

Execution Copy  
SOBRO

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LEASE

between

THE CITY OF NEW YORK

Landlord

and

SOBRO DEVELOPMENT CORPORATION

Tenant

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Dated: June 7, 1982

Premises

Tax Block 2586 Lot 26  
Phillips-Jones Building  
Bronx, New York

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THIS LEASE, dated June 7, 1982, between THE CITY OF NEW YORK ("Landlord" or the "City"), a municipal corporation of the State of New York, having an office at City Hall, New York, New York 10007 and Sobro Development Corporation ("Tenant" or the "Corporation"), a New York local development corporation, duly organized pursuant to Article 14 of the Not-For-Profit Corporation Law, having an office at 370 East 149 Street, Bronx, New York 10455.

W I T N E S S E T H :

WHEREAS, the City owns certain property (the "Property") located at 131 Walnut Avenue in the Borough of the Bronx, being generally known as the Phillips-Jones Building, and being more particularly described as Block 2586, Lot 26 on the tax map of the Borough of the Bronx, which Property has become underutilized and badly deteriorated; and

WHEREAS, the City's Office for Economic Development has obtained a Title I grant from the U.S. Economic Development Administration for 2.6 million dollars to accomplish the renovation of the structure located on the Property; and

WHEREAS, the South Bronx Overall Economic Development Corporation, a New York local development corporation affiliated with Tenant, conceived of and sponsored the project for the renovation of said structure to promote the economic revitalization of the South Bronx area and participated in and facilitated the award of the grant to the City; and

WHEREAS, upon completion of the renovation, the best interests of the City in the economic development and utilization of the structure will be obtained by the lease of said structure by the City to Tenant; and

WHEREAS, on March 6, 1980, the Board of Estimate, pursuant to Section 197-c of the City Charter, adopted a resolution (Cal. No. 14) approving the lease of the Property to Tenant; and

WHEREAS, the Borough Board of the Borough of the Bronx, pursuant to Section 1411 of the Not-for-Profit Corporation Law, did by resolution adopted at a meeting held December 21, 1981, a copy of which is annexed hereto as Exhibit D, approve and consent to the City's entering into a lease with Sobro Development Corporation of the premises herein demised, upon the terms and conditions contained herein; and

WHEREAS, the Board of Estimate of The City of New York, pursuant to Section 1411 of the Not-For-Profit Corporation Law, did by resolution adopted at a meeting held January 14, 1982, a copy of which is annexed hereto as Exhibit A, approve and consent to the City's entering into a lease with Sobro Development Corporation of the premises herein demised, upon the terms herein contained, and authorize The Mayor or his designee or the Deputy Commissioner of General Services to enter into said lease.

NOW, THEREFORE, the Landlord, for and in consideration of the rent, covenants, terms and conditions in this Lease to be paid, performed, kept and observed by the Tenant, does lease and demise to the Tenant, for the term herein set forth, the Premises herein described, on the following terms, covenants and conditions:

ARTICLE 1

DEFINITIONS

The terms defined in this Article shall, for all purposes of this Lease and all agreements supplemental hereto, have the meanings herein specified:

"Architect" shall mean the licensed architect designated by Tenant from time to time, with consent of Landlord, which consent shall not be unreasonably withheld or delayed

"Basic Rent" shall have the meaning provided in Section 3.01 hereof.

"Building" shall mean and include all "Equipment", all the buildings, and other improvements and appurtenances of every kind and description now located or hereafter erected, constructed or placed upon the "Land" and any and all alterations, and replacements thereof, additions thereto and substitutions therefor.

"Capital Improvement" shall have the meaning provided in Section 11.01 hereof.

"Capital Replacement Fund" shall have the meaning provided in Section 6.01 hereof.

"City" shall mean the City of New York.

"City Map" shall mean the City Map pursuant to Section 198 of the New York City Charter.

"Commencement Date" shall mean the date of commencement of the "Initial Term" as set forth in Article 2 hereof.

"Construction Agreements" shall mean agreements for construction, "Restoration", Capital Improvement, rehabilitation, alteration, conversion, extension, repair or demolition performed pursuant to this Lease.

(j) "Corporation" shall mean Sobro Development Corporation.

"Default" shall mean any condition or event which constitutes or would, after notice or lapse of time, or both, constitute an "Event of Default".

"Default Interest Rate" shall mean the lower of (a) an annual rate of interest which is equal to the "prime" rate charged by The Chase Manhattan Bank, N.A., on the date that, with respect to any arrearages by Tenant or amount paid by Landlord, a charge calculated at such rate first becomes payable hereunder pursuant to Article 7 or (b) the maximum rate of interest permitted by law.

"Deficiency" shall have the meaning provided in Section 25.04(c) hereof.

(n) "Depository" shall mean a bank or trust company located in New York State, which would qualify as an Institutional Lender, designated by Tenant, with Landlord's consent, and which has agreed to serve as Depository pursuant to this Lease. Any request for Landlord's consent shall expressly represent that the designated Depository qualifies as a Depository pursuant to the terms of this Lease.

Any account opened by Tenant pursuant to this Lease shall name the City as a joint-Depositor, and the Depository and Tenant shall agree that Tenant shall not be able to withdraw funds from such account without Landlord's consent except as otherwise provided in this Lease.

"Deputy Commissioner" shall mean the City's Deputy Commissioner of General Services, Division of Real Property, or his successor in function or, if Landlord shall no longer be the City, any other person designated by Landlord, upon notice to Tenant.

"Director" shall mean the Commissioner of the City's Office for Economic Development or his designee or successor in function with respect to commercial development projects.

(q) "Equipment" shall mean all fixtures, equipment and machinery incorporated in the "Premises" and necessary for the operation of the Building, including, but not limited to, machinery, engines, dynamos, boilers, elevators, refrigerators, radiators, air-conditioning compressors, ducts, pipes, conduits and fittings, but not including any fixtures, personal property or special equipment installed by an occupant or tenant of space in the Building.

(r) "Event of Default" shall have the meaning provided in Section 25.01 hereof.

(s) "Expiration Date" shall have the meaning provided in Section 2.01 hereof.

(t) "Gross Rentals" shall mean the aggregate amount received by the Tenant under any and all sublease, occupancy, license and concession agreements affecting the Premises.

"Impositions" shall have the meaning provided in Section 5.01 hereof.

"Initial Term" shall have the meaning provided in Section 2.01 hereof.

"Institutional Lender" shall mean a savings and loan association, a savings bank, a commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, or a state, municipal or similar public employees' welfare, pension or retirement fund or system, or any other similar corporation or organization subject to supervision and regulation by the insurance or banking departments of any State or the United States Treasury, or any successor department or departments hereafter exercising the same functions as said departments; provided such institution shall be subject to service of process within New York State and shall either have a net worth of \$100,000,000 or assets of at least \$500,000,000.

"Land" shall mean the parcel of land described as lot 26 in block 2586 as shown on the tax map for the Borough of the Bronx.

"Landlord", on the date as of which this Lease is made, shall mean the City, but thereafter "Landlord" shall mean only the fee owner at the time in question of the Premises, so that if The City of New York or any successor to its interest hereunder ceases to have any interest in the Premises or there is any transfer of the Landlord's interest in the Premises, then the transferor shall be and hereby is entirely freed and relieved of all agreements, covenants obligations of Landlord hereunder to be performed on or after the date of such transfer, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties that the "Person" who has acquired the Premises has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder accruing from and after the date of such acquisition.

Except as otherwise provided herein, so long as the City shall be Landlord hereunder, all functions of Landlord shall be performed by, and all rights of Landlord shall be exercised by, the Deputy Commissioner.

"Management Fee" shall have the meaning provided in Section 3.11 hereof.

(aa) "Mortgage" shall mean a mortgage, complying with the provisions of section 14.11 hereof, which constitutes a lien on Subtenant's interest in its Sublease and the leasehold interest created thereby, and which is made as the principal security for a loan made to Subtenant.

(bb) "Mortgagee" shall mean the holder of a Mortgage.

"Net Income" except as modified for the purpose of calculating Net Income as specified in Section 6.01, shall mean an amount equal to the difference between (i) Gross Rentals actually received by the Tenant during each lease year less (ii) payments made by the Tenant during that year (including the Management Fee, Payments to the Capital Replacement Fund and PILOT but excluding management costs) which are attributable to its obligations as lessee of the Premises.

"Notice" shall have the meaning provided in Section 26.01.

"Person" shall mean and include an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, State, county or municipal government or any bureau, department or agency thereof.

"PILOT" shall have the meaning provided in Section 3.02 hereof.

"Premises" shall mean the Land and the Building.

(hh) "Renewal Rent" shall have the meaning provided in Section 27.02 hereof.

"Rental" shall have the meaning provided in Section 3.05 hereof.

(jj) "Requirements" shall have the meaning provided in Section 16.01 hereof.

"Restore" and "Restoration" shall have the meanings provided in Section 13.01 hereof.

(ll) "Subleases" and "Subtenants" shall have the meaning provided in Section 14.04 hereof.

"Taxes" shall mean the real property taxes assessed and levied against the Premises pursuant to Chapter 58 of the Charter of the City and Chapter 17, Title E of the Administrative Code of the City or any statute in lieu thereof.

"Tenant" shall mean Sobro Development Corporation provided, however, that whenever this Lease and the leasehold estate hereby created shall be sold, transferred, or assigned in the manner permitted by this Lease, then, from and after the date of such sale, transfer or assignment and until the next permitted sale, transfer or assignment the term "Tenant" shall mean the permitted purchaser, transferee or assignee.

"this Lease" shall mean this Lease and all amendments, modifications, extensions and renewals hereof.

"Unavoidable Delays" shall mean delays due to strikes, lockouts, acts of God, inability to obtain labor or materials due to governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of Tenant (not including Tenant's insolvency or financial condition) of which Tenant shall have notified Landlord not later than 30 days after Tenant knows or has reason to know the same.

ARTICLE 2

DEMISE AND TERM

Section 2.01 Landlord hereby leases the Premises to Tenant, and Tenant hereby takes and hires the Premises from Landlord, upon and subject to the terms and conditions hereinafter expressed; and

SUBJECT TO the matters set forth in Exhibit C attached hereto,

TO HAVE AND TO HOLD the Premises for a term of thirty (30) years to begin at 12:01 A.M. on the first day of the second calendar month following the receipt by the City of written certification from the New York State Urban Development Corporation that all renovation work has been completed, that a permanent Certificate of Occupancy for the Premises has been issued and that the Premises are vacant (the "Commencement Date") and to end (unless this Lease is earlier terminated by Landlord as hereinafter provided) on (i) midnight of the date (the "Expiration Date") immediately preceding the 30th anniversary of the Commencement Date or (ii) such other dates as provided in Section 27.01 hereof. The period beginning on the Commencement Date and ending at midnight of the date immediately preceding the 30th anniversary thereof is hereinafter referred to as the "Initial Term".

ARTICLE 3

RENT

Section 3.01

(a) Tenant shall pay to Landlord, in currency which at the time of payment is legal tender for the payment of public and private debts in the United States of America, without notice or demand, for each year during the Initial Term, an annual rental the "Basic Rent") which equals fifty percent (50%) of the difference between (x) the Gross Rentals received by the Tenant during that lease year and (y) the expenses, expenditures, maintenance and operating costs as delineated in Section 3.09 (including the Management Fee, payments to the Capital Replacement Fund and PILOT but excluding management costs) paid by the Tenant during that lease year, but only to the extent that such costs have been approved by the Landlord pursuant to Section 3.09 hereof.

(b) "Basic Rent" payments shall be paid on or before the first day of the third month following the Lease Year for which that Basic Rent payment is due and shall be paid at the office of Landlord set forth immediately below (or at such other place as the Deputy Commissioner shall direct by notice to Tenant):

Division of Real Property  
New York City Department of  
General Services  
2 Lafayette Street  
New York, New York 10007  
Attn: Accounting Department

Section 3.02

During the period beginning six (6) months following the Commencement Date and terminating on the last day of the Initial Term, Tenant shall pay to Landlord, in currency which at the time of payment is legal tender for the payment of public and private debts in the United States of America, without notice or demand, a payment in lieu of Taxes ("PILOT"). PILOT shall be paid quarterly (every three months), at the office of the Landlord at the location set forth in Section 3.01 (b) on or before the first day following the quarterly period for which PILOT is due except that during the first lease year PILOT shall be paid on or before the 30th day following the quarterly period for which PILOT is due.

The amount of each PILOT shall equal seven and one half per cent (7 1/2%) of the Gross Rentals received by the Tenant during each quarterly period for which the PILOT is due.

Section 3.03 Basic Rent and PILOT shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off, or offset whatsoever, except as provided in this Article and Article 15 hereof, so that this Lease shall yield, net, to Landlord, the Basic Rent PILOT for each year during the Initial Term and, except as otherwise expressly provided herein, Tenant shall pay all costs, expenses, charges of every kind and nature relating to the Premises, and Landlord shall be indemnified by Tenant against, and held harmless by Tenant from, the same.

Section 3.04 Tenant shall also pay all Impositions in accordance with Article 5 hereof.

