

LEASE

THE CITY OF NEW YORK,

LANDLORD,

-with-

FULTON DeKALB ASSOCIATES,

TENANT.

I N D E X

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THIS LEASE made the *21st* day of *September*, 1972, between THE CITY OF NEW YORK, a municipal corporation of the State of New York (hereinafter called the "City" or the "Landlord"), acting by the Commissioner of Real Estate of the City of New York, and FULTON DeKALB ASSOCIATES, a New York partnership, having an office c/o Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, New York (hereinafter called the "Tenant").

W I T N E S S E T H :

(1) WHEREAS, Landlord and Brooklyn Center Development Corp. have entered into a lease ("Master Lease") dated this date, which Master Lease was (a) duly authorized by the Board of Estimate, by resolution adopted the 20th day of July, 1972, a copy of which resolution is attached as an exhibit to the Master Lease, and (b) signed and delivered by the parties thereto on the *21st* day of *September*, 1972; and

(2) WHEREAS, under the Master Lease, Landlord leased to Brooklyn Center Development Corp. and Brooklyn Center Development Corp. hired from Landlord, at the rental and upon the other terms, covenants and conditions therein provided, a portion of the Brooklyn Center Urban Renewal Area (a description of which is attached as an exhibit to the Master Lease): and

(3) WHEREAS, under the Master Lease, Master Tenant (as such term is hereinafter defined) has the right from time to time to require that the Master Lease

be modified by subtracting from the premises demised thereunder a portion or portions thereof, in which case the portion or portions so subtracted shall simultaneously with such modifications be leased by Landlord to Master Tenant (or at Master Tenant's request), to Stephen Klein or George Klein, or both, or to a corporation or other legal entity in which either or both of them shall have a controlling interest, or their permitted assigns under Section 24.1 of the Master Lease) under a new lease ("Severance Lease"), all upon the terms, covenants and conditions set forth in the Master Lease; and

(4) WHEREAS, at the request of the Master Tenant under the Master Lease, (a) Landlord and Master Tenant have modified, by instrument dated this date, the Master Lease by subtracting from the premises demised thereunder the premises leased by Landlord to Tenant under this Lease, and (b) Landlord and Tenant are entering into this Lease, which Lease is intended to be a Severance Lease;

NOW, THEREFORE, Landlord and Tenant do hereby covenant and agree as follows:

Article 1. Definitions

Section 1.1 For the purposes of this Lease, unless the context otherwise requires:

(a) The word "Land" shall mean all those certain lots, parcels or pieces of land lying, being and situate in the County of Kings, City and State of New

York, more particularly bounded and described in Exhibit A attached hereto and hereby made a part of this Lease.

(b) ~~The word "Buildings" shall mean all of the buildings and improvements (other than "Building Equipment", as such term is hereinafter defined) hereafter erected on the Land, or on the "Air Rights" (as such term is hereinafter defined), or on any part thereof, by Tenant (or by anyone claiming through or under Tenant, including, without limitation, the New Building (as such term is hereinafter defined), and those portions of the S.L.P.C.S. and the retail stores thereon constructed by Tenant under Section 7.5, together with all alterations, additions and improvements thereto and all restorations and replacements thereof, but excluding, however, (i) property of the lessee under the "Telco Lease" (as such term is hereinafter defined) other than Building Equipment, which such lessee or other occupant may be authorized to remove from the "Demised Premises" (as such term is hereinafter defined) upon and subject to the terms and conditions of its "Sublease" (as such term is hereinafter defined), (ii) property of contractors servicing the Demised Premises, and (iii) improvements for water, gas and electricity and other similar equipment or improvements owned by any public utility company or any governmental agency or body.~~

(c) The term "Building Equipment" shall mean all machinery, apparatus, equipment, personal property and fixtures of every kind and nature whatsoever now or hereafter attached to or used in connection with the operation or maintenance of: (i) the Buildings; and (ii) those portions of the S.L.P.C.S. constructed by Tenant under Section 7.5, to the extent the same are located in the Buildings or in those portions of the S.L.P.C.S. constructed by Tenant under Section 7.5; including, but not limited to all heating,

lighting, and power equipment, engines, pipes, pumps, tanks, motors, conduits, plumbing, cleaning, fire prevention, refrigeration, ventilating, air-cooling and air conditioning equipment and apparatus, elevators, ducts and compressors, and any and all renewals and replacements of any thereof; but excluding, however, (i) property of the lessee under the Telco Lease, and property of any "Subtenant" (as such term is hereinafter defined) or other occupant, other than Building Equipment, which such lessee, Subtenant or other occupant may be authorized to remove from the "Demised Premises" (as such term is hereinafter defined) upon and subject to the terms and conditions of its lease or "Sublease" (as such term is hereinafter defined), (ii) property of contractors servicing the Demised Premises, and (iii) improvements for water, gas and electricity and other similar equipment or improvements owned by any public utility company or any governmental agency or body.

