reputable and responsible contractor or construction manager (which may be Rockrose Construction Corporation or any successor thereto), providing for the completion of such Construction Work in accordance with the plans and specifications approved by Landlord pursuant to this Section 13.02; and

(b) an assignment to Landlord of the Construction Agreement so furnished (subject and subordinate in all respects to all assignments of such Construction Agreement to Recognized Mortgagees), the assignment to be duly executed and acknowledged by Tenant, and by its terms to be effective at Landlord's option upon any termination of this Lease or upon a judicial determination of the occurrence of an Event of Default. The assignment shall also include the benefit of all payments made on

account of such Construction Agreement, including payments made before the effective date of the assignment.

Section 13.03. Cooperation of Landlord in Obtaining Permits. Landlord shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by Section 13.04(a)(i), and shall sign within 10 days following receipt by Landlord any application therefor made by Tenant in order to obtain such permits, consents, certificates and approvals, provided that Landlord reasonably believes that such application and the actions to be taken pursuant thereto are in compliance with the applicable provisions of this Lease and all applicable Requirements. Landlord's execution of any such application shall not (i) impose any liability on Landlord with respect to the work to be performed pursuant thereto, or (ii) be deemed to be a waiver of any of Landlord's rights under this Lease (including the right to review and approve Reviewable Matters) if the work performed pursuant thereto is not in conformity with the applicable provisions of this Lease or all applicable Requirements. Tenant shall reimburse Landlord within 10 days after Landlord's demand for any out-of-pocket cost or expense which is actually incurred by Landlord with respect to Landlord's cooperation in obtaining the permits, consents, certificates and approvals required by clause (i) of Section 13.04(a), provided that Landlord shall not be entitled to reimbursement for any costs or expenses incurred by Landlord in connection with its execution of any application by Tenant under this Section 13.03 with respect to the Construction of the Building. Landlord shall provide information reasonably requested by Tenant with respect to any request by Landlord for reimbursement pursuant to the preceding sentence.

Section 13.04. Conditions Precedent to Commencement of Construction Work.

(a) Permits and Insurance. Tenant shall not commence any Construction Work unless and until (i) Tenant shall have obtained (and, if the Construction Work involves Reviewable Matters, delivered to Landlord true and complete copies of) all necessary permits, consents, certificates and approvals of all necessary Governmental Authorities, and (ii) Tenant shall have delivered to Landlord certified copies, certificates or memoranda of the policies of insurance described in Section 7.01(b), except to the extent such coverage is afforded by insurance carried or caused to be carried by or on behalf of Tenant pursuant to Section 7.01(c). In any event, Tenant shall deliver to Landlord true and complete copies of the permits, consents, certificates and approvals referred to in clause (i) of this Section 13.04(a) if requested by Landlord.

(b) Approval of Plans and Specifications or Textual Description. Tenant shall not begin Construction of the Building, unless and until Landlord shall have approved the Proposed Plans

and Specifications, provided, however, that to the extent permitted by applicable laws and regulations, Tenant may commence excavation and foundation work with respect to the Building insofar as Landlord has, prior to the date of this Lease, approved the portions of the Proposed Plans and Specifications relating to such excavation and foundation work. Not less than 10 business days prior to beginning any Construction Work other than Construction of the Building, Tenant shall (unless Tenant has submitted plans and specifications to Landlord in accordance with the terms and provisions of Section 13.02) deliver to Landlord (x) a certificate executed by Tenant or a Qualified Architect stating that to the best of Tenant's or a Qualified Architect's knowledge, as the case may be, after appropriate inquiry the Construction Work to be performed does not affect any Reviewable Matter, is estimated by Tenant or a Qualified Architect to cost less than \$6,500,000 (Subject to Indexing), and cannot (when completed) reasonably be expected to materially reduce the value of the Building or, in lieu of the certificate referred to in clause (x) of this Section 13.04(b) and in all cases where the proposed Construction Work has an estimated cost in excess of \$6,500,000 (Subject to Indexing), individually or when aggregated with other Construction Work to be performed at the same time, (y) plans, specifications and/or a textual description of the Construction Work to be performed, setting forth in reasonable detail the nature and scope of the Construction Work to be performed; the areas of the Building to be affected; the general types and qualities of finishes and materials to be utilized; and such other information as Tenant reasonably believes is reasonably necessary for Landlord to ascertain if the Construction Work contemplated will affect any Reviewable Matter or, when completed, will materially decrease the value of the Building. If Tenant delivers to Landlord the certificate specified in clause (x) of this Section 13.04(b) and Landlord disputes any portion thereof within 10 business days after such delivery, Tenant may deliver to Landlord the items specified in clause (y) of this Section 13.04(b), or if Tenant elects not to so deliver such items, the matter in dispute shall, upon the request of either Party, be resolved by arbitration conducted in accordance with Article 34. If Tenant delivers to Landlord the items specified in clause (y) of this Section 13.04(b), Landlord shall notify Tenant within 10 business days following its receipt of such items that Landlord has approved such Construction Work for the purposes of this Section 13.04(b) or that Landlord has determined that the performance of the Construction Work described would affect a Reviewable Matter (in which case the provisions of Section 13.02 shall apply) or would materially decrease the value of the Building (in which case the provisions of Section 13.17 shall apply). If Construction Work described in items submitted to Landlord pursuant to clause (y) of this Section 13.04(b) is performed, it shall be performed in substantial conformity with the plans and specifications therefor and/or description thereof provided to Landlord in accordance with the provisions of this

Section 13.04(b), but nothing contained in this Section 13.04(b) shall prohibit Tenant from altering (in a substantial manner or otherwise) any plans for or textual description of any Construction Work to be performed pursuant to this Section 13.04(b), provided that the provisions of this Section 13.04(b) are complied with respecting such altered plans or textual description.

(c) Limitation on Construction Before Effectiveness of Guaranty. Tenant shall not perform any portion of the Construction of the Building, except for the excavation of the Land and the construction of foundations for the Building and other below-grade improvements, unless and until the effective date of the Guaranty shall have occurred. The provisions of the foregoing sentence shall not modify or otherwise affect any of Landlord's or Tenant's other obligations under this Lease, including without limitation, Tenant's obligations to pay Rental and Tenant's obligations under Section 13.01(a) (and there shall be no extension by reason of the foregoing sentence of the period of 90 days during which Tenant may cease Construction Work under Section 13.01(a) following the completion of foundations for the Building).

(d) Security. The provisions of this Section 13.04(d) shall apply to all Construction Work other than the Construction of the Building. Tenant shall provide Acceptable Security to Landlord, prior to commencement of any Construction Work having an estimated cost (in isolation or when aggregated with other Construction Work to be performed at the same time) in excess of \$7,500,000 (Subject to Indexing), which estimated cost shall be determined in accordance with Section 8.02(b) as if such Construction Work were Construction Work in connection with a Casualty Restoration, unless Tenant shall have submitted the certificate specified in clause (x) of Section 13.04(b) and Landlord shall not have timely disputed the cost estimate contained therein. Any provisions of the second sentence of this Section 13.04(d) to the contrary notwithstanding, in the event that an Event of Default has occurred and is continuing at the time any Construction Work is being performed, Tenant shall provide Acceptable Security to Landlord with respect to all Construction Work regardless of the estimated cost thereof.

Section 13.05. Completion of Construction Work. Except as may be provided to the contrary in Section 13.01(a), all Construction Work, once commenced, shall be completed without undue delay (but subject nevertheless to Unavoidable Delays), in a good and workmanlike manner and in accordance with all applicable Requirements. The Construction of the Building shall be in accordance with the Plans and Specifications. All other Construction Work affecting Reviewable Matters shall be in accordance with plans and specifications therefor approved by Landlord. Promptly following completion of any Construction Work,

Tenant shall furnish Landlord with (a) in the case of the completion of the Construction of the Building, (x) a Qualified Architect's certification to Landlord that it has examined the Plans and Specifications and that to its best knowledge, after appropriate investigation, the Building, as then constructed, has been completed substantially in accordance with the Plans and Specifications and complies with the Building Code of the City and all other Requirements, which certification shall also specify the Floor Area of the Building, (y) a copy or copies of the Certificate(s) of Occupancy for the Building, and (z) a complete set of "as built" plans and a survey showing the Building; (b) in the case of Construction Work (other than Construction of the Building) which either involves Reviewable Matters or has a cost greater than \$7,500,000 (Subject to Indexing), a Qualified Architect's certification to Tenant, a Subtenant, or Landlord that such architect has examined the plans and specifications for such Construction Work and that to its best knowledge, after appropriate investigation, such Construction Work complies with the Building Code of the City and all other Requirements which certification shall specify whether or not and to what extent the Floor Area of the portion of the Building affected by such Construction Work changed as a result of such Construction Work; (c) in the case of Construction Work other than Construction of the Building, if requested by Landlord, copies of appropriate documents customarily obtained by owners or lessees of buildings comparable to the Building evidencing compliance with the Requirements applicable to such Construction Work; and (d) in the case of Construction Work (other than the Construction of the Building or Construction Work which does not materially affect the structure or mechanical systems of the Building), a set of "as built" plans with respect to the Construction Work performed. If the Construction Work in question was to have been performed pursuant to plans and specifications approved by Landlord, the certification delivered pursuant to clause (b) of this Section 13.05 shall also certify that such Construction Work has been completed substantially in accordance with the plans and specifications approved by Landlord and applicable thereto.

Section 13.06. Title to the Building and Materials. Materials to be incorporated in the Building (including alterations thereto pursuant to the provisions of this Lease but excluding all property belonging to Subtenants) shall, effective upon their purchase and at all times during the Term be and be deemed to be leased to Tenant and to constitute the property of the Fee Owner, and upon Construction of the Building, or the incorporation of such materials therein, title thereto shall be and continue in the Fee Owner. However, (a) except as may be otherwise specified herein with respect to Landlord and the Expansion Space, the Fee Owner and Landlord shall not be liable in any manner for payment to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase of any such materials, (b) the Fee Owner and Landlord shall have no

obligation to pay any compensation to Tenant by reason of the Fee Owner's acquisition of title to any such materials, and (c) except to the extent an Event of Default has occurred and is continuing, Tenant alone shall be entitled to enforce and obtain the benefit of all warranties, guaranties, claims for deficient material, refunds, rebates and the like with respect to materials and Equipment incorporated into the Building, all of which are leased to Tenant. Title to the Building and the Expansion Space shall at all times be and vest in the Fee Owner.

Section 13.07. Wages of Contractors, Etc. All persons employed by Tenant with respect to Construction of the Building or other 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 involving \$500,000 (Subject to Indexing) or more shall include the following provisions, provided that non-material deviations, as appropriate, from the language set forth below shall be permitted:

(i) ["Contractor" / "Subcontractor" / "Materialman"] hereby agrees that immediately upon the purchase by ["contractor" / "subcontractor" / "materialman"] of any building materials to be incorporated in the Building (as defined in the lease pursuant to which the owner acquired a leasehold interest in the property (the "Lease")), such materials shall become the sole property of the Fee Owner (as defined in the Lease), notwithstanding that such materials have not been incorporated in, or made a part of, such Building at the time of such purchase; provided, however, that Landlord (as defined in the Lease) and the Fee Owner shall not be liable in any manner for payment to ["contractor" / "subcontractor" / "materialman"] in connection with the purchase of any such materials, and Landlord and the Fee Owner shall have no obligation to pay any compensation to ["contractor" / "subcontractor" / "materialman"] by reason of such materials becoming the sole property of the Fee Owner.

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



(iii) ["Contractor" / "Subcontractor" / "Materialman"] hereby agrees to make available for inspection by the Fee Owner, during reasonable business hours, ["contractor's" / "subcontractor's" / "materialman's"] books and records relating to Construction Work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as defined in the Lease) to be incorporated into the Building.

(iv) The Fee Owner and Landlord are not parties to this ["contract" / "agreement"] 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"].

(v) All covenants, representations, guarantees and warranties of ["contractor" / "subcontractor" / "materialman"] set forth in the preceding 4 paragraphs shall be deemed to be made for the benefit of Landlord and shall be enforceable by Landlord.

(b) After the Substantial Completion Date, all Construction Work having a cost estimated by Tenant to be in excess of \$5,000,000 (Subject to Indexing) (unless such estimate is challenged by Landlord, in which case such cost shall be determined pursuant to the provisions of Section 8.02(b)) shall be performed pursuant to Construction Agreements (which may be with Rockrose Construction Corporation or any successor thereto) that are assignable to Landlord, as provided in Section 13.02.

Section 13.09. Demolition of the Building. Except as hereinafter provided or otherwise consented to by Landlord and the Fee Owner, Tenant shall not demolish the Building during the Term. If at least 75% percent of the Floor Area of the Building is destroyed as a result of a fire or other casualty or it is necessary in connection with a Casualty Restoration to demolish the remainder of the Building, Tenant shall have the right, subject to compliance with all Requirements and the terms of Articles 8 and 13, to demolish the remainder of the Building prior to performing a Casualty Restoration. If a material portion (but less than 75%) of the Floor Area of the Building is destroyed as a result of a fire or other casualty, Landlord and the Fee Owner shall not unreasonably withhold consent to a request by Tenant to demolish the remainder of the Building, provided that Landlord and the Fee Owner shall be entitled to consider all relevant factors.

Section 13.10. Development Sign. Within 30 days after request of Landlord or the Fee Owner, Tenant shall at its expense furnish and install a project sign, the design and location of which shall be reasonably satisfactory to Landlord and the Fee

Owner, and the size, location and contents of which shall be reasonably satisfactory to Tenant. Such sign need not remain in place after the Substantial Completion Date unless Tenant elects to permit it to remain for a longer period.

Section 13.11. Funds for Construction. Tenant covenants and agrees to provide all requisite funds for the completion of all Construction Work, including Construction of the Building. Nothing in the preceding sentence shall be deemed to (i) prohibit or limit any borrowing by Tenant in accordance with the terms and provisions of this Lease, or (ii) affect or abrogate the provisions of Section 42.02.

Section 13.12. Use of Plans and Specifications. Landlord and the Fee Owner shall have the right to use without any payment or other compensation by Landlord or the Fee Owner therefor (a) the Schematic Drawings, (b) the Plans and Specifications and Proposed Plans and Specifications, (c) any surveys and "as built" plans showing the Building, and (d) any other plans and specifications with respect to Construction Work solely (x) for the design, construction, operation and use of the Expansion Space, (y) to facilitate the exercise of its rights under this Lease, and (z) subsequent to the expiration or termination of this Lease, for the construction, use, operation and alteration of the Building and other purposes incidental thereto. The provisions of this Section 13.12 shall survive the expiration or termination of this Lease.

Section 13.13. Approval Procedures.

(a) Subject to the provisions of Section 13.13(b), to the extent matters are subject to Landlord's review and approval under this Article 13, Landlord's granting or withholding of approval shall be based solely upon (i) conformity to the last to have been approved by Landlord or Landlord and the Fee Owner of (x) the Schematic Drawings, (y) the Plans and Specifications or (z) any other plans, drawings, specifications, models or other items concerning the Building, (ii) the exterior walls and appearance of the Building, (iii) the connections between the Building and Carnegie Hall, and (iv) the structural integrity of the Building as the same may affect Carnegie Hall (collectively, "Reviewable Matters").

(b) When any item or matter regarding construction has been approved by Landlord, the item or matter shall not later be disapproved by Landlord either in connection with any required approval subsequently requested by Tenant or otherwise, provided, however, that any approval as to architectural matters at any stage of design shall be subject to additional details at later stages of design being satisfactory to Landlord. If any architectural matter is approved at any stage of design (a "Previously Approved Matter") and at a later stage of design, an

approval is requested for the first time for an architectural matter which is related to the Previously Approved Matter (the "New Matter"), the approval of the Previously Approved Matter shall not control the approval or disapproval of the New Matter at the later stage of design; however, the approval at any later stage of design of any Previously Approved Matter shall not be unreasonably withheld if the Previously Approved Matter at such later stage of design is consistent with such Previously Approved Matter at the earlier stage of design. If any item or matter is disapproved by Landlord or the Fee Owner when the approval thereof has been requested by Tenant, such disapproval shall be accompanied by a written statement in reasonable detail describing the reasons for such disapproval.

**Section 13.14. Construction Rules.** All Construction Work shall be performed in strict compliance with the construction rules set forth on Schedule III as same may be amended pursuant to this Section 13.14. From and after the earlier of (i) the seventh anniversary of the Commencement Date, or (ii) Substantial Completion and the completion of all material Tenant Improvement Work in connection with the initial leasing of space in the Building, Tenant shall not unreasonably withhold consent to amendments of the construction rules set forth on Schedule III from time to time so as to provide that Construction Work detectable within the concert halls located within Carnegie Hall shall not be permitted during periods scheduled for performances in such concert halls, provided that no such amendment shall deprive Tenant of reasonable and practicable opportunities to perform Construction Work. Any dispute arising under the immediately preceding sentence shall upon the request of either Party, be resolved by arbitration conducted in accordance with Article 34. Landlord and Tenant may amend the construction rules by mutual agreement at any time and from time to time.

**Section 13.15. Construction Work on Carnegie Hall.** During the course of (and as a portion of) the Construction of the Building, Tenant shall perform the actual physical work of blocking off the windows located on the eastern wall of Carnegie Hall abutting the western boundary of the Land adjacent to where the Building will be located with masonry block in accordance with the fire rating requirements of the New York City Building Code and otherwise in a good and workmanlike manner, provided, however, that to the extent Tenant so blocks off more than 100 such windows, Landlord shall reimburse Tenant upon demand for the costs actually incurred by Tenant with respect to the blocking off of such additional windows. Tenant, after notice to Landlord, shall have the right to remove from (a) the east wall of the existing Carnegie Hall building the existing cornice, parapet, parapet coping and related masonry elements to the extent such cornice, parapet, parapet coping and related masonry elements conflict with the Construction of the Building, and (b) the roof of Carnegie Hall, the abandoned cooling tower, and to relocate, to a location

approved by Landlord in Landlord's reasonable discretion and without disruption of Landlord's operations, the operating cooling tower(s), the water tank(s) and associated pipes and other mechanical equipment associated with the cooling tower(s) and water tank(s) and the air conditioner and associated ducts installed to serve Carnegie Hall's east wall tenants on the roof of the existing Carnegie Hall building. Tenant may, at its option, remove in a good and workmanlike manner the projections over the Land set forth on Schedule I. Any work by Tenant performed pursuant to the preceding two sentences shall be performed by Tenant without cost or expense to Landlord, in compliance with all applicable laws and regulations, and at Tenant's sole risk.

Section 13.16. Fee Owner Approval. Any provision of this Lease to the contrary notwithstanding, to the extent the Proposed Plans and Specifications are not in compliance with the provisions of any special permit covering the Building and issued pursuant to Section 74-711 of the Zoning Resolution (the "Special Permit"), the approval of the Proposed Plans and Specifications by the Fee Owner (acting in its proprietary capacity) shall be required to the same extent as the approval of Landlord, and the Fee Owner (acting in its proprietary capacity) shall be bound by the provisions of this Lease with respect to the timing and criteria for such review and approval in the same manner (and to the same extent) as Landlord is bound thereby.

Section 13.17. Preservation of Value of Building. Any provision of this Lease to the contrary notwithstanding, Tenant shall not perform, permit or suffer any Construction Work which when completed, would materially decrease the value of the Building.

## ARTICLE 14

### REPAIRS, SIDEWALKS, UTILITIES AND WINDOW CLEANING

Section 14.01. Maintenance of the Premises, Etc. Tenant shall take good care of the Premises, the alleys and curbs in front of or adjacent to the Premises (other than those in front of Carnegie Hall), water, sewer and gas connections, pipes and mains appurtenant to the Premises (but not appurtenant to Carnegie Hall, including the Expansion Space from and after the Expansion Space Completion Date), and shall keep and maintain the Premises (subject to and 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 (i) keep the Premises in good and safe order and condition, (ii) preserve the outer surfaces and structural elements of the Boundary Walls and the structural elements supporting the Expansion Space (except that Landlord shall be responsible for any window breakage in the Boundary Walls caused by Landlord or its employees, agents, invitees or guests) and (iii) prevent damage to Carnegie Hall and the Expansion Space resulting from the use of the Premises or Tenant's acts, however the necessity or desirability therefor may occur. 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 and applicable provisions of this Lease. As used in this Section, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions.

Section 14.02. Removal of Equipment. Tenant shall not, without the consent of Landlord (which shall not be unreasonably withheld), remove or dispose of any Equipment having a then current aggregate market value in excess of \$500,000 (Subject to Indexing) during the course of any Lease Year unless such Equipment is (a) promptly replaced by Equipment of at least equal utility and quality, (b) removed in connection with Construction Work, or (c) removed for repairs, cleaning or other servicing and thereafter, reinstalled 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. Dirt, Snow, Etc. Except as set forth in the next sentence of this Section 14.03, Tenant shall (i) keep clean and free from dirt, snow, ice, rubbish and obstructions (except for temporary obstructions permitted by law or pursuant to Section 14.06) the sidewalks, grounds, parking facilities, plazas,

common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs or any other space, which may at any time exist in the Premises or in front of, or adjacent to, the Premises, and during the course of any Construction Work (ii) keep the sidewalks and streets adjacent to Carnegie Hall free from any debris and rubbish caused by such Construction Work. Landlord shall keep clean and free from dirt, snow, ice, rubbish and obstructions (except for temporary obstructions permitted by law and rubbish and debris to be removed by Tenant during the course of any Construction Work), the sidewalks, grounds, parking facilities, plazas, common areas, chutes, sidewalk hoists, railings, gutters, alleys, curbs or any other space which may at any time exist in front of or adjacent to Carnegie Hall and Landlord's street-level entrances to the Expansion Space. In the event Landlord breaches its obligations set forth in the preceding sentence and fails to cure such breach within 30 days following notice from Tenant of such breach, Tenant may, as its sole and exclusive remedies (i) seek injunctive relief against Landlord, and/or (ii) remove dirt, snow, ice, rubbish or obstructions from such areas at Landlord's expense. Landlord shall reimburse Tenant upon demand for any out-of-pocket costs actually incurred by Tenant arising from the proper exercise of its rights under clause (ii) above together with interest thereon at the Late Charge Rate from the date actually paid by Tenant to the date reimbursed by Landlord, but in no event shall Tenant be entitled to an abatement or setoff with respect to Rental as a result of Landlord's breach of the provisions of this Section 14.03. Except as explicitly provided in this Section 14.03, Tenant shall have no rights against Landlord or Carnegie Hall under this Lease as a result of Landlord's breach of the provisions of this Section 14.03.

Section 14.04. No Obligation to Repair or to Supply Utilities. Except as may be expressly provided to the contrary in this Lease, Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises, and shall not have any duty or obligation for Tenant to make any alteration, change, improvement, replacement, Restoration or repair to the Building. Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises. Except as may be expressly provided to the contrary in this Lease; Tenant shall not be required to supply any facilities, services or utilities whatsoever to Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), and the physical location of the Expansion Space within the Building shall not create any implied duty or obligation for Tenant to make any alteration, change, improvement, replacement, Restoration or repair to Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date). Landlord hereby acknowledges that Tenant has assumed absolutely no responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair,

maintenance and/or management of Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) except as expressly set forth in this Lease.

Section 14.05. Window Cleaning. Tenant shall not clean nor require, permit, suffer or allow any window in the Building to be cleaned from outside in violation of Section 202 of the Labor Law, or of the rules of the Industrial Board, or any other Governmental Authority. Landlord shall not clean any window in the Boundary Walls from outside. If requested by Tenant and necessary or reasonably desirable due to the provisions of applicable law, Landlord will execute and otherwise cooperate with Tenant respecting Tenant's applications for permits to install and operate window washing equipment for the Building (including the exterior of windows in the Boundary Walls), at Tenant's risk and expense, provided that such equipment shall not violate any provisions of this Lease and shall be subject to the applicable requirements hereof in all respects, including provisions for Landlord's review and approval in regard to any effect of such equipment on Reviewable Matters.

Section 14.06. Sidewalk Bridges. During the Construction of the Building, Tenant shall have the right to install and maintain sidewalk bridges and utilize storage areas and facilities, at its sole risk and expense, in the manner and at the locations set forth on Schedule VIII in compliance with all Requirements. Tenant's manner of use of such sidewalk bridges and storage facilities shall be accomplished in a manner so as not to unreasonably interfere with the use and enjoyment of Carnegie Hall by Landlord. Such sidewalk bridges and storage facilities shall be removed by Tenant in a good and workmanlike manner no later than the Substantial Completion Date, provided that the sidewalk bridges located on 57th Street in front of Carnegie Hall shall be removed as soon as such removal is allowed by law.

## ARTICLE 15

### LETTER OF CREDIT

#### Section 15.01. Delivery of Letter of Credit.

Simultaneously with the execution of this Lease, Tenant has delivered to Landlord an amendment to that certain letter of credit previously issued by Citibank, N.A. in favor of and now held by Landlord in the face amount of \$1,000,000 with a stated expiration date of September 7, 1988 (Letter of Credit No. NY-0885-30000639), so as to provide for draws on such letter of credit upon submission by Landlord of its sight draft as provided therein accompanied by a sworn and duly notarized affidavit signed by Landlord's managing director or other duly authorized executive or operating officer to the effect that Landlord is entitled to draw on such letter of credit either (i) under clause (a) of Section 15.04, or (ii) by reason of the termination of this Lease by Landlord following any Event of Default (such letter of credit as so amended, and any extension, renewal or replacement thereof in accordance with Section 15.02, is referred to herein as the "Letter of Credit"). Landlord shall be entitled to hold the Letter of Credit after the Commencement Date on and subject to the terms set forth in this Article 15. Within 10 days after the occurrence of the Guaranty Effectiveness Date, Landlord shall return the Letter of Credit to Tenant with authorization from Landlord, in the form annexed to the Letter of Credit, for the Letter of Credit to be terminated and cancelled. Landlord shall also be required to return the Letter of Credit to Tenant for cancellation if Landlord breaches its obligations under this Lease and by reason of such breach, Tenant has taken action resulting in a final judicial determination terminating this Lease. During the time Landlord holds the Letter of Credit, Landlord shall be entitled to draw thereon in accordance with the provisions of Section 15.04 and this Section 15.01 (but not otherwise).

#### Section 15.02. Extension of Letter of Credit.

Tenant shall, no later than 15 business days before the stated expiration date of the Letter of Credit (including any previous extension or renewal of the Letter of Credit, and any replacement thereof, in accordance with this Section 15.02), extend or renew the Letter of Credit for at least one additional year, or deliver to Landlord, in replacement of the Letter of Credit then in effect, another letter of credit issued by Citibank, N.A. (or a comparable financial institution) on the same terms and in the same amount as the Letter of Credit then in effect (but not in excess of the then undrawn face amount thereof) with a stated expiration date no less than 11 months after the stated expiration date of the Letter of Credit then in effect; provided, however, that Tenant shall not be required to extend, renew or replace the Letter of Credit after the Guaranty Effectiveness Date.



Section 15.03. Reduction in Face Amount of Letter of Credit. The face amount of the Letter of Credit shall be reduced monthly at Tenant's request by amounts equal to Tenant's documented out-of-pocket expenditures for the hard costs of excavation and/or foundation work for the Construction of the Building, but in no event shall the undrawn face amount of the Letter of Credit be reduced below \$500,000. Landlord shall, within 10 days after its receipt of notice from Tenant accompanied by documentation of Tenant's out-of-pocket expenditures described in the preceding sentence, instruct the issuer of the Letter of Credit to reduce the face amount thereof as provided in the preceding sentence by delivering to such issuer a certificate in the form annexed to the Letter of Credit.

Section 15.04. Draws by Landlord on Letter of Credit. During the time Landlord holds the Letter of Credit, Landlord shall be entitled to draw thereon to the extent of the undrawn balance thereof if (a) Tenant shall have failed to extend or renew the Letter of Credit (or deliver to Landlord a replacement therefor) in accordance with Section 15.02, but immediately following such draw, Landlord shall deposit the proceeds of the Letter of Credit with Depositary to be held in an interest bearing account upon the same terms and for the same purpose as the Letter of Credit was held by Landlord, except that if Tenant thereafter delivers to Landlord a new or replacement letter of credit issued by Citibank, N.A. (or a comparable financial institution) and which otherwise complies with the provisions of Section 15.02 (it being agreed that such new or replacement letter of credit shall thereupon be included within the term "Letter of Credit"), all proceeds so held by Depositary (together with the interest thereon) shall be paid immediately to Tenant, or (b) the Lease shall have been terminated by Landlord following any Event of Default, in which case Landlord shall be entitled to retain the amount or amounts received from such draw as added Rental for, among other things, Tenant's past control over and rights to the use of the Land under this Lease. The provisions of this Section 15.04, and the exercise by Landlord of its rights under such provisions, shall be without prejudice to any and all other rights and remedies of Landlord under this Lease.