Section 3.05 All the amounts payable by Tenant to Landlord pursuant to this Lease, including without limitation Basic Rent, PILOT, Impositions, 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 deposits with, Landlord (collectively, "Rental") shall constitute rent under this Lease and, in the event of Tenant's failure to pay Rental, Landlord shall have all of the rights and remedies provided for herein or by law.

Section 3.06 Except as may be otherwise expressly provided herein, there shall be no abatement, diminution or reduction of Rental payable by Tenant hereunder, or of the other obligations of Tenant hereunder, under any circumstances.

Section 3.07 OMITTED

Section 3.08 OMITTED

Section 3.09 On the Commencement Date and on or before each succeeding anniversary of such date, the Tenant shall furnish to the Landlord an annual projection of expenses, expenditures, maintenance and operating costs including projected payments to and disbursements from the Capital Replacement Fund) for approval by the Landlord. It is agreed by the parties that such projections (excluding projected disbursements from the Capital Replacement Fund), when approved by Landlord, shall form the basis for determining allowable expenses, expenditures, maintenance and operating costs to be used for the purpose of calculating the Basic Rent (or Renewal Rent) subject to reasonable adjustment due to errors, miscalculations, inflation, changed circumstances and unforeseen events to the

extent such adjustments are approved by Landlord. Such projections shall be utilized to determine the validity of but not the actual deductions from Gross Rentals for the purpose of calculating Basic Rent (or Renewal Rent).

To the extent that Tenant demonstrates they are directly related to the maintenance or operation of the Premises, are reasonable and necessary, and were paid during the lease year, the following expenses, expenditures, maintenance and operating costs shall be permissible deductions from Gross Rentals for the purposes of calculating Basic Rent (or Renewal Rent) for that lease year:

- payroll and fringe benefits;
- heating expenses;
- (c) water and sewer charges;
- (d) maintenance and service contracts;
- (e) repairs and maintenance costs and capital expenditures including architectural and engineering costs (to the extent not payable from the Capital Replacement Fund);
- (f) insurance premiums and appraisal costs;
- (g) security arrangements;
- (h) the Management Fee (to the extent paid during the Lease Year);
- real estate leasing commissions;
- (j) accounting and legal fees;
- (k) payments to the Capital Replacement Fund; and
- (l) PILOT, Taxes and Impositions

No other expenses, expenditures, maintenance or operating costs shall be allowable deductions from Gross Rentals for the purpose of calculating Basic Rent (or Renewal Rent) without the prior written approval of the Landlord which will not be unreasonably withheld or delayed. In no event shall costs attributable to the management of the Premises or costs paid by the Tenant prior to the date of execution of this Lease, be an allowable deduction from Gross Rentals for the purpose of calculating Basic Rent (or Renewal Rent). During the period commencing upon the Execution Date of this Lease and ending upon the Commencement Date of this Lease, expenses or expenditures paid by the Tenant with respect to the Premises shall be allowable deductions from Gross Rentals for the purpose of calculating Basic Rent during the first lease year only to the extent such expenses or expenditures (x) were incurred with the prior written consent of the Landlord, and (y) may be reasonably characterized as one of the following: (i) legal and accounting; (ii) architectural and engineering; (iii) tenant's alterations; (iv) leasing brokerage commissions; (v) advertising and marketing.

Section 3.10 During the entire Lease Term, Tenant will utilize any and all Net Income, as defined in Article 1, to foster and enhance the economic development of the South Bronx area in the Borough of the Bronx. Tenant will furnish to the Director a detailed annual report of disbursements of Net Income. At Landlord's option, this Section shall not be applicable to an assignee of the Tenant (approved by the Landlord pursuant to Article 14).

Section 3.11 During the period beginning six (6) months following the Commencement Date and ending upon the expiration or termination of this Lease, Tenant shall be entitled to retain or pay to an affiliated company a fee (the "Management Fee") for managing the Premises. The Management Fee shall be paid quarterly (every three months). The amount of each Management Fee payment shall be equal to seven and one half per cent (7 1/2%) of the Gross Rentals received by the Tenant during the quarterly period for which the Management Fee is due. At the Tenant's option, Management Fee payments due at any time during the first three Lease years may be carried over and paid to Tenant from Gross Rentals derived from the Premises during any subsequent Lease year, but in no event shall such postponed Management Fee payments be made from Gross Rentals derived after the fourth Lease year.

ARTICLE 4

REAL ESTATE TAXES

Section 4.01 During the Initial Term, Landlord shall pay (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord) and/or cancel any and all Taxes which may become due and payable with respect to the Premises. If during the Initial Term Landlord shall no longer be the City, the new Landlord shall pay Taxes to the City. Such Taxes shall be imposed on the Premises and all improvements thereon in the same manner by which the City imposes Taxes on all other privately owned property.

Section 4.02 During each renewal term, Tenant shall pay any and all Taxes which may become due and payable with respect to the Premises. It is agreed that Taxes will be assessed and imposed as if the Premises were privately owned. Such payments shall be paid at the office of the Deputy Commissioner (or at such other place as the Deputy Commissioner shall direct by notice to Tenant).

ARTICLE 5

IMPOSITIONS

Section 5.01 During the entire Lease term, Tenant shall pay without notice or demand and without any abatement, deduction or set-off, except as provided in Article 3, all the following items ("Impositions"): (a) During each renewal term, Taxes, (b) real property assessments which become due with respect to the Premises, (c) water, water meter and

sewer rents, rates and charges, (d) vault charges, (e) license and permit fees, (f) any and all other governmental levies, fees, sidewalk assessments, emergency repair liens, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and (g) any interest, fines, penalties or costs with respect to any of the foregoing which at any time during the Initial Term (or any renewal thereof) are assessed, levied, confirmed, imposed upon, or would grow or become due and payable out of, or would be charges with respect to, the Premises and are or would be encumbrances or liens on (i) the Premises, (ii) the sidewalks or streets in front of or adjoining the Premises, (iii) any vault passageway or space in, over or under such sidewalk or street, (iv) any other appurtenances of the Premises, or (v) the Equipment or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof). Each such Imposition, or installment thereof, during the Initial Term (or any renewal thereof) shall be paid not later than the last date on which the imposition may be paid before a penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof provided, however, that if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments, provided that all such installment payments due and payable during the Initial Term (or any renewal thereof) are paid by Tenant prior to (i) the Expiration Date or (ii) the expiration of any renewal term. Tenant shall be liable for the payment of Impositions only to the extent that (a) the obligation to pay such Impositions accrues during the Tenant's

Lease term or (b) the Imposition relates to or arose from any liability, incurred or any act or omission which took place, during the Tenant's lease term.

Section 5.02 Nothing herein contained shall require Tenant to pay income taxes assessed against Landlord, capital levy, corporation franchise, excess profits, estate, succession, inheritance or transfer taxes payable by Landlord; provided, however that if (i) at any time during the Initial Term (or any renewal thereof) the present method of taxation or assessment shall be changed so that the whole or any part of the Impositions now levied, assessed or imposed on real estate and the improvements thereon shall be levied, assessed and imposed wholly or partially as a capital levy or otherwise on the rents received therefrom, and/or (ii) if any tax, corporation franchise tax, assessment, levy, Imposition or charge, or any part thereof, shall be measured by or be based, in whole or in part, upon the Building and/or upon any Equipment and shall be imposed upon Landlord, then all such taxes, assessments, levies, Impositions or charges, or the part thereof so measured or based upon the Building and/or upon any Equipment, shall be deemed to be included within the term "Impositions" for the purposes hereof, to the extent that such tax would be payable if the Premises were the only property of Landlord, and Tenant will pay and discharge the same as herein provided with respect to the payment of Impositions.

Section 5.03 Tenant, from time to time upon request of Landlord, shall furnish to Landlord, within 60 days after the last date when an Imposition is due and payable without penalty under this Lease, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of such Imposition.

Section 5.04 In the event that this Lease is not renewed, as specified in Article 27, any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Initial Term and a part of which is included in a period of time after the Expiration Date, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of, or become a lien upon the Premises, or shall become payable, during the Initial Term) be apportioned between Landlord and Tenant as of the Expiration Date, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time before the Expiration Date bears to such fiscal period, and Landlord shall pay the remainder thereof. If an Imposition relating to a fiscal period of the taxing authority, a part of which period is included within a renewal term and a part of which is included in a period of time after the renewal term expires, Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time before the expiration of the renewal term bears to such fiscal period, and Landlord shall pay the remainder thereof, if there is no further renewal term. .

Section 5.05 Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition, unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of Section 5.01 hereof, payment of such Imposition shall be postponed if, and only as long as:

neither the Premises nor any part thereof would by reason of such postponement or deferment be, in the reasonable judgment of Landlord, in danger of being forfeited or lost; and

Tenant shall have deposited with Depository cash, letter of credit or other security Landlord shall reasonably approve in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in such proceedings. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest penalties or other liabilities in connection therewith, and upon such payment, Depository shall return any amount deposited with it with respect to such Imposition as aforesaid, provided, however, that Depository, if requested by Tenant, shall disburse said moneys on deposit with it directly to the party to whom such Imposition is payable. If at any time during the continuance of such proceedings Landlord shall deem insufficient the amount deposited as aforesaid, then Tenant, upon demand, shall make an additional deposit of such additional sums or other security as Landlord reasonably may request, and upon failure of Tenant to do so, upon the demand of Landlord, the amount theretofore deposited may be applied to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings, and the balance, if any, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord on demand.

Section 5.06 Tenant shall have the right to seek a reduction in the valuation of the Premises as assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith.

Section 5.07 Landlord shall not be required to join in any proceedings referred to in Sections 5.05 or 5.06 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such

proceedings be brought by and/or in the name of Landlord, in which event Landlord shall join and cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings.

Section 5.08 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, or non-payment of such Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

## ARTICLE 6

### CAPITAL REPLACEMENT FUND

Section 6.01 Commencing with the third Lease year, within sixty days after the end of each Lease year, Tenant shall deposit into a separate account (the "Capital Replacement Fund"), to be maintained by Tenant, an amount equal to ten per cent (10%) of the Net Income derived from the Premises during that Lease year, but in no event shall such a deposit be more than \$10,000 in any Lease year. Such deposits shall continue throughout the entire Lease term until a total of \$75,000 has been accumulated in the Capital Replacement Fund, after which deposits shall resume only to the extent that funds have been expended hereunder from such account. For the purpose of calculating Net Income under this Section, payments to the Capital Reserve Fund shall not be considered a deductible expense from Gross Rentals, but the deposit thereof shall be considered a deductible expense from Gross Rentals for the purpose of calculating Net Income under any other section of this Lease.

Section 6.02 The Capital Replacement Fund shall be utilized exclusively to pay for capital expenditures at the building, as necessary or appropriate and shall be utilized to pay for such items to the extent funds are available. Tenant may not utilize more than \$10,000 from the Capital Replacement Fund to pay for a particular capital expenditure without the prior written consent of the Landlord which shall not be unreasonably withheld or delayed. Tenant's request for such consent shall include at least two written estimates of the cost of the capital improvement from reputable and responsible contractors. Periodic reports shall be submit-

ted to Landlord from time to time setting forth expenditures made from the Capital Replacement Fund, but in no event less frequently than annually.

Section 6.03 Tenant is hereby authorized to invest the amounts held in Capital Replacement Fund in banks, savings banks, savings and loan associations and in money market funds having total deposits of not less than \$100,000,000. At the end of each lease year, any earnings resulting from such an investment shall be appropriated from the Capital Replacement Fund and shall be considered a Gross Rental derived from the Premises during that lease year.

Section 6.04 Upon the expiration or termination of this Lease, any and all funds remaining in the Capital Replacement Fund shall be considered a Gross Rental derived from the Premises during the last Lease year.

#### ARTICLE 7

#### LATE CHARGES

Section 7.01 If any amount payable to Landlord hereunder shall not be paid within 15 days after the date on which it is due and payable as provided in this Lease, a late charge per month or part thereof equal to one-twelfth (1/12th) of the Default Interest Rate (computed on a 30-day month) on the sums so overdue shall become immediately due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make timely payment, and said late charges shall be payable by Tenant on demand as additional rent. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligations to pay late charges

shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance thereafter occurring. The provisions of this Article shall not be construed in any way to extend the grace periods or notice periods provided for in Article 25 of this Lease.

## ARTICLE 8

### DEVELOPMENT AND USE

Section 8.01 It is understood that the letting of the Premises by the Landlord and the authorization of its use by the Board of Estimate of The City of New York are for the express purpose of creating manufacturing, industrial and commercial space within the City in order to retain and promote increased employment opportunities within the City. The Tenant shall sublet the Premises for industrial, manufacturing or commercial purposes consistent with these aims. It is understood that the Tenant will not directly use or occupy any part of the Premises except that the Tenant may use and occupy that part of the Premises which the Tenant reasonably requires to manage and operate the Premises

Section 8.02 It is agreed between the parties hereto that the speedy achievement of the goals outlined in Section 8.01 of this lease is a material inducement in bringing about the execution of this lease. Therefore, Tenant agrees that within the first year of the initial of this lease it will have sub-lease arrangements in effect for not than thirty percent (30%) of the square footage available for leasing. Further, Tenant agrees that by the end of the second year of the initial term of this lease it will have sublease arrangements in effect for not

less than sixty percent (60%) of the total square footage available for leasing, and that by the end of the third year of the term of this lease it will have sublease arrangements in effect for not less than ninety percent (90%) of the total square footage available for leasing. The achievement of this leasing schedule is a material covenant of this lease and, should such levels not be achieved, it shall be within the option of the Landlord to terminate said lease.