(d) The term "Air Rights" shall mean, when, as, if and to the extent demised under Section 7.5, the volume of air space necessary for the construction, operation and maintenance of those portions of the S.L.P.C.S. as to which either party has any rights or obligations hereunder (and any Buildings constructed or to be constructed thereon).

(e) The term "Demised Premises" shall mean the Land, the Buildings, the Building Equipment and the Air Rights, together with all Consents, rights, rights of way, grants, privileges and easements pertaining thereto.

(f) The terms "Term of this Lease" and "Demised Term" shall mean the original term of this Lease and any extended term or extended terms of this Lease as to which Tenant has effectively exercised its right of extension.

(g) The term "Leasehold Mortgage" shall mean any mortgage or deed of trust, including, without limitation, any mortgage or deed of trust securing a construction, building or permanent loan, or any combination thereof, or a purchase

money obligation, which is a lien on the leasehold estate created under this Lease, as such mortgage or deed of trust may be renewed, modified, extended, consolidated or replaced from time to time, so long as the same is made (i) to one or more "Institutional Leasehold Mortgagees" (as such term is hereinafter defined); and/or (ii) to one or more other lenders in consideration of a bona fide loan or advances made or to be made thereunder, which other lender or lenders (1) lend money in the regular course and as a primary part of its or their business, or (2) shall be such Person (as such term is hereinafter defined) listed on either the New York Stock Exchange or the American Stock Exchange, or any pension and/or retirement fund established by a Person for the benefit of its employees; but no such other lenders shall be Stephen Klein or George Klein or any member of the "Immediate Family" (as such term is hereinafter defined) of either of them or any corporation or other legal entity in which either or both of them shall have a "controlling interest" (as such term is hereinafter defined), unless such corporation or other legal entity shall now or hereafter be listed on either the New York Stock Exchange or the American Stock Exchange; and/or (iii) to any assignor of this Lease to secure a purchase money obligation of the assignee thereof; and the holder thereof is herein sometimes called a "Leasehold Mortgagee".

(h) The term "Institutional Leasehold Mortgage" shall mean any Leasehold Mortgage made to one or more of the following: (i) any commercial or savings bank; (ii) any savings and loan association; (iii) any trust company; (iv) any insurance company, authorized to do business in the State of New York; (v) any pension and/or retirement trust or fund (1) having any bank or trust company authorized to do business in the State of New York, or any governmental agency, department or official

of the City or State of New York; or any subdivision thereof, as a trustee; or (2) for the sole benefit of employees of any State or municipality, or any subdivision, department or agency thereof; (vi) any real estate investment trust having a bank or trust company authorized to do business in the State of New York as a trustee; (vii) any corporation, foundation or trust formed and operated exclusively for charitable, scientific and/or educational purposes, having assets of \$100,000,000 or more; (viii) any holders of bonds or other obligations (or a corporation formed by or for the benefit of such holders) secured by a Leasehold Mortgage, where the trustee thereunder is any bank, savings and loan association, trust company or any insurance company authorized to do business in the State of New York; and the holder thereof is herein sometimes called an "Institutional Leasehold Mortgagee."

(i) The term "Unavoidable Delays" shall mean any delays resulting from any (i) acts of God or of the public enemy, (ii) fire, floods, earthquakes, or similar casualty, (iii) strikes or lockouts, (iv) riot, insurrection, or civil commotion, (v) inability to procure labor, materials or supplies, (vi) failure of power, electric current or other utilities, for one day or more, due to the fault of the utility company, (vii) laws, orders, rules and regulations of the United States, the State of New York, the City of New York, or of any agency, department or other subdivision thereof, whether now or hereafter in force, including, without limitation, rationing or restrictions with regard to construction or the use of labor and materials, (viii) judicial order, or failure to obtain a

judicial order which has the effect of, prohibiting or restraining or delaying the performance of the covenants to be performed hereunder by Landlord or Tenant, or both; (ix) the refusal of any title company to insure, at reasonable rates, Landlord's title to any portion of the Land as a result of any appeal or other proceeding pending with respect to Landlord's acquisition thereof by condemnation or eminent domain; and (x) any similar causes which shall be beyond the control of Landlord or Tenant, as the case may be.