## ARTICLE 16

### REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 16.01. Tenant's 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, subject to the terms and provisions of Section 35.03, 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 by the Building, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Building, 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.

Section 16.02. Landlord's Obligation to Comply. Except as expressly specified to the contrary in Section 14.01 with respect to the Expansion Space, Landlord shall comply promptly with all requirements of all Governmental Authorities purporting to have jurisdiction over Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether affecting the maintenance, use or occupancy of Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), or involving or requiring any structural changes or additions in or to Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), and regardless of whether such changes or additions are required by reason of any particular use to which Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), or any part thereof, may be put, but Landlord shall only be required by this Section 16.02 to comply with requirements as described above to the extent that the failure to so comply causes (a) Landlord to be in default of its obligations and covenants under other provisions of this Lease, (b) a default to exist under any Recognized Mortgage, or (c) Tenant to be in violation of any Requirement with respect to the Premises, whether or not such violation has been noted or issued against the Premises by any Governmental Authority. Tenant shall give Landlord notice if Tenant believes Landlord to be in default of this Section 16.02 (which notice shall specify the nature of the alleged default), and Landlord shall not be liable to Tenant for damages under this Section 16.02 except to the extent Landlord fails to cure such default within a reasonable time after notice thereof from Tenant, but nothing contained in this sentence shall abrogate any other liability Landlord may have under this Lease or otherwise, or any rights Tenant may have in equity.

## 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, Carnegie Hall, the Expansion Space or any part thereof, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord or the Fee Owner, or (c) any other matter or thing whereby the estate of Landlord or the Fee Owner in and to the Premises, Carnegie Hall, the Expansion Space or any part thereof is or would be impaired, provided, however, that notwithstanding the above, (i) Tenant shall have the right at any time and from time to time to execute and maintain Recognized Mortgages and Subleases in accordance with the provisions of this Lease; and (ii) Tenant's obligations with respect to Tenant's Impositions shall be as provided in Sections 4.01(a) and 35.02. Landlord shall neither create nor cause to be created during the Term any lien, encumbrance or charge upon Tenant's (or a Recognized Mortgagee's) interest in, to or under this Lease or the leasehold estate created hereby or any assets of or funds appropriated to Tenant, nor shall Landlord do or cause (or permit any Person claiming by, through or under Landlord to do or cause to be done) any other matter or thing whereby the estate of Tenant or any Recognized Mortgagee in, to or under this Lease and/or the Premises (or any part thereof) is or would be impaired, provided, however, that notwithstanding the above, (x) Landlord shall have the right to execute mortgages which comply with the provisions of Section 26.02, and (y) Landlord's obligations with respect to liens arising from Landlord's Impositions shall be as provided in Section 4.01(b). Tenant shall give Landlord notice of any default by Landlord of Landlord's obligations under this Section 17.01 (which notice shall specify the nature of the default), and Landlord shall not be liable to Tenant for damages under this Section 17.01 except to the extent Landlord fails to cure such default within a reasonable time after notice thereof from Tenant, but nothing contained in this sentence shall abrogate any other liability Landlord may have under this Lease or otherwise, or any rights Tenant may have in equity.

### Section 17.02. Discharge of Liens.

(a) If (i) any mechanic's, laborer's, vendor's, materialman's or similar lien is filed against (or otherwise encumbers) the Premises or any part thereof, or (ii) any public improvement lien shall be filed against any assets of, or funds appropriated to, Landlord or the Fee Owner, or (iii) any mechanic's, laborer's, vendor's, materialman's or similar lien is filed against (or otherwise encumbers) the Expansion Space, Carnegie Hall, or any part of either of them, and such lien was

created or caused by Tenant, a Subtenant, or any Person acting through, under, or on behalf of either Tenant or a Subtenant, Tenant shall, within 30 days after Tenant's receipt of written notice (from Landlord or otherwise) of the creation or filing of such mechanic's, laborer's, vendor's, materialman's or similar 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 a cash deposit, bond, clean and irrevocable letter of credit or other security reasonably satisfactory to Landlord, in an amount sufficient to pay the lien with interest and penalties (but such security need not be furnished to Landlord to the extent such security would duplicate security then held by Depositary for such purpose), 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, failing which Landlord may use the security furnished by Tenant (or Depositary shall use the security then held by it to the extent security has not been furnished to Landlord) in order to (x) bond the lien, or (y) if Landlord has received written advice from an attorney licensed as such in the State that an imminent foreclosure of the Premises, Carnegie Hall or the Expansion Space is likely, otherwise discharge the lien.

(b) If (i) any mechanic's, laborer's, vendor's, materialman's or similar lien is filed against (or otherwise encumbers) the Premises or any part thereof, or (ii) any public improvement lien shall be filed against the assets of, or funds appropriated to, Tenant, and such lien was created or caused by Landlord or any Person acting through, under or on behalf of Landlord (other than Tenant, a Subtenant, or any Person acting through, under, or on behalf of either Tenant or a Subtenant), Landlord shall, within 30 days after Landlord's receipt of written notice (from Tenant or otherwise) of the creation or filing of such lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Landlord shall not be required to discharge any such lien if Landlord shall have (A) furnished Tenant (or a Recognized Mortgagee if such Recognized Mortgagee requires security with respect to such lien pursuant to the terms and provisions of its Recognized Mortgage) with a cash deposit, bond, clean and irrevocable letter of credit or other security reasonably satisfactory to Tenant (or such Recognized Mortgagee, as the case may be), 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 Landlord's efforts to seek discharge of the lien, such lien creates a default

under any Recognized Mortgage or Tenant (or such Recognized Mortgagee, as the case may be) reasonably believes such lien is about to be foreclosed and so notifies Landlord, Landlord shall immediately cause such lien to be discharged of record, failing which Tenant (or such Recognized Mortgagee, as the case may be) may use the security furnished by Landlord in order to (x) bond the lien, or (y) if Tenant (or such Recognized Mortgagee, as the case may be) has received written advice from an attorney licensed as such in the State that an imminent foreclosure of the Premises is likely, to otherwise discharge the lien. If Landlord shall fail to comply with its obligations under clause (A) of this Section 17.02(b) with respect to the provision of security for a lien, and such failure shall continue for 15 days after notice thereof from Tenant, Tenant may discharge such lien and shall be entitled to have and shall receive a credit against the next payment(s) of Rent in an amount equal to the amount of the lien so discharged and interest thereon at the Late Charge Rate from the date of payment through the date such credit is received by Tenant.

Section 17.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the request of Landlord or the Fee Owner, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any 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 Landlord's or the Fee Owner's interest or estate in the Premises or any part thereof, or against assets of, or funds appropriated to, Landlord or the Fee Owner. Notice is hereby given, and to the extent practicable Tenant shall cause all Construction Agreements to provide, that to the extent enforceable under New York law, neither Landlord nor the Fee Owner shall 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 lien for such work or materials shall attach to or affect Landlord's or the Fee Owner's interest or estate in the Premises or any part thereof or any assets of, or funds appropriated to, the Fee Owner or Landlord.

## ARTICLE 18

### REPRESENTATIONS; POSSESSION

Section 18.01. Representations of Landlord. Landlord represents and warrants that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby. Landlord further represents and warrants that (i) the use of the existing Carnegie Hall building currently is, and shall in the future be, in compliance with the certificate of occupancy for such building dated February 19, 1952, with such changes or amendments as may be made in such certificate from time to time and with such replacements thereof as may occur, provided that such changes, amendments or replacements do not interfere or conflict with Tenant's Construction of the Building, or with the performance by Tenant of any of its other obligations under this Lease, (ii) the zoning floor area in Carnegie Hall (including the Expansion Space) that is devoted to residential use (as defined under laws existing on the date hereof) does not now exceed, and shall not in the future be increased above, 50,000 square feet, (iii) the provisions of Chapter 524 of the Laws of New York of 1960, as amended, do not limit or impair Landlord's ability to enter into this Lease or permit the use and development of the Premises as contemplated by this Lease, and that Landlord has the right and authority to execute and deliver this Lease and perform its obligations hereunder, and (iv) any designation of a developer of the Premises made prior to May 15, 1985 has been terminated. If any claim is made by any person other than Tenant (as of the date hereof) or Rockrose Development Corporation that such other person has any rights to develop the Premises based on any acts of Landlord or the City, Landlord shall indemnify, save harmless and defend Tenant in connection therewith, including without limitation, reasonable attorneys' fees and disbursements.

Section 18.02. Tenant's Acknowledgment. Tenant acknowledges and confirms that it has visited the Premises, made whatever inspections it deemed appropriate, and is fully familiar therewith, the condition thereof, and the Title Matters. Tenant accepts the Premises in their existing condition (including all subsurface conditions other than those set forth in clause (b) of Section 18.05) and state of repair, and Tenant confirms that except for the representations, warranties and statements of Landlord contained in this Lease, (x) no representations, statements or warranties, express or implied, have been made by, or on behalf of, Landlord with respect to the Premises or the transaction contemplated by this Lease, the status of title of the Premises, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, or the use that may be made of the Premises, and (y) Tenant has relied on no other representations, statements or warranties. Except as may be

otherwise expressly set forth in this Lease, Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

**Section 18.03. Tenant's Representations and Warranties.**

Tenant represents and warrants that as of the Commencement Date:

(a) The sole partners constituting Tenant are H-CHLP I Corp., K-CHLP II Corp., F-CHLP III Corp. and Fairfax Company, all of which are wholly owned as of the date hereof by the guarantors under the Guaranty.

(b) It has not dealt with any broker, finder or like entity in connection with the execution and delivery of this Lease or the consummation of the transaction contemplated hereby.

**Section 18.04. Tenant's Covenants.**

(a) Tenant hereby covenants that Tenant and its substantially owned subsidiaries have not, since July 13, 1985, sold or agreed to sell goods or services (except, perhaps, food or medical supplies), and shall not during the period commencing upon Tenant's execution and delivery of this Lease and ending upon the termination of this Lease and the Term, sell or agree to sell, goods or services other than food or medical supplies directly to the following agencies of the South African government or directly to a corporation owned or controlled by such government and established expressly for the purpose of procuring such goods and services for such specific agencies: (i) the police, (ii) the military, (iii) the prison system, or (iv) the department of cooperation and development.

(b) In the event Landlord receives information that Tenant is in violation of Section 18.04(a), Landlord shall review such information and give Tenant an opportunity to respond. If a violation has occurred, Landlord shall have the right to obtain, as its sole and exclusive remedy and as liquidated damages, a sum equal to three times the profit associated with the transaction constituting the violation hereof.

(c) Tenant hereby covenants that it and its substantially owned subsidiaries have not since July 13, 1985 violated, and shall not during the period commencing upon Tenant's execution and delivery of this Lease and ending upon the termination of this Lease and the Term violate, the Export Administration Act of 1979 as amended (50 U.S.C. §2410 et seq.) or the Arms Export Control Act of 1976 as amended (22 U.S.C. §2778) by unlawfully exporting or re-exporting goods to the Republic of South Africa or Namibia. Upon a final determination by the United States Department of Commerce or any other agency of the United

States or a court of competent jurisdiction that Tenant or its substantially owned subsidiary has violated the Export Administration Act or the Arms Export Control Act by unlawfully exporting or re-exporting goods to the Republic of South Africa or Namibia, Landlord shall have the right to obtain, as its sole and exclusive remedy and as liquidated damages, a sum equal to twice the profit associated with the transaction constituting the violation hereof.

Section 18.05. Possession. Upon the Commencement Date, Landlord shall deliver to Tenant vacant possession of the Land subject only to the Title Matters. Landlord and Tenant hereby acknowledge and agree that (a) Tenant shall be responsible for the removal of all underground encroachments onto the Land from the land and building immediately to the east of the Land which it elects to remove and which can be removed in the ordinary course of excavation, (b) Landlord shall be responsible for the removal of all underground encroachments onto the Land from the land and building immediately to the east of the Land which present a substantial impediment to the timely Construction of the Building, and (c) Tenant is authorized to remove (in a good and workmanlike manner) any underground encroachments onto the land from Carnegie Hall. To the extent Landlord is empowered to do so, and to the extent not inconsistent with Requirements or the Tea Room Agreement, Landlord hereby authorizes Tenant to remove the encroachments described in clause (a) of this Section 18.05.



## ARTICLE 19

### LIABILITY FOR INJURY; LANDLORD'S INSURANCE

Section 19.01. Landlord not Liable for Injury or Damage, Etc. Landlord and the Fee Owner 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 (provided that the foregoing provisions of this sentence shall not diminish or otherwise affect Landlord's or the Fee Owner's responsibilities for occurrences in or about Carnegie Hall or its appurtenances, including the Expansion Space from and after the Expansion Space Completion Date), 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 Building (including, but not limited to, any of the common areas within the Building, hatches, openings, installations, stairways, hallways or other common facilities, and the streets or sidewalk areas within or in front of the Premises) or that may arise from any other cause whatsoever, unless directly caused by any violation by Landlord of any of the terms or provisions of this Lease or (a) the negligence, (b) intentionally tortious acts or omissions, or (c) criminal acts or omissions of Landlord or the Fee Owner (in its proprietary capacity), or their independent contractors, guests, invitees, agents or employees. Landlord and the Fee Owner shall not be liable to Tenant or to any Person for any failure of gas or water supply, electric current, or 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 (provided that the foregoing provisions of this sentence shall not diminish or otherwise affect Landlord's or the Fee Owner's responsibilities for occurrences in or about Carnegie Hall or its appurtenances, including the Expansion Space from and after the Expansion Space Completion Date), nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless directly caused by any violation by Landlord of any of the terms or provisions of this Lease or (x) the negligence, (y) intentionally tortious acts or omissions, or (z) criminal acts or omissions of Landlord or the Fee Owner (in its proprietary capacity) or their independent contractors, guests, invitees, agents or employees. Nothing in this Article 19 shall alter the obligations or liabilities (if any) of the City in its municipal capacity.

Section 19.02. Insurance Covering Carnegie Hall.

Landlord acknowledges and agrees that the physical location of the Expansion Space in the Building shall not create any implied responsibility or liability on the part of Tenant with respect to personal injury (including death) or property damage occurring in or about Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date). Landlord shall cause Carnegie Hall (including the Expansion Space) to be covered by insurance against liability for bodily and personal injury (including death) and property damage on an occurrence basis with a combined single limit of not less than the greater of (x) \$10,000,000 (as same may be increased in accordance with either or both of the 2 next succeeding sentences of this Section 19.02) or (y) \$20,000,000 (which shall not be subject to increase) at all times during the Term, which insurance shall name Tenant as an additional named insured and shall provide for a waiver of rights of subrogation against Tenant, provided, however, that Landlord shall not be obligated to carry such insurance with respect to the Expansion Space prior to the Expansion Space Completion Date. Not more often than once every 6 years Tenant may notify Landlord that Tenant believes the amount set forth in clause (x) of this Section 19.02 should be increased in order to protect Tenant from assertions of liability arising in connection with personal injury (including death) or property damage occurring in or about Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), which notice shall set forth the amount of such increase that Tenant believes is appropriate for such purpose, and if Landlord does not dispute the amount of the increase set forth in Tenant's notice within 30 days following Landlord's receipt thereof, the amount of insurance required under clause (x) of this Section 19.02 shall be increased as set forth in Tenant's notice. If Landlord shall timely dispute the amount of the increase set forth in Tenant's notice, and Landlord and Tenant fail to agree within 30 days thereafter as to the amount to be set forth in clause (x) of this Section 19.02, upon request of either Party, such dispute shall be resolved by arbitration conducted in accordance with Article 34. The inclusion of clause (y) in this Section 19.02 shall in no way influence any increase of the amount set forth in clause (x) of this Section 19.02. Notwithstanding the foregoing, if and/or to the extent the insurance or the amount thereof required pursuant to the terms and provisions of this Section 19.02 is at any time no longer commonly carried with respect to premises comparable to Carnegie Hall and operations of a size and nature similar to the operations conducted at Carnegie Hall due to changes in insurance practices in the New York area or general unavailability, then Landlord shall so notify Tenant, and to such extent, Landlord shall be relieved of its obligations under this Section 19.02 to carry such insurance upon the earlier to occur of (x) Tenant's agreement with Landlord as to the types and amounts of insurance that are no longer so commonly carried, or (y) if Tenant fails to so agree with Landlord within 30 days following Landlord's notice to

Tenant, a determination by arbitration conducted in accordance with Article 34 at the request of either Party of the types and amounts of insurance no longer so commonly carried. Upon request, Landlord shall provide Tenant with evidence of the insurance required to be maintained by Landlord pursuant to this Section 19.02.

## ARTICLE 20

### INDEMNIFICATION

#### Section 20.01. Tenant's 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, the Fee Owner or PDC to any liability or responsibility for injury, damage to Persons or property, or to any liability by reason of any violation of any Requirement, and shall exercise such control over the Premises so as to comply with the foregoing provisions of this sentence. The foregoing provisions of this Section 20.01 shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of Section 35.03. To the fullest extent permitted by law, Tenant shall indemnify and save harmless Landlord, the Fee Owner, PDC and their officers, directors, employees, agents and servants (collectively, "Tenant's Indemnitees") 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, incurred by, suffered by, or asserted against any of Tenant's Indemnitees by reason of any of the following, unless caused by any violation by Landlord of any of the terms or provisions of this Lease or (x) the negligence, (y) intentionally tortious acts or omissions, or (z) criminal acts or omissions of any one or more of Tenant's Indemnitees:

(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, but excluding matters arising with respect to Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) for which Tenant would not be liable but for the provisions of this Section 20.01;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant, or any Subtenant (unless not related to the Premises), or any of its or their respective officers, shareholders, partners, 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, but excluding matters arising with respect to Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) for which Tenant would not be liable but for the provisions of this Section 20.01;

(e) Liens. Any breach by Tenant of its obligations under Section 17.02(a);

(f) 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 Direct Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed which failure results in a suit, fine, penalty, claim or charge against one or more of Tenant's Indemnitees;

(g) Fees. Any tax attributable to the execution, delivery or recording of this Lease or a memorandum hereof other than New York State Real Property Transfer Gains Tax and New York City Real Property Transfer Tax;

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

(i) Brokerage. Provided Landlord's representation and warranty set forth in the first sentence of Section 18.01 is true and correct, any claim for brokerage commissions, fees or other compensation by any Person who alleges to have dealt with Tenant in connection with this Lease, the Building, or the transactions contemplated by this Lease.

Section 20.02. Landlord's Obligation to Indemnify. Landlord shall not do or permit any act or thing to be done in Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), or any part thereof, and shall not do any act or thing in the Expansion Space at any time, which subjects Tenant to any liability or responsibility for injury, damage to Persons or property, or to any liability by reason of any violation of any requirement of any Governmental Authority purporting to have jurisdiction over Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date), and shall exercise such control over Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) so as to comply with the foregoing provisions of this sentence. To the fullest extent permitted by law, Landlord shall indemnify and save harmless Tenant and its officers, directors, employees, partners, agents and servants (collectively, "Landlord's Indemnitees") 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 Landlord's Indemnitees by reason of any of the following, unless caused by any violation by Tenant of any of the terms or provisions of this Lease, or (x) the negligence, (y) intentionally tortious acts or omissions, or (z) criminal acts or omissions of any one or more of Landlord's Indemnitees:

(a) Work. Any construction or other work or act done in, on, or about Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) or any part thereof by anyone other than Tenant or a Person under Tenant's control (or acting on Tenant's behalf) which results in (x) a suit, fine, penalty, claim or charge against any one or more of Landlord's Indemnitees, or (y) physical damage to the Building or any part thereof or Equipment or personalty therein;

(b) Ownership. The ownership or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) or any part thereof, or of any street, alley, sidewalk, curb, vault, passageway, subway or space comprising a part thereof or adjacent thereto which results in (x) a suit, fine, penalty, claim or charge against any one or more of Landlord's Indemnitees, or (y) physical damage to the Building or any part thereof or Equipment or personalty therein, but excluding matters arising with respect to the Premises for which Landlord would not be liable (under this Lease or otherwise) but for the provisions of this Section 20.02;

(c) 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 Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) 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, but excluding matters arising with respect to the Premises for which Landlord would not be liable but for the provisions of this Section 20.02;

(d) Liens. Any breach by Landlord of its obligations under Section 17.02(b);

(e) Brokerage. Provided Tenant's representation and warranty set forth in Section 18.03(b) is true and correct, any claim for brokerage commissions, fees or other compensation by any Person who alleges to have dealt with Landlord and/or the Fee



Owner in connection with this Lease, the Building, the Expansion Space or any of the transactions contemplated by this Lease.

Section 20.03. Contractual Liability. The obligations of Tenant and Landlord under this Article 20 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 any insurance policy.

Section 20.04. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of Tenant's Indemnitees or Landlord's Indemnitees by reason of any matter to which reference is made in Section 20.01 or 20.02, as applicable, then upon demand by Landlord or the Fee Owner, in the first instance, or Tenant, in the second instance, Tenant or Landlord, as appropriate, shall resist, defend or satisfy such claim, action, or proceeding in such indemnitee's name, by the attorneys for, or approved by, Tenant's or Landlord's insurance carrier, as appropriate (if such claim, action or proceeding is covered by insurance) or by such other attorneys as the indemnitor shall select and the indemnitee shall approve (which approval shall not be unreasonably withheld). The foregoing notwithstanding, any indemnitee may, at its expense, engage its own attorneys to defend itself, or to assist in its defense of such claim, action or proceeding, as the case may be, and the indemnitor shall cooperate (and cause its attorneys to cooperate) with such attorneys of the indemnitee with respect to such defense.

Section 20.05. Survival. The provisions of this Article 20 shall survive the Expiration of the Term.



## ARTICLE 21

### RIGHT OF ENTRY AND INSPECTION

Prior to the completion of the Construction of the Building Landlord's right to enter the Premises shall be governed by the terms and provisions of Section 13.01(f). Thereafter, Tenant shall permit Landlord, its agents and representatives to enter (x) the portions of the Premises not demised under Subleases at all reasonable times, and (y) the portions of the Premises demised under Subleases to the same extent that Tenant is permitted to enter such areas pursuant to the Subleases. Landlord shall give Tenant not less than 48 hours notice of such entry, except in the case of an Emergency (in which case no notice is required), and shall be accompanied by a representative of Tenant (if Tenant timely provides such representative) during the course of any such entry. Tenant's right to enter the Expansion Space shall be governed by the terms and provisions of Section 30.09.

## ARTICLE 22

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

Section 22.01. Landlord's Right to Perform Tenant's Obligations. If an Event of Default shall occur and be continuing; or if Tenant shall fail to carry (or cause to be carried) and keep (or cause to be kept) in full force and effect insurance coverage when and as required by Article 7 (or shall fail to deliver binders or other evidence of such coverage when and as required by Section 7.02 (c) or (d)) and such failure shall continue for 10 days after notice from Landlord to Tenant; Landlord may, but shall be under no obligation to, (x) subject to the rights of all Recognized Mortgagees, perform the obligation the breach of which gave rise to such Event of Default, or (y) obtain the applicable insurance coverage, all at Tenant's expense and without waiving any of Landlord's rights or releasing Tenant from any of its obligations contained herein.

Section 22.02. Construction Work. If (a) this Lease shall expire or be terminated for any reason before the completion of any Construction Work by Tenant; or (b) an Event of Default shall occur because Tenant shall fail to commence any Construction Work (i) in accordance with the provisions of Article 8, in the event of damage or destruction, or (ii) in accordance with the provisions of Article 9, in the event of a taking, or (iii) in accordance with the provisions of Section 13.01(a); or (c) having commenced any Construction Work, an Event of Default shall occur because Tenant shall fail to complete such Construction Work in accordance with Article 13, Landlord may, subject to the rights of all Recognized Mortgagees, but shall not be obligated to, 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 (in accordance with the terms and provisions of Section 22.02) to commence or complete any such Construction Work, (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, within 15 days following Landlord's demand, shall pay the deficiency to Depositary, and (b) Depositary shall pay all undisbursed moneys held by it to Landlord, as and when Landlord incurs expenses with respect to the completion of such Construction Work, provided, however, that (x) the terms and provisions of this Section 22.03 shall not otherwise affect Depositary's disbursement of monies pursuant to the other applicable terms and provisions of this Lease, and (y) Landlord's rights with

respect to sums paid to Landlord by Tenant or Depositary pursuant to this Section 22.03 shall be subject to the terms and provisions of Section 11.04(e).

Section 22.04. Reimbursement of Landlord. Any expense paid or actually incurred by Landlord in accordance with the terms and provisions of this Lease in performing Tenant's obligations under this Lease, including all reasonable legal fees and disbursements paid or actually incurred by Landlord in connection therewith, shall be reimbursed by Tenant upon demand therefor by Landlord, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date such expense was paid by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.05. Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article 22 shall not be, nor be deemed to be (a) a waiver or release of any 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 22.06. 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 comply with any of Tenant's insurance obligations under Article 7 of this Lease, to the amount of the insurance premium or premiums not paid. Subject to the provisions of Section 42.02 Landlord shall be entitled to recover, as damages for such Default or Event of Default, the costs and expenses incurred by Landlord in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements and the uninsured amount of any loss or damage sustained or incurred by Landlord.

Section 22.07. No Liability for Disturbance. Nothing in this Article 22 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder, and performance of any work permitted to be done on Tenant's behalf by Landlord pursuant to this Lease shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store in and/or proximate to the area in which such work is being done all necessary materials, tools, supplies and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage suffered by Tenant, any Subtenant or other occupant of the Building by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment

into the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby.

## ARTICLE 23

### PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Use. Subject to the terms and provisions of this Lease, Tenant shall (except as may be provided to the contrary pursuant to the provisions of Section 23.04) use and operate the Premises during the Term solely for the Construction of the Building and the operation of the Building as a first-class office building (and all uses incidental thereto including, without limitation, incidental storage by Tenant and/or Subtenants and retail space), and for no other purpose. For the purposes of this Lease, the submission of Tenant's leasehold estate in the Premises (or any part thereof) to the provisions of Article 9B of the Real Property Law of the State (as same may be amended) shall not be deemed to be permitted by this Section 23.01 in the absence of the prior written consent of Landlord and the Fee Owner given pursuant to Section 23.04. In no event shall Tenant use or suffer the use of any portion of the Premises for an Adult Use or any Prohibited Use, any provision of this Lease to the contrary notwithstanding. Landlord's use of the Expansion Space shall be governed by the terms and provisions of Section 30.01.

Section 23.02. Unlawful Occupancy. During the Term Tenant shall not use or occupy the Premises, nor permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra hazardous business, use or purpose, or for any purpose or in any way in violation of the provisions set forth in (i) Section 23.01, (ii) Section 16.01, and (iii) the requirements of the insurance policies required to be maintained by Tenant under this Lease. Tenant, upon the discovery of any such unlawful, illegal or extra hazardous business, use or purpose or use or occupation in violation of items (i), (ii) or (iii) immediately preceding, shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any Subtenant using or occupying any portion of the Premises for any such business, use or purpose. The provisions of this Section shall not restrict Tenant's rights herein to contest the validity of any Requirements or to effect the insurance coverages required to be maintained by it hereunder through underwriters from time to time selected by Tenant in accordance with the terms and provisions of Article 7.

Section 23.03. Adverse Possession. Tenant shall not suffer or permit the Premises or any portion thereof to be used by the public or any Person without restriction or in such manner as would, with the lapse of time, impair title to the Premises or any portion thereof, or in such manner as would, with the lapse of time, create the basis for a legitimate claim or claims of adverse usage or adverse possession by the public, as such, or any Person,

or of implied dedication of the Premises, or any portion thereof. The foregoing provisions of this Section 23.03 notwithstanding, Tenant shall not be deemed to have breached its obligations under this Section 23.03 by reason of its maintenance of a through-block lobby in the Building which is open to the public to the extent required by Requirements, the Special Permit and/or the Restrictive Declaration.

Section 23.04. Changes In Use. After the Substantial Completion Date and the Expansion Space Completion Date, Tenant shall be permitted to use all or a portion of the Building for purposes other than those permitted under Section 23.01 or to subject Tenant's leasehold estate in the Premises (or any part thereof) to the provisions of Article 9B of the Real Property Law of the State (as same may be amended), provided Tenant has received the prior written consent of Landlord and the Fee Owner with respect to such change. Landlord and the Fee Owner shall not arbitrarily withhold consent to any such change in use or conversion to a condominium regime; it being acknowledged by the Parties and the Fee Owner that major considerations in determining whether to grant or withhold such consent shall be (a) the compatibility of the proposed use with Carnegie Hall and the area surrounding the Building (it being hereby agreed by Landlord and the Fee Owner that the use of the Building as a first class hotel or for luxury residential housing would be a compatible use), and (b) the then present and estimated future financial impact such proposed change would have on Landlord and the Fee Owner (it being hereby agreed that Landlord and the Fee Owner should not be financially prejudiced by such proposed change, and should continue to receive Rent based upon the revenues generated with respect to the Building to substantially the same degree as is currently provided for in this Lease, with appropriate adjustments as may be necessary to reflect material changes in Tenant's expenses with respect to the Premises which would be caused by such proposed change.