## ARTICLE 9

### TITLE TO BUILDING

Section 9.01 Title to the Building and Equipment and all changes, additions, alterations and renovations therein, and all renewals and replacements thereof, when made, erected, constructed, installed or placed upon the Premises by or for Tenant, shall be or remain in Landlord. Subtenants' alterations and improvements shall belong to such Subtenants until termination of such Subleases, subject to the right, if any, of Subtenant to remove same at the end of the term. Tenant shall be liable for any damage to the Premises which results from Subtenants' removal of such alterations or improvements.

## ARTICLE 10

### REPAIR AND MAINTENANCE

Section 10.01 Tenant, at its sole cost and expense and throughout the Initial Term, (and any renewals thereof), shall (i) take good care of the Premises including, without limitation: the Building's roofs,

foundations and appurtenances thereto; all sidewalks, grounds, parking facilities, plazas, areas, vaults, railings, gutters, alleys and curbs comprising or appurtenant to the Premises; all water, sewer and gas connections, which are not the responsibility of public utilities; pipes and mains, and all other fixtures, machinery and Equipment, (ii) put, keep and maintain the Building in good and safe order and condition; and (iii) make all repairs therein and thereof, interior and exterior, structural and non-structural, ordinary and extraordinary, unforeseen and foreseen, necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability therefor may occur, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent waste, damage, or injury to the Premises. When used in this Section 10.01, the term "repairs" shall include all necessary replacements, renewals, alterations and additions. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with the then-current laws, regulations and rules of the City, and all other governmental authorities having jurisdiction over the Premises, and the New York Board of Fire Underwriters.

Section 10.02 Tenant, at its sole cost and expense, shall keep the Premises and all the sidewalks, grounds, parking facilities, plazas, areas, railings, gutters, alleys, and curbs comprising or appurtenant thereto, clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances.

Section 10.03 Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises. Landlord shall have no duty or obligation to make any alteration, change, improvements, replacement, Restoration or repair to, or to demolish the Building. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises.

## ARTICLE 11

### CHANGES, ALTERATIONS AND ADDITIONS

Section 11.01 Where the estimated cost of any such action is \$100,000 or more, Tenant shall not demolish, replace or materially alter the Building, or any part thereof, or make any addition thereto or construct any additional Building on the Land, whether voluntarily or in connection with a repair or Restoration required by this Lease (any such action if the estimated cost thereof is in excess of \$100,000, being herein

referred to as a "Capital Improvement"), unless Tenant shall comply with

the following requirements:

(a) Tenant shall furnish to the Deputy Commissioner a complete set of plans and specifications for the Capital Improvement.

(b) No Capital Improvement shall be undertaken until Tenant shall have procured the written consent of the Deputy Commissioner, which consent shall not be unreasonably withheld or delayed and shall have procured and paid for, insofar as the same may be required from time to time, all required permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction. Landlord shall not unreasonably refuse to join the application for such permit or authorization, provided same is made without cost or expense of Landlord. Copies of all required permits and authorizations, certified to be true copies thereof by Tenant, shall be delivered to Landlord prior to the commencement of any Capital Improvement.

(c) Any Capital Improvement, when completed, shall be of such a character as not to reduce the value of the Premises below its value immediately before construction of such Capital Improvement was commenced.

(d) Any Capital Improvement shall be made promptly (Unavoidable Delays excepted) and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all municipal and governmental departments, commissions, boards and officers having jurisdiction and in accordance with the approved plans and specifications therefor and the orders, rules, regulations and requirements of any Board of Fire Underwriters having jurisdiction, or any similar body exercising similar functions.

(e) The cost of any Capital Improvement shall be paid in cash or its equivalent, so that the Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Premises.

(f) No Capital Improvement shall be undertaken until Tenant shall have delivered to Landlord insurance policies or certified copies thereof issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Article 12 hereof. If under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to keep such policy or policies in full force and effect, Tenant shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

(g) At least 20 days before the commencement of any work in connection with the proposed Capital Improvement, Tenant shall furnish to Landlord the following:

a cash deposit in the amount of the estimated cost of the Capital Improvement or other security reasonably acceptable to Landlord, guaranteeing completion thereof within a reasonable time, free and clear of all liens, encumbrances, security agreements, interests and financing statements;

a contract and bonds for the construction of the Capital Improvement satisfying the requirements of subparagraph (b) of Section 13.04 hereof; and

(iii) an assignment to Landlord of the aforesaid contract and bonds satisfying the requirements of subparagraph (c) of Section 13.04 hereof.

(h) In connection with Tenant's procurement of the written consent of the Deputy Commissioner pursuant to Section 11.01(b) of this lease, Tenant shall provide the Deputy Commissioner with either (i) three bids from reputable and responsible contractors or (ii) copies of public advertisements which describe the work to be performed and requests bids from appropriate contractors, and a summary of all bids received by the Tenant in response to such advertisement.

#### Section 11.02

Where the estimated cost of any such action is less than \$100,000, but more than \$10,000, Tenant shall not demolish, replace or materially alter the Building, or any part thereof, or make any addition thereto or construct any additional Building on the Land, whether voluntary or in connection with a repair or Restoration required by this Lease, unless Tenant shall have received the prior written approval of Landlord which shall not be unreasonably withheld or delayed.

#### Section 11.03

Where the estimated cost of any such action is \$10,000 or less, Tenant shall not demolish, replace or materially alter the Building, or any part thereof, or make any addition thereto or construct any additional Building on the Land, whether voluntarily or in connection with a repair or Restoration required by this Lease without the prior written consent of Landlord, unless the cost of such action was contained in the annual projection of expenses, expenditures, maintenance and operating costs which Tenant has provided to Landlord and which Landlord has approved pursuant to Section 3.09 of this Lease.

#### Section 11.04

All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. The estimates of cost made by such architect shall be binding upon both parties for the purposes of Article 11 hereof.

#### Section 11.05

(a) If after receipt of the two requests described below, the Landlord has failed to respond to such request by Tenant for any approval required by this Article 11, Tenant's obligation to obtain such an approval shall be deemed waived by the Landlord and Tenant may proceed as if such an approval had been granted. This Section shall be applicable only if Tenant makes two written requests for Landlord's approval each of which contain a notice to the Landlord and to Director stating that the failure of Landlord to reply to request would be deemed a waiver of Tenant's obligation to obtain such an approval, provided that: (a) the first notice gives Landlord a thirty (30) day period in which to respond from receipt of said notice, and (b) if Landlord fails to respond within such thirty (30) day period, or fails in writing to reasonably extend that period, Tenant thereafter gives Landlord a second notice to which Landlord has ten (10) days to respond, from receipt thereof, and Landlord fails to so respond.

(b) Landlord may reasonably extend the thirty day approval period provided in this Section by notifying the Tenant of such an extension in writing prior to the expiration of the thirty day approval period.

## ARTICLE 12

### INSURANCE

#### Section 12.01

(a) Tenant at its sole cost and expense shall, during the entire term of this Lease:

- (i) keep the Premises insured against loss or damage by fire, windstorm, tornado and hail and all other hazards covered by the usual extended coverage and "all risk" endorsements (including, without limitation, and specifically, damage by water), of whatsoever kind and in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers under provisions of applicable policies of insurance, but in any event in an amount not less than one hundred percent (100%) of the actual replacement value thereof, (including the cost of debris removal but excluding foundations and excavations), such replacement value to be determined from time to time, but not less frequently than once in any 12 consecutive calendar months, by one of the insurers or, at the option of Landlord, by an appraiser, architect or contractor chosen and paid for by Tenant, subject to approval by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord may require Tenant to furnish additional insurance of the nature specified in this Section 12.01(a)(i) at any time that Landlord reasonably deems such insurance to be inadequate.
- (ii) provide and keep in force insurance against liability for bodily injury and death and property damage and boiler insurance (should boilers be installed), it being agreed that all such insurance shall be in such amounts as may from time to time be reasonably

required by Landlord, that such liability insurance shall be comprehensive general public liability insurance containing the so-called "occurrence clause", that it shall include specifically the Premises and all parking areas, streets, alleys, pedestrian walkways and sidewalks adjoining or appurtenant to the Premises, and that:

the insurance against liability for injury and death shall be not less than \$5,000,000 for any occurrence, and for property damage shall be not less than \$1,000,000 for any occurrence, and

the boiler insurance (should boilers be installed) shall be in an amount not less than \$1,000,000;

- (iii) provide and keep, or require to be provided and kept, in force worker's compensation and New York State temporary disability benefits insurance covering all persons employed at the Premises;
- (iv) provide and keep in force rent insurance with "all risk" coverage in an amount equal to one year's estimated current Rental, and which shall not be less than the actual rental for the prior year.
- (v) if a sprinkler system shall be located in any portion of the Premises, provide and keep in force sprinkler leakage insurance in amounts approved by Landlord, which approval shall not be unreasonably withheld or delayed;
- (vi) provide and keep in force such other insurance in such amounts as may from time to time be required by Landlord against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated.

(b) All insurance provided by Tenant, as required by this Section 12.01, shall be carried in favor of Landlord and Tenant, as their respective interests may appear.

#### Section 12.02

(a) The loss under all policies required by any provision of this Lease insuring against damage to the Premises by fire or other casualty shall be payable to Depositary. Rent insurance required by any provision of this Lease shall be carried in favor of Landlord and Tenant, as their respective interests appear, but the proceeds thereof shall be paid to Depositary and shall be applied to the Rental payable by Tenant under this Lease until completion of Restoration of the Premises by Tenant and the balance, if any,

shall be paid to Tenant. All insurance required by any provision of this Lease shall be in such form and shall be issued by such responsible companies licensed and authorized to do business in the State of New York as are reasonably acceptable to Landlord. All policies referred to in this Lease shall be procured, or caused to be procured, by Tenant at no expense to Landlord and for periods of not less than one year. The originals or certified copies of such policies shall be delivered to Landlord immediately upon receipt from the insurance company or companies. New or renewal policies replacing any policies expiring during the Initial Term or any renewal thereof shall be delivered to Landlord on the Commencement Date and at least 30 days before the date of expiration of said policies, together with proof satisfactory to Landlord that the full premiums have been paid. Premiums on policies shall not be financed in any manner whereby the lender, on default or otherwise, shall have the right or privilege of surrendering or cancelling the policies, provided, however, that premiums may be paid in annual installments.

(b) Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance moneys.

(c) Tenant shall not carry separate insurance (other than personal injury liability insurance) concurrent in form or contributing in the event of loss with that required by this Lease and to be furnished by Tenant, unless Landlord is included therein as insured with loss payable as provided in this Lease. Tenant shall immediately notify Landlord of the carrying of any such separate insurance and shall cause the same to be delivered as required in this Lease.

(d) All casualty insurance policies as required by this Lease shall provide that all adjustments for claims with the insurers in excess of \$100,000 shall be made with Landlord and Tenant. Any adjustments for claims with the insurers involving sums of less than \$100,000 shall be made with Tenant.

(e) Tenant shall not violate or permit to be violated any of the conditions or provisions of any such policy, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies so that at all times companies of good standing satisfactory to Landlord shall be willing to write and/or continue each insurance.

(f) Each policy of insurance required to be obtained by Tenant as herein provided shall contain a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount or any loss sustained and an agreement by the insurer that such policy shall not be cancelled or modified without at least 20 days' prior written notice to Landlord.

Section 12.03

(a) Prior to beginning of any work in connection with a Capital Improvement, including excavation, Tenant shall provide, or cause to be provided, and thereafter shall keep, or cause to be kept, in full force and effect, until such work has been completed, the following at no cost to Landlord:

contractor's comprehensive general liability insurance in an amount not less than \$3,000,000 for each occurrence involving injury to or death of one person, not less than \$5,000,000 for each occurrence involving injury to or death of more than one person, and not less than \$500,000 for each occurrence involving property damage, up to an aggregate of \$1,000,000, such insurance 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 Agreement), and automobile liability (owned and non-owned) 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;

workers' compensation and disability benefits insurance covering all persons employed in connection with the construction of the Building;

- (iii) owner's protective insurance written under a comprehensive general liability policy form (separate from the contractor's comprehensive general liability policy required by subparagraph (i) of this Section 12.03(a)) naming Landlord and Tenant, as their respective interests may appear, in an amount not less than \$3,000,000 for each occurrence involving injury to or death of one person, not less than \$5,000,000 for each occurrence involving injury to or death of more than one person, and not less than \$500,000 for each occurrence involving property damage up to an aggregate of \$1,000,000;
- (iv) builder's risk insurance (fire, extended coverage, vandalism and malicious mischief) written on a completed value (non-reporting) basis with limits as provided in Section 12.03(a)(i) hereof, naming any general contractor engaged by Tenant, and also naming Landlord and Tenant, as their respective interests may appear. In addition, such insurance (x) shall contain a waiver of subrogation against subcontractors and an endorsement stating that "permission is granted to complete and occupy," and (y) if any offsite storage location is used, shall cover, for the full insurable value, all materials and equipment on or about any such offsite storage location intended for use with respect to the Premises.