(j) The term "Legal Requirements" shall mean all laws, statutes and ordinances (including, but not limited to, building codes and zoning regulations and ordinances), and the orders, rules, regulations and requirements of all federal, state and municipal governments, and the appropriate agencies, officers, departments, boards and commissions thereof, which may be applicable to the Demised Premises, or any part thereof, or the use or manner of use of all or any part of the Demised Premises.

(k) The term "Insurance Requirements" shall mean the requirements of any insurer of the Demised Premises, and the requirements of the local Board of Fire Underwriters (or of any other organization possessing similar authority and exercising similar functions) insofar as they pertain to the Demised Premises.

(l) The word "Sublease" shall mean all leases (other than the Master Lease, this Lease and any other Severance Lease), subleases and lettings, occupancies or other agreements for use or hire of any portion of the Demised Premises; and the word "Subtenant" shall mean any

sublessee, occupant or other "Person" (as such term is hereinafter defined) entitled to use or occupy any portion of the Demised Premises under any Sublease.

(m) The term "Subleasehold Mortgage" shall mean any mortgage or deed of trust, including without limitation, any mortgage or deed of trust securing a construction, building or permanent loan, or any combination thereof, which is a lien on any Sublease, as such mortgage or deed of trust may be renewed, modified, extended, consolidated or replaced from time to time; and the holder thereof is herein sometimes called a "Subleasehold Mortgagee."

(n) The term "Institutional Subleasehold Mortgage" shall mean any Subleasehold Mortgage made to a Person or entity to whom an Institutional Leasehold Mortgage may be made; and the holder thereof is herein sometimes called an "Institutional Subleasehold Mortgagee."

(o) The word "Person" shall mean a natural person or persons, a partnership, a corporation, and other forms of business or legal associations and entities.

(p) The word "Tenant" shall mean (i) the Person named as Tenant herein, except that from and after any valid assignment of the whole of Tenant's interest in this Lease pursuant to the provisions hereof, or by operation of law or otherwise, "Tenant" shall mean only the owner for the time being of Tenant's interest under this Lease, or (ii) any Leasehold Mortgagee in possession for the time being of Tenant's leasehold estate hereunder, or (iii) any Leasehold Mortgagee or any nominee or designee of said Leasehold Mortgagee which shall have obtained a new lease pursuant to Article 22 hereof, and the successors

and assigns of such Leasehold Mortgagee or nominee or designee.

(q) The word "Landlord" shall mean The City of New York, and any subsequent owner or owners of all or any part of the fee title to the Demised Premises.

(r) The terms "Administrator" and "Administrator of the Economic Development Administration" shall mean the officer or agent of the City who at the time shall be exercising the same or equivalent functions to those now exercised by the Administrator of the Economic Development Administration, or his duly authorized representative or designee.

(s) The terms "Commissioner" or "Commissioner of Real Estate" shall mean the officer or agent of the City who at the time shall be exercising the same or equivalent functions to those now exercised by the Commissioner of Real Estate, or his duly authorized representative or designee.

(t) The terms "herein," "hereof," "hereunder" and words of similar import shall mean this Lease as a whole and not any particular Article, Section or other subdivision.

(u) The term "Time for Landlord's Approval" shall mean, as the case may be: (i) three months, when City Planning Commission or Board of Estimate approval is required; (ii) six months, when Board of Estimate and City Planning Commission approval is required, and (iii) thirty days when neither City Planning Commission nor Board of Estimate approval is required, or when no period of time for approval or consent by Landlord, the Commissioner or the Administrator is set forth in this Lease with respect to any particular matter or thing. Landlord agrees that in each case under this Lease where the consent or approval

of the Commissioner or the Administrator, as the case may be, shall be requested by Tenant, the same shall be given or declined within the Time for Landlord's Approval, unless a different time period with respect to such consent or approval is expressly set forth in this Lease in which case such consent or approval shall be given or declined within such specified period of time.

(v) The term "Temporary Public Amenities" shall mean the improvements set forth in Exhibit B attached hereto and hereby made a part of this Lease.

(w) The terms "Preliminary Plan" and "Project Plan" shall mean the Preliminary Plan or the Project Plan, as the case may be, under the Master Lease, as the same may be amended from time to time pursuant to the Master Lease.

(x) the term "S.L.P.C.S." and the word "Consents" shall have the meaning set forth therefor under Section 3.1(g) of the Master Lease.

(y) The term "Master Tenant" shall mean the then Tenant under the Master Lease.

(z) The term "Urban Renewal Plan" shall mean Exhibit B to the Master Lease.