Section 23.05. Maximum Floor Area.

(a) At no time during the Term shall the aggregate Floor Area of the Building (including at all times the Floor Area contained in the Expansion Space as of the Expansion Space Completion Date) exceed 500,000 square feet (as such square footage may be increased from time to time pursuant to Section 23.05(b)), provided, however, that subsequent to the 10th anniversary of the date of Initial Occupancy, Tenant shall not be in Default under this Section 23.05 due solely to an immaterial increase in the Floor Area of the Building (including at all times the Floor Area contained in the Expansion Space as of the Expansion Space Completion Date) above 500,000 square feet.

(b) At any time and from time to time Tenant shall be permitted to increase the aggregate Floor Area of the Building

above 500,000 square feet (but not above 505,000 square feet) by paying to Landlord \$50 (Subject to Indexing) for each square foot of Floor Area of the Building above 500,000. Immediately upon Landlord's receipt of any such payment, the number 500,000 set forth in Section 23.05(a) shall be deemed increased appropriately, but upon request of Tenant, Landlord shall execute and deliver to Tenant an amendment to this Lease (or other agreement in recordable form) confirming the maximum Floor Area of the Building allowable under this Section 23.05.

(c) In no event shall any provision of this Section 23.05 relieve Tenant of its obligation to comply with all Requirements in connection with the Floor Area of the Building.

## ARTICLE 24

### EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

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

(a) if Tenant shall fail to timely make any payment of Rent (or any part thereof) required to be paid by Tenant hereunder, and such failure shall continue for a period of 15 days after notice by Landlord to Tenant of such failure, or if Tenant shall fail to timely make any payment of Rental other than Rent (or any part thereof) required to be paid by Tenant hereunder, and such failure shall continue for a period of 30 days after notice by Landlord to Tenant of such failure;

(b) if Tenant shall fail to Commence Construction of the Building on or before the 90th day (subject to extension due to Unavoidable Delays) following the Commencement Date, and such failure shall continue for a period of 30 days after notice by Landlord to Tenant of such failure;

(c) if Tenant shall fail to construct and Substantially Complete the Building in accordance with the provisions of clauses (ii) and/or (iii) of Section 13.01(a), and such failure shall continue for a period of 45 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 45 day period, in which case no Event of Default shall be deemed to have occurred or to exist as long as Tenant shall have commenced curing the same within such 45 day period and shall diligently and continuously prosecute the same to completion);

(d) if Tenant shall enter into an Assignment, Transfer or Major Sublease without complying with the applicable provisions of this Lease, and such Assignment, Transfer or Major Sublease shall not be cancelled, unwound, or otherwise made to comply with the applicable provisions of this Lease within 90 days after Landlord's notice thereof to Tenant;

(e) if, subject to Unavoidable Delays (i) Tenant shall fail to complete and tender the Expansion Space to Landlord without undue delay as provided in clause (x) of Section 30.02, or (ii) Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease (other than Tenant's agreement in (A) clause (y) of Section 30.02 to complete and tender the Expansion Space to Landlord on or before the Expansion Space Outside Date, or (B) the first sentence



of Section 10.07(a) as to both of which a failure of performance shall not be a Default or Event of Default), and such failure shall continue for a period of 60 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 60 day period, in which case no Event of Default shall be deemed to have occurred or to exist as long as Tenant shall have commenced curing the same within such 60 day period and shall diligently and continuously prosecute the same to completion);

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

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

(h) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code, or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in the appointment of, any trustee (unless required by Article 12), receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein;

(i) to the extent permitted by law, if within 120 days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within 120 days after the appointment, without the consent or acquiescence of Tenant, of any trustee (unless required by Article 12), receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within 120 days after the expiration of any such stay, such appointment shall not be vacated;

(j) if any of the representations made by Tenant in Section 18.03 shall be false or incorrect in any material respect, and Tenant shall fail to cause, within 15 days following notice of such misrepresentation to Tenant by Landlord, such representation to become true and correct as of a date within such 15 day period;

(k) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby, and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of 45 days after notice thereof from Landlord to Tenant;

(l) if there is an event of default under the Guaranty which is not cured within the applicable grace period (if any) thereunder (provided that no Event of Default shall or can occur pursuant to the terms and provisions of this Section 24.01(1) after the Substantial Completion Date);

(m) if (i) Tenant shall fail to carry (or cause to be carried) and keep (or cause to be kept) in full force and effect insurance coverage when and as required by Article 7, or shall fail to deliver a binder or other evidence of such coverage when and as required by Section 7.02(c) or (d), (ii) such failure shall continue for 10 days after notice by Landlord to Tenant, and (iii) such failure shall continue for an additional 15 days after a further notice from Landlord given following the expiration of such initial 10 day period; or

(n) if there is a default under any Qualifying Guaranty or any other guaranty delivered to Landlord by or on behalf of Tenant (other than the Guaranty) and (i) such default is not cured, or (ii) such guaranty is not replaced by a guaranty or other security reasonably satisfactory to Landlord within 30 days after notice to Tenant of such default.

Section 24.02. Cure Notices. At any time after Landlord has given Tenant notice of a non-monetary Default, Tenant, in addition to and not in limitation of its other rights, remedies or privileges in respect of such notice may, not more than twice with respect to any particular non-monetary Default, send Landlord a notice stating Tenant's belief that such non-monetary Default has been cured, and setting forth in reasonable detail the actions taken by Tenant to cure such non-monetary Default. From and after Tenant's giving of such notice, any unexpired grace and cure periods with respect to such non-monetary Default shall be tolled until Landlord (a) acknowledges in a notice to Tenant that such non-monetary Default has been cured, or (b) gives Tenant a notice setting forth in reasonable detail the respect(s) in which Tenant's attempted cure are deficient. If, within 5 days following Landlord's receipt of Tenant's notice, Landlord has not taken either of the actions set forth in clauses

on or before the date specified in such notice. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 24.01(h) or (i), 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 60 days after entry of the order for relief or as may be allowed by the court, or if such 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 future performance of Tenant's obligations under this Lease as provided in Section 24.10, 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 10 days notice to Tenant, Tenant as debtor-in-possession or such trustee. Upon the expiration of the 10 day period, this Lease shall expire and terminate, and Tenant, Tenant as debtor-in-possession and/or such trustee immediately shall quit and surrender the Premises.

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

(i) Landlord may, without notice, re-enter and repossess the Premises, using such force for that purpose as may be necessary, without being liable for indictment, prosecution or damages therefor, and may dispossess Tenant by summary proceedings or otherwise;

(ii) Tenant shall (subject to the terms and provisions of Section 42.02) pay to Landlord all Rental payable under this Lease by Tenant to Landlord through the date upon which the Term shall have expired and come to an end (including all Rental allocable to the period

prior to the Expiration Date, even if the due date with respect to such Rental occurs subsequent to the Expiration Date); and

(iii) 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, all at Tenant's expense and without relieving Tenant of any liability under this Lease or otherwise affecting any such liability (but subject, however, to the terms and provisions of Section 42.02), and/or let or relet the Premises or any portion thereof for the whole or any part of what would otherwise have constituted the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and Tenant shall (subject to the terms and provisions of Section 42.02) (A) first, pay to Landlord the cost and expense incurred by Landlord of terminating what would otherwise have constituted the unexpired portion of the 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 (to the extent such removal is not prohibited by Nondisturbance Agreements), including in such costs, brokerage commissions and reasonable attorneys' fees and disbursements, (B) second, pay to Landlord the cost and expense of completing any Construction Work required to be performed by Tenant hereunder (to the extent Landlord has not been reimbursed for such expenses pursuant to clause (A) of this Section 24.03(b)(iii)), (C) third, pay to Landlord the cost and expense incurred by Landlord in securing any new tenants and other occupants, including in such costs, brokerage commissions 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.

Landlord in no way shall 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, and shall in no event be obligated to pay Tenant (or any Person claiming by, through or under Tenant) any rent or other sums received or receivable by Landlord with respect to the use or reletting of the Premises or any part thereof.

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 had the effect of limiting or modifying any of the provisions of this Article.

Section 24.05. Receipt of Moneys After Notice or Termination. No receipt or acceptance of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term, or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises, but nothing set forth in this sentence shall abrogate or detract from the rights of Recognized Mortgagees under Section 11.04. After the giving of notice to terminate this Lease referred to in Section 24.03, 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 such notice or any proceeding, order, suit or judgment with respect to the Premises or this Lease, 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 (either now in force or hereafter enacted) or otherwise, (b) of re-entry, (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, but nothing set forth in this sentence shall abrogate or detract from the rights of Recognized Mortgagees under Section 11.04. The terms "enter", "re-enter", "entry" and "reentry", as used in this Lease, are not restricted to their technical legal meanings.

Section 24.07. Strict Performance. No failure by Landlord or Tenant to insist upon the other Party's strict performance of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy available to such Party, and no payment or acceptance of full or partial Rental during the continuance of any breach of any provision of this Lease, 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. No covenant, agreement, term or condition of this Lease to be performed or complied with by either Party, and no default by either Party, 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. Rights of the Parties. In the event of either Party's default or threatened default, the other Party shall be entitled to enjoin the default or threatened default, and, except as otherwise provided in this Lease, shall have the right to invoke any rights and remedies allowed at law, in equity, by statute or otherwise, including the right to enforce the performance or observance of the applicable provisions of this Lease, and, in light of the exculpatory provisions of Article 42, the right to the appointment of a receiver, other remedies that may be available to such Party notwithstanding. Each right and remedy of a Party provided for in this Lease shall be cumulative, and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law, in equity, by statute or otherwise. The exercise or beginning of the exercise by a Party of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law, in equity, by statute or otherwise, shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Lease, or available to such Party at law, in equity, by statute or otherwise.

Section 24.09. Payment of Expenses. To the extent determined by arbitration initiated by either Party and conducted in accordance with Article 34, each Party shall pay the other Party all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, actually incurred by the other Party in any action or proceeding seeking to enforce any of the covenants and provisions of this Lease.

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 and every part thereof, and adequately assure the 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 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, including, without limitation, its obligations with respect to (or in any way affecting) the Expansion Space or Carnegie Hall;

(b) that the Premises shall continue to be used 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 reasonably necessary to insure the adequate protection and security of the Premises; and

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

Section 24.11. Funds Held by Depositary. If this Lease shall be terminated as provided in Section 24.03(a), any funds

held by Depositary under this Lease shall be paid to Landlord to be utilized (in Landlord's sole discretion) for (a) the purpose(s) for which such funds were deposited with Depositary, or (b) the payment of sums then currently (or which will become) due and payable to Landlord and not otherwise paid, but subject, however, to the rights of all Recognized Mortgagees. Any funds remaining after Landlord's use of the funds received by Landlord from Depositary as set forth in the preceding sentence shall be disbursed by Landlord to Tenant, subject to the rights of all Recognized Mortgagees.

Section 24.12. Judgment Credits. If a final money judgment in favor of Tenant has been entered against Landlord, Tenant shall be entitled to have and shall receive in satisfaction of such judgment a credit against the next payment(s) of Rental due to Landlord in an amount equal to the amount of such judgment.



## ARTICLE 25

### NOTICES

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

(a) If by Landlord, by hand delivery with receipt acknowledged, or by mailing the same to Tenant by certified mail, postage prepaid, return receipt requested, addressed to Carnegie Hall Tower Limited Partnership, c/o Rockrose Development Corp., 309 East 45th Street, New York, New York 10017, Attention: H-CHLP I Corp., Mr. H. Henry Elghanayan, President, with copies thereof to Kramer, Levin, Nessen, Kamin & Frankel, 919 Third Avenue, New York, New York 10022, Attention: Michael Paul Korotkin, Esq., or to such other address(es) and parties as Tenant may from time to time designate by notice given to Landlord in accordance with the provisions of this Article 25.

(b) If by Tenant, by hand delivery with receipt acknowledged, or by mailing the same to Landlord by certified mail, postage prepaid, return receipt requested, addressed to The Carnegie Hall Corporation, 881 Seventh Avenue, New York, New York 10019, Attention: Mr. Lawrence P. Goldman, with copies thereof to: Deputy Commissioner, Division of Real Property, Department of General Services, 2 Lafayette Street, New York, New York 10007; Executive Vice President, Development, New York City Public Development Corporation, 161 William Street, New York, New York 10038; and Webster & Sheffield, 237 Park Avenue, New York, New York 10017, Attention: Sander Lehrer, Esq., or to such other address(es) and parties as Landlord may from time to time designate by notice given to Tenant in accordance with the provisions of this Article 25.

Section 25.02. Service. Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served 3 business days following the time that the same shall have been actually deposited in the United States mails, postage prepaid, as aforesaid, if mailed, (except that notices to Recognized Mortgages shall not be deemed given or served until received) or when actually hand delivered with receipt acknowledged as aforesaid, if delivered by hand.

## ARTICLE 26

### SUBORDINATION

Section 26.01. No Subordination. The Fee Owner's interest in the Premises, and 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, the leasehold estate of Tenant created hereby, and all rights of Tenant hereunder are and shall be subject to the Title Matters.

Section 26.02. Subordination of Mortgages. Any mortgage made by Landlord or the Fee Owner which encumbers all or any portion of the Premises, the Land or Landlord's or the Fee Owner's interest therein shall be subject and subordinate to this Lease, any lease made pursuant to Section 11.04 and any and all Recognized Mortgages regardless of when made or recorded.

## ARTICLE 27

### STREET WIDENING; EXCAVATIONS AND SHORING

Section 27.01. Proceedings for Widening Street. If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to (or fronting on) the Premises, which proceedings or orders require removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises, or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, curbs or appurtenances in or adjacent to the Premises, Tenant shall (subject to the provisions of Section 27.02) comply promptly with such requirements, at its sole cost and expense, and the Lease shall continue without abatement of the Rental payable to Landlord. With respect to compliance with such requirements, Tenant shall ensure that the Building remains a complete building, consisting of rentable, self-contained architectural units in good condition and repair, and, to the extent practicable, of a condition substantially similar to the condition of, and of a character and appearance similar to the character and appearance of, the Building as it existed immediately before such proceedings. If Tenant shall fail to comply with such requirements within 30 days after notice thereof by Landlord to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such 30 day period, if, within such 30 day period, Tenant shall fail to commence to remedy such failure, or shall fail to diligently and continuously, subject to Unavoidable Delays, prosecute the same to completion), then Landlord, following notice to Tenant, may comply with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder, and shall be payable by Tenant to Landlord on demand.

Section 27.02. Contest of Proceedings. Tenant shall be permitted to contest in good faith any proceedings or orders for street widening or any changes or alterations resulting therefrom or necessitated thereby, provided that such contest shall be brought in accordance with the provisions of Section 35.03 as though Tenant were contesting a Requirement thereunder.

Section 27.03. Distribution of Award. Any award made in connection with such proceedings shall be deemed to be an Award made in connection with a taking of less than Substantially All of

the Premises and shall be paid, distributed and applied in accordance with the provisions of Section 9.02(c).

Section 27.04. 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 and at reasonable times after notice for the purpose of doing such work as may be necessary to preserve any of the walls (or other portions) of the Building or other structures on the Land 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, the requirements of all insurance policies required to be maintained hereunder and all applicable Requirements; 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 (or other portions) of the Building or other structures on the Land from injury or damage, and to support them by proper foundations.

Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity, or for suspension, diminution, abatement or reduction of the Rental payable by Tenant to Landlord, provided, however, that if such excavation or work is performed pursuant to clause (a) above, Landlord shall indemnify and hold Tenant harmless from and against (x) any and all damage to the Building and Equipment and personalty therein, (y) accident, injury (including death at any time resulting therefrom) or damage to any Person, and (z) all loss of rent due to suits by Subtenants against Tenant caused by or related in any way to the performance of such work or excavation.

## ARTICLE 28

### EMPLOYMENT REPORTING; JOB TRAINING

Section 28.01. Questionnaires. Within 30 days after the Commencement Date, Tenant shall complete and deliver to PDC a questionnaire on the form prescribed by PDC setting forth, in substance, how many and what types of jobs Tenant in good faith estimates will be created by it at the Premises when the Building is Substantially Completed, and such supplemental documentation as may reasonably be required by the form (the "Questionnaire").

Section 28.02. Direct Subtenants. Tenant shall make Reasonable Efforts to include in each Direct Sublease consummated before the 15th anniversary of the Substantial Completion Date (1) covenants by the Direct Subtenant under such Direct Sublease, for itself and any assignee or other occupant claiming by, through or under such Direct Subtenant, (i) to complete and return to PDC within 30 days after execution of such Direct Sublease a Questionnaire with respect to employment to be created at the premises demised under such Direct 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 said demised premises; (iii) to provide the City or such entities with the opportunity (A) to refer candidates who are City residents having the requisite experience for the opportunities in question, and (B) to create a program to train City residents for those opportunities; and (iv) until the 15th anniversary of the Substantial Completion Date and within 30 days after demand (A) to report to PDC, on an annual basis, the actual number of jobs then created at said demised premises and the Direct Subtenant's response to any proposals, personnel referrals and training programs made and/or created by the City, as described in clauses (ii) and (iii) above, and (B) to deliver to PDC any and all forms reasonably required to be delivered pursuant to the Questionnaire; and (2) a reasonably explicit acknowledgement by the Direct Subtenant that the covenants referred to in clause (1) above are made for the benefit of PDC and the City.

Section 28.03. Concern to the City and PDC. Tenant acknowledges that accurate and complete information concerning employment opportunities generated by the operation of the Building is of material concern to the City and PDC. Tenant agrees to cooperate fully with the City and PDC in enforcing against Direct Subtenants the provisions referred to in Section 28.02, but such cooperation shall not require Tenant to act in a way that results in economic prejudice to Tenant's interests. Upon demand made by PDC or the City, Tenant shall

assign to PDC or the City, as the case may be, Tenant's cause of action to enforce such provisions.

Section 28.04. Injunctive Relief by the City and PDC. Tenant acknowledges that the City and PDC would have no adequate remedy at law if Tenant or any Direct Subtenant whose Direct Sublease contains the provisions referred to in Section 28.02 should fail to observe the covenants contained in this Article 28. In such event, the City and PDC shall be entitled to injunctive relief.

Section 28.05. Sole Beneficiary. This Article 28 is for the sole and exclusive use and benefit of the City and City-related entities, who are hereby deemed to be third-party beneficiaries of the provisions of this Article 28. The terms and provisions of this Article 28 may not be enforced, construed or utilized for any purpose, in any manner or to any degree whatsoever by Landlord.

## ARTICLE 29

### CERTIFICATES BY LANDLORD AND TENANT; CONSENTS AND APPROVALS

Section 29.01. Certificate of Tenant. Tenant shall, within 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 Rent payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given Landlord written notice of any event that is a default or which, 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 15 days after notice by Tenant, execute, acknowledge and deliver to Tenant, or any 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), (ii) the date to which each item of Rent payable by Tenant hereunder has been paid, (iii) the date then fixed for the expiration of the Term, (iv) the identity of Depositary, (v) the names and last given addresses of all Recognized Mortgagees, (vi) the annual rate of Base Rent then payable hereunder and the date the same is next scheduled to be adjusted, and (vii) whether or not Landlord recognizes the effectiveness of a specified Assignment, Transfer, Major Sublease or Recognized Mortgage, as the case may be, and (b) stating (x) whether an Event of Default has occurred or in the case of Events of Default under Section 24.01(f), (g), (h) or (i) whether to the best of Landlord's knowledge an Event of Default has occurred (and if any Events of Default have occurred identifying the same), 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 (y) 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. Substantial Completion Certificate.  
Upon Tenant's satisfaction of the conditions required with respect to Substantial Completion of the Building, Landlord shall, within 15 days after request by Tenant or any Recognized Mortgagee, deliver a certificate to Tenant and, if so requested, all Recognized Mortgagees, confirming that the Building has been Substantially Completed.

Section 29.04. Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any further similar act.

Section 29.05. Provisions Regarding Consent or Approval

(a) If, pursuant to the terms of this Lease, any consent or approval by Landlord, the Fee Owner or Tenant is required, then unless a different time period is specified in this Lease, the party who is to give its consent or approval shall notify the appropriate party or parties within 15 business days after receiving such other Party's request for a consent or approval that such consent or approval is granted or denied.

(b) If, pursuant to the terms of this Lease, any consent or approval by Landlord, the Fee Owner or Tenant is not to be unreasonably withheld or is subject to a specified standard, any denial of such consent or approval shall be accompanied by a statement setting forth in reasonable detail the reasons therefor. In the event that there shall be an arbitrators' determination or a court decision that the consent or approval was unreasonably withheld or delayed or that such specified standard was met so that the consent or approval should have been granted (a "Wrongful Withholding"), the consent or approval shall be deemed granted, and except to the extent that there has been a final judicial determination that such consent or approval was withheld in bad faith (in which case the limitations on damages set forth in Sections 29.05(b) and 29.05(c) shall not apply), (x) such granting of the consent or approval, (y) the recovery of all reasonable legal and other professional fees and disbursements actually incurred with respect to obtaining such determination or decision (which shall be paid by the party responsible for the Wrongful Withholding), and (z) damages (if any) recoverable pursuant to Section 29.05(c) shall be the exclusive remedies of the Party requesting or requiring the consent or approval and prevailing in such determination or decision.



(c) The party responsible for any Wrongful Withholding shall pay (i) in the case of Wrongful Withholdings with respect to a Change Order, the agrieved party's actual damages up to \$25,000 in the case of the first Wrongful Withholding by the responsible party, \$50,000 in the case of the second Wrongful Withholding by the responsible party, and \$100,000 in the case of each Wrongful Withholding by the responsible party thereafter occurring; (ii) in the case of any Wrongful Withholding occurring prior to the Substantial Completion Date which does not involve a Change Order, no damages in the case of each of the first 3 Wrongful Withholdings by the responsible party, and the agrieved party's actual damages up to \$25,000 in the case of each Wrongful Withholding by the responsible party thereafter occurring; and (iii) during each 7-calendar-year period beginning on the Substantial Completion Date, no damages in the case of the first Wrongful Withholding by the responsible party during any such 7-year period, the agrieved party's actual damages up to \$25,000 (Subject to Indexing) in the case of the second Wrongful Withholding by the responsible party during any such 7-year period, the agrieved party's actual damages up to \$50,000 (Subject to Indexing) in the case of the third Wrongful Withholding by the responsible party during any such 7-year period, and the agrieved party's actual damages up to \$100,000 (Subject to Indexing) in the case of each additional Wrongful Withholding by the responsible party during any such 7-year period.

(d) Prior to the Substantial Completion Date, any time period for communicating to Tenant as to the approval or disapproval of any item or matter may be extended (except as provided to the contrary in Section 10.01(e)) once for such length of time specified in an extension notice given to Tenant, which extension notice is given no more than 3 days after Tenant has given a reminder notice as described in the following sentence, provided that (x) no such extension shall be for more than one third (1/3) the number of days in the original time period (without regard to any possible extension thereof), and (y) the aggregate of all extensions of time pursuant to this sentence shall not exceed 30 days for the 3 year period commencing on the date hereof or 30 days for any subsequent 3 year period. An approval by Landlord or the Fee Owner shall be deemed to have been given if after Tenant has requested such approval in accordance with the requirements in this Lease concerning such request, there has been no response to such request before the expiration of the later of (i) the applicable time period for communication to Tenant after (in the case of requests made before the Substantial Completion Date) any allowable extension under the preceding sentence, and (ii) 4 days after Tenant has given one reminder notice with respect to such request, which reminder notice may not be given sooner than 6 days in advance of the expiration of such applicable time period without regard to any such extension, and which shall describe the request involved, shall specify the date

on which such applicable time period will expire (without regard to any possible extension thereof) and shall state that the matter or item involved in such request shall be deemed approved if there is no response to such request before the expiration date so specified in such reminder notice.

(e) In the case of any request by Tenant for an approval by Landlord or the Fee Owner, Tenant shall give to Landlord (and the Fee Owner, if its approval is required) 1 copy of the request and 1 copy of the materials required to accompany such request. A copy of all requests for approvals as to architectural items or matters, not including the materials required to accompany such requests, shall be given to James Stewart Polshek and Partners (or another architectural firm designated by Landlord, provided not less than 30 days' prior notice of the identity and address of such firm shall have been given to Tenant) simultaneously with the submission thereof to Landlord. A copy of all requests for approvals as to any items or matters other than architectural items or matters, not including the materials required to accompany such requests, shall be given to Webster & Sheffield (or another law firm designated by Landlord, provided not less than 30 days' prior notice of the identity and address of such firm shall have been given to Tenant) simultaneously with the submission thereof to Landlord.

Section 29.06. No Unreasonable Delay. If it is provided in this Lease (including all Exhibits and Schedules hereto) that a particular consent or approval by Landlord, the Fee Owner or Tenant is not to be unreasonably withheld or is subject to another specified standard, such consent or approval shall not be unreasonably delayed.

Section 29.07. No Fees, Etc. Except as may be expressly provided to the contrary herein, no fees or charges of any kind or amount shall be required by either Party hereto or the Fee Owner as a condition of or in connection with the grant of any consent or approval which may be required under this Lease.

## ARTICLE 30

### EXPANSION SPACE

Section 30.01. Use of Expansion Space. During the Term, Landlord shall not use the Expansion Space for residential purposes or any purpose which is inconsistent with the use of the Premises by Tenant and Subtenants as a first-class office building (such as an off-track betting parlor, any Prohibited Use or any Adult Use), it being agreed that the use of the Expansion Space for dressing rooms, lounges for patrons and employees of Carnegie Hall, musicians and other performing artists and other guests and invitees of Landlord, restrooms, musicians' rooms, service entrance and elevator, lobbies, entertainment areas, banquet space, incidental storage, offices, and uses consistent with and incidental thereto shall not be prohibited by this Section 30.01. In any event, Landlord shall not use or occupy the Expansion Space, nor permit or suffer the Expansion Space to be used or occupied, for any unlawful, illegal or extra hazardous business, use or purpose, and shall, upon discovery of any such unlawful, illegal or extra hazardous business, use or purpose or any use or occupation in violation of Section 16.02, take all necessary steps, legal and equitable, to compel the discontinuance thereof. Landlord shall not block up (unless agreed to by Tenant in writing) or display signs in the windows of the Expansion Space (but shall be entitled to install curtains, venetian blinds and other interior window treatments provided, in each instance, that the same are not incompatible with the exterior of the Building and the window treatments installed in the Building), and shall not alter the (i) exterior of the portions of the Building which enclose the Expansion Space; or (ii) the outer surfaces and structural elements of the Boundary Walls except, with respect to the latter, as expressly provided in Schedule V. Subject to prior approval by Tenant (which approval shall not be unreasonably withheld), Landlord may install not more than 3 reasonably sized noncommercial signs on the exterior of the Building adjacent to the 56th Street entrances and exits from the Expansion Space which are compatible with the exterior of the Building, and Landlord shall be responsible for the maintenance (and if necessary, replacement) of such signs in a manner reasonably satisfactory to Tenant. Landlord shall not use the address of the Building as the address of the Expansion Space (unless the use of another address is not lawful), and shall refer to the Expansion Space as part of Carnegie Hall. Tenant shall give Landlord notice if Tenant believes Landlord to be in default of this Section 30.01 (which notice shall specify the nature of the alleged default), and Landlord shall not be liable to Tenant for damages under this Section 30.01 except to the extent Landlord fails to cure such default within a reasonable time after notice thereof from Tenant, but nothing contained in this sentence shall abrogate any other liability Landlord may have under this Lease or otherwise, or any rights Tenant may have in equity.

Section 30.02. Construction of Expansion Space. Tenant shall construct the Expansion Space in accordance with the items referred to in Schedule V (as same may be amended) in a good and workmanlike manner concurrently with (and as a portion of) the Construction of the Building. Construction of the Expansion Space shall comply with all provisions of this Lease governing Construction Work. The Expansion Space shall be completed and tendered to Landlord (x) without undue delay, but (y) in no event later than the earlier to occur of the following (the "Expansion Space Outside Date"): (a) the first date on which at least 250,000 square feet of the Floor Area in the Building (exclusive of the Expansion Space) can legally be occupied for the conduct of business, or (b) the last day of the fifty-four month period commencing on the Starting Date (as such fifty-four month period may be extended due to Unavoidable Delays). Tenant shall pay in full all costs with respect to the construction of the Expansion Space except as may be otherwise specified in Schedule V or agreed between the Parties in writing, and shall discharge of record as provided in Article 17 any liens affecting the Expansion Space which result from Tenant's construction of the Expansion Space or any portion of the Building. From and after the Expansion Space Completion Date, no Mortgagee shall have any interest in or lien on any portion of the Expansion Space. Tenant shall use all new materials in the construction of the Expansion Space, and shall deliver to Landlord on the Expansion Space Completion Date (i) a one-year written warranty covering the construction thereof, and (ii) assignments (without representation, warranty or recourse) of all warranties obtained by Tenant covering the Recital Hall Elevator.