No work in connection with any Capital Improvement shall be commenced until Tenant shall have delivered to Landlord the original policies or certified copies thereof, as required by this Section, which policies shall also conform to the provisions of Sections 12.01(b) and 12.02 hereof.

The insurance coverage required by this Section is in addition to any other insurance coverage required by this Article and shall not in any way limit or lessen Tenant's obligation to procure and maintain any other insurance coverage required by this Article.

Section 12.04 Landlord, by written notice, may at any time after the date upon which a Default shall occur but prior to the curing of such a Default by Tenant require Tenant to deposit each month with Landlord, one-twelfth (1/12th) of the annual premiums for insurance required to be carried by Tenant hereunder

Section 12.05 The insurance required by this Lease may, at the option of Tenant be effected by blanket and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by such Tenant, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certified copies or duplicate original of such policies in place of the originals, with schedules thereto

attached showing the amount of insurance afforded by such policies applicable to the Premises.

Section 12.06 (a) Except as specified in Section 12.06(b) hereof, all insurance shall provide in its policy, among other provisions, that

- (i) No act or omission of Tenant will invalidate the policy, as to Landlord, and no act or omission of Landlord will invalidate the policy as to the Tenant;  
the insurance company will defend Landlord under any and all circumstances;  
the insurance company will not have the right to refuse to defend on the grounds of negligence, negligence per se contributory negligence or non-delegable duty; and  
the presence of engineers, inspectors or other employees of Landlord on the Premises shall not invalidate this policy of insurance.

(b) Nothing herein shall require Tenant to obtain insurance which provides in its policy that the insurance company will defend Landlord in the event of Landlord's fraud.

Section 12.07

- (a) Tenant shall cause each policy of insurance and certified copies thereof to name Landlord as co-insured
- (b) Tenant shall cause each policy of insurance to provide that notice of accident or claim to the insurance company by either Landlord or Tenant shall be deemed notice by both.

## ARTICLE 13

### DAMAGE OR DESTRUCTION; USE OF FIRE INSURANCE PROCEEDS

#### Section 13.01 Damage or Destruction

If all or any part of any of the Building shall be damaged or destroyed in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord immediate written notice thereof, and Tenant, at its sole cost and expense, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient to pay for the cost of such repairs, alterations, restorations, replacements and rebuilding (collectively "Restoration"), promptly shall repair, alter, restore, replace and rebuild (collectively "Restore") the same, at least to the extent of the value and as nearly as possible to the character of the Building as it was immediately prior to such occurrence, and Landlord, in no event, shall be called upon to restore the Building or any portion thereof or to pay any of the costs or expenses thereof. If Tenant shall fail or neglect to Restore with reasonable diligence (including reasonable time to settle and collect insurance proceeds for the damage or destruction) the Building or the portion of any thereof so damaged or destroyed, or having so commenced such Restoration shall fail to complete the same with reasonable diligence in accordance with the terms of this Lease or if, prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated for any reason, Landlord may complete the same at Tenant's expense. All such Restoration work shall be done in accordance with the provisions of this Lease.

Section 13.02 Except as provided in Section 13.06 hereof, all insurance proceeds shall be paid directly over to Depositary. Subject to the provisions of Section 13.03 hereof, Depositary shall pay over to Tenant from time to time, upon the following terms, any moneys which may be received by Depositary from insurance provided by Tenant other than rent insurance but in no event to any extent or in any sum exceeding the amount actually collected by Depositary upon the loss; provided, however, that Depositary before paying such moneys over to Tenant shall be entitled to reimburse itself and Landlord therefrom to the extent, if any, of the necessary and proper expenses paid or incurred by Depositary and Landlord in the collection of such moneys. Depositary shall pay to Tenant, the aforesaid insurance proceeds, for the purpose of Restoration to be made by Tenant. Prior to the making of any Restoration, Tenant shall furnish Landlord with an estimate of the cost of such Restoration, prepared by a licensed architect, approved by Landlord, which approval shall not be unreasonably withheld, and such insurance moneys shall be paid to Tenant from time to time thereafter in installments as the Restoration progresses, upon application to be submitted by Tenant to Depositary and Landlord showing the cost of labor and material incorporated in the Restoration, or incorporated therein since the last previous application, and paid for by Tenant or to be paid for by Tenant with the proceeds of such an advance of funds. If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien is created or permitted to be created by Tenant and is filed against Landlord, or any asset of or fund appropriate to any of them, Tenant shall not be entitled to receive any further installment until such lien is satisfied or

otherwise discharged. The amount of any installment to be paid to Tenant shall be such proportion of the total insurance moneys and deposits pursuant to Section 13.05 received by Depositary as the cost of labor and materials theretofore incorporated by Tenant in the Restoration bears to the total estimated cost of the Restoration by Tenant, less (a) all payments theretofore made to Tenant out of said insurance proceeds and deposits, and (b) 10% of the amount so determined. Upon completion of and payment for the Restoration by Tenant, and approval by the Landlord (which approval shall not be unreasonably withheld or delayed), the balance of any and all insurance proceeds held by Depositary shall be paid over to Tenant. Any such payment amount which is in excess of the amount required to fully reimburse the Tenant for the expenses incurred by the Tenant in the performance of the Restoration shall be deemed a Gross Rental attributable to the Premises. If the insurance proceeds are insufficient for the purpose of paying for the Restoration, Tenant shall nevertheless be required to make the Restoration and pay any additional sums required for the Restoration. Notwithstanding the foregoing, if Landlord makes the Restoration at Tenant's expense, as provided in Section 13.01 hereof, then Depositary shall pay over to Landlord, upon written request, all moneys which may be received by Depositary from insurance provided by Tenant, and after payment thereof, any balance shall be paid to Tenant.

Section 13.03 The following shall be conditions precedent to each payment made to Tenant as provided in Section 13.02 above:

(a) there shall be submitted to Depository and Landlord the certificate of the aforesaid architect stating (i) that the sum then requested to be withdrawn either has been paid by Tenant and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished certain 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 said Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate; (ii) that no part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of insurance money or has been made out of the proceeds of insurance received by Tenant; and (iii) that the sum then requested does not exceed the value of the services and materials described in the certificate;

(b) there shall be furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien created or permitted to be created by Tenant affecting Landlord, or the assets of or funds appropriated to any of them, which has not been discharged of record, except such as will be discharged upon payment of the amount then requested to be withdrawn; and

(c) at the time of making such payment, Tenant shall not be in Default in the payment of Rental and there is no existing and unremedied Event of Default on the part of Tenant under Article 25 hereof.

Section 13.04 If any loss, damage or destruction occurs, the cost of Restoration of which exceeds \$100,000 in the aggregate, Tenant agrees to furnish to Landlord at least 10 days before the commencement of any work necessary to Restore the Premises, or any part thereof, the following:

(a) complete plans and specifications for the Restoration, prepared by an architect whose qualifications shall meet with the reasonable satisfaction of Landlord and which plans and specifications shall meet with the reasonable approval of Landlord, together with the approval, and any required permits issued by any governmental board, bureau or body then exercising jurisdiction with regard to such work, plans and specifications, which plans and specifications shall be and become the sole and absolute property of Landlord in the event that for any reason this Lease shall be terminated;

(b) a stipulated sum contract in form assignable to Landlord made with a reputable and responsible contractor, providing for (i) the completion of all work, labor and materials necessary to Restore the Building in accordance with said plans and specifications, and (ii) payment and performance bonds by sureties reasonably satisfactory to Landlord or other collateral reasonably satisfactory to Landlord;

(c) Said bond(s);

(d) an assignment to Landlord of the contract so furnished and the bonds provided thereunder, duly executed and acknowledged by Tenant, by its terms to be effective upon any termination of this Lease or upon Landlord's reentry upon the Premises following an Event of Default prior to the complete performance of such contract, such assignment also to include the benefit of all payments made on account of said contract including payments made prior to the effective date of such assignment.

Section 13.05 If the estimated cost of any Restoration required by the terms of this Article 13 exceeds the net insurance proceeds, then, prior to the commencement of any Restoration, Tenant shall deposit with Depository a bond, cash or other security satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 13.02 hereof, as security for the completion of the work, free of public improvement, vendor's, mechanic's, laborer's or materialmen's statutory or other similar liens.

Section 13.06 Notwithstanding the terms of this Article 13, if the net insurance proceeds equal less than \$50,000, the Tenant may receive such insurance proceeds directly, to be held in trust, to pay for the cost of the Restoration. Tenant shall make monthly reports to Landlord of any disbursements made from such insurance proceeds.

Section 13.07 This Lease shall not terminate or be forfeited or be affected in any manner, and there shall be no reduction or abatement of the Rental payable hereunder, by reason of damage to or total, sub-

stantial or partial destruction of the Building or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including the payment of Rental payable by Tenant hereunder, shall continue as though the Building had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

ARTICLE 14

ASSIGNMENT, SUBLETTING, MORTGAGES

Section 14.01

(a) Except with the prior written consent of Landlord in each case, neither this Lease nor the interest of Tenant in this Lease shall be sold, assigned or otherwise transferred, whether by operation of law or otherwise, nor shall any of the issued or outstanding capital stock of any corporation which directly or indirectly is Tenant under this Lease or which is a general partner of any partnership that is Tenant under this Lease be sold, assigned or transferred, nor shall additional stock in any such corporation be issued, so as to result in a change of the controlling stock ownership of such corporation as held by the shareholders thereof on the date when such corporation became Tenant under this Lease pursuant to the terms hereof, nor shall any general partners's interest in a partnership which is Tenant under this Lease be sold, assigned or transferred, nor shall Tenant sublet any part of the Premises, nor enter into any occupancy, license or concession agreement with respect to any part of the Premises, without (x) the prior written consent of Landlord in each case, and (y) the delivery to Landlord of the executed documents described in clauses (i), (ii) and (iii) of subparagraph (b) hereof. An assignment of this Lease in accordance with the provisions hereof shall not relieve or release the assignor from any obligations of Tenant hereunder and the assignor shall remain liable for the performance of all obligations of Tenant hereunder for the remainder of the Initial Term, or any renewal thereof. Landlord's consent with respect to Sublease, occupancy, license and concession agreements shall not be unreasonably withheld or delayed.

(b) Subject to the prior written consent of Landlord as set forth in subparagraph (a) of this Section, this Lease and the interest of Tenant in this Lease may be sold or assigned to, and the Premises may be sublet to, and the Tenant may enter into an occupancy, license or concession agreement with any Person authorized under the law of the State of New York to own and convey real property, provided that there shall have been delivered to Landlord (i) an executed counterpart of the instrument(s) of assignment of this Lease or of the Sublease, in recordable form, containing inter alia, the name, address and telephone number of the assignee or Subtenant, (ii) an executed instrument of assumption of Tenant's obligations under this Lease by said assignee, in recordable form, effective as of the date of the assignment, and (iii) an affidavit of the assignee or Subtenant or the principal officer or general partner thereof, setting forth the names and addresses of all persons having interests in the assignee or Subtenant and of all directors and officers of the assignee or Subtenant and the financial statements of Subtenant.

Section 14.02 No assignment of this Lease or the issuance of any Sublease for any part of the Premises shall have any validity except upon compliance with the provisions of this Article 14.

Section 14.03 Any consent by Landlord under Section 14.01(a) above shall apply only to the specific transaction thereby authorized and shall not relieve Tenant from the requirement of obtaining the prior written consent of Landlord to any further sale or assignment of this Lease or transfer of stock or subletting of the Premises.

Section 14.04 Tenant shall use its best efforts to cause any subtenants, operators, licensees, concessionaires or other occupants of the Building (collectively, "Subtenants") to comply with all their obligations under subleases, occupancy, license and concession agreements (collectively "Subleases") and shall diligently enforce all of the rights of the landlord or owner of the Premises in accordance with the terms thereof.

Section 14.05 The fact that a violation or breach of any of the terms, provisions or conditions of this Lease results from or is caused by an act or omission by any of the Subtenants shall not relieve Tenant of Tenant's obligation to cure the same. Tenant shall take all necessary steps to prevent any such violation or breach.

Section 14.06 Landlord, after Default by Tenant, may collect rent and all other sums due under Subleases, and apply the net amount collected to the Rental, but no such collection shall be, or be deemed to be, a

waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any Subtenants as Tenant here under, or a release of Tenant from performance by Tenant of its obligation under this Lease.

Section 14.07 To secure the prompt and full payment by Tenant of the Rental and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth, all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Subleases, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord in the exercise of said right, may use all legal force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however that such assignment shall become operative and effective only if (a) an Event of Default shall occur, or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof, or (c) there occurs repossession under a dispossess warrant or other re-entry or repossession by Landlord under the provisions hereof, and then only as to such of the Subleases that

Landlord may elect to take over without relieving or releasing Tenant of any of the provisions of this Lease.