Section 30.03. Special Acknowledgement; Changes to Expansion Space. Landlord and Tenant acknowledge and agree that (a) the design of the Expansion Space, its interrelationship with the Building, and the requirements of Governmental Authorities with respect to, among other things, fire safety and Certificates of Occupancy have not been finalized, and that modifications and additions to Schedule V may be necessary due to some or all of the foregoing; (b) delay in the Construction of the Building would be prejudicial to Tenant; and (c) to the fullest extent practicable and consistent with the use of the Expansion Space and the Building as contemplated by this Lease, the Building, on the one hand, and the Expansion Space, on the other hand, should be covered by separate Certificates of Occupancy, should have separate and independent fire safety systems, and should not be interconnected. Subject to and in light of the foregoing, each of the Parties shall endeavor in good faith to seek to accommodate such reasonable changes to Schedule V as may be reasonably requested by the other Party.

Section 30.04. Landlord's Construction. Landlord and Tenant shall make good-faith efforts to coordinate the

Construction Work with Landlord's construction work in the Expansion Space. Landlord shall not employ labor or otherwise take any action in connection with construction work to be performed by Landlord which would result in such work not being performed in a manner that is harmonious with the Construction Work. All of Landlord's construction work shall be performed in accordance with all applicable laws. Construction work in the Expansion Space performed by or on behalf of Landlord shall in no way reduce the as-of-right zoning Floor Area available to Tenant for the Building (including the Expansion Space) below 500,000 square feet. As soon as Landlord has available any completed drawings or completed revisions of completed drawings at the schematic, design development or working drawing stage of design, which drawings or revisions of drawings have been approved by Landlord for work to be performed in the Expansion Space, Landlord shall furnish to Tenant a copy thereof, and Landlord shall generally keep Tenant apprised of Landlord's plans for the construction of the Expansion Space. Upon completion of the Expansion Space Landlord shall provide Tenant with "as built" drawings of the fire safety, plumbing, electrical and HVAC installations included in the Expansion Space and, if available to Landlord, architectural and structural "as built" drawings therefor.

Section 30.05. Severance of Expansion Space. From and after the Expansion Space Completion Date:

(a) All space comprising the Expansion Space shall cease to be demised to Tenant under this Lease, and Tenant shall have no further interest hereunder whatsoever in and to the Expansion Space (including any fixtures and personal property comprising a part thereof), and Landlord shall have the sole and exclusive right to use and occupy the Expansion Space, except as may be specifically provided to the contrary herein.

(b) Landlord shall have sole responsibility for the upkeep, maintenance, insurance, heating, ventilation, repair, restoration and other matters incidental to the Expansion Space and the activities occurring therein, including, without limitation, the provision of utilities thereto and therein.

(c) The definitions of Building, Premises and Equipment shall be deemed amended so as to exclude the Expansion Space and any fixtures, equipment and other personalty located therein (other than Tenant's Risers and Horizontal Runs).

(d) In the event of a taking under Article 9 which affects the Expansion Space in any manner, any Award paid with respect to such taking which is not separately allocated to the Building and the Expansion Space by its express terms, shall be equitably allocated. In the event that Landlord and Tenant do not agree upon such allocation within 30 days following the date of

such Award, then upon the request of either Party such allocation shall be determined by arbitration conducted in accordance with Article 34. Any Award or portion of an Award allocated to the Expansion Space expressly or pursuant to the provisions of either of the preceding two sentences shall be paid solely to Landlord (and Tenant shall have no claim thereto), any provision of this Lease or otherwise to the contrary notwithstanding. Tenant shall have no obligation to perform a Restoration with respect to any portion of the Expansion Space, provided, however, that if any such taking or any casualty includes or adversely affects a Boundary Wall, the Restoration of such Boundary Wall (excepting the interior surfaces thereof) shall be deemed to be a portion of the Restoration, and Tenant shall perform such Restoration in accordance with the provisions of Article 8 or 9, as applicable.

Landlord and Tenant shall promptly execute such Lease amendments or other documents as may be reasonably requested by the other Party or a Recognized Mortgagee in order to further evidence or confirm the exclusion of the Expansion Space from the space demised by this Lease, and to carry out the provisions and intent of this Article 30.

Section 30.06. Risers. The Parties acknowledge and agree that (a) it will be necessary for pipes, vents, ducts, cables, conduits and the like (collectively, "Risers and Horizontal Runs") serving only the Building to pass through the Expansion Space (all such Risers and Horizontal Runs serving only the Building but passing through the Expansion Space being herein referred to as "Tenant's Risers and Horizontal Runs") in locations not yet determined, and (b) it will be necessary for Risers and Horizontal Runs serving only the Expansion Space to pass through the Building (all such Risers and Horizontal Runs serving only the Expansion Space but passing through the Building being herein referred to as "Landlord's Risers and Horizontal Runs") in locations not yet determined but proximate to the Expansion Space, connecting one portion thereof to another, or connecting a portion thereof to the existing Carnegie Hall building. The Parties shall use all reasonable efforts to agree upon mutually satisfactory locations for Landlord's Risers and Horizontal Runs (and equitable adjustments for any reduction in the usable space in the Building suffered by Tenant as a result of the installation of Landlord's Risers and Horizontal Runs which are in addition to those currently depicted on the plans referred to in Schedule V), and upon such agreement Schedule V shall be deemed amended so as to permit the installation of such Landlord's Risers and Horizontal Runs. The Parties shall use all reasonable efforts to agree upon mutually satisfactory locations for Tenant's Risers and Horizontal Runs (and equitable adjustments for any reduction in the usable space in the Expansion Space suffered by Landlord as a result of the installation of Tenant's Risers and Horizontal Runs which are in addition to those currently depicted on the plans referred to in Schedule V), and upon such agreement Schedule V shall be deemed

amended so as to permit the installation of such Tenant's Risers and Horizontal Runs. Upon request of either Party, the other Party shall execute and deliver written agreements in recordable form reasonably satisfactory to the requesting Party's counsel identifying the locations and permitting the installation, maintenance, use and continued existence of Landlord's Risers and Horizontal Runs and/or Tenant's Risers and Horizontal Runs, as the case may be.

**Section 30.07. Certificates of Occupancy.**

(a) **Tenant's Certificate of Occupancy.** Landlord shall file no later than February 15, 1988 an alteration application with the Building Department of the City pursuant to which Carnegie Hall's certificate of occupancy shall be amended so as to include the Expansion Space and Landlord shall thereafter use all reasonable efforts to obtain approval thereof. When such approval has been obtained, Landlord shall provide a copy of the approved plans to Tenant. Tenant shall notify Landlord of work Tenant believes is required to be performed within the Expansion Space as a condition to Tenant's obtaining a Certificate of Occupancy for any portion of the Building ("Required Expansion Space Work") and the estimated cost of performing such work. Within 15 business days following such notice, Landlord shall (i) advise Tenant of Landlord's election to perform such Required Expansion Space Work, in which case (and as a condition to such election) Landlord shall provide Tenant with reasonable assurances that the Required Expansion Space Work shall be performed expeditiously (and cause such work to be so performed), and Tenant shall grant Landlord such access to the Expansion Space as is reasonably necessary in order to perform such work, or (ii) authorize Tenant to perform such Required Expansion Space Work, in which case Landlord shall pay Tenant the out-of-pocket expenses incurred by Tenant in performing the portions of such work that could be reasonably utilized by Landlord with respect to the completion of the Expansion Space by Landlord in accordance with Landlord's plans for the Expansion Space theretofore delivered to Tenant. In any event, Landlord and Tenant shall cooperate in all reasonable respects (A) in order for the Required Expansion Space Work to be performed in a timely and commercially reasonable manner, and (B) in connection with other work or actions which are reasonably necessary in order to allow Tenant to obtain a Certificate of Occupancy covering the Building and/or otherwise comply with Requirements.

(b) **Landlord's Certificate of Occupancy.** Landlord shall notify Tenant of any work Landlord believes is required to be performed within the Building solely as a condition to Landlord's obtaining a Certificate of Occupancy covering the Expansion Space. Unless Tenant disputes the necessity of such work as a condition for obtaining a Certificate of Occupancy for the Expansion Space by giving notice to Landlord of such dispute

within 15 business days after receipt of Landlord's notice to Tenant (in which case such dispute shall be resolved by arbitration conducted pursuant to Article 34), Tenant shall perform such work as soon as is reasonably practicable, and Landlord shall pay Tenant for the out-of-pocket costs actually incurred by Tenant in connection therewith which would not have been incurred by Tenant but for the provisions of this Section 30.07(b). In any event, Landlord and Tenant shall cooperate in all reasonable respects in connection with any work or actions which are reasonably necessary in order to allow Landlord to obtain a Certificate of Occupancy covering the Expansion Space and/or otherwise comply with the requirements of Governmental Authorities with respect to the Expansion Space.

(c) Access to Expansion Space. In connection with the Expansion Space Completion Date, Landlord and Tenant shall coordinate the closing off of access to the Expansion Space from the Building and the opening of connections from Carnegie Hall to the Expansion Space in order to ensure that access to the Expansion Space shall be possible through either the Building or through Carnegie Hall at all times. Tenant shall make good faith efforts to permit Landlord to enter the Expansion Space during the 60 day period before the anticipated Expansion Space Completion Date so that Landlord may install stairs therein.

Section 30.08. No Abatement. The severance of the Expansion Space from the Building shall in no event give rise to a claim for abatement of Rent on the part of Tenant, and except as may be expressly provided in this Article 30, shall in no way diminish or affect any obligation of Tenant under this Lease. The severance of the Expansion Space shall in no event be deemed to be a constructive eviction of Tenant.

Section 30.09. Right of Entry and Inspection. Landlord shall permit Tenant and its agents and representatives to enter the Expansion Space at all reasonable times for the purpose of: (a) inspecting the Expansion Space to determine whether any conditions exist therein which (i) would cause a violation to be filed of record against the Building, or (ii) are in breach of Landlord's obligations under this Lease with respect to the Expansion Space; and (b) inspecting, maintaining and repairing the Boundary Walls, structural elements of the Building and any Tenant's Risers and Horizontal Runs. Tenant shall give Landlord not less than 48 hours prior written notice of such entry except in the case of an Emergency. Landlord shall have the opportunity to cause one of its representatives to accompany Tenant or Tenant's agent or representative during the course of each such entry. All entries into the Expansion Space by Tenant pursuant to this Section 30.09 shall be at Tenant's expense, and any inspection or work performed in the Expansion Space by Tenant pursuant to this Section 30.09 shall be performed at such times and in such a manner as shall minimize the disruption of



Landlord's use and enjoyment of the Expansion Space, but Tenant shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage suffered by Landlord or any other occupant of the Expansion Space by reason of any entry pursuant to this Section 30.09, or on account of bringing materials, tools, supplies and equipment into the Expansion Space during the course thereof, and the obligations of Landlord under this Lease shall not be affected thereby. Tenant shall permit Landlord and its agents and representatives to enter the Building at all reasonable times for the purpose of inspecting, maintaining and repairing any Landlord's Risers and Horizontal Runs. Landlord shall give Tenant not less than 48 hours prior written notice of such entry except in the case of an Emergency. Tenant shall have the opportunity to cause one of its representatives to accompany Landlord or Landlord's agent or representative during the course of each such entry. All entries into the Building by Landlord pursuant to this Section 30.09 shall be at Landlord's expense, and any inspection or work performed in the Building by Landlord pursuant to this Section 30.09 shall be performed at such times and in such manner as shall minimize the disruption of Tenant's and/or any Subtenants' use and enjoyment of the Building, but Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage suffered by Tenant or any Subtenant or other occupant of the Building by reason of any entry pursuant to this Section 30.09, or on account of bringing materials, tools, supplies and equipment into the Building during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby.

Section 30.10. Expansion Space Completion Date. Tenant shall give notice to Landlord when Tenant believes that the Expansion Space has been completed in accordance with Schedule V (as such Schedule may be supplemented and amended in accordance with the provisions of this Article 30) and other applicable provisions of this Lease. Within 20 days following receipt of such notice (or within 10 days following receipt of Tenant's notice described in clause (i) of the next sentence), Landlord shall either (a) give notice to Tenant acknowledging that the Expansion Space has been so completed, or (b) provide Tenant with a statement setting forth in reasonable detail the reasons for Landlord's refusal to acknowledge such completion of the Expansion Space. Within 20 days after Tenant's receipt of the statement described in clause (b) of this Section 30.10, Tenant shall either (i) agree to make the changes required by such statement and, when Tenant believes that the Expansion Space has been so completed with such changes, notify Landlord thereof, or (ii) give Landlord written notice of its disagreement with Landlord's statement, in which case the question as to whether the Expansion Space has been so completed shall, upon request of either Party, be resolved by arbitration conducted in accordance with Section 34.04 (and for the purposes of Section 34.04, be deemed to be a Construction Approval).

**Section 30.11. Payments Based on Expansion Space Completion Date.**

(a) If the Expansion Space Completion Date does not occur on or prior to August 1, 1990, Tenant shall pay to Landlord, within 30 days following demand therefor, a sum equal to \$50 for each square foot of Floor Area in the Building (including the Expansion Space) in excess of 496,250, which payment shall be a component of Rental. If the Floor Area of the Building is not known at the time of Landlord's demand for such payment (i) Tenant shall use all reasonable efforts to cause the Floor Area of the Building to be determined at the earliest date practicable, and (ii) such payment shall be made by Tenant within 30 days following the first date upon which the Floor Area of the Building is determined. Notwithstanding the foregoing provisions of this Section 30.11(a), no sums shall be payable under such provisions if (x) the Expansion Space Completion Date occurs on or before February 1, 1991, (y) the Expansion Space Completion Date did not occur on or before August 1, 1990 solely due to Tenant's failure to install the Recital Hall Elevator in the Expansion Space as required by Schedule V, and (z) Tenant has given Landlord notice on or before August 1, 1990 of Tenant's belief that the Expansion Space Completion Date will not occur on or before August 1, 1990 solely due to Tenant's failure to install the Recital Hall Elevator as described above. Any dispute as to any factual matter arising under this Section 30.11 shall, upon the request of either Party, be resolved by arbitration conducted in accordance with Article 34.

(b) If the Expansion Space Completion Date does not occur on or prior to the Expansion Space Outside Date, such delay shall not be a Default or Event of Default (unless Tenant is in breach of clause (x) of Section 30.02) but Tenant shall pay to Landlord a sum equal to \$1,369.83 per day for each day by which the Expansion Space Completion Date occurs subsequent to the Expansion Space Outside Date. Such payment shall be deemed to include compensation to Landlord for its loss of the use of the Expansion Space after the Expansion Space Outside Date, shall be a component of Rental, shall be payable monthly in arrears on the first day of each month, and shall be the sole monetary damages recoverable by Landlord from Tenant due to the failure of the Expansion Space Completion Date to occur on or prior to the Expansion Space Outside Date.

**Section 30.12. Tenant's Excess Costs.** If at any time after the Expansion Space Completion Date (a) any of Tenant's insurers informs Tenant that such insurer will raise Tenant's insurance premiums as a direct result of a specified use of the Expansion Space, or (b) Tenant notifies Landlord that a specified use of the Expansion Space will increase Tenant's maintenance or other expenses with respect to the Building, Tenant may give

Landlord notice of the amount of the estimated increase and such specified use. Within 30 days after Landlord's receipt of such notice, (i) Landlord may either cease such specified use, or (ii) if Landlord elects not to cease such specified use and Tenant's insurance premiums, maintenance or other expenses rise as a direct result of such specified use (and Landlord receives appropriate documentation thereof), Tenant shall have and shall receive a credit against the next payment(s) of Rent in the amount of such incremental increase in Tenant's insurance premiums and/or maintenance or other expenses, if such use is not a reasonable and ordinary use of the Expansion Space.

Section 30.13. Dispute Resolution. Any dispute arising under Sections 30.03, 30.06 and 30.07 shall, upon the request of either party, be resolved by arbitration conducted in accordance with Article 34.

Section 30.14. No Implied Obligations. The physical location of the Expansion Space within the Building shall not create any implied obligations, responsibility or liability on the part of Tenant, and Tenant shall not be deemed to have assumed any responsibility by reason thereof with respect to Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date). Nothing in this Lease shall be deemed to create a landlord/tenant relationship between Tenant and Landlord with respect to the Expansion Space from and after the Expansion Space Completion Date. From and after the Expansion Space Completion Date, Tenant shall not be liable for any injury or damage to Landlord or to any Person happening on, in or about the Expansion Space or its appurtenances nor for any injury or damage to the Expansion Space or to any property belonging to Landlord 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 Expansion Space or that may arise from any other cause whatsoever, unless directly caused by any violation by Tenant of any of the terms or provisions of this Lease, or (x) the negligence, (y) intentionally tortious acts or omissions, or (z) criminal acts or omissions of Tenant, or Tenant's independent contractors, guests, invitees, agents or employees. Except as may be expressly provided to the contrary in this Lease with respect to an Event of Default, Landlord shall not be empowered to contract in the name of Tenant, and nothing contained in this Lease shall be deemed to constitute the request of Tenant, express or implied, to so contract. Notice is hereby given that, to the extent enforceable under New York law, Tenant shall not be liable for any work performed or to be performed in the Expansion Space from and after the Expansion Space Completion Date by or on behalf of Landlord or for any materials furnished or to be furnished to Landlord.

## ARTICLE 31

### 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), 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 the Title Matters, liens and encumbrances to which Landlord has consented in writing (if any) and, if the Expiration of the Term occurs prior to the Fixed Expiration Date, Subleases to which Landlord has given recognition pursuant to Nondisturbance Agreements. 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 Direct Subleases; Etc. Upon the Expiration of the Term (or upon a re-entry by Landlord upon the Premises pursuant to Article 24), Tenant shall deliver to Landlord Tenant's executed counterparts of all Direct Subleases and any service and maintenance contracts with Tenant or Affiliates of Tenant then affecting the Premises; to the extent available and in Tenant's possession, maintenance records for the Premises; to the extent available and in Tenant's possession, original licenses, permits, certificates and governmental approvals then pertaining to the Premises; to the extent available and in Tenant's possession, Certificates of Occupancy then in effect for the Building; to the extent available and in Tenant's possession, warranties and guarantees then in effect which Tenant has received in connection with any work or services performed, or Equipment installed in the Building, together with a duly executed assignment thereof (without representation, recourse or warranty) to Landlord; all financial reports, books and records required by Articles 3 and 37; and to the extent available and in Tenant's possession, other documents reasonably necessary for Landlord to use and operate the Building.

Section 31.03. Personal Property. Any personal property of Tenant or of any Subtenant which shall remain on the Premises for 20 days after the Expiration of the Term 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, provided, however, that the terms and provisions of this Section 31.03 shall not apply to any Subtenant who is protected by a Nondisturbance Agreement if the Expiration of the Term occurs prior to the Fixed Expiration Date and during

the term of such Subtenant's Sublease. Landlord shall in no event be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant after the expiration of such 20-day period.

Section 31.04. Credits at End of Term. If Tenant is entitled to any credits against Rental, other credits or moneys from Landlord upon the expiration of the Term, Landlord shall pay the amount of such credits or moneys (to the extent they exceed all amounts then due Landlord from Tenant) to Tenant within 30 days following the Expiration of the Term.

Section 31.05. Survival Clause. The provisions of this Article 31 shall survive the Expiration of the Term.

## ARTICLE 32

### ENTIRE AGREEMENT

This Lease (including the Exhibits and Schedules hereto) contains all of the promises, agreements, conditions, inducements, warranties, representations 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 concerning the subject matter hereof, other than as expressly set forth herein. From and after the date hereof, the Designation Letter shall be without force or effect, all of its terms and provisions having been merged into this Lease. Nothing in this Article 32 shall abrogate the terms and provisions of the Restrictive Declaration.

ARTICLE 33

QUIET ENJOYMENT

Landlord covenants that, as long as Tenant faithfully shall perform the agreements, terms, covenants and conditions hereof on its part to be performed, Tenant shall and may (subject only to the Title Matters and the terms and provisions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Term without any molestation or disturbance whatsoever by or from Landlord or any person claiming through Landlord.

## ARTICLE 34

### ARBITRATION AND APPRAISAL

#### Section 34.01. Arbitration

(a) In such cases where this Lease expressly provides for the determination or resolution of a dispute, issue or question by arbitration (at the request of either Party or otherwise) other than disputes, issues or questions respecting Construction Approvals (which are to be determined or resolved pursuant to Section 34.04), and only in such cases, the same shall be determined or resolved by arbitration conducted in the City and County of New York (and not by litigation, provided that nothing in this Section 34.01(a) or in Section 34.04 shall preclude a Party from seeking a judicial determination that the other Party has acted or is acting in bad faith), in accordance with the then applicable rules of the American Arbitration Association (or any successor thereto), and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The foregoing notwithstanding, in the event of any conflict or difference between such rules of the American Arbitration Association (or any successor thereto) and the terms and provisions of this Article 34, the arbitrators shall be chosen and the arbitration governed in accordance with and pursuant to the terms and provisions of this Article 34. In addition to any applicable requirements of the American Arbitration Association (or any successor thereto), the Party desiring arbitration of such dispute or question shall, in the notice setting forth its request that such dispute or question be submitted to arbitration, set forth with particularity the dispute or question sought to be arbitrated, and make specific reference to the provisions of this Lease which expressly provide for the settlement of such dispute or question by arbitration. In the event that the American Arbitration Association or any successor body of similar function shall not then be in existence, Landlord and Tenant shall seek to agree for the 15 day period following the giving of the notice referred to in the preceding sentence upon an appropriate body of rules to govern arbitration to be conducted pursuant to this Article 34; if the Parties fail to so agree within such 15 day period, such arbitration shall be governed by the then applicable rules of the entity then most commonly utilized in the New York metropolitan area for the arbitration of commercial disputes, as determined by the Appointing Authority.

(b) The Party desiring arbitration shall appoint as arbitrator on its behalf, a disinterested person having not less than 10 years experience in the general area which is the subject of the arbitration and give notice thereof to the other Party who shall, within 15 days thereafter, appoint as arbitrator on its



behalf, a second disinterested person having not less than 10 years experience in the general area which is the subject of the arbitration and give written notice thereof to the first Party. The arbitrators thus appointed shall, within 15 days following the appointment of the second arbitrator, appoint a third disinterested person having not less than 10 years experience in the general area which is the subject of the arbitration, and said 3 arbitrators shall, as promptly as possible (but in any event within 30 days following the appointment of the third arbitrator), determine the matter which is the subject of the arbitration, and whether any damages, costs or expenses are to be awarded in connection therewith pursuant to the terms and provisions of Section 29.05(b) or (c). The decision of the majority of the arbitrators shall be conclusive and binding upon the Parties, shall be delivered to the Parties by the arbitrators when made, and shall be controlling for all purposes under this Lease immediately upon receipt by the Parties of a copy of the decision. The effectiveness of such decision for such purposes shall not be delayed or postponed pending confirmation of the arbitration decision or award or entry of judgment upon the decision or award, notwithstanding any challenge or contest by either or both of the Parties with respect to the decision or award, and notwithstanding any application or other request by either or both of the Parties that the arbitrators or any court or other body stay, set aside, nullify, modify or otherwise change the decision or award. The Parties shall make no request or other application to the arbitrators or any court or other body for any injunction, stay or other relief which would be contrary to the provisions of the preceding sentence, and agree that the arbitrators, any court and any other body shall have no jurisdiction or other authority to consider any request or other application for, or to grant, any injunction, stay or other relief which would violate any provision of this Article 34. If any decision of the majority of the arbitrators shall be set aside, nullified, modified or otherwise changed after the Parties receive a copy of the original decision or award, the Parties shall thereupon comply with the action setting aside, nullifying, modifying or otherwise changing the original decision or award, with such changes and adjustments by the Parties in actions taken pursuant to the original decision as may be necessary for such purpose. The arbitrator selected by Tenant and the third arbitrator shall not have any liability to Landlord, or the Fee Owner, or to any Person claiming through Landlord, or the Fee Owner, by reason of his or her participation in any determination made under this Article 34, and Landlord shall indemnify and defend all Persons acting in such capacity hereunder against any and all claims asserted against such Persons by reason of their participation in any such determination brought by Landlord or the Fee Owner (or any Person claiming through either of them). The arbitrator selected by Landlord and the third arbitrator shall not have any liability to Tenant, or to any Person claiming through Tenant, by reason of his or her participation in any determination made under this Article 34, and

Tenant shall indemnify and defend all Persons acting in such capacity hereunder against any and all claims asserted against such Persons by reason of their participation in any such determination brought by Tenant (or any Person claiming through Tenant). Landlord and Tenant shall each indemnify the other from any breach of their respective covenants or indemnities contained in the immediately preceding two sentences.

(c) If a Party having the right pursuant to Section 34.01(b) to appoint an arbitrator fails or neglects to do so, then, and in such event, the other Party, or if the 2 arbitrators appointed by the Parties shall fail within 15 days after the appointment of the second arbitrator to appoint a third arbitrator, then, either Party, may apply to the Appointing Authority for the appointment of such arbitrator. Except as otherwise specified in the first sentence of this Section 34.01(c), in the event of the failure, refusal or inability of any arbitrator to act, his successor shall be appointed within 10 days by the Party who originally appointed him, or in the event such Party shall fail so to appoint such successor, or in the case of the third arbitrator, his successor shall be appointed as hereinabove provided. Neither of the Parties shall raise any challenge or objection as to the full power and jurisdiction of the Appointing Authority to entertain such application and make such appointment.

(d) Except as provided to the contrary in Section 29.05(b) or as otherwise determined by a majority of the arbitrators, whose determination shall be binding and conclusive upon all Parties, the expenses of arbitration shall be shared equally by Landlord and Tenant, and each Party shall be responsible for the fees and expenses of its own attorneys and other representatives.

(e) The arbitrators shall have no power to vary or modify any of the provisions of this Lease, and their powers and jurisdiction are hereby limited accordingly.

Section 34.02. Appraisals. In such cases where this Lease expressly provides for the settlement of a dispute or question by resort to appraisal, and only in such cases, such appraisal shall be conducted as follows, provided that the determination of FMV shall be governed by the provisions of Article 3 and not by this Section 34.02:

(a) 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 15 days after the effective date 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, 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 fail to agree upon such appointment.

(b) If, within 30 days after the designation of the second appraiser, the said 2 appraisers shall fail to agree upon the valuation, they themselves shall appoint a third appraiser who shall be a competent and impartial person.

(c) In the event the 2 appraisers fail to agree upon the appointment of a third appraiser within 10 days after the expiration of the 30 day period referred to in Section 34.02(b), then either Party, on behalf of both, may apply to the Appointing Authority for the appointment of such third appraiser, and the other Party shall not raise any challenge or objection as to the full power and jurisdiction of the Appointing Authority to entertain such application and make such appointment.

(d) Any appraiser selected or appointed pursuant to this Section 34.02 shall be a duly qualified real estate appraiser who is a member of the American Institute of Real Estate Appraisers (or a successor organization), and shall have not less than 10 years experience in appraising commercial land and improvements in the Borough of Manhattan, City and State of New York. 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 10 days by the Party who originally appointed him, or in the event such Party shall fail so to appoint such successor, or in case of the third appraiser, his successor shall be appointed as hereinabove provided.

(e) The decision of the first two appraisers designated shall be conclusive and binding on the Parties, provided that if the first two appraisers fail to agree within the 30 day period set forth in Section 34.02 (b), they shall submit to the third appraiser their determinations, and the third appraiser shall select one or the other of such determinations, and the determination so selected shall be conclusive and binding on the Parties. Each appraiser shall disclose to the Parties and the other appraiser(s) in reasonable detail the methodology, assumptions and rationale upon which their determination was based.

(f) Each Party shall pay the fees and expenses of its respective appraiser, and both shall share equally the fees and expenses of the third appraiser, if any. Each Party shall be

responsible for the fees and expenses of its own attorneys and other representatives.

Section 34.03. Additional Matters. Landlord and Tenant shall execute all documents and do all other things necessary to comply with the provisions of this Article 34, and further agree to submit to arbitration or appraisal, as the case may be, to the extent specifically required under Sections 34.01, 34.02 and 34.04 and to abide by the decision rendered pursuant thereto.

Section 34.04 Arbitration of Construction Approvals

(a) If Landlord or the Fee Owner withholds any consent or approval provided for herein prior to the Substantial Completion Date with respect to the Proposed Plans and Specifications, the Plans and Specifications, any Change Order or any other matter or thing directly affecting the Construction of the Building (any such consent or approval, the request for which is made before the Substantial Completion Date, is herein referred to as a "Construction Approval") and Tenant claims that pursuant to the terms and provisions of this Lease such consent or approval was wrongfully withheld, such claim shall be resolved by arbitration conducted in accordance with this Section 34.04. The terms and provisions of this Section 34.04 shall only apply to arbitrations concerning Construction Approvals, and shall not apply to the arbitration of any other matter under this Lease. The Parties shall be bound by the decision resulting from such arbitration as the final adjudication of any such claim, judgment thereon may be entered in any court having jurisdiction thereof, and the provisions of Section 34.01(b) shall apply to such decision as if it were a decision described in Section 34.01(b).

(b) All arbitrations pursuant to this Section 34.04 shall be decided by 3 arbitrators. The arbitrator for Landlord shall be Joseph Fleischer, or Carl Panero, the choice between said 2 individuals to be made by Landlord within 3 business days following the initiation of an arbitration under this Section 34.04. The arbitrator for Tenant shall be Stephen Eisner, or Arthur Nussbaum, the choice between said 2 individuals to be made by Tenant within 3 business days following the initiation of an arbitration under this Section 34.04. If either of the persons chosen by Landlord or Tenant pursuant to the first or second sentence of this paragraph (b) respectively are unable or unwilling to act as arbitrator because of death, disability or otherwise, Landlord or Tenant (as the case may be) shall select an alternate arbitrator within 3 business days following the inability or unwillingness of such person to so serve. The independent arbitrator shall be Peter Gluck, or if he is unable or unwilling to so serve, Robert Jacobs, or if he is unable or unwilling to so serve, Ralph Steinglass, or if he is unable or unwilling to so serve, Charles DeBenedittis.

(c) All costs and expenses of the arbitrators, and the reasonable costs and expenses incurred by the Parties in prosecuting or defending any dispute submitted to arbitration under this Section 34.04, including reasonable attorneys' fees and disbursements, shall be borne in the manner provided in Section 29.05(b) by the unsuccessful party in the arbitration as determined by the arbitrators.

(d) Both Parties shall cooperate with the arbitrators in all reasonable respects in order to facilitate their decision, and upon request shall supply to the arbitrators (or the other Party, as the case may be) plans, specifications and other documents which are in their possession relating to the Construction of the Building.

(e) The arbitrators shall render their decision within 10 days following the selection of the last of the arbitrators to be chosen, which decision shall be limited to whether or not the subject consent or approval was improperly withheld or delayed, the amount of damages (if any) payable pursuant to Section 29.05(c), and in the case of an arbitration arising under Section 30.10, whether and on what date the Expansion Space Completion Date has occurred.

(f) Except as provided to the contrary in this Section 34.04, the provisions of Section 34.01 shall govern the conduct of an arbitration conducted pursuant to this Section 34.04.

## ARTICLE 35

### ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 35.01. Tax Contest Proceedings. During the Term, Tenant shall have the sole and exclusive right to seek reductions in the Assessed Value, 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 the City, and at Tenant's sole cost and expense. The foregoing provisions of this Section 35.01 to the contrary notwithstanding, Landlord and the Fee Owner shall be entitled to seek reductions in the Assessed Value in the event that any portion of the Premises becomes subject to Taxes. In the event that two or more of Tenant, Landlord and the Fee Owner simultaneously seek a reduction in the Assessed Value, such parties shall cooperate and coordinate their efforts, but each at its own expense.

Section 35.02. Impositions Contest Proceedings. Landlord shall have the sole and exclusive right to contest the amount or validity in whole or in part, of any of Landlord's Impositions, provided, however, that nothing in this sentence shall reduce or abrogate Landlord's obligations under Section 4.01(b). Tenant shall have the sole and exclusive right to contest the amount or validity, in whole or in part, of any of Tenant's Impositions by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01, payment of such Tenant's Imposition may be postponed if, and only as long as:

(a) neither the Premises nor Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) or any part of either of them would, by reason of such postponement or deferment, be, in the reasonable judgment of an attorney licensed as such in the State, in danger of being forfeited, and Landlord and the Fee Owner are in no danger of being subjected to criminal liability or penalty, or civil liability or penalty in excess of the amount of security (if any) which Tenant has furnished as provided in Section 35.02(b) by reason of nonpayment thereof; and

(b) Tenant has provided to Landlord or delivered to Depositary Acceptable Security unless (x) the aggregate amount of all Impositions then being contested by Tenant is less than \$2,500,000 (Subject to Indexing), and (y) no Event of Default has occurred and is then continuing (in which case no security shall be required). Upon the termination of such proceedings, Tenant shall pay the amount of such Tenant's 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, interest, penalties or other liabilities in connection therewith, and upon such payment, Landlord or Depositary (as the case may be) shall return any security deposited with it with respect to such Tenant's Imposition which has not been applied, together with the interest, if any, earned on such security. However, if Landlord or Depositary (as the case may be) is so requested by Tenant and adequate funds therefor have been delivered to Landlord or Depositary by Tenant pursuant to this Section 35.02(b), Landlord or Depositary (as the case may be) shall disburse said moneys on deposit with it directly to the Person to whom or to which such Tenant's Imposition is payable. If, at any time during the continuance of such proceedings, Landlord, in its reasonable judgment, shall determine that the security theretofore delivered to Landlord or Depositary pursuant to this Section 35.02(b) no longer constitutes Acceptable Security, or if in the reasonable judgment of an attorney licensed as such in the State the conditions for contesting Tenant's Impositions set forth in Section 35.02(a) no longer are met, then unless within 30 days after Landlord's notice to Tenant thereof, such conditions are met or Tenant takes such action as is necessary to cause Acceptable Security to once again be provided or delivered to Landlord or Depositary, Landlord or Depositary (as the case may be) may, in addition and without prejudice to any other rights and remedies of Landlord, apply the security theretofore provided or deposited, together with the interest, if any, earned thereon, to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith, and any costs, fees 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 or Depositary as aforesaid, shall within 10 days 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 10 days after Landlord's demand.

Section 35.03. Requirement Contest. Tenant shall have the right to contest the validity of any Requirement or the application thereof, at its sole cost and expense. During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that, before instituting any such contest, Tenant shall furnish Depositary with a surety bond or clean and irrevocable letter of credit issued by an Institutional Lender, a cash deposit, a Qualifying Guaranty or other security in form and amount reasonably satisfactory to Landlord, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses which may arise in connection therewith. Any such contest instituted by Tenant 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, letter of credit, deposit, guaranty or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 16.01 if the Premises, Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) or any part of either of them, are in danger of being forfeited, or if Landlord or the Fee Owner 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 35 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, reasonable attorneys' fees and disbursements) actually incurred by Landlord in connection therewith, and indemnify and defend Landlord from and against any loss, claim, suit, damage or expense in connection therewith.

Section 35.05. Cooperation. In the event Impositions are not separately allocated to or legal requirements are not independently applied to the Premises and its appurtenances, on the one hand, and to Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) and its appurtenances, on the other hand, by the entity imposing such Impositions or legal requirements, upon the request of either Party the other Party shall cooperate with the requesting Party in all reasonable and non-prejudicial respects in connection with the requesting Party's challenge to any Imposition or legal requirement.



## ARTICLE 36

### INVALIDITY OF CERTAIN PROVISIONS

If any item or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be held to be invalid or unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or 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. If the provisions of Section 42.02 limiting Tenant's liability under this Lease are held to be invalid or unenforceable, Landlord shall not, in any event, enforce or seek to enforce a money judgment against Tenant to the extent that the amount of such judgment exceeds the then current amount that could be realized upon a sale of Tenant's interest under this Lease.

## ARTICLE 37

### FINANCIAL REPORTS

#### Section 37.01. [Intentionally Omitted]

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

Tenant shall keep and maintain at an office in the City complete and accurate books and records of accounts of the operations of the Premises from which Landlord may determine for each Lease Year or Lease Quarter the items to be shown or set forth on the statements to be delivered to Landlord pursuant to Sections 3.04 and 5.02(b), and shall preserve, for a period of at least 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 6 year period, Landlord is contesting any matter relating to such records or any matter to which such records are or are likely to be relevant, Tenant shall preserve such records until 1 year after the final adjudication, settlement or other disposition of any such contest. If requested by Landlord, Tenant shall also promptly furnish to Landlord 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 Fee Owner, the Comptroller of the City (the "Comptroller") and/or the agents or representatives of any of the foregoing shall have the right from time to time during regular business hours, upon not less than 3 days notice, to inspect, audit, and, at their option, duplicate, at their expense, all of Tenant's books, records and other relevant documents of Tenant relating to the construction, maintenance, operation and leasing of the Premises or to Tenant's obligations under this Lease. Tenant shall produce such books, records and other relevant documents promptly following the request of Landlord, the Fee Owner and/or the Comptroller. Tenant shall preserve for a period of at least 4 years after the Substantial Completion Date all such books, records and other relevant documents relating to the Construction of the Building. Subject to the requirements of applicable law, Landlord, the Fee Owner and the Comptroller shall hold in confidence, and shall each cause their respective agents and representatives to hold in confidence, all information obtained from Tenant's books, records, papers and files, except as may otherwise be required under the New York Freedom of Information Law (or other applicable law) or as may be necessary for the enforcement of Landlord's rights under this Lease.

(b) Underpayments of Rent. Should any audit performed by Landlord, the Fee Owner, the Comptroller and/or the agents or representatives of any of the foregoing disclose that any Rent was understated or otherwise underpaid, then any underpayments shall be paid to Landlord within 10 days after Tenant has received notice of such underpayment from Landlord, together with interest thereon at the Late Charge Rate from the date such Rent was first due through the date upon which such Rent is finally paid.

(c) Tenant's Payment of Audit Costs. If an audit of Tenant's financial statements reveals that Gross Commercial Rents for any Lease Quarter were understated (or the exclusions therefrom were overstated) by more than 5%, Tenant shall pay, within 10 days after demand, the reasonable cost of such audit.

Section 37.04. Survival Clause. The obligations of Tenant under this Article 37 shall survive the Expiration of the Term, with regard to obligations which apply to any calendar period which commenced before the Expiration of the Term but which terminates after such expiration.

## ARTICLE 38

### RECORDING OF LEASES

Section 38.01. Recording of Lease. Tenant shall cause this Lease (or at Tenant's option, a memorandum of this Lease) to be recorded in the Clerk's Office promptly after the execution and delivery of this Lease, and shall pay and discharge all recording fees in connection therewith, but nothing in this Article 38 shall abrogate or detract from Landlord's responsibilities under Section 4.01(d). In the event that Tenant elects to record a memorandum as provided in the preceding sentence, the form and content of any such memorandum shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld. Landlord and Tenant shall cooperate with one another to execute, complete and file all returns or forms required to be completed and/or filed by any Governmental Authority in connection with the recording of this Lease (or any amendment hereto, or any memorandum or restatement hereof) and/or in connection with the payment of and/or any exemption from taxes and/or fees with respect thereto.

Section 38.02. Recording of Master Lease. Landlord shall cause the Master Lease (or a memorandum thereof containing, in substance, the terms and provisions of Article 40 of the Master Lease) to be recorded in the Clerk's Office prior to the recordation of this Lease, and shall pay or cause to be paid and discharged all recording fees in connection therewith.

## ARTICLE 39

### Tax Savings

Section 39.01. Initial Tax Savings. Tenant shall pay Landlord \$2,100,000 on account of the Tax Savings in connection with the Construction of the Building (which, for purposes of this Article 39, shall include (x) all Tenant Improvement Work done or to be done for any Direct Subtenant that is the first occupant of any space in the Building, and (y) the purchase of all Equipment necessary or desirable to cause the Building to become fully operational). Such sum shall be paid (or deemed paid) as follows: (i) on the Starting Date the Tax Savings Credit (which, subject to adjustment as specified in Section 5.03, shall be in the amount of \$485,000), (ii) \$300,000 on the day that is 60 days after the Starting Date, (iii) \$100,000 on the first day of each of the months that follow the sixth, twelfth, eighteenth and twenty-fourth monthly anniversaries of the Starting Date, (iv) \$915,000 upon the earlier to occur of (x) the opening of the Through Block Connection to the public for use (as such date is determined in accordance with the terms and provisions of Paragraph 3(j) of the Restrictive Declaration) or (y) the "Through Block Completion Deadline" (as such term is defined in Paragraph 3(j) of the Restrictive Declaration), and (v) within 30 days after it is determined, the amount, if any, by which the Tax Savings Credit is less than \$485,000.

Section 39.02. Unavailability of Tax Savings. If despite compliance with the provisions of Section 39.06 it is finally determined by the appropriate taxing authority that any sales, compensating use or other similar taxes are payable by Tenant in connection with Construction Work, then Tenant shall pay such taxes, and the potential Tax Savings related to such Construction Work shall be reduced to the extent that Tenant is obligated to and actually pays such taxes, provided that (a) Tenant has not defaulted under the provisions of Section 13.08, (b) Tenant notified Landlord in writing prior to payment of such taxes that a claim had been made therefor, and (c) if permitted by applicable law, Landlord was given the opportunity to contest the imposition of same, provided that neither Tenant's interest in the Premises nor any income therefrom would, by reason of such contest, be forfeited or lost, or subject to any lien, encumbrance or charge, and Tenant would not by reason thereof be subject to any civil or criminal liability or be delayed in performing any Construction Work. Neither Landlord nor Tenant shall be obligated to contest the decision of any such authority to deny, revoke or terminate any exemptions or other relief from the payment of such taxes; however, should either Party desire to contest any such decision by bringing a lawsuit or otherwise, it may do so at its own risk and expense.

Section 39.03. No Exemption for Subtenants. No Direct Subtenant may claim any sales or other tax exemption solely by virtue of the City's ownership of the Premises, and Tenant shall either include such restriction in all Direct Subleases, or otherwise give Direct Subtenants notice of this Section 39.03. Nothing contained in this Section 39.03 shall be deemed or construed to prohibit or interfere with any of Tenant's agents, contractors, subcontractors or construction managers claiming or obtaining the benefit of any sales or other tax exemption by reason of the City's ownership of the Premises.

Section 39.04. Other Tax Savings. In addition to the payments to be made by Tenant pursuant to the provisions of Section 39.01, Tenant shall pay Landlord sums equal to the Tax Savings with respect to all Construction Work other than the Construction of the Building performed by or on behalf of Tenant

Section 39.05. Statements, Right to Inspect and Audit.

(a) Within 120 days after (x) Completion of the Construction of the Building, and (y) the end of each Lease Year thereafter, Tenant shall furnish to Landlord a statement showing in detail all Tax Savings (if any) accruing with respect to the Construction of the Building or such Lease Year (as the case may be) throughout the relevant period. Such statements shall be prepared and certified to Landlord as accurate by the Certified Public Accountant and shall be accompanied by a check in the amount of any Tax Savings not theretofore paid (or deemed to have been paid).

(b) The City shall have, in addition to the other rights of inspection and audit provided in this Lease, the right to inspect and audit during business hours and upon not less than 3 days' notice, Tenant's books and records pertinent to Tenant's calculations of Tax Savings and the payments made in connection therewith. If any inspection or audit conducted pursuant to this Section 39.05(b) shall reveal that the amount of any payment due from Tenant pursuant to Section 39.05(a) is greater than the amount actually paid by Tenant, then such deficiency shall be paid by Tenant within 30 days after the City shall have given notice of such deficiency to Tenant.

Section 39.06. Application for Exemption.

(a) Tenant shall take such actions as are necessary to qualify for and obtain an exemption in full (or other equivalent form of relief) from the payment of all sales, compensating use and other similar taxes based upon the City's ownership of the Premises, and Landlord and the Fee Owner shall on or prior to the Starting Date (and thereafter upon demand) supply to Tenant such forms, letters, certificates and other statements and information

as may be necessary or desirable to obtain such exemption and relief and shall otherwise cooperate in connection therewith.

(b) Tenant shall use all reasonable efforts to obtain the benefit of all Tax Savings.

Section 39.07. Obligations. All sums payable by Tenant pursuant to the terms and provisions of this Article 39 shall be and be deemed to be components of Rental.

Section 39.08. Minimum Tax Savings. Subject to the provisions of Section 39.02, the Parties agree that the Tax Savings with respect to the Construction of the Building shall not be less than \$2,100,000, except to the extent that (i) Landlord and/or the City have not complied with their obligations under Section 39.06, or (ii) the City alienates the Land prior to the completion of the Construction of the Building, in either or both of which cases the amounts paid by Tenant on account of Tax Savings shall be reduced by the amount of Tax Savings not realized by reason thereof.

Section 39.09. Disputes. Any dispute arising under or with respect to this Article 39 shall, upon the request of either party, be resolved by arbitration conducted in accordance with Article 34.

## ARTICLE 40

### NONDISCRIMINATION; COOPERATION WITH INVESTIGATION

Section 40.01. Nondiscrimination. Tenant shall comply with the provisions of Executive Order Number 50 of the Mayor of the City (April 25, 1980), and the regulations issued thereunder to the extent applicable to the Premises, including inter alia, that Tenant shall: treat and take affirmative action to assure that all employees and applicants for employment at or in respect of the Premises 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, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff, termination, and all other terms and conditions of employment, except as provided by law. The foregoing provisions of this Section 40.01 shall not apply with respect to sex, age or handicap where such factor is a bona fide occupational disqualification, nor shall they 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 not discriminate by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability, marital status, sexual orientation or affectional preference in the assignment of this Lease, or in the subletting, use or occupancy of the Premises or of any part thereof, or in connection with any construction work, or in any instrument, covenant, agreement or transaction affecting the Premises or this Lease, and Tenant shall comply with all federal, state and municipal laws, ordinances, rules, codes, orders, and regulations regarding discrimination or segregation, and/or requiring affirmative action by Tenant with respect to the same.

Section 40.02. Cooperation With Bureau of Labor Services. Tenant shall make Reasonable Efforts to include in each contract for the Construction of the Building involving a contract sum of \$500,000 or more, covenants by the contractors thereunder (i) to complete and return to the City's Bureau of Labor Services ("BLS"), within 30 days after their first involvement in the Construction of the Building, an employment reporting form prepared by BLS and delivered to Tenant and such contractors setting forth the number and types of jobs the contractors estimate, in good faith, will be created by such contractors and their subcontractors in connection with the Construction of the Building ("Construction Jobs") and the contemplated sources for filling those jobs, (ii) to consider in good faith such proposals



as BLS may make with regard to filling such Construction Jobs, (iii) to provide BLS with the opportunity to refer candidates to the contractors and their subcontractors for the Construction Jobs, (iv) to consider in good faith, the hiring of economically disadvantaged individuals as participants in qualifying trade apprenticeship programs to the extent practicable and feasible and (v) until the Substantial Completion Date and within 30 days after request therefor to report to BLS the actual number of jobs created by each such contractor and its subcontractors since the last report and the contractor's response to any proposals and personnel referrals made by BLS since such last report and cumulatively since the beginning of its involvement in the Construction of the Building.

Section 40.03. Cooperation with Investigation. 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.

Section 40.04. Sole Beneficiary. This Article 40 is for the sole and exclusive use and benefit of the City and City-related entities, who are hereby deemed to be third-party beneficiaries of the provisions of this Article 40. The terms and provisions of this Article 40 may not be enforced, construed or utilized for any purpose, in any manner or any degree whatsoever by Landlord.

## ARTICLE 41

### MISCELLANEOUS

Section 41.01. Captions; References. 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. Unless expressly provided to the contrary, all references in this Lease to "Articles," "Exhibits," "Schedules" or "Sections" shall refer to the designated Article(s), Exhibit(s), Schedule(s) or Section(s), as the case may be, of or to this Lease.

Section 41.02. 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 to be a part of this Lease.

Section 41.03. 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 permitted assigns of any individual Landlord or Tenant.

Section 41.04. 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, subject to the terms and provisions of Article 42, 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 41.05. Remedies Cumulative. Except as may be expressly provided to the contrary in this Lease, each right and remedy of Landlord or 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 available to such Party at law, in equity 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 available to such Party at law, in equity 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 available to such Party at law, in equity or otherwise.

Section 41.06. Merger. There shall be no merger of this Lease or the leasehold estate created hereby with (a) 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, and/or (b) the Master Lease or the leasehold estate created thereby by reason of the same Person acquiring or holding, directly or indirectly this Lease and the leasehold estate created hereby as well as the Master Lease and the leasehold estate created thereby.

Section 41.07. Cost and Expense of Performance. Except as may be expressly provided to the contrary in this Lease, when Tenant exercises any of its rights or performs any of its obligations hereunder, Tenant hereby acknowledges and agrees that it shall do so at Tenant's sole cost and expense. Except as may be expressly provided to the contrary in this Lease, when Landlord exercises any of its rights or performs any of its obligations hereunder, Landlord hereby acknowledges and agrees that it shall do so at Landlord's sole cost and expense.

Section 41.08. Waiver, Modification, Etc. No covenant, agreement, term or condition of this Lease to be performed or complied with by either Party, and no default thereof by either Party, shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination 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 or breach thereof. If the representation and/or warranty set forth in clause (iii) of Section 18.01 is inaccurate or breached, or if there is a suit by a third party which, if successful, would make such representation inaccurate and/or cause such warranty to be breached, Landlord will indemnify and hold Tenant (and, prior to the Substantial Completion Date, the guarantors under the Guaranty) harmless from and against all damages, losses, costs and expenses (including without limitation reasonable attorneys fees) arising from or relating to such inaccuracy, breach or suit. If and to the extent requested by Tenant, Landlord will, at its expense, defend any such suit (including appeals arising from such suit). In any event, the Parties shall cooperate (or cause their attorneys to cooperate) in connection with the defense of any such suit.

Section 41.09. Depositary Charges and Fees. Tenant shall pay any and all fees, charges and expenses owing to Depositary for any services rendered by Depositary pursuant to the provisions of this Lease, but Landlord shall pay any and all fees, charges and expenses owing to Depositary due to any services

rendered by Depositary at Landlord's request which are above and beyond the services to be rendered by Depositary hereunder.

Section 41.10. Status of Deposited Funds. All funds held by Depositary pursuant to this Lease shall be and shall be deemed to be held in escrow by Depositary and shall only be disbursed in accordance with the terms and provisions of this Lease.

Section 41.11. Governing Law. This Lease shall be governed by, and be construed in accordance with, the laws of the State.

Section 41.12. Approval of the Architect. The selection by Tenant of a new Architect shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld or delayed.

Section 41.13. Assignment of this Lease by Landlord. If Landlord or any successor to its interest hereunder transfers or assigns its interest in the Land and (by operation of law or otherwise) its interest under this Lease, then from and after the date of such assignment or transfer, the assignor or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such transfer or assignment, and it shall be deemed and construed without further agreement between the Parties or their successors in interest that the transferee or assignee under such transfer or assignment has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder occurring from and after the date of such assignment or transfer.

Section 41.14. 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 41.15. Media Inquiries; Advertisements; Use of Name. All inquiries received by Tenant from the media concerning Carnegie Hall shall, to the extent feasible in the reasonable judgment of Tenant, be referred to Landlord for response. All media releases and announcements concerning the Building made prior to the Substantial Completion Date shall, to the extent feasible, be referred to and coordinated by Landlord. The provisions of the preceding sentence shall not apply to any materials prepared for the purpose of marketing of space or an interest in the Premises. Tenant shall not at any time refer to Carnegie Hall or use the words "Carnegie Hall" in any advertisement or for any other promotional or profit-making purpose in connection with the Premises without Landlord's prior

written consent (which may be withheld for any or no reason), provided, however, that Landlord's consent shall not be required in the case of any use of the words "Carnegie Hall" (a) solely for purposes of geographical identification, (b) in connection with the name of Tenant as of the date hereof (or any other name of Tenant approved by Landlord in writing), and/or (c) in connection with any of the following names for the Building (or any other name for the Building approved by Landlord in writing): The Tower at Carnegie Hall; Carnegie Hall Tower; Carnegie Hall Plaza; Carnegie Hall Place; Carnegie Hall Commons; and Carnegie Hall Center. Nothing contained in this Lease shall restrict Tenant or any Subtenant from using the word "Carnegie" when not used in conjunction with the word "Hall".

Section 41.16. Master Lease. This Lease is subject to all the terms and conditions of the Master Lease. Landlord covenants and agrees that it shall not enter into or cause to be entered into any amendment or supplement to the Master Lease which (a) increases or alters Tenant's obligations under this Lease, (b) decreases or alters Tenant's monetary rights or monetary claims under this Lease, (c) limits the permitted uses of the Premises, (d) limits Tenant's rights under this Lease to dispose of or assign its interest in the Premises, or (e) decreases or alters the rights of any Recognized Mortgagee, unless the same is consented to by Tenant (or, in the case of (e), by such Recognized Mortgagee) or is made subject and subordinate to this Lease and to the rights of all Recognized Mortgagees so affected.

Section 41.17. No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Lease with respect to the Fee Owner, PDC, BLS and Recognized Mortgagees, nothing contained in this Lease or in any of the exhibits or schedules hereto shall or shall be construed to confer upon any person or entity other than Landlord and Tenant any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

Section 41.18. Negotiated Document. The Parties acknowledge that the provisions and the language of this Lease have been negotiated and the Parties agree that no provision of this Lease shall be construed against either Party by reason of such Party having drafted such provision or this Lease.

Section 41.19. Carnegie Hall Roof. Landlord shall not install any structures or equipment on (a) the 18 foot wide portion of the roof of Carnegie Hall adjacent to the Building beginning at the southern edge of the Carnegie Hall roof and extending 100 feet northerly (the "Southern Restricted Area"); (b) the 40 foot wide portion of the roof of Carnegie Hall adjacent to the Building beginning at the northern boundary of the Southern Restricted Area and extending northerly to the base of the tower known as the campanile and located at the northeast corner of

Carnegie Hall (the "Middle Restricted Area"); and (c) the roof of the campanile (the "Campanile Roof") without the prior written consent of Tenant, which shall not be unreasonably withheld. Landlord acknowledges that any material blocking of views from the Building, intrusion of noise or odors into the Building, or other material and adverse effect on the Building or the revenue produced thereby which would be caused by a proposed installation of any structures or equipment on the Southern Restricted Area, Middle Restricted Area and/or the Campanile Roof shall constitute reasonable grounds for the withholding of consent by Tenant. Notwithstanding the foregoing, but subject to the terms and provisions of Section 13.15, Landlord may without the consent of Tenant maintain on the Southern Restricted Area, Middle Restricted Area and/or the Campanile Roof any structures or equipment located thereon as of the date of this Lease ("Existing Structures"), and may without the consent of Tenant, but upon not less than 30 days' prior written notice to Tenant (i) add structures or equipment on the Campanile Roof and/or Middle Restricted Area that are less than 4 feet high, (ii) add structures or equipment on the Southern Restricted Area that are not more than 18 inches high (and/or ducts, pipes, conduits and other equipment that are not more than 30 inches high on the western most 8 feet of the Southern Restricted Area), (iii) rebuild or replace (in the same location) any Existing Structures (except that no such rebuilding or replacement on the Southern Restricted Area, Middle Restricted Area and/or the Campanile Roof shall result in the installation of structures or equipment larger than the then existing structures or equipment), and (iv) add structures or equipment to the Southern Restricted Area, Middle Restricted Area and/or the Campanile Roof which are reasonably necessary in order to comply with applicable laws and regulations provided, however, that in complying with any such laws and regulations Landlord shall use all reasonable efforts to minimize the impact of such compliance on the views from and noise heard within the Building. Tenant may, at any time during the Term, notify Landlord that Tenant wishes to relocate any then existing structures or equipment on the Southern Restricted Area, Middle Restricted Area and/or the Campanile Roof to a specified location pursuant to a specified plan. If Landlord approves such relocation (which approval shall not be unreasonably withheld) Tenant may (except during the pendency of an Event of Default) cause such relocation at Tenant's risk and expense, and in accordance with the provisions of Article 13 governing Construction Work. Landlord shall not without the consent of Tenant construct any improvement on a roof of Carnegie Hall that is as high or higher than the Southern Restricted Area if such improvement would increase the floor area (as defined in the Zoning Resolution) of Carnegie Hall. In any event, Landlord shall consult with Tenant prior to the addition of any improvement on any roof of Carnegie Hall if such improvement would extend higher than the Southern Restricted Area. Any dispute between Landlord and Tenant arising out of this

Section 41.19 shall, upon request of either Party, be resolved by arbitration conducted pursuant to Article 34.