Section 14.08 Tenant covenants and agrees that each Sublease affecting the Premises shall provide that (a) it is subject to this Lease, and (b) at Landlord's option, on the termination of this Lease pursuant to Article 25 hereof, the Subtenant will attorn to, or enter into a direct Sublease on identical terms with, Landlord.

Section 14.09 Landlord covenants and agrees, for the benefit of any Subtenant, that Landlord will recognize the Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to any of the provisions of Article 25 hereof; provided, however, that at the time of the termination of this Lease (i) no default exists under the Subtenant's Sublease which at such time would then permit the landlord thereunder to terminate the same or to exercise any dispossession remedy provided for therein, and (ii) the Subtenant shall deliver to Landlord an instrument confirming the agreement of such 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 through or under Landlord shall be:

(1) liable for any prior act or omission of any prior landlord (including, without limitation, the then defaulting landlord), or

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

(3) bound by any payment of rent which the Subtenant might have paid for more than the current month to any prior landlord (including, without limitation, the then defaulting landlord), or

(4) bound by any covenant not contained in such Sublease, including a covenant to undertake or complete any construction of the Premises or any portion thereof demised by said Sublease, or bound by any sublease not approved by Landlord if Landlord, at its options, decides not to be so bound.

(5) bound by any obligation to make any payment to the Subtenant, or

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

#### Section 14.10

Tenant shall not mortgage or encumber this Lease without the prior written consent of the Landlord. In connection with Tenant's procurement of such consent, Tenant shall provide Landlord with a Photostatic copy of the original of each instrument creating and effecting such mortgage or encumbrance, certified by Tenant to be a true copy of such instrument, and written notice containing the name and post office address of the mortgagee.

Tenant covenants and agrees that no Sublease entered into pursuant to this Article shall be mortgaged or encumbered other than in compliance with the conditions of Section 14.11 hereof, each of which shall be an obligation of Tenant.

#### Section 14.11

No mortgage or any extension thereof made by any Subtenant shall extend to or affect the estate and interest of Landlord in and to the Premises or any part thereof. No mortgage (the "Mortgage") of any subtenant's Sublease shall be valid or of any force or effect unless and until (i) Landlord shall have consented to the Mortgage in writing, and (ii) a photostatic copy of the original of each instrument creating and effecting such Mortgage, certified by Subtenant to be a true copy of such instrument, and written notice containing the name and post office address of the Mortgagee, shall have been delivered to Landlord.

Subtenant may Mortgage its subleasehold interest for the purpose of financing the cost of alterations or improvements to the Premises, purchasing equipment to be utilized at the Premises, and/or moving expenses incurred as a result of relocating to the Premises.

Subtenant may not assign or further Sublease its subleasehold interest without the prior written consent of Landlord except that no consent shall be required for an assignment or Sublease to a related or affiliated company or in connection with a merger, consolidation or sale of substantially all of Subtenant's assets. Landlord's consent with respect to the Sublease or assignment of Subtenant's leasehold interest shall not be unreasonably withheld.

#### Section 14.12

Proceeds received by Tenant from an assignment of Tenant's interest in this lease shall be considered a Gross Rental derived from the Premises for the purpose of calculating Basic Rent (or Renewal Rent).

ARTICLE 15  
CONDEMNATION

Section 15.01

(a) If at any time during the Initial Term (or any renewal thereof), the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant, and those authorized to exercise such right, this Lease shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be apportioned and paid to Landlord as of the date of such taking.

(b) The term "substantially all of the Premises" shall be deemed to mean (i) such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, 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 or building regulations then existing or prevailing, readily accommodate a new building of a nature similar to the Building existing at the date of such taking, or (ii) a taking of the entire Building. If there be any dispute as to whether or not "substantially all of the Premises" has been taken, such dispute shall be resolved by arbitration in accordance with the provisions of Article 35 hereof.

(c) If the whole or substantially all of the Premises shall be taken or condemned as provided in this Article, any award paid there under shall be paid solely to the Landlord and the leasehold interest of the Tenant and any rights or privileges accorded the Tenant by virtue of this Lease shall be deemed to have no value. No compensation or claim thereof shall or may be asserted by Tenant or Subtenants except that Tenant shall be entitled to receive compensation for the taking of Tenant's leasehold improvements in an amount equal to one-half (1/2) of the value of the fixtures, machinery and equipment purchased and installed by Tenant; and Subtenants shall be entitled to receive compensation for the taking of Subtenant's leasehold improvements in an amount equal to the full value of the fixtures, machinery and equipment purchased and installed by Subtenant.

(d) Each of the parties agree to execute any and all documents that may be required in order to facilitate collection by them of such awards.

Section 15.02 For the purpose of this Article 15, the Premises or a part thereof, as the case may be, shall be deemed to have been taken or condemned on the date on which actual possession of the Premises or a

part thereof, as the case may be, is acquired by any lawful power or authority or the date on which title vests therein, whichever is earlier.

Section 15.03

(a) If less than substantially all of the Premises is taken or condemned, then this Lease shall continue in full force and effect without abatement of the Rental or diminution of any of Tenant's obligations hereunder. In the event of any such partial taking or condemnation, the leasehold interest of the Tenant and any rights or privileges accorded to the Tenant by virtue of this Lease shall be deemed to have no value. Subleases for all or any portion of the Premises may contain provisions permitting the subtenant to cancel its sublease in the event that a portion of the parking space is taken or condemned or access to the Premises for loading or unloading is materially affected by such exercise of the right of condemnation or eminent domain.

(b) In the event of any taking or condemnation of less than substantially all of the Premises, by any lawful power or authority exercised by any entity other than the Landlord, the entire award shall be paid to Depositary. Tenant, at its sole cost and expense, whether or not the award shall be sufficient for the purpose, shall diligently proceed to Restore any remaining part of the Building not so taken so that the same shall be a complete, rentable, self-contained architectural unit in good condition and repair. Subject to the provisions and limitations in this Article 15, Depositary shall make available to Tenant as much of that portion of the award actually received and held by Depositary, if any, less all necessary and proper expenses paid or incurred by Depositary and Landlord in the condemnation proceedings, as

is necessary to pay the cost of Restoration of the part of the Building remaining. Such Restoration shall be done in accordance with and subject to the provisions of Article 11 and 13 hereof. Payments to Tenant as aforesaid shall be disbursed in the manner set forth in Article 13 hereof. Any balance of the award thereafter remaining shall be paid to Landlord without deduction therefrom for any estate vested in Tenant by this Lease. If the portion of the award made available by Depository, as aforesaid, is insufficient for the purpose of paying for the Restoration, Tenant shall nevertheless be required to make the Restoration and pay any additional sums required for the Restoration.

(c) In the event of any taking or condemnation of less than substantially all of the Premises by any lawful power or authority exercised by the Landlord, any award thereunder shall be paid solely to the Landlord and no compensation or claim thereof shall or may be asserted by Tenant or Subtenants except that Tenant shall be entitled to receive compensation for the taking of tenant's leasehold improvements in an amount equal to one-half (1/2) of the value of the fixtures, machinery and equipment which were so taken; and subtenants shall be entitled to receive compensation for the taking of Subtenant's leasehold improvements in an amount equal to the full value of the fixtures, machinery and equipment which were so taken.

Section 15.04 If the estimated cost of any Restoration required by the terms of Section 15.03(b) exceeds the net condemnation award, then prior to the commencement of any Restoration, Tenant shall deposit with Depository a bond, cash or other security reasonably satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in

accordance with the provisions of Section 15.03(b) hereof, as security for the completion of the work, free of public improvement, vendor's mechanic's, laborer's or materialmen's statutory or other similar liens.

Section 15.05 If the temporary use of the whole or any part of the Premises shall be taken at any time during the Initial Term (or any renewal thereof) 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 between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Initial Term (or any renewal thereof) shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental due hereunder (or the Renewal Rental as the case may be) without reduction or abatement, and Tenant shall be entitled to receive any award or payments for such use provided, however, that:

(a) if the taking is for a period not extending beyond the Initial Term (or any renewal thereof), and if such award or payment is made less frequently than in monthly installments, the same shall be paid to and held by Depositary as a fund which Depositary shall apply from time to time to the Rental due hereunder (or the the Renewal Rental as the case may be); except that if such taking results in changes or alterations in any of the Building which would necessitate an expenditure to Restore such Building to its former condition, then a portion of such award or payment considered by Landlord as appropriate to cover the expenses of the Restoration shall be retained by Depositary, without application as aforesaid, and applied and paid over to Tenant towards the Restoration of such Building to its former condition substantially in the same manner and subject to the same conditions as those provided in Section 15.03 hereof.

(b) if the taking is for a period extending beyond the Initial Term (or any renewal thereof), such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date; Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to Depositary and applied in accordance with the provisions of subparagraph (a) of this Section 15.05 provided, however, that the amount of any award or payment allowed or retained for Restoration of the Building shall remain the property of Landlord if this Lease shall expire prior to the Restoration of the Building to its former condition.

(c) The amount of any such award or payment paid to tenant which is attributable to such temporary use of the premises in any lease year, except for such amounts as are used to Restore the Building pursuant to Section 15.05(a) hereof, shall be considered a Gross Rental received by the Tenant in such Lease year.

Section 15.06 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, this Lease shall continue in full force and effect without reduction or abatement of Rental and the award shall be paid to Landlord.

ARTICLE 16

COMPLIANCE WITH LAWS

Section 16.01 Tenant, at its sole cost and expense, promptly shall comply with any and all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders (hereinafter in this Article 16 collectively called "Requirements") irrespective of the nature of the work required to be done, extraordinary as well as ordinary, of federal, state, City, or other governmental, public or quasi-public authorities now existing or hereafter created, and of any and all of their departments and bureaus, and of the New York Board of Fire Underwriters or other body exercising similar functions, affecting the Premises, or any street, avenue and/or sidewalk comprising a part of or in front thereof and/or any vault in or under the same, or requiring the removal of any encroachment, or affecting the maintenance, use or occupation of the Premises, whether or not the same involves or requires any structural changes or additions in or to the Premises, and irrespective of whether or not such changes or additions be required on account of any particular use to which the Premises, or any part thereof, may be put; Tenant shall also comply with any and all provisions and requirements of any casualty, liability or other insurance policies required to be carried by Tenant under the provisions of this Lease.

Section 16.02 Tenant shall have the right to contest the validity of any Requirements or the application thereof at Tenant's sole cost and expense. During such contest, compliance with any such contested Requirements may be deferred by Tenant upon condition that, before instituting any such proceedings, Tenant shall furnish to Landlord a surety company bond, a cash deposit or other security reasonably satisfactory to Landlord, securing compliance with the contested Requirements and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be begun as soon as is reasonably possible after the issuance of any such contested matters and shall be prosecuted to final adjudication with reasonable dispatch. Notwithstanding the furnishing of any bond, deposit or security, Tenant promptly shall comply with any such Requirements and compliance shall not be deferred if at any time the Premises, or any part thereof, shall be in danger of being forfeited or lost, or if Landlord shall be in danger of being subjected to criminal and/or civil liability or penalty by reason of noncompliance therewith. Landlord agrees that it shall cooperate with Tenant in any such contest instituted by the federal or state government to such extent as Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant.

ARTICLE 17

EQUIPMENT

Section 17.01 Tenant shall not have the right, power or authority to, and will not remove, any Equipment from the Premises except for repairs, cleaning, or other servicing, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, and unless the same is promptly replaced by Equipment of like kind and quality.

Section 17.02 Tenant shall keep all Equipment in good working order and repair and shall replace the same when necessary with items of similar utility and value.

ARTICLE 18

DISCHARGE OF LIENS; BONDS

Section 18.01 Except for Mortgages, created in accordance with Article 14 hereof, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises, or any part thereof, the income therefrom, or any asset of or fund appropriated to Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, rights and interest of Landlord in the Premises or any part thereof might be impaired.

Section 18.02 If any mechanic's, laborer's or materialman's lien at any time shall be filed against the Premises or any part thereof or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any asset of or fund appropriated to Landlord, then Tenant, within 30 days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, and if such lien shall continue for an additional 10 days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event

Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord with all costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Default Interest Rate from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Notwithstanding the foregoing provisions of this Section 18.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties

Section 18.03 Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, 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 against the Premises or any part thereof or any asset of or fund appropriated to Landlord.

Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant or any Subtenant or for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, or any asset of or fund appropriated to Landlord.

Section 18.04 Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of or funds appropriated to Landlord, or of any interest of Landlord in the Premises.

ARTICLE 19

NO REPRESENTATIONS BY LANDLORD

Section 19.01 Tenant is fully familiar with the Premises, the Land and the physical condition thereof, and accepts the Premises in its existing condition and state of repair, and Tenant agrees that, except as expressly provided in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Premises, the status of title thereof, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, or the use that may be made of the Premises, that Tenant has relied on no such representations, statements or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises.

Section 19.02 Tenant agrees that no other representations, statements or warranties, express or implied, have been made by or on behalf of Landlord, in respect of the transaction pursuant to which Landlord has leased the Premises to Tenant, or the laws applicable to this transaction, Landlord or the Premises, that Tenant has relied on no such representations, statements or warranties and that Landlord shall in no event whatsoever be liable by reason of any such claimed misrepresentations or breach of warranties.