## ARTICLE 42

### EXCULPATION

Section 42.01. Landlord's Liability. The liability of Landlord hereunder and/or under any Collateral Document for damages or otherwise shall be limited to Landlord's interest in the Premises and this Lease. Landlord shall have no liability hereunder and/or under any Collateral Document (personal or otherwise) beyond its interest in the Premises and this Lease. The directors, officers, employees, shareholders, agents or servants of Landlord shall have no liability whatsoever (personal or otherwise) by reason of or arising under this Lease and/or any Collateral Document. No property or assets of Landlord other than its interest in the Premises and this Lease and no property of the directors, officers, employees, shareholders, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder or in connection herewith or under or in connection with any Collateral Document.

Section 42.02. Tenant's Liability. The liability of Tenant hereunder and/or under any Collateral Document for damages or otherwise shall be limited to Tenant's interest in the Premises and this Lease, and, if held by Depositary, any Awards and proceeds of insurance policies covering or relating to the Premises. Tenant shall have no liability hereunder and/or under any Collateral Document (personal or otherwise) beyond its interest in the Premises, this Lease and, if held by Depositary, any Awards and proceeds of insurance policies covering or related to the Premises. The directors, officers, employees, shareholders, agents, servants, partners, joint venturers or tenants-in-common of and/or comprising Tenant shall have no liability whatsoever hereunder and/or under any Collateral Document (personal or otherwise) by reason of or arising under this Lease and/or any Collateral Document. No property or assets of Tenant other than its interest in the Premises and this Lease and, if held by Depositary, any Awards and proceeds of insurance policies covering or relating to the Premises, and no property whatsoever of the directors, officers, employees, shareholders, agents, servants, partners, joint venturers, or tenants-in-common of and/or comprising Tenant shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies hereunder or in connection herewith or under or in connection with any Collateral Documents. The provisions of this Section 42.02 shall in no event diminish or otherwise affect the obligations and liabilities of the guarantors under the Guaranty, the Interim Guaranty, any Qualifying Guaranty or any other guaranty delivered to Landlord.



Section 42.03. Survival. The provisions of this Article 42 shall survive the Expiration of the Term.

Section 42.04. Limitation on Liability of Recognized Mortgagees. The making of any Recognized Mortgage shall not be deemed to require the Recognized Mortgagee thereunder to assume the performance of any terms, covenants or conditions on the part of Tenant to be performed under this Lease or to subject any Recognized Mortgagee to any liability or obligation under this Lease. The foregoing sentence shall not abrogate or otherwise affect any liability or obligations created in or assumed by a Recognized Mortgagee in a written agreement executed by such Recognized Mortgagee and delivered to Landlord.

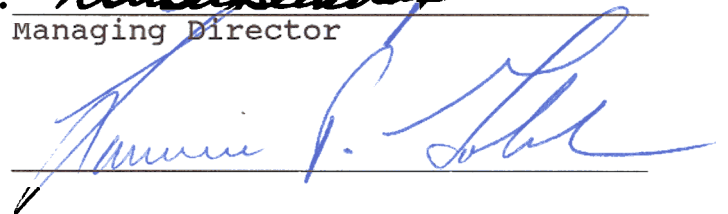
IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

ATTEST:

THE CARNEGIE HALL CORPORATION

By: \_\_\_\_\_

  
Managing Director



CARNEGIE HALL TOWER LIMITED  
PARTNERSHIP, a Delaware Limited  
Partnership

ATTEST:

By: H-CHLP I Corp., a  
general partner

By: \_\_\_\_\_

  
Assistant Treasurer

[Signatures Continue]

ATTEST:

By: K-CHLP II Corp., a  
general partner

By: Charles B. Katsaris  
Assistant Treasurer

ATTEST:

By: F-CHLP III Corp., a  
general partner

By: Frederick E. [Signature]  
President

Agreed to with respect to  
approvals or consents by  
the City and with respect  
to express covenants and  
agreements made by the City  
under this Lease:

The City of New York

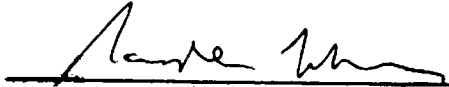
By: Michael D. [Signature]

Approved as to form:

Richard M. [Signature]

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

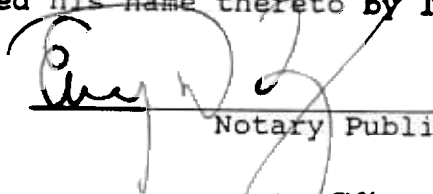
On the 2 day of December, 1987, before me personally came Morton Belknap to me known, who, being by me duly sworn, did depose and say that he resides at 563 Park Ave; that he is the Managing Director of The Carnegie Hall Corporation, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by like order.

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

SANDER LEHRER  
Notary Public, State of New York  
No. 30-4601425  
Qualified in Nassau County  
Commission Expires December 31, 1988

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

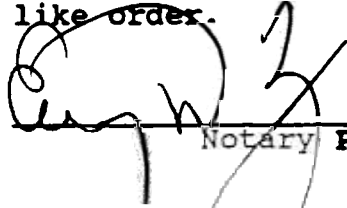
On the 24 day of December, 1987, before me personally came Lawrence P. Goldman to me known, who, being by me duly sworn, did depose and say that he resides at No. 4 Meadow Way Irvington, N.Y.; that he is the Director Re: Estate Planning of The Carnegie Hall Corporation, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by like order.

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

EUGENE J. LEVY  
Notary Public, State of New York  
No. 30-7225355  
Qualified in Nassau County  
Commission Expires July 31, 1988

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

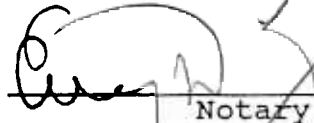
On the 24 day of December, 1987, before me personally came Charles B. Katzenstein to me known, who, being by me duly sworn, did depose and say that he resides at 95 W 45 St. N.Y.N.Y.; that he is the Assistant Treasurer of H-CHLP I Corp., a general partner of Carnegie Hall Tower Limited Partnership, the limited partnership described in and which executed the foregoing instrument; and that he signed his name thereto by like order.

  
Notary Public

EUGENE D. LEVY  
Notary Public, State of New York  
No. 30-7525355  
Qualified in Nassau County  
Commission Expires July 31, 1988

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

On the 24 day of December, 1987, before me personally came Charles B. Katzenstein to me known, who, being by me duly sworn, did depose and say that he resides at 95 W 45 St. N.Y.N.Y.; that he is the Assistant Treasurer of K-CHLP II Corp., a general partner of Carnegie Hall Tower Limited Partnership, the limited partnership described in and which executed the foregoing instrument; and that he signed his name thereto by like order.

  
Notary Public

EUGENE D. LEVY  
Notary Public, State of New York  
No. 30-7525355  
Qualified in Nassau County  
Commission Expires July 31, 1988

STATE OF NEW YORK

**ES. :**

On the 24 day of December, 1987, before me personally came Frederick Oghonien to me known, who, being by me duly sworn, did depose and say that he resides at 309 East 45th Street that he is the President of F-CHLP III Corp., a general partner of Carnegie Hall Tower Limited Partnership, the limited partnership described in and which executed the foregoing instrument; and that he signed his name thereto by like order.

**EUGENE J. LEVY**  
Notary Public, State of New York  
No. 30-7525355  
Qualified in Nassau County  
Commission Expires July 31, 1988

## EXHIBIT A

### DEFINITIONS

"Acceptable Security" means any of the following: (i) Available Equity Credit equal to not less than 300% of the Secured Amount; (ii) in the event that the performance of Construction Work is being secured, a payment and performance bond issued by an Institutional Lender meeting the requirements of clause (i), (ii) or (iii) of the definition thereof in form reasonably 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 cost of the subject Construction Work; (iii) a clean and irrevocable letter of credit issued by a commercial bank or trust company that is an Institutional Lender in favor of Landlord in an amount equal to the Secured Amount and in a form approved by Landlord (which approval shall not be unreasonably withheld); (iv) a Qualifying Guaranty in an amount equal to the Secured Amount; (v) cash deposited with Depositary in an amount equal to the Secured Amount; or (vi) any other security satisfactory to Landlord in its discretion, which shall not be exercised unreasonably. Acceptable Security may be comprised of a combination of any of the foregoing. Any provision of this definition to the contrary notwithstanding, Available Equity Credit shall not be deemed to comprise any part of Acceptable Security in the event that an Event of Default has occurred and is continuing.

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

"Actual Expenses" shall mean out-of-pocket expenses actually incurred by Tenant with respect to the operation and maintenance of, but not the construction or financing of, the Premises, including, by way of illustration and not limitation, utility costs and cleaning costs.

"Additional Rent" has the meaning provided in Section 3.01(a).

"Adjusted Assignment Proceeds" means Gross Assignment Proceeds less the greater of (i) Audited Development Costs (which shall be Subject to Indexing as if all Audited Development Costs were incurred by Tenant on the Substantial Completion Date if the Assignment occurs after the Substantial Completion Date, and will otherwise not be Subject to Indexing), or (ii) the maximum outstanding principal amount of the last Refinancing to have occurred, except that in calculating Adjusted Assignment Proceeds, a deduction may be made therefrom for litigation expenses incurred in collecting such Adjusted Assignment Proceeds if litigation is

commenced in order to collect the same. Adjusted Assignment Proceeds shall not include any amounts the determination of which shall depend in whole or in part on income or profits derived by any Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or sales), except to the extent that Landlord has made a determination pursuant to Section 10.07(c), and has notified Tenant and the City of such determination.

"Adjusted Refinancing Proceeds" shall mean Gross Refinancing Proceeds less Audited Development Costs (which shall be Subject to Indexing as if all Audited Development Costs were incurred by Tenant on the Substantial Completion Date if the Refinancing occurs after the Substantial Completion Date, and will otherwise not be subject to Indexing). Adjusted Refinancing Proceeds shall not include any amounts the determination of which shall depend in whole or in part on income or profits derived by any Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or sales), except to the extent that Landlord has made a determination pursuant to Section 10.07(c) and has notified Tenant and the City of such determination.

"Adjusted Transfer Proceeds" shall mean Gross Transfer Proceeds less a proportionate share of the greater of (i) Audited Development Costs (which shall be Subject to Indexing as if all Audited Development Costs were incurred by Tenant on the Substantial Completion Date if the Transfer occurs after the Substantial Completion Date, and will otherwise not be Subject to Indexing), or (ii) the maximum outstanding principal amount of the last Refinancing to have occurred, except that in calculating Adjusted Transfer Proceeds, a deduction may be made therefrom for litigation expenses incurred in collecting such Adjusted Transfer Proceeds if litigation is commenced in order to collect the same. For example, if Gross Transfer Proceeds are \$100, Audited Development Costs are \$900 and a 10% interest in Tenant is being transferred, Adjusted Transfer Proceeds would equal \$10 [\$100 minus (\$900x10%)] assuming that (x) the Transfer occurred on or before the Substantial Completion Date so that Audited Development Costs were not increased by virtue of their being Subject to Indexing, (y) Audited Development Costs exceeded the maximum outstanding principal amount of the last Refinancing to have occurred, and (z) no litigation expenses were incurred in collecting Adjusted Transfer Proceeds. Adjusted Transfer Proceeds shall not include any amounts the determination of which shall depend in whole or in part on income or profits derived by any Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or sales), except to the extent that Landlord has made a determination pursuant to Section 10.07(c), and has notified Tenant and the City of such determination.

"Adjustment Period" shall mean each of the periods beginning on the first day of Rental Years 25, 40, 55, 70 and 85, and continuing for 15 Rental Years thereafter or until the Expiration Date or the Fixed Expiration Date, whichever is sooner

"Adult Use" means any of the following:

(i) An "adult bookstore", which means a bookstore or other establishment having (A) a substantial portion of its stock in trade in books, magazines, periodicals or novelties which are distinguished or characterized by their emphasis on matter depicting, describing or referring to specified sexual activities, or (B) a principal portion of its stock in trade in books, magazines, periodicals or novelties which are distinguished or characterized by their emphasis on matter depicting, describing or referring to specified anatomical areas. "Specified sexual activities" are: (a) Human genitals in a state of sexual stimulation or arousal; (b) Acts of human masturbation, sexual intercourse or sodomy; or (c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast. "Specified anatomical areas" are: (a) Less than completely and opaquely covered (1) human genitals, pubic region, (2) buttock, and (3) female breast below a point immediately above the top of the areola; or (b) Human male genitals, less than completely and opaquely covered, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(ii) An "adult theatre", which means a stage or motion picture theatre or other facility used substantially for presenting dramatic or cinematic material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, but a live dramatic presentation shall not be deemed "adult theatre" merely because specified anatomical areas are displayed.

(iii) An "adult coin-operated entertainment facility", which means a motion picture theatre or other establishment containing one or more coin operated mechanisms intended to be viewed individually which substantially presents material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

(iv) An "adult 'topless' entertainment establishment", which means any establishment whether or not an eating and drinking place and whether or not such establishment is authorized to sell beer or intoxicating liquor for consumption on the premises, which provides dancers or any other form of entertainment that involves specified sexual activities or the display of specified anatomical areas as a substantial entertainment activity of such establishment.



(v) An "adult physical culture establishment", which means any establishment which offers or advertises, by members of the opposite sex, massage, body rubs or physical contact with specified anatomical areas, whether or not licensed, provided however, that if all or a portion of the Premises is permitted to be used as a hotel, the giving of massages by licensed practitioners as a routinely available hotel service shall not be deemed to be an Adult Use. Establishments which routinely provide medical services by state-licensed medical practitioners, electrolysis treatment by licensed operators of electrolysis equipment, continuing instruction in martial or performing arts or instruction for organized athletic activities shall be excluded from the definition of adult physical culture establishments.

"Affiliate" or "Affiliates" means (A) any Person that has, directly or indirectly, an ownership interest in the Person at issue or any Person in which the Person at issue, any shareholder of the Person at issue, any partner of the Person at issue or any stockholder of any Person that is a partner of the Person at issue, has an ownership interest, and (B) any individual who is a member of the immediate family (whether by birth or marriage) of an individual described in clause (A) of this definition, which includes for purposes of this definition a spouse; a brother or sister of the whole or half blood 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.

"Appointing Authority" shall mean the President of the Association of the Bar of the City of New York, or, if there is no such person or such person shall decline to so act, the Chairman of the Real Estate Board of New York, or, if there is no such person or such person shall decline to so act, a justice of the New York State court of general jurisdiction for New York County from time to time.

"Architect" means Cesar Pelli & Associates, Brennan Beer Gorman/Architects, or any other registered architect(s) or architectural firm(s) selected and approved as provided in Section 41.12.

"Assessed Value" shall mean the aggregate value from time to time of the Land and the Building (excluding the Expansion Space), as determined from time to time by the department or officer of the City charged with assessing the value of real property for purposes of calculating New York City real property taxes, in accordance with assessment procedures generally applied by such department or officer to land and improvements, similar to the Land and Building, which are subject to such taxes. In the event that it is unclear as to whether such department or officer included the value of the Expansion Space in determining

the value of the Land and Building as aforesaid, Landlord or Tenant may request clarification from such officer or department. If it remains unclear after inquiry whether the value of the Expansion Space was included in such determination, or if it is determined that such department or officer included the value of the Expansion Space in such determination and such department or officer does not disclose the value allocated to the Expansion Space, Landlord and Tenant shall seek to agree upon Assessed Value for a period of 30 days. If Landlord and Tenant fail to so agree within such 30 day period, upon the request of either Party Assessed Value shall be determined by an appraisal conducted in accordance with Article 34, provided, however, that the appraisers shall be empowered to deviate from the Assessed Value determined as described above only to the extent the appraisers believe it included the value of the Expansion Space.

**"Assignee"** means an assignee under an Assignment

**"Assignee Reasonably Satisfactory to Landlord"** means any Person who is not (i) an Indicted Party, (ii) controlled by, controlling, or under common control with an Indicted Party, or (iii) a Person identified in Section 10.01(c)(i)-(viii), and who is either (A) a Person (including an Affiliate of the Indicted Party) who is satisfactory to all Recognized Mortgagees, or (B) a Person (other than an Affiliate of the Indicted Party) who is acting in a fiduciary capacity as an independent trustee for the benefit of the Indicted Party for the purpose of actively managing the Premises or the Indicted Party's Interest in Tenant, as the case may be.

**"Assignment"** means the sale, exchange, assignment or other transfer or disposition of Tenant's interest in this Lease or the leasehold estate created hereby, whether by operation of law or otherwise, but excluding (i) all Transfers, (ii) the execution and delivery of all Recognized Mortgages, and (iii) the entering into of any Sublease.

**"Assignor"** means an assignor under an Assignment.

**"Audited Development Costs"** means the aggregate of the following: (i) out-of-pocket costs incurred by Tenant for (A) Construction of the Building, including without limitation, hard costs, premiums for insurance during Construction of the Building required to be provided and maintained under Article 7 of the Lease, and fees and expenses of architects, engineers, lawyers and other professionals and consultants performing services with respect to Construction of the Building; (B) fees of lawyers and other costs and expenses for the acquisition by Tenant of its interest under this Lease; (C) Tenant Improvement Work; and (D) initial leasing of space in the Building to Direct Subtenants, including without limitation, advertising and legal fees, and brokerage commissions paid or payable with respect to the leasing

of space in the Building; and (ii) interest paid or payable on amounts borrowed by Tenant, other than from Principals of Tenant, and with respect to sums provided to Tenant by Principals of Tenant (either as equity or loans), an amount equal to interest on such sums at the Cost of Funds Rate plus 1 per cent per annum, provided that the foregoing calculations shall in all events exclude any funds borrowed by or otherwise provided to Tenant for payment of deficits from operation of the Building and shall also exclude any interest on amounts borrowed by Tenant (other than from Principals of Tenant) to pay such deficits and any amount equal to interest with respect to sums provided to Tenant by Principals of Tenant (either as equity or loans) to pay such deficits, and provided further that the foregoing calculations shall include interest and an amount equal to interest only for the period ending on the date rent (exclusive of any payments consisting solely of reimbursement to Tenant for Actual Expenses, and any security deposits or other deposits (which may equal the first month's rent) upon or in connection with the execution of a Sublease) is first paid to Tenant by Subtenants for no less than 50 per cent of the total Floor Area of the Building (excluding the Expansion Space), except that the number 50 per cent shall be increased by 2.5 per cent of the total Floor Area of the Building (excluding the Expansion Space) for each month after the first anniversary of Initial Occupancy during which Subtenants are paying rent to Tenant (exclusive of any payments consisting solely of reimbursement to Tenant for Actual Expenses, and any security deposits or other deposits (which may equal the first month's rent) upon or in connection with the execution of a Sublease) for less than 25 per cent of the total Floor Area of the Building (excluding the Expansion Space). All of the foregoing costs shall be calculated and determined in accordance with generally accepted accounting principles and on the basis of the accrual method of accounting, provided that such costs shall be determined as of the earlier of (x) the date on which rent is being paid by Subtenants to Tenant (exclusive of any payments consisting solely of reimbursement to Tenant for Actual Expenses, and any security deposits or other deposits (which may equal the first month's rent) upon or in connection with the execution of a Sublease) for no less than 95 per cent of the total Floor Area of the Building (excluding the Expansion Space), and (y) the date of the Assignment or Transfer (exclusive of any Initial Syndications) or the Initial Refinancing with respect to which Audited Development Costs is being calculated and determined, and provided further that the costs described in clauses (i)(C) and (D) above shall be limited to costs which are incurred for the initial rental of the first 95 per cent of the total Floor Area of the Building (excluding the Expansion Space). Upon request by Landlord, Tenant shall provide documents or other evidence reasonably sufficient to establish the amount of Audited Development Costs.

"Available Equity Credit" means Tenant's Equity at the time in question as reduced by the amount of Equity which is then

serving as a component of Acceptable Security previously provided to Landlord. For example, if Tenant's Equity is \$80,000,000 and Tenant is then relying upon Available Equity Credit as Acceptable Security with respect to the contest of an Imposition for which the Secured Amount is \$15,000,000 (thereby "utilizing" for these purposes  $3.5 \times \$15,000,000$  or \$52,500,000 of Equity), Available Equity Credit would be equal to \$80,000,000 minus \$52,500,000, or \$27,500,000. Any of the foregoing to the contrary notwithstanding, Available Equity Credit shall be reduced to the extent that a reasonable Person in Landlord's position would not by reason of the circumstances existing at the time in question (including, without limitation, a declining market which would tend to decrease Equity, a Default or threatened Default by Tenant, or past Defaults by Tenant with respect to the completion of Construction Work) rely upon Available Equity Credit calculated as aforesaid as security for the matter for which Tenant is then proposing to rely upon Available Equity Credit as a component of Acceptable Security. If Tenant disputes any claim by Landlord that Available Equity Credit be reduced pursuant to the immediately preceding sentence then (A) Tenant shall promptly notify Landlord of such dispute, (B) pending the resolution of such dispute, Available Equity Credit shall be reduced as claimed by Landlord, (C) such dispute shall, upon the request of either Party, be resolved by arbitration conducted in accordance with Article 34, and (D) to the extent it is determined in any such arbitration that Landlord's claim pursuant to the immediately preceding sentence was unreasonable, Landlord shall promptly pay to Tenant the costs actually incurred by Tenant with respect to the provision of security under this Lease which would not have been required but for Landlord's unreasonable claim pursuant to the preceding sentence. Subject to the terms and provisions of the immediately preceding sentence, if Landlord and Tenant fail to agree on the amount of Available Equity Credit within 30 days following Tenant's written request for a determination of same, upon the request of either Party Available Equity Credit shall be determined by arbitration conducted pursuant to Article 34.

"Award" means the entire award or other sums paid (including interest paid thereon) in connection with a taking or condemnation (excluding takings and condemnations that have no effect whatsoever on Tenant's rights under or interest in this Lease), of all or a portion of the Premises (but not of any other land or improvements) for any public or quasi-public purpose by any lawful power or authority by the exercise of a right of condemnation or eminent domain or by agreement among Landlord, Fee Owner, Tenant and those authorized to exercise such right.

"Base Amount" shall mean the product of "FMV" and the "Conversion Factor", each determined as provided in this Lease to be effective as of the first day of the relevant Adjustment Period. The Base Amount once determined for any Adjustment Period shall not thereafter change during any Adjustment Period.

"Base Rent" means the sums payable by Tenant to Landlord pursuant to Sections 3.01(b) and 3.02.

"Base Rent Stepup Date" shall mean the earlier to occur of (i) the first date upon which Initial Occupancy occurs, or (ii) the last day of the fifty-four month period commencing on the Starting Date (as such fifty-four month period may be extended due to Unavoidable Delays).

"Benefitted Transferee" has the meaning provided in Section 3.09(b).

"BLS" has the meaning provided in Section 40.02.

"BSA" has the meaning provided in Section 3.10(a).

"Boundary Walls" has the meaning provided in the definition of "Expansion Space."

"Building" shall mean the building(s) (including footings and foundations), Equipment, Tenant's Risers and Horizontal Runs, improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon the Land and any and all alterations and replacements thereof, additions thereto and substitutions therefor, including the Expansion Space prior to the Expansion Space Completion Date, but excluding the Expansion Space from and after the Expansion Space Completion Date.

"Building Prohibition" has the meaning provided in Section 3.10(a).

"Campanile Roof" has the meaning provided in Section 41.19.

"Capital Transfer Rent" means the sums payable to Landlord pursuant to Section 3.05.

"Carnegie Hall" means the land and improvements adjoining the Land on its western boundary, and commonly known as 881 Seventh Avenue, New York, New York, including the Expansion Space from and after the Expansion Space Completion Date.

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

"Certificate of Occupancy" means a temporary or permanent certificate of occupancy issued by the New York City Department of Buildings pursuant to Section 645 of the New York City Charter, or any successor or other statute of similar import.

"Certified Public Accountant" means Pannell, Kerr & Forster & Co., or any other independent and reputable certified public accountant or independent and reputable accounting firm selected by Tenant.

"Change Order" means a request by Tenant for approval of a not reasonably foreseeable change required in the Plans and Specifications prior to the Substantial Completion Date due to field conditions, unavailability of labor or materials, changes in Requirements and/or other similar occurrences or eventualities.

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

"Clerk's Office" has the meaning provided in the first Whereas clause of this Lease.

"Collateral Documents" means all documents and correspondence in any way relating or collateral to this Lease.

"Commence Construction of the Building" or "Commencement of Construction of the Building" or "Construction Commencement Date" means the first date on which excavation work with respect to Construction of the Building shall have been commenced.

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

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

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

"Construction Agreement" means an agreement to do any Construction Work, but does not mean agreements with architects, engineers or construction consultants (or construction managers if entered into prior to the date hereof).

"Construction Approval" has the meaning provided in Section 34.04(a).

"Construction Jobs" has the meaning provided in Section 40.02.

"Construction of the Building" means the acts constituting the construction of the Building on the Land in accordance with the Plans and Specifications and this Lease (provided that references in the Plans and Specifications to work to be performed by Landlord in the Expansion Space shall not mean that such work is part of the Construction of the Building).

"Construction Work" means the acts constituting any construction or similar work performed on or about the Premises, including, without limitation, Construction of the Building, a Restoration, or Tenant Improvement Work.

"Conversion Factor" shall mean the product of (x) .69 and (y) the numerical average for the then most recently preceding 5 years of the per annum percentage yields for United States Treasury notes and bonds having 10 year maturities, as adjusted to constant maturities by the United States Treasury, as such yields appear in publications of the Federal Reserve Board of general circulation that are most recently available 30 days preceding the commencement of the relevant Adjustment Period. For example, on May 15, 1985 the Conversion Factor would be calculated to be 8.54 percent, based on information available as of February 1, 1985, as follows:

1. The per annum percentage yields for U.S. Treasury notes and bonds having 10 year maturities, as adjusted to constant maturities by the U.S. Treasury, according to publications of the Federal Reserve of general circulation available for the most recent 5 years as of February 1, 1985 were:

1980	-	11.460%
1981	-	13.911%
1982	-	13.002%
1983	-	11.105%
1984	-	12.438%
2. The average of the yields described above is 12.38 percent.
3. Thus, the conversion factor is 8.54 percent (12.38% x .69)

In the event that United States Treasury notes and bonds having 10 year maturities are no longer offered, the yields of equivalent instruments or an index equivalent to the yields of said notes and bonds shall be substituted for the yields of said notes and bonds for the purpose of determining the Conversion Factor. If the Parties fail to agree on an equivalent instrument or index within 20 days after either Party has requested that the other Party agree thereto, upon request of either Party the matter shall be determined by arbitration conducted in accordance with Article 34. If the Federal Reserve Board shall cease to exist, or shall cease to publish the yields of such notes and bonds in publications of general circulation, the most readily available reputable publication publishing such yields (chosen by the Parties, or if the Parties fail to agree on such publication within 20 days after either Party has requested that the other Party agree thereon, such publication shall be determined by

arbitration conducted pursuant to Article 34) shall be utilized as the source of such yields for the purpose of calculating the Conversion Factor. Landlord shall advise Tenant of the Conversion Factor not less than 15 days preceding the commencement of each Adjustment Period, unless the Parties have failed to agree on any matter referred to above in this paragraph affecting the calculation of the Conversion Factor, in which event Landlord shall advise Tenant of the Conversion Factor within 15 days after such disagreement is determined by agreement between the Parties or arbitration. Upon the request of either Party, any dispute regarding the calculation of the Conversion Factor shall be resolved by arbitration conducted pursuant to the provisions of Article 34.

"Conviction" has the meaning provided in Section 12.02(b).

"Cost of Funds Rate" shall mean the sum of (x) the Prime Lending Rate of Citibank N.A. as publicly announced at its main New York City office from time to time (expressed as a percentage per annum), and (y) 1-1/2% per annum.

"Date of Taking" means the earlier of (A) the date on which actual possession of all or any part of the Premises, 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 any part of the Premises, as the case may be, vests in any lawful power or authority pursuant to the provisions of applicable law.

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

"Default" means any condition or event, or failure of any condition or event to occur, which (i) would after notice and the lapse of time, constitute an Event of Default, and/or (ii) pursuant to Section 24.01 (f), (g), (h), (i) or (l) constitutes, or would after the lapse of time, constitute an Event of Default.

"Depository" means (i) the Recognized Mortgagee which is the holder of the Recognized Mortgage most senior in lien, or (ii) if the Recognized Mortgagee holding the Recognized Mortgage most senior in lien refuses to serve as Depository, any other Recognized Mortgagee holding a Recognized Mortgage with a principal balance of not less than \$30,000,000 (Subject to Indexing) selected by Tenant, or (iii) if there is no Recognized Mortgagee, or no Recognized Mortgagee described in clauses (i) or (ii) available to serve as Depository, an Institutional Lender having an office in the Borough of Manhattan selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or (iv) if Tenant fails to select a Recognized Mortgagee under clause (ii) or (iii), an Institutional Lender selected by



Landlord. Tenant shall not be entitled to change its selection under clauses (ii) or (iii) except to the extent a Recognized Mortgagee or Institutional Lender so selected ceases to qualify as such pursuant to the provisions of this Lease or refuses to serve as Depositary. The term "Depositary" shall not include a Recognized Mortgagee qualifying as an Institutional Lender solely by reason of clause (vii) or (viii) of the definition of Institutional Lender.

"Designation Letter" has the meaning provided in the second Whereas clause hereof.

"Development Rent" means the sums payable by Tenant to Landlord pursuant to Section 3.03.

"Direct Sublease(s)" means all subleases pursuant to which Tenant is the landlord (including a Major Sublease) demising space in or on the Premises, and all occupancy, license or concession agreements to which Tenant is a party and which permit occupancy of all or a portion of the Premises by others.

"Direct Subtenant(s)" means all tenants under Direct Subleases pursuant to which Tenant is the landlord, and all operators, licensees, franchisees, concessionaires and other occupants of the Premises or any portion thereof pursuant to agreements with Tenant.

"Disagreement Notice" has the meaning provided in Section 3.05(d).

"Effective Control" means the right to make all decisions on behalf of Tenant except Major Decisions without the need for the vote, approval or consent of any other Person.

"Emergency" means a condition presenting imminent danger (i) to the health or safety of an individual, or (ii) of substantial damage to property.

"Equipment" means all fixtures and personal property incorporated in or attached to and used or usable in the operation of the Land or the building to be constructed on the Land in accordance with the provisions of this Lease (but excluding the Expansion Space from and after the Expansion Space Completion Date), 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 and security equipment; computers; and all additions or replacements thereof. Notwithstanding the foregoing, the term "Equipment" shall exclude all fixtures and personal property in which neither Tenant nor any Affiliate of Tenant has any property interest.

"Equity" means the excess at any time of (x) the then current fair market value of Tenant's interest in this Lease and the Premises, over (y) the sum then necessary to fully discharge and satisfy of record any and all debts secured in whole or in part by Recognized Mortgages or a security interest in Tenant (collectively, "Tenant's Debt"). At any time a determination of Equity is necessary, Tenant shall provide to Landlord Tenant's written (i) estimate of the then current fair market value of Tenant's interest in this Lease and the Premises, and (ii) statement of the sum then necessary to fully discharge and satisfy Tenant's Debt. Tenant shall provide to Landlord in a timely manner such information as Landlord may reasonably request in connection with the determination of Equity. If Landlord and Tenant do not agree upon the amount of Equity within 20 days following Tenant's delivery to Landlord of the information referred to in clauses (i) and (ii) above, upon the request of either Party the amount of Equity shall be determined by an appraisal (with respect to the fair market value of Tenant's interest under this Lease) or arbitration (with respect to all other disputed matters) conducted in accordance with Article 34. A determination of Equity (pursuant to agreement, arbitration or appraisal) shall be effective for 18 months, except to the extent there is a material change in the amounts described in clause (x) or (y) above.

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

"Excluded Amounts" has the meaning provided in Section 3.04(b).

"Existing Structures" has the meaning provided in Section 41.19.

"Expansion Space" shall mean (i) those spaces described on Schedule V and the plans, specifications and other items referred to therein (as such schedule may be amended in accordance with the provisions of Article 30), located in the building to be constructed on the Land in accordance with the provisions of this Lease, including the inner surfaces of the walls, floors, ceilings and windows enclosing the spaces described (collectively, "Boundary Walls"), but excluding the outer surfaces and structural elements of all Boundary Walls, (ii) all fixtures and equipment at any time (x) located within and serving such space, and/or (y) located in the Building but serving such space and not the

Building, and the cost of which has been borne by or on behalf of Landlord, and (iii) Landlord's Risers and Horizontal Runs.

"Expansion Space Completion Date" shall mean the date upon which the Expansion Space has been completed in a good and workmanlike manner in accordance with Schedule V (as such schedule may be supplemented and amended in accordance with the provisions of Article 30) and other applicable provisions of this Lease as determined in accordance with Section 30.10.

"Expansion Space Outside Date" has the meaning provided in Section 30.02.

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

"Expiration of the Term" means either the Expiration Date or Fixed Expiration Date, whichever shall be applicable.

"Extended Hours" has the meaning provided in Section 5.02(a).

"Favorable BSA Decision" means (i) a decision of BSA on the Section 11-331 Application that permits the completion of the foundations for the Building after May 13, 1988, with an extension of time for such completion after May 13, 1988 which is not less than the extension of time requested by Tenant in the Section 11-331 Application, or (ii) a decision of BSA as described in clause (i) above which permits an extension of time after May 13, 1988 for completion of the foundations for the Building which is shorter than the extension of time requested by Tenant in the Section 11-331 Application, provided that on or before the last day of such extension of time, the work on foundations for the Building is completed within the meaning of Section 11-331 of the Zoning Resolution. For purposes of this definition of Favorable BSA Decision and the definition of Negative BSA Decision, the decision of BSA as described in clause (ii) above shall be deemed to be included within the definition of Favorable BSA Decision until the last day of the extension of time permitted by the BSA Decision, after which such decision shall be treated as if it were a Negative BSA Decision when first made if and only if on the last day of such extension of time, the work on foundations for the Building is not completed within the meaning of Section 11-331 of the Zoning Resolution.

"Fee Owner" shall mean the landlord under the Master Lease from time to time.

"Fee Owner Input" means the opportunity for the Fee Owner to convey its opinions, preferences, determinations and other input to Landlord with respect to a specific issue or decision, and the obligation of Landlord to give good faith

consideration to all such input, and respond to such input as Landlord deems appropriate. Landlord's failure to offer the Fee Owner Fee Owner Input shall in no way prejudice or otherwise affect Tenant.

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

"Floor Area" means space in the Building and/or the Expansion Space which is within the definition of Floor Area provided in the Zoning Resolution.

"FMV" shall mean the price with respect to the Land which the fee owner of the Land (assuming such owner was then seeking to sell the Land) and a prospective purchaser seeking to purchase the Land would agree upon in an arms-length negotiation, if the fee owner of the Land were to sell the Land to such prospective purchaser with the benefit of all of the Fee Owner's and Landlord's development rights actually utilized by Tenant, and unencumbered by this Lease, the Master Lease, or any other document or fact, with the sole exceptions of (A) the improvements thereon (but only to the extent that such improvements, if conveyed to such prospective purchaser together with the Land would decrease the price of the Land as compared to the price of the Land if no improvements were located thereon), (B) then applicable rent control laws (except those which Tenant has voluntarily assumed or which otherwise resulted from Tenant's violation of any Requirement, and the assumption of which by Tenant does not benefit Landlord), (C) the Title Matters, and (D) then applicable zoning laws. In determining FMV, full weight shall be given to the effect (if any) of the location of the Carnegie Hall building immediately to the west of the Land (assuming it is then still standing), and it shall be assumed that (i) a building of the nature of the Building and containing the Floor Area permitted to be contained in the Building (excluding the Expansion Space) pursuant to the terms of this Lease could be built on the Land (even if then current law would not allow the construction of a building of such size and use), and (ii) such prospective purchaser would not be required to pay any real estate taxes with respect to the Land or any improvements thereon.

"Full Taxes" shall mean the product of the then applicable Assessed Value and the then applicable Tax Rate on the first day of each of Rental Years 11-24 and on the first day of each Adjustment Period, as the case may be.

"Governmental Authority or Authorities" means the United States of America, the State of New York, the 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 located adjacent to, the Premises, or any vault in or under the Premises or such street, road, avenue or sidewalk.

"Gross Assignment Proceeds" means all payments (including any interest component thereof) and the value of all tangible or intangible property received and collected by an Assignor or an Affiliate of the Assignor in connection with an Assignment.

"Gross Commercial Rents" means, with respect to any period of time, any and all gross rentals, receipts, fees, proceeds and amounts of any kind (and any other tangible or intangible property) received, directly or indirectly, by or for the account of Tenant or any Affiliate of Tenant, attributable to the period of time in question (as determined in accordance with Accounting Principles) from, in connection with, or arising out of (A) the Premises, any part thereof, any right or interest therein or in respect thereof, or the leasing, use, occupation or operation of the Premises or any part thereof, including amounts received from or in respect of Subleases (including, without limitation, fixed rental, minimum rental, rental computed on the basis of sales or other criteria, additional rental, escalation rental, tenant security deposits applied in payment of any rental, and proceeds of insurance paid in lieu of rental), (B) the providing of goods or services of any kind (except for services typically provided to space tenants by parties other than their landlords, but which Tenant or its Affiliate provides for separate consideration (which does not exceed the fair market value of such services) to Subtenants pursuant to agreements other than Subleases), to any persons or entities on the Premises or in connection with the use, occupation or operation of the Premises, even if such goods or services are provided from a location off the Premises, and including without limitation, concessions, licenses or agreements granted to third parties in connection with the providing of any such goods or services, and (C) the proceeds of business interruption or rent insurance. Notwithstanding the foregoing, Gross Commercial Rents shall not include (i) any amounts included above but ultimately credited or refunded by Tenant or an Affiliate of Tenant to Subtenants or other Persons, (ii) any sums received by Tenant in payment of the fair market value of Construction Work beyond the building standard performed by Tenant for any Subtenant, (iii) sums received by an Affiliate of Tenant for the fair market value of management services provided with respect to the Premises, (iv) any sums received by Tenant as escalations, passthroughs or similar charges to the extent that such compensation constitutes reimbursement (without duplication or profit) for Actual Expenses, (v) Gross Assignment Proceeds, Gross Refinancing Proceeds and Gross Transfer Proceeds, (vi) sums paid to Tenant or an Affiliate of Tenant for movie and television filming rights or the right to provide any portion of the Premises with garbage collection or cable television services, a fiber optic network, roof antennae, utility services, and food

and beverage cart services, (vii) amounts the determination of which depends in whole or in part on the income or profits derived by any Person from the Premises or any portion thereof (other than an amount based on a fixed percentage or percentages of gross receipts or sales), except to the extent that Landlord has made a determination pursuant to Section 10.07(c), and has notified Tenant and the City of such determination, (viii) insurance proceeds (other than rent insurance or business interruption insurance proceeds) and Awards, and (ix) any item that has theretofore been included in Gross Commercial rents and any transfer of funds between and among Tenant and its Affiliates.

"Gross Refinancing Proceeds" means the maximum outstanding principal amount of the Initial Refinancing.

"Gross Transfer Proceeds" means all payments (including any interest component thereof) and the value of tangible or intangible property received and collected by a Transferor or an Affiliate of the Transferor in connection with any Transfer.

"Guaranty" shall mean that certain Guaranty of Substantial Completion dated as of the date hereof, made by H. Henry Elghanayan, Frederick Elghanayan and Kamran T. Elghanayan in favor of Landlord.

"Guaranty Effectiveness Date" shall mean the date on which the condition of the effectiveness of the Guaranty set forth in Paragraph 17(a) of the Guaranty shall have been satisfied.

"Hearing" has the meaning provided in Section 12.01.

"Hearing Officers" has the meaning provided in Section 12.01

"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, (if any) payable by Tenant or Landlord; (iv) water, water meter and sewer rents, rates and charges; (v) excises; (vi) levies; (vii) license and permit fees payable to Governmental Authorities; (viii) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply; (ix) except for Taxes, and New York State Real Property Transfer Gains Taxes and New York City Real Property Transfer Taxes payable by Landlord pursuant to Section 4.01(d), any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever; and (x) any fines, penalties and other similar governmental charges applicable to the

foregoing, together with any interest or costs with respect to the foregoing.

"Incremental Expenses" has the meaning provided in Section 5.02(a).

"Independent Appraiser" has the meaning provided in Section 3.02(e).

"Indicted Party" has the meaning provided in Section 12.01.

"Initial Occupancy" means the earliest date upon which any Direct Subtenants are paying rent for or physically occupying not less than 1,000 square feet of Floor Area in the Building pursuant to Direct Subleases, provided that occupancy by a Direct Subtenant solely for the purpose of performing Tenant Improvement Work shall not be deemed to be occupancy by such Direct Subtenant for purposes of defining Initial Occupancy.

"Initial Refinancing" means the first Refinancing, unless Landlord elects in accordance with the last sentence of Section 3.05(g) not to participate in the proceeds thereof, in which case the term "Initial Refinancing" shall mean the first Refinancing in which Landlord participates.

"Initial Syndication" means any and all Transfers made on or prior to the third anniversary of the Base Rent Stepup Date provided that (i) following such Transfer(s) one or more of the owners of Tenant or the partners of Tenant as of the date of this Lease, their minor children, spouses or one or more trusts for the exclusive benefit of one or more of the foregoing Persons either directly or indirectly maintains Effective Control, and (ii) the Gross Transfer Proceeds from all such Transfers (which shall be Subject to Indexing from the date received and collected by the Transferor) do not exceed Audited Development Costs (which shall be Subject to Indexing as if all Audited Development Costs were incurred by Tenant on the Substantial Completion Date).

"Initial Transfer Rent Payment" has the meaning provided in Section 3.05(f).

"Institutional Lender" means (i) a savings bank or savings and loan association that has a net worth of not less than \$100,000,000 (Subject to Indexing); (ii) a commercial bank or trust company (whether acting individually or in a fiduciary capacity) that has a net worth of not less than \$300,000,000 (Subject to Indexing); (iii) an insurance company organized and existing or licensed to do business under the laws of the United States or any state thereof that has a net worth of not less than \$300,000,000 (Subject to Indexing); (iv) a religious, educational or eleemosynary institution existing under the laws of the United

States or any state thereof or a pool created by the foregoing that has total assets of not less than \$500,000,000 (Subject to Indexing); (v) a federal, state, municipal or private employee's welfare, benefit, pension or retirement fund or a pool created by the foregoing that has total assets of not less than \$500,000,000 (Subject to Indexing); (vi) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of improvements; (vii) a Person that was formerly the Tenant under this Lease and which has accepted a leasehold mortgage in an initial principal amount of not less than \$1,000,000 (Subject to Indexing) encumbering the Tenant's interest under this Lease as partial consideration for such Person's Assignment of its interest under this Lease (provided that such Person shall not be deemed to be an Institutional Lender subsequent to the payment in full, assignment or satisfaction of such mortgage); (viii) a Subtenant with respect to not less than 100,000 square feet of Floor Area in the Building which has lent Tenant not less than \$5,000,000 (Subject to Indexing) secured by a mortgage encumbering Tenant's interest under this Lease (provided that such Person shall not be deemed to be an Institutional Lender subsequent to the payment in full, assignment or satisfaction of such mortgage); (ix) General Electric Credit Corp., General Motors Acceptance Corporation, or any similar credit corporation, or HRE Properties or any similar real estate Investment Trust that has a net worth of not less than \$100,000,000 (Subject to Indexing); or any combination of Institutional Lenders; provided, that each of the above entities shall qualify as an Institutional Lender only if it is subject to (x) the jurisdiction of the courts of the State of New York in any actions relating to this Lease, and in the case of Persons referred to in clauses (i), (ii) and (iii) above, (y) the supervision of the Federal Reserve Bank, Comptroller of the Currency of the United States, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, the Insurance Department or the Banking Department or the Comptroller of the State of New York (or any other state), or the Comptroller of New York City.

"Interim Guaranty" means that certain Interim Guaranty dated as of the date hereof, made by H. Henry Elghanayan, Kamran T. Elghanayan and Frederick Elghanayan in favor of Landlord.

"Joinder Agreement" means that certain agreement between the Fee Owner and Tenant dated as of the date hereof and intended to be recorded on or about the date hereof.

"Land" means the land described in Exhibit C hereto

"Landlord" means the Carnegie Hall Corporation, provided, however, that if the Carnegie Hall Corporation or any successor to its interest hereunder transfers or assigns its



interest under the Master Lease 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, provided it assumes Landlord's obligations under this Lease.

"Landlord's Appraiser" has the meaning provided in Section 3.02(e).

"Landlord's Impositions" has the meaning provided in Section 4.01(b).

"Landlord's Indemnitees" has the meaning provided in Section 20.02.

"Landlord's Percentage" has the meaning provided in Section 3.05(a).

"Late Charge Rate" means the rate of interest generally charged from time to time by the City for delinquent real property taxes with respect to land and buildings subject to such taxes similar to the Land and Building.

"Lease" means this Agreement of Lease (including all exhibits and schedules hereto) and all amendments, modifications, restatements and supplements hereof.

"Lease Quarter" shall mean a three-month period, the first day of which is the first day of January, April, July or October of a Lease Year.

"Lease Year" means (i) the period commencing on January 1, 1988 and continuing until December 31, 1988, and (ii) every consecutive twelve-month period thereafter during the Term, and (iii) any period of less than twelve months which begins after any such consecutive twelve-month period and ends on the Expiration Date or the Fixed Expiration Date, whichever is sooner.

"Major Decisions" means decisions by Tenant to (i) assign its interest under this Lease; or (ii) obtain a Refinancing; or (iii) enter into a Major Sublease; or (iv) cause a sale or reallocation of the stock of or a partnership interest in Tenant (including the issuance of new stock); or (v) call for additional capital contributions from partners; or (vi) make changes to the partnership agreement, Articles of Incorporation or Bylaws of Tenant; or (vii) make changes to the Plans and Specifications that change the scope of the project; or (viii) enter into a Direct Sublease demising more than 50,000 square feet; or (ix) name or rename the Building; or (x) declare bankruptcy; or (xi) initiate litigation unrelated to the Construction of the Building involving over \$500,000; or (xii) enter into an amendment, modification or cancellation of this Lease; or (xiii) change the use of the Building under Article 23;

or (xiv) appoint or change the Certified Public Accountant, principal place of business of Tenant or the managing agent of the Building.

"Major Sublease" means a Direct Sublease demising not less than 100,000 square feet of Floor Area where the Direct Subtenant thereunder does not occupy at least 50% of the area demised by such Direct Sublease.

"Major Subtenant" means a Direct Subtenant under a Major Sublease.

"Master Lease" has the meaning provided in the first Whereas clause hereof.

"Middle Restricted Area" has the meaning provided in Section 41.19.

"Mortgage" means any mortgage, deed of trust or other financing instrument that constitutes or creates a lien on Tenant's interest in this Lease or the leasehold estate created hereby.

"Mortgagee" means the holder of a Mortgage.

"Mortgagee's Request" has the meaning provided in Section 10.09(a).

"Negative BSA Decision" means (i) a decision of BSA on the Section 11-331 Application after May 13, 1988 which does not permit the completion of foundations for the Building after May 13, 1988, provided that Tenant gives Landlord notice and a copy of such decision, or (ii) subject to the last sentence of the definition of Favorable BSA Decision, a decision of BSA as described in clause (i) above which permits an extension of time after May 13, 1988 for the completion of the foundations for the Building which is shorter than the extension of time requested by Tenant in the Section 11-331 Application if and only if on the last day of the extension of time permitted under such decision, the work on foundations for the Building has not been completed within the meaning of Section 11-331 of the Zoning Resolution and if Tenant gives notice to Landlord of the occurrence of the events described above in this clause (ii).

"New Matter" has the meaning provided in Section 13.13(b).

"Nondisturbance Agreement" has the meaning provided in Section 10.06.

"Operating Costs" has the meaning provided in Section 3.09(a).

"Original Owner" means, in the context of an Assignment, the Tenant on the date hereof and, in the context of a Transfer, any of the partners named in Section 18.03(a), any of the beneficial owners of such partners or any Person who acquires an interest in Tenant by way of an Initial Syndication.

"Owner's Share" means the price which a prospective purchaser would agree to pay in an arms-length transaction for both the Fee Owner's and Landlord's interest in the Premises, subject to and with the benefit of this Lease, and assuming that Tenant is not then in breach of any of the terms and provisions of this Lease. In determining the Owner's Share, due consideration shall be given to the then current and future Rental payable by Tenant, and Landlord's and the Fee Owner's actual and potential rights to regain possession of the Premises. The determination of the Owner's Share shall be carried out in the manner set forth for the determination of FMV under Section 3.02(e) in all relevant details and the term "Owner's Share" shall be substituted for the term "FMV", provided that the determination by Landlord's Appraiser of the Owner's Share shall be delivered to Tenant as soon as is practicable, but in no event more than 120 days following the Date of Taking.

"Participation Agreement" has the meaning provided in Section 3.05(f).

"Party" means Landlord or Tenant, and "Parties" means Landlord and Tenant.

"PDC" means the New York City Public Development Corporation and its successors.

"Percentage Rent" means the sums payable by Tenant to Landlord pursuant to Section 3.04.

"Percentage Rent Shortfall" has the meaning provided in Section 3.09(c).

"Percentage Rent Startup Date" has the meaning provided in Section 3.04(a).

"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.

"Plans and Specifications" means Proposed Plans and Specifications that have been approved by Landlord (and to the extent required by this Lease, the Fee Owner), with such

modifications after such approval as shall be approved by Landlord (and to the extent required by this Lease, the Fee Owner).

"Pre-approved Transferee" means a Person which qualifies as an Institutional Lender pursuant to clause (i)-(vi) or (ix) of the definition thereof (other than a private employee's welfare, benefit, pension or retirement fund).

"Premises" means the Land and the Building.

"Previously Approved Matter" has the meaning provided in Section 13.13(b).

"Principal of Tenant" means (i) the president, secretary, treasurer, director or other officer having immediate operating responsibility for a corporate Tenant, or a shareholder owning 20% or more of the outstanding voting stock of a corporate Tenant; (ii) any individual general partner of Tenant or any limited partner owning 20% or more of the partnership interests in Tenant if Tenant is a partnership, or (iii) the president, secretary, treasurer, director or other officer having immediate operating responsibility for a corporate general partner of Tenant, or a shareholder owning 20% or more of the outstanding voting stock of a corporate general partner of Tenant, if Tenant is a partnership.

"Prohibited Use" means any use or business set forth on Schedule IV hereto.

"Proposed Plans and Specifications" means construction drawings and specifications prepared by the Architect (or its consultants) that shall conform to the Schematic Drawings.

"Qualified Appraiser" means an individual who is a member of the American Institute of Real Estate Appraisers (or a successor organization) and has at least 10 years experience in the valuation of commercial real estate in the City of New York.

"Qualified Architect" means a registered architect or architectural firm who or which at all times maintains malpractice insurance coverage of not less than \$2,000,000 (Subject to Indexing), provided that if such level of insurance becomes no longer available to architects (or is no longer commonly carried by architects), a Qualified Architect need only conform to the then current industry standard for reputable architects with respect to malpractice insurance or other forms of financial security.

"Qualifying Guaranty" shall mean a personal guaranty in favor of Landlord and reasonably satisfactory in form and substance to Landlord, made by any one or more of Frederick Elghanayan, H. Henry Elghanayan or Kamran T. Elghanayan, provided

that (i) such guaranty shall be for the full amount of the matter which it is intended to secure; (ii) the net worth of the guarantor or guarantors during the term of the guaranty (which net worth may be established by certificates from a certified public accountant without disclosure to Landlord of any such guarantor's financial statements) shall be not less than 5 times the amount of the guaranty; and (iii) the guarantor or guarantors have a direct or indirect ownership interest of not less than 25% in Tenant upon the date of the guaranty.

"Questionnaire" has the meaning provided in Section 28.01(a).

"Reasonable Efforts" means inclusion of the provisions at issue in initial drafts of Direct Subleases and applicable contracts, as the case may be, and Tenant's good-faith efforts to avoid the deletion of such provisions during negotiations with prospective Direct Subtenants or contractors, as the case may be, provided that Tenant shall not be obligated to suffer economic prejudice as a result of its efforts to avoid such deletion.

"Recital Hall Elevator" means the passenger elevator to be included in the Expansion Space and referred to in Schedule V.

"Recognized Mortgage" means a Mortgage (i) that is held by an Institutional Lender or a subsidiary controlled by an Institutional Lender, (ii) which complies with the provisions of this Lease, 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.

"Recognized Mortgagee" means the holder of a Recognized Mortgage, provided that the maximum number of Recognized Mortgagees at any time during the Term shall be 4.

"Reduced Financial Terms" has the meaning provided in Section 3.11.

"Refinancing" shall mean any financing, other than the first and original financing, of all or part of Audited Development Costs, secured in whole or in part by any interest in the Premises (or any part thereof) which is held by Tenant or any Affiliate of Tenant. The term "Refinancing" shall not include any financing which is secured by any Sublease (and no other interest in the Premises), unless the subleasehold interest under such Sublease is held by Tenant or an Affiliate of Tenant.

"Refund Rate" has the meaning provided in Section 3.02(d).

"Rent" has the meaning provided in Section 3.01(a).

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

"Rental" means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, Base Rent, Additional Rent, Impositions, the amounts payable pursuant to Articles 20 and 30, 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.

"Rental Year" means (i) the period commencing on the day after the last day of the month in which the Base Rent Stepup Date occurs (or if the Base Rent Stepup Date is the first day of a month, the period commencing on such date) and continuing until the twelfth monthly anniversary of said date, and (ii) every consecutive twelve-month period thereafter during the Term, and (iii) any period of less than twelve months which begins after any such consecutive twelve-month period and ends on the Expiration Date or Fixed Expiration Date, whichever is sooner.

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

"Requirements" means: (i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Authorities purporting to have jurisdiction with respect to the Premises (or any part thereof, but excluding the Expansion Space from and after the Expansion Space Completion Date) or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under or in front of the Premises, or any street, road, avenue or sidewalk, or any personal property or other facility used in the operation of the Premises or any other appurtenances of the Premises (including, without limitation, the Zoning Resolution, the Building Code of the City, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions), and (ii) the Certificate or Certificates of Occupancy issued for the Building as then in force.

"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), together with the interest, if any, earned thereon, and (b) the proceeds of any security deposited with Depositary pursuant to Section 8.05, together with the interest, if any, earned thereon.

"Restrictive Declaration" means that certain Declaration by and among Landlord, Tenant and the City dated July 20, 1987 and recorded in the Clerk's Office on November 13, 1987, on Reel 1317, page 1170, as same may be amended.

"Reviewable Matters" has the meaning provided in Section 13.13(a).

"Scheduled Completion Date" means April 1, 1991 except that such date shall be extended for Unavoidable Delays and/or any other factors causing delay with respect to Construction of the Building.

"Schematic Drawings" means the plans, specifications and other documents listed on Schedule VII hereto.

"Section 11-331 Application" has the meaning provided in Section 3.10(a).

"Secured Amount" means (i) in the case of a Tenant's Imposition that is being contested and for which Acceptable Security is required pursuant to Section 35.02, the amount of such contested Tenant's Imposition together with all interest, penalties and charges related to such contested Tenant's Imposition which may or might be assessed against, or become a charge on the Premises or Carnegie Hall (including the Expansion Space from and after the Expansion Space Completion Date) or any portion of either of them as a result of the nonpayment of such contested Tenant's Imposition; (ii) in the case of Construction Work for which Acceptable Security is required pursuant to Section 13.04(d), an amount equal to the estimated cost of the Construction Work (as determined in accordance with the relevant provisions of this Lease); or (iii) if a Tenant's Imposition for which Acceptable Security is required to be provided pursuant to Section 35.02 is being contested during the performance of Construction Work for which Acceptable Security is required pursuant to Section 13.04(d), the sum of the amounts described in the preceding clauses (i) and (ii).

"Shortfall Rent" means the sums payable by Tenant to Landlord pursuant to Section 3.06.

"South African Entity" means an entity listed on Schedule VI hereto.

"Southern Restricted Area" has the meaning provided in Section 41.19.

"Special Permit" has the meaning provided in Section 13.16.

"Starting Date" has the meaning provided in Section 7.01(a).

"State" means the State of New York.

"Subject to Indexing" shall mean, in the case of any dollar amount stated herein to be Subject to Indexing, that such dollar amount shall be adjusted from time to time to reflect the percentage increase from the Commencement Date (unless another date is expressly stipulated in this Lease) to the effective date of such adjustment in the Consumer Price Index for All Urban Consumers, New York-Northeastern New Jersey (1967=100) published by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency. If said index shall cease to be published, there shall be substituted therefor such similar or comparable index as Landlord and Tenant shall agree upon, and if they fail so to agree within 30 days after either Party has requested that the other Party agree to such substitution, upon the request of either Party such matter shall be resolved by arbitration conducted in accordance with the provisions of Article 34. Upon request by a Party, the other Party shall confirm the effect of the term "Subject to Indexing" upon a specific dollar amount stated herein as of a specific date.