ARTICLE 20

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE

Section 20.01 Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Equipment, stairways or hallways which may arise from any other cause whatsoever unless caused by the negligence of Landlord, its agents or employees

Section 20.02 Landlord shall not be liable for any failure of water supply, gas or electric current, nor for any injury or damage to any property or any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or 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 leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, unless any of the foregoing results from the negligence of Landlord, its agents or employees.

## ARTICLE 21

### INDEMNIFICATION OF LANDLORD

Section 21.01 Tenant shall indemnify and save harmless Landlord (as owner of the Premises) against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including without limitation architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the Term unless caused by the negligence of Landlord, its agents or employees:

(a) Any work or thing done in, on or about the Premises or any part thereof excluding the completion of work, if any, by the New York State Urban Development Corporation;

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

(c) any negligence on the part of Tenant or any Subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(d) any accident, injury (including death) 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 or space adjacent thereto;

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

(f) any lien or claim which may be alleged to have arisen against or on the Premises, or any lien or claim created or permitted to be created by Tenant against any asset of or fund appropriated to Landlord under the laws of the State of New York or of any other governmental authority or any liability which may be asserted against Landlord with respect thereto;

(g) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) any tax attributable to the execution, delivery or recording of this Lease; or

(i) any contest permitted pursuant to the provisions of Articles 5 and 16 hereof.

Section 21.02 The obligations of Tenant under this Article 21 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 21.03 If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in Section 21.01 hereof, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend itself or to assist in its defense.

Section 21.04 The provisions of this Article 21 shall survive the Expiration Date and the expiration or prior termination of any renewal term.

ARTICLE 22

RIGHT OF INSPECTION

Section 22.01 Tenant shall permit Landlord and its agents or representatives, upon reasonable advance notice, to enter the Premises at all reasonable times for the purpose of (a) inspecting the same, and (b) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work provided that, except in an emergency, Landlord shall have given Tenant a notice specifying such repairs or work and Tenant shall have failed to make said repairs or to do such work within a reasonable time after the giving of such notice, and (c) showing the Premises within one (1) year prior to the Expiration Date to prospective future lessees. This provision shall in no way impair or affect the ability of legally authorized government officials to inspect or enter the Premises.

Section 22.02 Nothing in this Article or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work; and performance thereof by Landlord 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 at the Premises all necessary materials, tools, supplies and equipment. Landlord shall not be liable for any inconvenience, annoyance, disturbance, loss of business or other damage by Tenant or any Subtenant by reason of making such repairs or performing any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby.

ARTICLE 23

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 23.01 If Tenant at any time shall fail to pay any Imposition in accordance with the provisions hereof; or to take out, pay for, maintain or deliver any of the insurance policies provided for herein, or shall fail to perform any other act on its part to be made or performed, then Landlord may (but shall be under no obligation to):

(a) pay any Imposition required to be paid by Tenant pursuant to the provisions hereof, or

(b) take out, pay for and maintain any of the insurance policies provided for herein, or

(c) after notice to Tenant and continuance of such failure by Tenant for 7 days after the giving of such notice, pay any other sums, costs, expenses, charges, payments or deposits payable by Tenant hereunder, or perform any other act on Tenant's part to be made or performed as in this Lease provided, and may enter upon the Premises for the purpose and take all such action thereon as may be necessary therefor.

Section 23.02 All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Default Interest Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit, shall be paid by Tenant to Landlord on demand. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article shall not be nor be deemed to be a waiver or release of the breach or default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings and/or take such other action

as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited, in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reasons of damage to or destruction of the Premises.

ARTICLE 24

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 24.01 Subject to the provisions of law and applicable provisions of this Lease, Tenant shall use the Premises for any lawful purpose.

Section 24.02 Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful purpose, or for any business, use or purpose deemed by Landlord to be disreputable or extra-hazardous, or in such manner as to constitute a nuisance of any kind (public or private) or that Landlord deems offensive by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of the certificate of occupancy issued for the Building or of any present or future governmental laws, ordinances, requirements, orders, directions, rules or obligations, or which may make void or voidable any insurance then in force on the Premises. Tenant shall take immediately upon the discovery of any such unlawful, illegal, disreputable or extra-hazardous use all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any Subtenants utilizing the Premises for such unlawful, illegal, disreputable or extra-hazardous use.

ARTICLE 25

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 25.01 Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to pay any installment of Basic Rent, Renewal Rent PILOT, Impositions, or Taxes or any part thereof within fifteen (15) days from when the same shall become due and payable;

(b) if Tenant shall fail to make any other payment of Rental required to be paid by Tenant hereunder for a period of fifteen (15) days after notice thereof from Landlord to Tenant;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of fifteen (15) days after written notice thereof by Landlord 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, as the case may be, within such fifteen (15) day period, in which case no Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such fifteen (15) day period and shall diligently and continuously prosecute the same to completion);

(d) if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(e) if Tenant shall make an assignment for the benefit of creditors;

(f) if Tenant shall file a voluntary petition in bankruptcy or if a petition is filed against Tenant and a final order for relief is entered, or if Tenant shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises or any interest of Tenant therein;

(g) if within sixty (60) days after the commencement of any 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 statute or law, such proceeding shall not have been dismissed, or if, within sixty (60)

days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator 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 have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(h) if Tenant shall abandon the Premises or any portion thereof;

(i) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered without Landlord's approval or without compliance with the provisions of this Lease applicable thereto; or

(j) if a levy under execution or attachment shall be made against Tenant or its property and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days.

Section 25.02 If an Event of Default shall occur, Landlord may elect to declare all Basic Rent or Renewal Rent, as the case may be, and PILOT or Taxes as per Section 4.02 for the remainder of the Initial Term or Taxes for the remainder of the renewal term, as the case may be, due and payable. If Landlord shall make such an election, Basic Rent (or Renewal Rent) and PILOT and/or Taxes shall be due and payable five (5) days after notice by Landlord to Tenant of such election and for the purposes of calculating the amount of accelerated Basic Rent (or Renewal Rent) and PILOT and/or Taxes due hereunder, the amount of each annual obligation of Basic Rent (or Renewal Rent) and PILOT or Taxes shall be equal to the average amount of the Basic Rent (or Renewal Rent) and PILOT or Taxes during the previous three (3) lease years. Landlord also may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 25.03

(a) If an Event of Default (i) described in Sections 25.01(d), (e), (f), (g) or (h) hereof shall occur, or (ii) described in Sections 25.01(c), (i) or (j) shall occur and Landlord, at any time thereafter, at its option, gives written notice to Tenant stating that this Lease and the Initial Term (or any renewal thereof) shall expire and terminate on the date specified in such notice, which date shall be not less than fifteen (15) days after the giving of such notice, and if, on the date specified in such notice, Tenant shall have failed to cure the Default which was the basis for the Event of Default, then this Lease and the Initial Term (or any renewal thereof) and all rights of Tenant under this Lease shall expire and terminate as if the date on which the Event of Default described in clause (i) above occurred or the date specified in the notice given pursuant to clause (ii) above, as the case may be, were the date herein definitely fixed for the Expiration Date or the date of expiration of any renewal term, as the case may be, and Tenant immediately shall quit and surrender the Premises.

(b) If an Event of Default described in Sections 25.01(a) or (b) hereof shall occur, or this Lease shall be terminated as provided in Section 25.03(a) hereof, Landlord, without notice, may 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.

Section 25.04 If this Lease shall be terminated as provided in Section 25.03(a) hereof and/or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 25.03(b) hereof,

(a) Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the date upon which this Lease and the Initial Term (or any renewal thereof) shall have expired and come to an end or to the date of re-entry upon the Premises by Landlord, as the case may be;

(b) Landlord may repair and alter the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing and/or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and attorneys' fees and disbursements, (ii) second, pay to itself the cost and expense sustained in securing any

new tenants and other occupants, including in such costs brokerage commissions, legal expenses and attorneys' fees and disbursements and other expenses of preparing the Premises for reletting and, if Landlord shall maintain and operate the Premises, the cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord; Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, 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;

(c) Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as "Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Initial Term (or any renewal thereof) and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 25.04(b) hereof for any part of such period (after first deducting from the rents collected under any such reletting all of the payments to Landlord described in Section 25.04(b) hereof); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further Deficiencies, as and for liquidated and agreed final damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Initial Term (or any renewal thereof) exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of four percent (4%) per annum less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 25.04(c) hereof for the same period; it being agreed that if before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Initial Term, (or any renewal thereof), the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

Section 25.05 No termination of this Lease pursuant to Section 25.03 (a) hereof, and no taking possession of and/or reletting the Premises, or any part thereof, pursuant to Sections 25.03(b) and 25.04(b) hereof, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 25.06 To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 25. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 25.07 The Rental payable by Tenant hereunder and each and every installment thereof, and all costs, attorneys' fees and disbursements and other expenses which may be incurred by Landlord in enforcing the provisions of this Lease or on account of any delinquency of Tenant in carrying out the provisions of this Lease shall be and they hereby are declared to constitute a valid lien upon the interest of Tenant in this Lease and in the Premises.

Section 25.08 Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or other sums payable by Tenant to Landlord pursuant to this Article 25, may be brought by Landlord from time to time at Landlord's

election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Initial Term (or any renewal thereof) would have expired had there been no Event of Default by Tenant and termination.

Section 25.09 Nothing contained in this Article 25 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by a statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 25.

Section 25.10 No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Initial Term (or any renewal thereof) or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or

thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 25.11 Except as otherwise expressly provided herein or as prohibited by applicable law, 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 to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease are not restricted to their technical legal meaning.

Section 25.12 No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy upon a breach thereof, and no acceptance

of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach 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 breach thereof

Section 25.13 In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

Section 25.14 Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 25.15 Tenant shall pay to Landlord all costs and expenses, including, without limitation, attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant also shall pay to Landlord all costs and expenses, including, without limitation, attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs, expenses, and attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest and costs, shall be paid by Tenant to Landlord on demand.

Section 25.16 If an order for relief is entered in any proceeding which is commenced by or against Tenant under the present or any future federal bankruptcy code, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code or this Lease, including, without limitation, such rights and remedies as may be necessary to protect adequately Landlord's right, title and interest in and to the Premises or any part thereof. Adequate protection of Landlord's right, title and interest in and to the Premises, shall include, without limitation, the following requirements:

(a) that Tenant comply with all of its obligations under this Lease;

(b) that Tenant pay to Landlord, on the first day of each month occurring subsequent to the entry of such order, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;

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

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

(e) that Tenant hire, at its sole cost and expense, such security personnel as may be necessary to insure the adequate protection and security of the Premises.

ARTICLE 26

NOTICES

Section 26.01 Any notice, demand, request, consent, approval or other communication (collectively, "Notice") under this Lease or with respect to this Lease given or made by either party to the other, must be in writing and must be given by personal delivery or by depositing the same in the United States mail, postage prepaid and registered or certified and addressed to the party to be notified with return receipt requested. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this Lease, upon receipt if personally delivered or upon the expiration of five (5) days if it is deposited in the United States mail. Notices shall be addressed as follows:

- (a) If to Landlord or the Deputy Commissioner, to:

Deputy Commissioner of General Services  
Division of Real Property  
New York City Department of  
General Services  
2 Lafayette Street  
New York, New York 10007

- (b) If to the Director or Commissioner to:

Commissioner  
New York City Office for  
Economic Development  
17 John Street  
New York, New York 10038

Copy to:

the Deputy Commissioner, at the address hereinabove set forth.

(c) If to Tenant, to:  
Sobro Development Corporation  
370 East 149th Street  
Bronx, New York, 10455

Copy to:  
Squadron, Ellenoff, Plesent and Lehrer  
551 Fifth Avenue  
New York, N.Y. 10176

or to such other addressees and Persons as Landlord or Tenant from time to time may designate by notice given to the other party in accordance herewith.

Section 26.02 Except as otherwise provided in this Lease, the granting of any consent or approval by Landlord to Tenant to perform any act requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval, shall not be deemed a waiver by Landlord of its right to require such consent or approval for any further similar act by Tenant, and Tenant hereby expressly covenants and warrants, that as to all matters requiring Landlord's consent or approval under the terms of this Lease, Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

ARTICLE 27

TENANT'S OPTION TO RENEW LEASE

Section 27.01

Provided that there shall be no Default under this Lease Tenant shall have the option to renew this Lease for a renewal term of 10 years, to commence on the 30th anniversary of the Commencement Date and to expire on midnight of the day immediately preceding the 40th anniversary of the Commencement Date. Such option shall be exercised as provided in Section 27.03 hereof.

Provided that (i) Tenant has exercised the renewal option set forth in paragraph (a) of this Section 27.01, and (ii) Tenant shall not then be in default of any of its obligations under this Lease, Tenant shall have the further option to renew this Lease for an additional term of 10 years, to commence on the 40th anniversary of the Commencement Date and to expire on midnight of the day immediately preceding the 50th anniversary of the Commencement Date. Such option shall be exercised as provided in Section 27.03 hereof.