"Sublease(s)" means all subleases (including Major Subleases, Direct Subleases, sub-subleases and any other or further level of subletting) demising space in or on the Premises and all occupancy, license or concession agreements with respect to the Premises.

"Subsequent Tenant" means every Assignee following the initial bona fide Assignment.

"Substantial Completion" or "Substantially Complete(d)" means that (a) the Expansion Space Completion Date has occurred, (b) a Certificate of Occupancy has been issued for the entire Building after its substantial enclosure (excluding work with respect to the Expansion Space which is not required to be performed by Tenant and Tenant Improvement Work if and to the extent not required to obtain such Certificate of Occupancy), and (c) Landlord shall have received a certificate from the Architect or a Qualified Architect stating that the Building has been substantially completed substantially in accordance with the Plans and Specifications.

"Substantial Completion Date" means the date on which the Building shall have been Substantially Completed.

"Substantially All of the Premises" means such portion of the Premises as, when so taken, would leave a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not,



under economic conditions, zoning laws and building regulations then applicable to the Premises, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein, or by law required to be observed by Tenant, permit the Restoration of the Building so as to constitute a complete, rentable building or buildings capable of producing a fair and reasonable annual income proportional to the number of square feet not so taken. The average annual income during (i) the period commencing on the date the Building was Substantially Completed and ending on the last anniversary of said date which preceded the taking, or (ii) the 5 year period immediately preceding such taking, whichever is shorter, shall be deemed to constitute a fair and reasonable annual income for the purpose of determining what is a fair and reasonable annual income. For the purposes of this definition, the term "annual income" shall mean the annual income paid or payable to Tenant with respect to the Building, net of operating expenses of the Building (including all Rental payable by Tenant hereunder), but without deduction for debt service and other financing costs. If there be any dispute as to whether or not "Substantially All of the Premises" has been taken, upon the request of either Party such dispute shall be resolved by arbitration conducted in accordance with the provisions of Article 34.

"Subtenant(s)" means all tenants and subtenants under Subleases (including Major Subtenants), and all operators, licensees, franchisees, concessionaires and other occupants of the Premises or any portion thereof.

"Subway Work" has the meaning provided in Section 5.01.

"Tax Rate" means the rate per dollar of assessed value which shall apply from time to time for purposes of calculating annual New York City real property taxes payable with respect to land and improvements, similar to the Land and the Building, which are subject to such taxes.

"Tax Savings" means an amount equal to the aggregate amount of sales, compensating use and other similar tax savings in connection with any Construction Work (and the purchase of materials in connection therewith) and the purchase of Equipment realized by Tenant, Tenant's construction managers, contractors and/or subcontractors solely due to the City's ownership of the Premises.

"Tax Savings Credit" has the meaning provided in Section 5.03.

"Taxes" means any real property taxes which may be assessed and levied against the Premises, Carnegie Hall, or the Expansion Space, or any part of any of them pursuant to the provisions of Chapter 58 of the Charter of New York City and

Chapter 2, Title 11, 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.

"Tea Room" shall mean the building that is, on the Commencement Date, located immediately to the east of the Land and that is commonly known as the Russian Tea Room.

"Tea Room Agreement" means that certain Agreement dated December 7, 1987, between Landlord and the Russian Tea Room Inc. and intended to be recorded in the Clerk's Office immediately prior to the recording hereof.

"Tea Room Encroachments" shall mean (a) the approximately 49' 4 3/4" x 2 1/2" encroachment of the westerly wall of the Tea Room onto the Land, (b) the approximately 40' 11" by 1' 3/4" encroachment of the westerly wall of the Tea Room onto the Land, (c) the approximately 5' 8" x 4" encroachment of the westerly wall of the Tea Room onto the Land, (d) the tie rod anchors which project approximately 2" from the westerly wall of the Tea Room onto the Land, and (e) the approximately 1/2" encroachment of the northern end of the westerly wall of the Tea Room onto the Land. The Tea Room Encroachments are depicted on that certain survey of the Land made by Earl B. Lovell -- S.P. Belcher, Inc. dated January 2, 1987 and last redated October 30, 1987.

"Tenant" means Carnegie Hall Tower Limited Partnership or an assignee of the tenant's interest under this Lease, provided such assignment is permitted under the terms of this Lease.

"Tenant Improvement Work" means Construction Work performed by or on behalf of a Direct Subtenant within the area demised by a Direct Sublease.

"Tenant's Appraiser" has the meaning provided in Section 3.02(e).

"Tenant's Debt" has the meaning provided in the definition of Equity.

"Tenant's Impositions" has the meaning provided in Section 4.01(a).

"Tenant's Indemnities" has the meaning provided in Section 20.01.

"Term" has the meaning provided in Article 2.

"Through Block Connection" shall mean the Through Block Connection running between 57th Street and 56th Street to be

located on the ground floor of the Building, as more particularly described in the Restrictive Declaration.

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

"Transfer" means (A) the sale, assignment or other disposition, directly or indirectly, of any 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 unless done on a pro rata basis to existing shareholders, or (C) the sale, assignment or other disposition of any partnership interest in a partnership that is Tenant or a partnership that is a general partner in Tenant.

"Transfer Rent Fund" has the meaning provided in Section 3.05(b).

"Transfer Rent Statement" has the meaning provided in Section 3.05(c).

"Transferee" means a Person to whom or which a Transfer is made.

"Transferor" means a Person from whom or which a Transfer is made.

"Unavoidable Delays" means delays due to Landlord's and/or the Fee Owner's (in its proprietary capacity) acts or omissions in contravention of the provisions of this Lease, strikes, lockouts, work stoppages due to labor disputes; acts of God; inability to obtain labor or materials due to (among other things) governmental restrictions; litigation enjoining Tenant from proceeding with construction of the Building; delay in Construction of the Building required under the Zoning Resolution pending action by any Governmental Authority on an application filed by Tenant in a timely manner pursuant to Section 11-331 of the Zoning Resolution if all Construction Work on foundations of the Building has not been completed before May 13, 1988; enemy action; civil commotion; reasonable delays necessary for adjusting insurance proceeds; fire or other casualty; or other causes beyond the control of Tenant, but excluding Tenant's financial condition or insolvency, and for purposes solely of Sections 3.10 and 3.11, delays in obtaining approval by the New York City Landmarks Preservation Commission of Proposed Plans and Specifications and/or Plans and Specifications due to the inclusion therein of any econobrick (on the tower portion of the Building) or rooftop structures or other rooftop features that are inconsistent with or not included in the drawings and specifications or other written or graphic materials previously approved by the New York City

Landmarks Preservation Commission, and provided (i) Tenant shall have notified Landlord not later than 45 days after Tenant or any Affiliate of Tenant knows of the occurrence of the same, and (ii) such delay could not have reasonably been prevented by a prudent Person in the position of Tenant.

"Wrongful Withholding" has the meaning provided in Section 29.05(b).

"Zoning Resolution" means the Zoning Resolution of the City of New York, as amended from time to time.



**EXHIBIT B**

**TITLE MATTERS**

**PERMITTED EXCEPTIONS**

1. Subway Stairway Consent dated December 23, 1913 and recorded in the Clerk's Office February 18, 1914 in Sec. 4 Liber 159 Cp 350.

2. Designation as a landmark by Notice recorded in the Register's Office August 10, 1967 on Reel 209, Page 143.

3. Terms, covenants, conditions and agreements contained in a lease made by and between The City of New York, Lessor, and, The Carnegie Hall Corporation, Lessee, dated June 30, 1960 as restated in its entirety by instrument dated December 21, 1987 and intended to be recorded immediately prior to this Lease.

4. Subject to the state of facts shown on survey by Earl B. Lovell - S.P. Belcher Inc. dated January 2, 1987 and last redated October 30, 1987.

5. The Declaration by and among The Carnegie Hall Corporation, Rockrose Development Corporation and the City of New York dated as of July 20, 1987 and recorded in the Register's Office November 13, 1987 on Reel 1317, p. 1170.

6. The Agreement between The Carnegie Hall Corporation and The Russian Tea Room Inc. dated December 7, 1987 and intended to be recorded prior to the recording of this Lease.

EXHIBIT C

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 57th Street distant 150 feet easterly from the corner formed by the intersection of the easterly side of 7th Avenue with the southerly side of 57th Street;

RUNNING THENCE southerly parallel with the easterly side of 7th Avenue 100 feet 5 inches to the center line of the block;

THENCE westerly along said center line of the block 25 feet;

THENCE southerly parallel with the easterly side of 7th Avenue 100 feet 5 inches to the northerly side of 56th Street;

THENCE easterly along said northerly side of 56th Street 75 feet;

THENCE northerly parallel with the easterly side of 7th Avenue 200 feet 10 inches to the southerly side of 57th Street;

THENCE westerly along said southerly side of 57th Street 50 feet to the point or place of BEGINNING.

**SCHEDULE I**

**PROJECTIONS TO BE REMOVED**

1. The iron balcony which projects from the easterly wall of Carnegie Hall.
2. In Tenant's discretion:
  - a) The angle brackets (supporting ducts) which project approximately 0'2" from the easterly wall of Carnegie Hall.
  - b) The shutter hinges and/or eyes which project from the easterly wall of Carnegie Hall.
  - c) The window sill which projects from the easterly wall of Carnegie Hall.
  - d) The ends of two steel "I" beams which may project up to 0'1" at the second floor of the easterly wall of Carnegie Hall.



**SCHEDULE II**

**APPROVED MANAGING AGENTS**

Abrams Benisch Riker, Inc.  
Cross & Brown Company  
Cushman & Wakefield, Inc.  
Edward S. Gordon Co., Inc.  
Harper-Lawrence, Inc.  
Helmsley Spear, Inc.  
Huberth & Peters, Inc.  
Jones Lang Wootton, Inc.  
Julien J. Studley, Inc.  
Newmark & Co. Real Estate, Inc.  
Pearce Urstadt Mayer and Greer  
Peter R. Friedman, Ltd.  
Rockrose Development Corp.  
William A. White/Tishman East, Inc  
Williams & Co. Real Estate, Inc.

### SCHEDULE III

#### CONSTRUCTION RULES

Construction work on the Premises shall be subject to the following Construction Rules:

- A) Building Construction Code and Laws of the City of New York.
- B)
  - 1. There shall be no construction (except passive activity such as temporary heat, hoist for guard, etc.) from 7:30 p.m. to 11:00 p.m. on any day and from 3:00 p.m. to 5:30 p.m. on Saturdays and from 2:00 p.m. to 5:30 p.m. on Sundays. However, Tenant may request exceptions to these restrictions for Construction Work which can be demonstrated to be non-disturbing to Carnegie Hall's concert halls. Any exception must be approved by Landlord in writing, which approval will not be unreasonably withheld. On days and evenings when there are no concerts scheduled, the rules of this paragraph will not apply.
  - 2. Tenant shall apply for a permit to commence daily foundation blasting and drilling at 6:00 a.m. If such permit is granted, and consent obtained from the Union Locals to change the regular shift hours without wage increase, then unless such permit shall expire or be revoked, blasting and drilling operation shall end daily at 2:30 p.m. If such permit is not secured, then normal blasting and drilling operations shall extend from 7:00 a.m. to 3:30 p.m. on weekdays and 7:00 a.m. to 2:00 p.m. on Saturdays and Sundays except that on weekdays during the period 12/28/87 - 4/28/88, blasting may take place until 4:30 p.m. and drilling until 5:30 p.m. Between 12/28/87 and 4/28/88 Landlord may specify up to 3 days in each month (12 days in total) when blasting and drilling must end at the previously agreed time of 3:30 p.m. on weekdays.
  - 3. Landlord will grant such permission as may be required in order for the Building Department to grant a permit to Tenant to erect a crane on the Land with an operating radius over the Carnegie Hall structure, providing that at no

time will any construction load carried by the crane be over any part of Carnegie Hall except as required for the removal by crane of the abandoned Carnegie Hall cooling tower and the relocation of the active cooling tower. Tenant, at its own expense, will provide protection for the roofs of Carnegie Hall.

4. Tenant will not extend its building material storage beyond the frontage of the Land without the prior written consent of Landlord, except as permitted by Section 14.06 and Schedule VIII.

C)

In addition to the provisions outlined in Sections A and B of this Schedule III, the following special provisions shall apply with respect to Carnegie Hall's foundation and the construction of the Building's foundation:

1. The channel drilling shall extend a foot deeper than the general excavation (it being understood that narrow excavations for footings extend below the general excavation.
2. The Landmark Protection Plan dated November 11, 1987 and revised November 13, 1987 (the "Protection Plan") shall be referenced in the contracts of all relevant contractors.
3. It is the intent of the Parties that any repair of damage to Carnegie Hall caused by excavation shall, if it is permitted by Tenant's insurers without additional charge or premium to Tenant, be performed by Landlord and paid for from the proceeds of Tenant's (or the responsible contractor's) insurance award. Nothing in the foregoing sentence shall abrogate or reduce Tenant's liability with respect to such damage if such insurance proceeds are inadequate.
4. If, as a result of Tenant's blasting, Carnegie Hall is damaged and Tenant's construction manager or excavation contractor is aware of or is made aware of such damage, then the construction manager or excavation contractor shall revise the blasting pattern in an effort to avoid further damage to Carnegie Hall even though the particle velocity specified in the Protection Plan has not been exceeded.

D)

All work in connection with the Construction of the Building shall be performed in accordance with the Protection Plan.

**SCHEDULE IV**

**PROHIBITED USES**

1. Any business which sells, keeps or cares for animals in the Building.
2. Any business which produces offensive odors.
3. Any business which creates (i) unreasonable noise or vibration levels, or (ii) unusually high pedestrian or vehicular traffic in and adjacent to the Building.

## SCHEDULE V

### DESCRIPTION OF EXPANSION SPACE

#### 01.0 DEMISED AREA

As per items approved pursuant to Schematic Approval Letter dated October 1, 1987 from Landlord (on behalf of Landlord and the City) to Tenant as modified by submission A-1 through A-4 dated December 14, 1987 with such annotations thereon as have been agreed upon (collectively, the "Approved Items").

#### 02.0 WORK INCLUDED

The work to be done shall include and be limited as follows:

##### 02.1 Structure

- a) The structure for the Building shall include a reinforced concrete foundation and reinforced concrete superstructure. Columns, buttresses, shear walls, girders, beams, spandrels and arches necessary for the support of the Expansion Space are to be provided to meet the specifications set forth herein. Unless otherwise agreed, floor levels and openings in the Expansion Space will be at elevations and locations established in the Approved Items. Column, buttress, shear wall and mechanical riser locations will be determined by the Approved Items except that:
  - (i) Landlord and Tenant will work together to coordinate Tenant's structural design and layout with Landlord's architectural requirements for the Expansion Space provided that Landlord's architectural requirements are submitted to Tenant in accordance with the schedule set forth in Section 02.10 hereof. The intent of this coordination is to minimize structural off-sets, if any.
  - (ii) In the event that the mechanical layout proposed by Tenant (other than as approved pursuant to the Approved Items) would be acceptable to Landlord upon the

relocation of certain risers, Tenant shall redesign to relocate such risers.

- b) The structure supporting the Expansion Space shall be designed to accommodate an average live load of 60 p.s.f., except that on the third and fifth floors the area between column numbers 49, 24, 30 and 45, and in the northerly portion of the Expansion Space, the structure shall be designed to accommodate an average live load of 100 p.s.f.
- c) Heights from floor to underside of structural elements in the Expansion Space shall be as specified in the Approved Items.

02.2 Demising Walls and Interior Partitions

- a) The new walls demising the Expansion Space are to be of cinder block with struck joints and are to have a 2 hour fire rating, except that mechanical risers can be enclosed by 2 hour fire rated drywall. The new wall layout shall not extend beyond the Expansion Space.
- b) The north and south exterior walls surrounding the Expansion Space are to be of masonry cavity wall construction, including fenestration, storefront and entrance details designed as part of the Building.
- c) No work is to be done by Tenant for Landlord on the existing exterior of Carnegie Hall except for blocking up window openings as expressly provided in Section 02.3c and removal of items as permitted pursuant to the Sublease.
- d) Interior partitions - none, other than the north elevation of the Recital Hall Elevator.

02.3 Connections between the Building and Carnegie Hall

- a) New columns, floors and shear walls shall accommodate the design of new openings through existing masonry walls for connection (by Landlord) to Carnegie Hall as per the Approved Items. All work respecting the Expansion Space on or to Carnegie Hall, including, without limitation, design, cutting and patching of openings in the existing Carnegie

Hall building shall be done by Landlord except as expressly specified in Section 02.3c.

- b) The Building shall contain openings in the wall of the Expansion Space that separates the Expansion Space from Carnegie Hall as specified in the Approved Items.
- c) Tenant shall perform the actual physical work of blocking (with masonry block per Building Code fire rating requirements) up to one hundred (100) of the existing window openings in the east elevation of Carnegie Hall contiguous to the Building.

02.4 Doors and Hardware

- a) Hollow metal door buck, door and hanging hardware for double door exit to 56th Street at sidewalk level.
- b) Exit door to 57th Street at sidewalk level to be supplied and installed by Tenant at Landlord's expense.

02.5 Finishes

- a) Walls - exposed masonry or concrete
- b) Ceilings - exposed concrete
- c) Floor - exposed concrete, steel trowelled or broom finished, as indicated on plans furnished to Tenant by Landlord in accordance with the schedule set forth in Section 02.10 hereof.

02.6 Stairs

Floor arches with openings as per the Approved Items.

02.7 Passenger Elevator

One (1) passenger elevator as per the Approved Items.

02.8 H.V.A.C., Plumbing, Electric, Fire Protection, and Elevator Shaft Structure

- a) Sleeves, boxed openings and shaft openings through new Building floor levels and walls.



- b) No equipment, risers, mains, branches, conduit or wire, outlets, tie-ins, covering or temporary services.
- c) Floor arches and related structure, with openings as located by Landlord, for Landlord's freight elevator as per the Approved Items.

02.9 Expansion Space Design

[Intentionally Omitted]

02.10 Drawing Submissions and Approvals

Landlord, at Landlord's sole cost and expense, will provide Tenant with information, drawings and other data respecting the Expansion Space in the level of detail required to facilitate the timely development of plans for and construction of the Building by Tenant.

- a) Tenant will submit to Landlord progress prints of the architectural working drawings of those portions of the Building containing the Expansion Space. Landlord will show on those drawings or on its own drawings at the same scale any openings, sleeves, structure or other items that Tenant is required to build or provide that are not yet shown on Tenant's drawings and will provide this information to Tenant within 12 days following Tenant's submission. Landlord will also provide Tenant, for informational purposes, a complete copy of all its current plans for the Expansion Space.
- b) Tenant will submit to Landlord progress prints of the architectural working drawings of those portions of the Building containing the Expansion Space modified in response to the information received from Landlord in a) above. Landlord will within 15 business days of Tenant's submission either confirm Expansion Space requirements on these drawings, reserving such items as are agreed to require further coordination (such as mechanical lines that Landlord desires to install outside of the Expansion Space but within the Building), or give Tenant notice

specifying in reasonable detail its reasons for not confirming the drawings.

- c) Tenant will submit to Landlord completed working drawings of those portions of the Building containing the Expansion Space. Landlord will, within 15 business days of Tenant's submission, (i) coordinate with Tenant the final location of any items to be built or provided by Landlord that are outside of the Expansion Space or which require similar coordination with work being done by Tenant, (ii) either approve the working drawings or give Tenant notice specifying in reasonable detail its reasons for not approving the drawings, and (iii) provide Tenant, for informational purposes, a complete copy of all its current plans for the Expansion Space.
- d) Landlord will provide Tenant (i) a copy of its completed working drawings for the Expansion Space as soon as these drawings are finished, (ii) a copy of any changes to those drawings, and (iii) a copy of all submissions to the Department of Buildings with respect to the Expansion Space.

For purposes of calculating periods of time for responses, the week between Christmas and New Year's, 25 December 1987 through 3 January 1988 inclusive, will not be counted. The Parties agree that they each will make good-faith efforts to accommodate and approve changes or revisions in plans at any time, and that if such changes or revisions cannot be accommodated and approved the Party rejecting such changes or revisions shall specify in reasonable detail its reasons for such rejection, same to be accomplished within 15 business days.

#### 02.11 Building Department Approval

Responsibility for filing with and securing the approval of the Department of Buildings for proposed and completed construction work shall be as follows (with mutual cooperation between Landlord and Tenant):

- a) The Building shell demising the Expansion Space by Tenant (but not any Certificate of Occupancy therefor).

- b) All items within the Expansion Space (except the 57th Street passenger elevator) by Landlord.
- c) The 57th Street passenger elevator in the Expansion Space by Tenant.
- d) Carnegie Hall, exterior and interior (including, without limitation, connections to the Building and blocking up window openings) by Landlord.
- e) Tenant is responsible for all street and sidewalk approvals necessary only in conjunction with Tenant's Construction of the Building.

## SCHEDULE VI

### SOUTH AFRICAN ENTITIES

1. The following agencies of the South African government are South African Entities:
  - a. the police
  - b. the military
  - c. the prison system
  - d. the ministry of home affairs and national education
  - e. the ministry of education and development aid, including the development boards and the rural development boards
  - f. the ministry of justice
  - g. the ministry of constitutional development and planning
  - h. the ministry of law and order
  - i. the bureau of information
  - j. the ministry of manpower
  - k. the Armaments Development and Production Corporation (ARMSCOR), and its subsidiaries Nimrod, Atlas Aircraft Corporation, Eloptro (Pty) Ltd., Kentson (Pty) Ltd., Infoplan Ltd., Lyttleton Engineering Works (Pty) Ltd., Naschem (Pty) Ltd., Pretoria Metal Pressing (Pty) Ltd., Somchem (Pty) Ltd., Swartklip Products (Pty) Ltd., Telacast (Pty) Ltd., and Musgrave Manufacturers and Distributors
  - l. the national intelligence services
  - m. the council for scientific and industrial research
  - n. the electricity supply commission (ESCOM)
  - o. the South African Coal, Oil and Gas Corporation (Sasol Limited or Sasol 1, 2 or 3)

- p. the Atomic Energy Corporation (Ltd.
  - q. the Southern Oil Exploration Corporation (Soekor)
2. Together with the agencies listed in item 1 of this Schedule VI, any corporation owned or controlled by the South African government and established expressly for the purpose of procuring goods or services for the agencies listed in item 1 of this Schedule VI is a South African Entity.

## SCHEDULE VII

### SCHEMATIC DRAWINGS

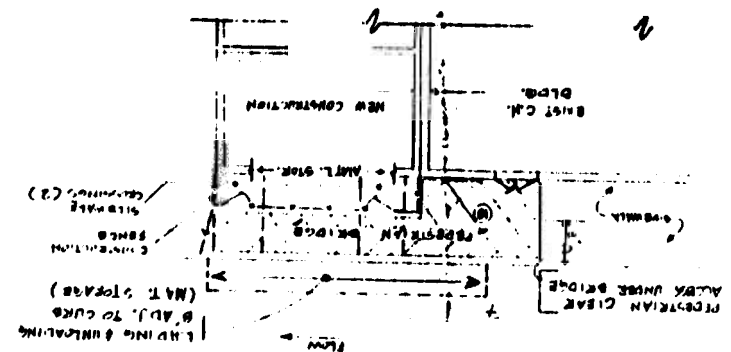
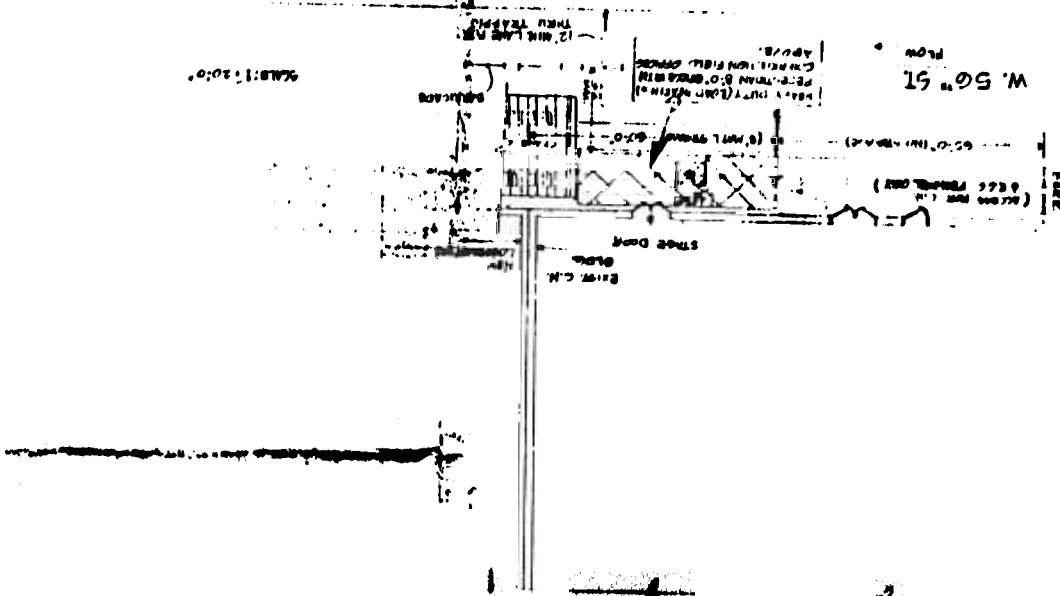
1. Architectural Drawings Nos. SD100, SD101, SD102, SD103, SD104, SD105, SD106 and SD107, dated June 26, 1987 (the "Architectural Drawings"), submitted to Carnegie Hall pursuant to a letter dated June 29, 1987 from Rockrose Development Corporation to Lawrence P. Goldman.
2. Structural Drawings dated May 20, 1987 (the "Structural Drawings"), submitted to Carnegie Hall pursuant to a letter dated May 20, 1987 from Rockrose Development Corporation to Lawrence Goldman.
3. Architectural Section Drawing No. SD116 dated May 13, 1987, submitted to Carnegie Hall pursuant to a letter dated May 20, 1987 from Rockrose Development Corporation to Lawrence Goldman.
4. Elevation Drawings SD112 (North Elevation), SD114 (East Elevation), and SD115 (West Elevation) dated May 13, 1987, submitted to Carnegie Hall pursuant to a letter dated May 20, 1987 from Rockrose Development Corporation to Lawrence Goldman.
5. The specifications which were submitted pursuant to Rockrose's letter to Lawrence Goldman dated May 20, 1987
6. The Shell Space-Revised Area Tabulations dated June 29, 1987 submitted pursuant to Rockrose's June 29, 1987 letter to Lawrence Goldman.
7. The South Elevation drawing (SK 428), revised September 8, 1987, submitted to Carnegie Hall under cover of John West's letter of September 10, 1987.
8. The letter from Rockrose Development Corporation to Carnegie Hall Corporation dated October 1, 1987.

All of the foregoing have been approved by Landlord pursuant to a letter from Landlord to Rockrose Development Corporation dated October 1, 1987, and some of which have been modified by submission A-1 through A-4 dated December 14, 1987 with such annotations thereon as have been agreed upon.

SCHEDULE VIII  
SIDEWALK BRIDGES

- NOTE:
1. CRANE ON 56<sup>TH</sup> ST TO BE USED TO ERECT BLDG. LIGHT TOP OF CURB WILL BLDG. 27 - 28<sup>TH</sup> ST.
  2. PRELIMINARY BRIDGE (N) PER CASE 302, C 36 - 2015
  3. SLOPE 1:10 FOR WALKWAY AND WALK UP TO ROAD-LEVEL BRIDGE.
  4. NO BRIDGE SUPPORTS TO BE ON SIDEWALK. BRIDGE AND WALKWAY 5'0" WIDE.
  5. A 10' BY 10' TO THIS GATE TO BE MAINTAINED.
  6. BRIDGE AT RAMP ABOVE BRIDGE TO PREVENT CABLE CABLE
  7. BRIDGE AT RAMP ABOVE BRIDGE TO PREVENT CABLE CABLE
  8. NO BRIDGE SUPPORTS TO BE ON SIDEWALK. BRIDGE AND WALKWAY 5'0" WIDE.
  9. BRIDGE AT RAMP ABOVE BRIDGE TO PREVENT CABLE CABLE
  10. BRIDGE AT RAMP ABOVE BRIDGE TO PREVENT CABLE CABLE
  11. BRIDGE AT RAMP ABOVE BRIDGE TO PREVENT CABLE CABLE
  12. BRIDGE AT RAMP ABOVE BRIDGE TO PREVENT CABLE CABLE

Project: 152 W. 57<sup>TH</sup> ST.  
ROCKROSE CONST CORP.  
301 E 45<sup>TH</sup> ST. NYC, 10017  
SIDEWALK & ROADWAY  
UTILIZATION PLAN  
SK-1 / REV. 11-87 / SAE-A.L.



W. 57<sup>TH</sup> STREET

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