Section 27.02 In addition to the Payment of Taxes, pursuant to Section 4.02 hereof, Tenant shall pay to Landlord, for each lease year during each renewal term, an annual rental (the "Renewal Rent") which shall equal fifty percent (50%) of the difference between (i) the amount of the Gross Rentals received by the Tenant during that lease year and (ii) the aggregate amount of the expenses, expenditures, maintenance and operating costs (including the Management Fee, Taxes and payments to the Capital Replacement Fund but excluding Management Costs) incurred by the

Tenant during that lease year, but only to the extent that such costs have been approved by the Landlord pursuant to Section 3.09 hereof

Section 27.03 Tenant shall exercise its right to a renewal term by giving Landlord notice of its election to renew not less than 12 months prior to the commencement date of the renewal term. Upon the giving of such notice, this Lease, subject to the provisions of this Article, shall be deemed to be renewed and the Initial Term thereof extended for the period of the relevant renewal term without the execution of any further instrument.

ARTICLE 28

ANNUAL AUDIT AND OTHER REPORTS AND RECORDS

Section 28.01(a) During the term of this Lease, and any renewals thereof Tenant agrees to provide to Landlord an annual audit by a certified public accounting firm (approved by Landlord), of its books, records, accounts, income, expenses and all other financial data related to its operation, management and administration of the Premises pursuant to the terms and covenants of this Lease or pursuant to the written request of Landlord. A copy of said audit shall be submitted to Landlord not later than first day of the fifth month following each lease year. Landlord's approval of such certified public accounting firm shall not be unreasonably withheld or delayed

Section 28.01(b) During the term of this Lease, and any renewals thereof, the payment of Basic Rent (or Renewal Rent) shall be accompanied by a certificate from a certified public accounting firm (approved by Landlord) which states that such firm has examined the cash receipts and cash disbursement books of Tenant and such other financial data as it deemed necessary or appropriate and to the best of its knowledge and belief the amount being paid as Basic Rent (or Renewal Rent) is correct as calculated by it in accordance with the terms and provisions of this Lease. Landlord's approval of such certified public accounting firm shall not be unreasonably withheld or delayed.

Section 28.02 Tenant shall use such accounting and internal control methods and procedures and keep such additional books and records as may be prescribed by the Landlord. Landlord shall have the right to examine the record keeping procedures of the Tenant prior to the commencement of the term of this Lease, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Tenant. Tenant shall maintain all records, books of account and data for a minimum of six (6) years.

Section 28.03 Tenant shall furnish to the Landlord by the last day of the succeeding month, quarterly statements sworn to and verified by an officer of the Tenant and in such form as may be requested by the Landlord, showing in detail the Gross Rentals collected by or due to the Tenant for each month of the quarterly period.

Section 28.04 Tenant agrees that the Landlord and any duly authorized representative of the Landlord shall have the right, at all reasonable times upon advance notice during business hours, to examine or audit the records, books of accounts and data of the Tenant to verify Gross Rentals as reported by the Tenant. The Tenant agrees to cooperate fully and assist the Landlord or any duly authorized representative of the Landlord in any examination or audit thereof.

Section 28.05 The failure or refusal of the Tenant to furnish any of the audits or reports required to be furnished pursuant to this Article within fifteen (15) days after its due date, the failure or refusal of the Tenant to maintain adequate internal controls or to keep or allow

the inspection of any of the records, books of accounts or data as required by this Article or the existence of an unexplained discrepancy in the amount of Basic Rent (or Renewal Rent) or PILOT required to be due and paid hereunder, as disclosed by the annual audit conducted pursuant to Section 28.01 hereof or other audit conducted by the Landlord, of more than five (5) percent (5%) in any Lease year shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this Lease and a default hereunder, which shall entitle the Landlord, at its option, on five (5) days' written notice, to terminate this Lease. In addition, the failure or refusal of the Tenant to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize the Landlord to make reasonable projections of the amount of Gross Rentals which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors or the Landlord deem appropriate in making such projections. Tenant agrees to pay any assessment based upon such reasonable projections within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this Lease and a default hereunder

#### ARTICLE 29

#### LANDLORD'S SALE OF ITS INTEREST IN THE PREMISES; TENANT'S RIGHT OF FIRST REFUSAL

Section 29.01 Except as provided in Section 29.02 hereof, nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect Landlord's absolute right at any time to convey its interest in the Premises, subject to this Lease, or to assign its interest

in this Lease, or to assign from time to time the whole or any portion of the Rental or other sums and charges at any time paid or payable hereunder by Tenant to Landlord, to a transferee designated by Landlord in a notice to Tenant, and in any such case Tenant shall pay the Rental and the other sums and charges payable by Tenant to Landlord, or the portion thereof so assigned, subject to the terms of this Lease, to Landlord's said designee at the address mentioned in any such notice.

Section 29.02 If Landlord shall have received, whether following Landlord's solicitation or otherwise, a bona fide written offer or bid to purchase Landlord's interest in the Premises, which offer Landlord proposes to accept or if Landlord shall have entered into a written agreement or a signed letter of intent for the sale of Landlord's interest in the Premises, then Landlord shall notify Tenant of the terms and conditions of such offer, agreement or letter thereof. Tenant, by giving notice to Landlord not later than 90 days thereafter, may elect to take the place of the party with whom Landlord had been dealing, and in such case, Tenant promptly shall enter into the same instruments and legal relationship with Landlord as had such other party. If Tenant shall fail to make such election, then Landlord may conclude a sale to such other party on substantially the same terms and conditions. If in the course of concluding such sale the terms and conditions are materially altered from those of which Tenant was given notice, then, prior to the closing of title, Landlord shall give Tenant notice of the altered terms and conditions and Tenant then shall have a further 15 days during which to elect to replace such other party on the basis of the altered terms and conditions.

ARTICLE 30

SUBORDINATION

Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate (a) to any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

ARTICLE 31

EXCAVATIONS AND SHORING

If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant either:

(a) shall afford to the Person causing or authorized to cause such excavation the right to enter upon the Premises in a reasonable manner for the purpose of doing such work as such Person shall consider to be necessary to preserve any of the walls or structures of the Premises from injury or damage and to support the same by proper foundations, or

(b) shall do or cause to be done all such work, at Tenant's expense, as may be necessary to preserve any of the walls or structures of the Premises from injury or damage and to support the same 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 Rental payable by Tenant hereunder.

ARTICLE 32

CERTIFICATES BY LANDLORD AND TENANT

Section 32.01 Tenant agrees at any time and from time to time upon not less than 10 days' prior notice by Landlord to execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, a written statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which the Rental payable by Tenant hereunder has been paid, and stating whether or not to the best knowledge of the signer of such certificate Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge.

Section 32.02 Landlord agrees at any time and from time to time upon not less than 10 days' prior notice by Tenant to execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which the Rental payable by Tenant hereunder has been paid, and stating whether or not to the best knowledge of the signer of such certificate Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge

ARTICLE 33

SURRENDER AT END OF TERM

Section 33.01 Upon the Expiration Date, or any earlier termination of this Lease, or a re-entry by Landlord upon the Premises pursuant to Article 25 hereof, Tenant shall surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by Landlord or subsequent owners of the Premises or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and which Landlord has consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 33.02 On the last day of the Initial Term (or any renewal thereof) or upon any earlier termination of the Lease, or a re-entry by Landlord upon the Premises pursuant to Article 25 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent certificates of occupancy then in effect for the Building, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Building, together with a duly executed assignment thereof to Landlord, and any and all other documents of every kind and nature whatsoever relating to the Premises.

ARTICLE 34

QUIET ENJOYMENT

Landlord covenants that, if and as long as Tenant shall faithfully perform the agreements, terms, covenants and conditions hereof, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Initial Term (and any renewal thereof) hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord.

ARTICLE 35

ARBITRATION AND APPRAISAL

Section 35.01 In cases where this Lease provides for the determination of any matter by arbitration, the same shall be settled and finally determined by arbitration in accordance with the Commercial Rules of the American Arbitration Association, or its successor, and the judgment upon the award rendered therein may be entered in any court having jurisdiction thereof.

Section 35.02 In each instance under this Lease where it shall become necessary to resort to appraisal (or if at the time of any arbitration as in Section 35.01 hereof provided the American Arbitration Association is not in existence and has no successor), such appraisal (or arbitration, as the case may be) shall be conducted as follows: the party desiring such appraisal or arbitration shall give notice to that effect to the other party, specifying therein the name and address of the person designated to act as appraiser or arbitrator on its behalf. Within 30 days after the service of such notice, the other party shall give notice to the first party specifying the name and address of the person designated to act as appraiser or arbitrator on its behalf. If either party fails to notify the other party of the appointment of its appraiser or arbitrator, as aforesaid, within or by the time above specified then the appointment of the second appraiser or arbitrator shall be made in the same manner as hereinafter provided for the appointment of a

third appraiser or arbitrator in a case where the two appraisers or arbitrators appointed hereunder and the parties are unable to agree upon such appointment. The appraisers or arbitrators so chosen shall meet within 10 days after the second appraiser or arbitrator is appointed and if, within 60 days after such first meeting, the said two appraisers or arbitrators shall be unable to agree upon the valuation or a decision as to the question being arbitrated, they shall appoint a third appraiser or arbitrator who shall be a competent and impartial person; and, in the event of their being unable to agree upon such appointment within 15 days after the time aforesaid, such third appraiser or arbitrator shall be selected by the parties if they can agree thereon within a further period of 15 days. If the parties do not so agree, then either party, on behalf of both, may apply to the Presiding Justice of the Supreme Court of the State of New York, County of New York, for the appointment of such third appraiser or arbitrator, and the other party shall not raise any question as to the court's full power and jurisdiction to entertain the application and make the appointment. In the event of the failure, refusal or inability of any appraiser or 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 case of the third appraiser or arbitrator, his successor shall be appointed as hereinbefore provided. Any appraiser selected or appointed pursuant to this Section shall be a member of the American Institute of Real Estate Appraisers (or a successor organization), shall be an appraiser, and shall have been doing business as such in New York City for at least 15 years before the date of his appointment. Any arbitrator acting

under this Section shall be qualified in the field in which the arbitration is involved and shall have been actively engaged in such field in New York City for at least 15 years before the date of his appointment as arbitrator hereunder. All appraisers and arbitrators chosen or appointed pursuant to this Article shall be sworn fairly and impartially to perform their duties as such appraiser or arbitrator. The decision of the appraisers or arbitrators so chosen shall be given within a period of 60 days after the appointment of such third appraiser or arbitrator. The decision in which any two appraisers or arbitrators so appointed and acting hereunder concur shall in all cases be binding and conclusive upon the parties. Each party shall pay the fee and expenses of its respective appraiser or arbitrator, if any, and bear equally the fee and expenses of a third appraiser or arbitrator, if any. In the event of the failure, refusal or inability of any two appraisers so to agree, then either party may apply to a Justice of the Supreme Court of the State of New York, County of New York, for appropriate legal or equitable relief and the other party shall not raise any question as to the court's full power and jurisdiction to entertain the application and grant appropriate relief.

ARTICLE 36

WAIVER OF TRIAL BY JURY

The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease or the Premises or any matters whatsoever arising out of or in any way connected with this Lease.

The provisions of this Lease relating to waiver of a jury trial and the right of re-entry upon revocation shall survive the expiration of this Lease.

ARTICLE 37

INVESTIGATIONS

Upon the refusal of a person, when called before a grand jury, a governmental department, a commission, agency, or any other body which is empowered to compel the attendance of witnesses and to examine them under oath, to testify concerning a transaction, contract, lease, permit or license entered into with the City of New York (City), the State, or any political subdivision thereof, or a public authority or with any public department, agency or official of the State or a political subdivision thereof, upon being advised that neither his or her statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding:

(a) such person, or any firm, partnership, corporation or other entity related to the aforesaid testimony of which he or she was at the time of the testimony a member, partner, director, officer, fiduciary, principal or employee may be disqualified for a period not to exceed five years after such refusal from submitting bids for or entering into or obtaining any contract, lease, permit or license with or from the City or submitting bids for or entering into or obtaining any contract, lease, permit or license which will be paid in whole or in part out of monies under the control of or collected by the City, and

(b) any and all such existing City contracts, leases, permits or licenses that said refusal to testify concerned may be cancelled or terminated by the City or the contracting agency and/or be subject to such other action appropriate under the circumstances thereto, in the discretion of the City for cause after a hearing, without the City

incurring any penalty or damages on account of such cancellation or termination, but any monies owing for goods delivered, work done, rentals, permit or license fees due, prior to the cancellation or termination, shall be paid by the City.

(c) The term license or permit as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(d) Any disqualification, cancellation or termination hereunder shall be made by the City, commissioner or agency head who is or would be a party to the contract, lease, permit or license that is the subject of the aforesaid disqualification, cancellation and/or termination, after a hearing upon not less than two (2) days written notice to the parties involved.

#### ARTICLE 38

#### NO DISCRIMINATION

Section 38.01 Tenant represents and warrants that it will comply with all applicable laws relating to civil rights and that when constructing or altering the Building, it will not refuse to hire or employ, nor bar or discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, color, national origin, sex, handicap, marital status, sexual orientation or affectional preference.

Section 38.02 Tenant further agrees that it will not enter into any Sublease or assignment of this Lease or any other instrument or covenant

or agreement, in each instance, affecting the Premises, containing a restriction based upon age, race, creed, color, national origin, sex, handicap, marital status, sexual orientation, or affectional preference.

ARTICLE 39

MISCELLANEOUS

Section 39.01 The captions and table of contents of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease, nor in any way shall affect this Lease or the construction and provisions hereof

Section 39.02 The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 39.03 Tenant agrees to pay any and all charges of Depositary in connection with any services rendered by Depositary pursuant to the provisions of this Lease

Section 39.04 If more than one party is named as or becomes Tenant hereunder, Landlord may require the signatures of all such parties in connection with any notice to be given or action to be taken by Tenant hereunder. Each party named as Tenant shall be fully liable for all of

Tenant's obligations hereunder. Any notice of Landlord to any party named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant.

Section 39.05 Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Land or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Land.

Section 39.06 Nothing contained in this Lease shall be deemed to derogate the rights or obligations, if any, of the City in its capacity as a municipality.

Section 39.07 This Lease cannot be changed or terminated orally, but only by a written instrument of change, modification, waiver or termination executed by the party against whom enforcement of any change, modification, waiver or discharge is sought.

Section 39.08 This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 39.09 The agreements, terms, covenants and conditions in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 39.10 Landlord and Tenant each warrant and represent to the other that they dealt with no broker in connection with this transaction.

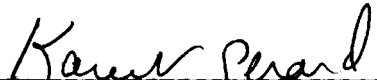
Section 39.11 Landlord and Tenant, upon the written request of the other, shall join in the execution of a memorandum of lease in proper form for recordation.

Section 39.12 If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Lease, or 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 enforced to the fullest extent permitted by law.

Section 39.13 This Lease contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as herein set forth.

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

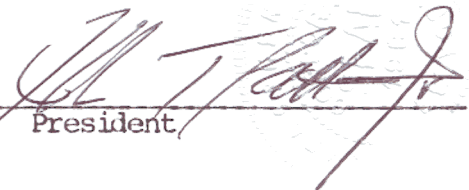
THE CITY OF NEW YORK

By   
Deputy Mayor for Economic  
Policy and Development

Approved as to Form:

  
Acting Corporation Counsel *DEU*

SOBRO DEVELOPMENT CORPORATION

By   
President

STATE OF NEW YORK

SS.:

COUNTY OF *New York*

On this *12<sup>th</sup>* day of *May*, 1982 before me personally came John Patterson, to me known to be the President of the Sobro Development Corporation, who, being by me duly sworn, did depose and say that he resides at 90 Riverside Drive, New York, New York; that he is the President of the SOBRO DEVELOPMENT CORPORATION the corporation described herein and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Edward A. Remsen*

Notary Public  
EDWARD A. REMSEN  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK - NO. 34076  
COMMISSION EXPIRES JUNE 1, 1982

STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK )

On this 7th day of June , 1982 before me personally came Karen N. Gerard , to me known and known to me to be the Deputy Mayor for Economic Policy and Development of THE CITY OF NEW YORK and the same person who executed the foregoing instrument, and he acknowledged that he executed the foregoing instrument on behalf of THE CITY OF NEW YORK as said Deputy Mayor and pursuant to the authority vested in her by resolution of the Board of Estimate adopted January 14, 1982, (Cal. No. 32).



Notary Public  
STEVEN ROSENBERG  
NOTARY PUBLIC, State of New York  
No. 41-4740790  
Qualified in Queens County  
Certificate Filed in Queens County  
Commission Expires March 30, 1983

EXHIBIT A

BOARD OF ESTIMATE

THE CITY OF NEW YORK

(Cal. No. 32)

WHEREAS, The City of New York (the "City") owns certain property (the "Property") located at 131 Walnut Avenue in the Borough of the Bronx, being generally known as the Phillips-Jones Building, and being more particularly described as Block 2586, Lot 26 on the tax map of the Borough of the Bronx, which Property has become underutilized and badly deteriorated; and

WHEREAS, the City's Office for Economic Development has obtained a Title I grant from the U.S. Economic Development Administration for 2.6 million dollars to accomplish the renovation of the structure located on the Property; and

WHEREAS, the South Bronx Overall Economic Development Corporation, a New York local development corporation affiliated with Sobro Development Corporation ("Sobro" or the "Tenant"), a New York local development corporation incorporated under Article 14 of the Not-For-Profit Corporation Law of the State of New York, conceived of and sponsored the project for the renovation of said structure to promote the economic revitalization of the South Bronx area and participated in and facilitated the award of the grant to the City; and

WHEREAS, upon completion of the renovation, the best interests of the City in the economic development and utilization of the structure will be obtained by the lease of said structure by the City to Sobro; and

WHEREAS, on March 6, 1980, the Board of Estimate, pursuant to Section 197-c of the City Charter, adopted a resolution (Cal. No. 14) approving the lease of the Property to Sobro; and

WHEREAS, pursuant to Section 1411 (d) of the Not-For-Profit Corporation Law, the Board of Estimate is empowered to authorize the City to lease real property to a local development corporation without public bidding at a price to be agreed upon between the City and the local development corporation; and

WHEREAS, on January 14, 1982 (Cal. No. 32), after due notice pursuant to Section 1411(d) of the Not-For-Profit Corporation Law, the Board of Estimate has held a public hearing to consider the proposed lease between the City and Sobro Development Corporation:

NOW, THEREFORE, BE IT RESOLVED, that the Mayor or his designee or the Deputy Commissioner of General Services is hereby authorized, pursuant to Section 1411 of the Not-For-Profit Corporation Law, to enter into a lease with Sobro Development Corporation with respect to the Property after approval as to form by the Corporation Counsel on terms substantially as follows:

The term shall be 30 years, which may be extended at the Tenant's option for two additional 10 year terms and which shall commence upon certification of the renovation work as complete and delivery of the premises to the Tenant.

During the initial term, the City shall receive, as rent, payments in lieu of real estate taxes [Pilot] in amounts which equal 7 1/2% of the gross rentals received by the Tenant plus a ground rent which equals 50% of the net income derived from the Property. During the initial term, the City shall pay, cancel or otherwise discharge all real property taxes arising with respect to the Property and all improvements thereon.

During any renewal term, the City shall receive, as rent, 50% of the net income derived from the Property. During any renewal term, Tenant shall pay all real property taxes arising with respect to the Property and all improvements thereon. (Real property taxes will be assessed and imposed upon the Property and all improvements thereon as if the property was privately owned.)

Throughout the entire lease term, Tenant may retain, as an allowable expense, 7 1/2% of the gross rentals derived from the Property as a management fee to pay for the cost of managing the Property.

Tenant shall utilize all net income which it derives from the Property, except for amounts paid to the City, to foster and enhance the economic development of the South Bronx area in the Borough of the Bronx.

Throughout the entire lease term, Tenant shall pay all impositions as defined in the lease (except real property taxes which are to be paid as provided above).

Prior to the expiration of the first lease year, Tenant agrees to have entered into sub-lease arrangements for not less than 30% of the total square footage available for leasing. Prior to the expiration of the second lease year, Tenant agrees to have entered into sub-lease arrangements for not less than 60% of the total square footage available for leasing. Prior to the expiration of the third lease year, Tenant agrees to have entered into sub-lease arrangements for not less than 90% of the total square footage available for leasing. The achievement of this leasing schedule is a material covenant of the lease, and should such levels not be achieved it shall be within the option of the City to terminate the lease.

Throughout the entire lease term, the Tenant shall provide for the maintenance, security, repair and insurance of the Property.

Commencing with the third lease year, Tenant shall fund and maintain a Capital Replacement Fund for the Property, with annual deposits in an amount equal to ten per cent (10%) of the net income derived from the Property, such deposit not to exceed \$10,000 in any lease year. Such deposits shall continue throughout the entire lease term until a total of \$75,000 has been accumulated in the Capital Replacement Fund, after which deposits shall resume only to the extent that funds have been expended from such account.

For the purpose of calculating Net Income under the lease, to determine the rental due and owing to Landlord, annual payments to the Capital Replacement Fund and Pilot shall be deductible from annual gross rentals received by the Tenant.

Tenant shall have the right of first refusal relative to Landlord's absolute right at any time to convey its interest in the Property.

APPROVED AS TO FORM

  
APPROVED AS TO FORM. p2u

EXHIBIT B

PLOT PLAN

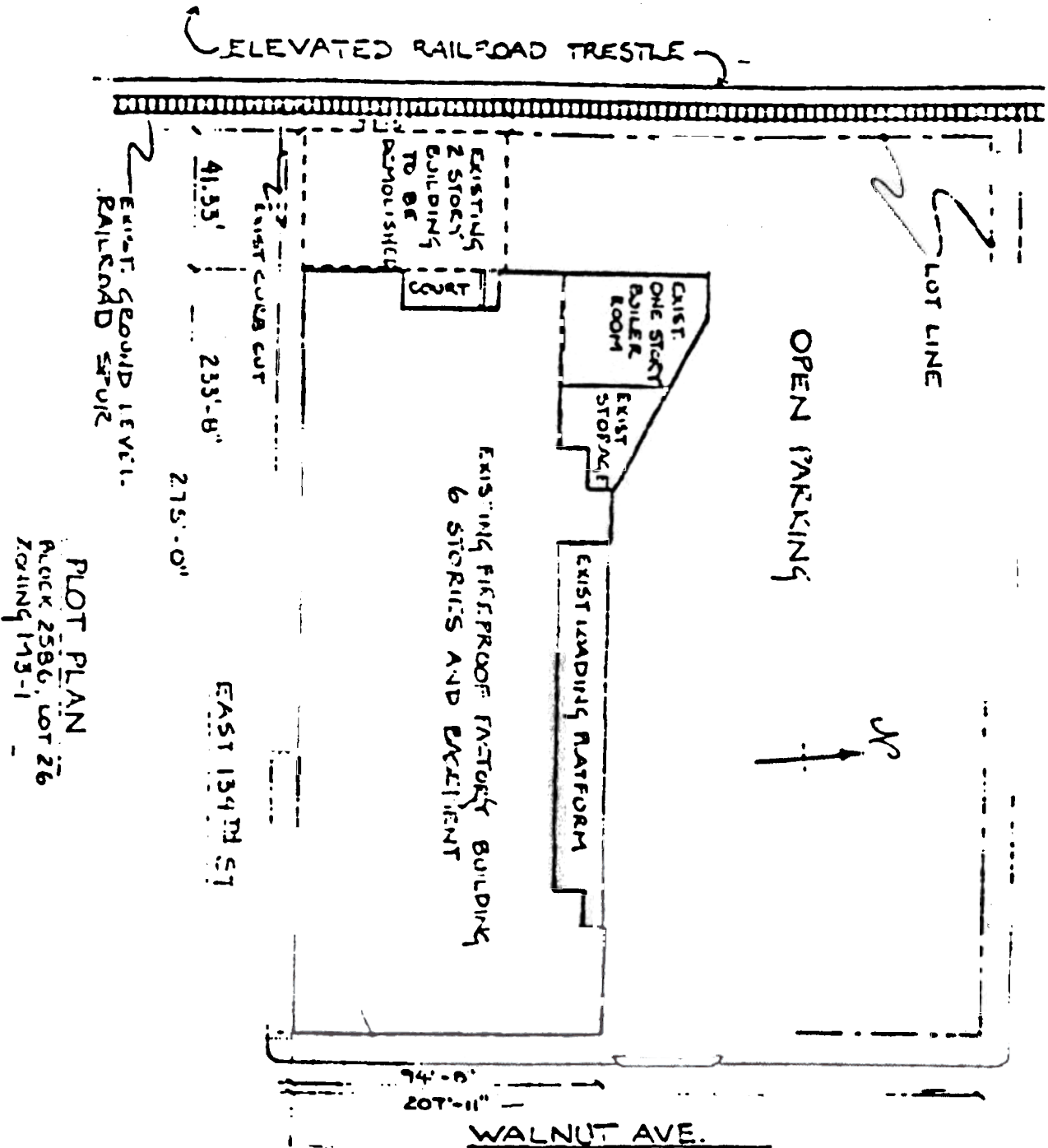


EXHIBIT D

BOROUGH BOARD RESOLUTION



PRESIDENT OF THE BOROUGH OF THE BRONX  
Grand Concourse and 161st Street  
Bronx, New York 10451  
STANLEY SIMON

**BRONX BOROUGH BOARD**

January 12, 1982

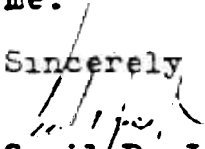
Commissioner Robert Kandel  
NYC Office of Economic Development  
17 John Street  
New York, New York 10038

Dear Commissioner:

Please be advised that at the December 21, 1981 meeting of the Bronx Borough Board, the members unanimously voted to support the project and lease for the Philip Jones building between the City and the South Bronx Overall Economic Development Corporation.

If further information is needed feel free to contact me.

Sincerely

  
Cecil P. Joseph

**EXHIBIT C**

**TITLE MATTERS**

**None**