(aa) Each of the following words or terms shall have the meaning set forth in the page or Section opposite such word or term:

(i) Master Lease -- Page 1

(ii) Original Term -- Section 2.1

(iii) Commencement Date -- Section 2.1

(iv) Conditions Precedent -- Section 2.2

(v) Landlord's Work -- Section 3.1

(vi) fixed annual rent -- Section 4.1

- (vii) extended term -- Section 5.1
- (viii) New Building -- Section 7.2
- (ix) Severance Lease -- Section 7.5
- (x) Work -- Section 13.1
- (xi) Depository -- Section 14.4
- (xii) event of default -- Section 17.1
- (xiii) notice of termination -- Section 17.1
- (xiv) non-disturbance agreement -- Section 21.2(a)
- (xv) subleased premises -- Section 21.2(a)
- (xvi) controlling interest -- Section 21.6

Article 2. Demise and Term

Section 2.1 Landlord, for and in consideration of the rents, additional rents, terms, covenants and conditions herein reserved and contained, does hereby demise and lease to Tenant, and Tenant does hereby take and hire from Landlord, upon and subject to the terms, covenants and conditions herein set forth, the Demised Premises;

SUBJECT, HOWEVER, to the matters set forth in Exhibit C attached hereto and hereby made a part of this Lease, and the easements reserved by Landlord under Section 28.3 hereof.

TO HAVE AND TO HOLD the Demised Premises for a term of thirty-nine (39) years (hereinafter sometimes referred to as the "Original Term") beginning on the Commencement Date (as such term is defined in Section 2.2 hereof), and ending at midnight on the day preceding the thirty-ninth anniversary of the Commencement Date.

Section 2.2 For the purposes of this Lease, the "Commencement Date" shall mean the date on which all of the

following conditions precedent (the "Conditions Precedent") shall have occurred or been performed:

(a) Landlord shall have performed its covenants and obligations under subsections (a), (c) and (d) of Section 3.1 hereof.

(b) Tenant shall have obtained title insurance naming Tenant as the insured from one or more title insurance companies licensed to do business in the State of New York, at reasonable rates, affirmatively insuring the validity of Tenant's leasehold estate hereunder, free of all liens and encumbrances, except as provided in Section 3.1(a) hereof. Tenant shall pay the cost of such title insurance. Landlord shall apply, on Tenant's behalf, for such insurance with respect to the Land with diligence after Landlord has obtained title thereto, to one or more title insurance companies which are members of the New York Board of Title Underwriters and which are acceptable to the prospective Institutional Leasehold Mortgagee, if any, which shall then have issued a commitment for a construction or a permanent loan in respect of the buildings or improvements to be constructed on the Land (and if there shall then be no such commitment issued, then, from The Title Guarantee Company, Chicago Title Insurance Company, American Title Insurance Company, or U.S. Life Title Insurance Company), all in reasonable amounts designated by Tenant; and Landlord shall deliver to Tenant the original of each title report issued by each such title insurance company, promptly after the receipt thereof by Landlord.

(c) After the conditions set forth in subsections (a) and (b) of this Section, shall have occurred or been fulfilled, Landlord shall have delivered or tendered the delivery to Tenant of the Land free of possessory rights of

other Persons [except as expressly provided to the contrary in Section 3.1(a) hereof], without regard to whether Tenant shall have accepted such delivery of possession.

~~Section 2.3. Landlord acknowledges that the Land has been duly designated under Section 5.1 of the Master Lease and that Tenant has duly exercised its option under Section 6.7(a) of the Master Lease to exclude from the Land, Hudson Avenue between Fulton Street and DeKalb Avenue.~~

However:

(a) Tenant shall, nevertheless, have the right (subject to the approval of the appropriate governmental authorities) to build, operate and maintain bridges and platforms (and buildings and improvements thereon) over not more than thirty (30%) percent of such street in at least two (2) separate structures and in connection therewith, Landlord agrees to obtain and demise to Tenant, within six months after Tenant shall have given notice to Landlord of Tenant's election to build such improvements, all Consents necessary therefor and any Air Rights applicable thereto, upon the terms, covenants and representations set forth in subdivisions (ii) to (vii), inclusive, of Section 3.1(g) and Section 5.1 of the Master Lease, subject, however, to Tenant obtaining all necessary municipal approval and permits applicable thereto;

(b) Tenant shall have no obligation with regard to any water and sewer lines and equipment in, on, over or under any street, but Tenant shall be obligated to pay the cost of relocating any gas, electric or other utility lines and equipment, in, on, over or under such street over which Tenant shall build any such bridges and platforms;

(c) Tenant shall not be obligated to maintain such

street;

(d) Such bridges and platforms shall be deemed part of the Buildings for the purposes of this Lease.

Article 3. Landlord's Obligations

Section 3.1 Landlord shall, at its sole cost and expense (except as expressly provided to the contrary in this Lease) do and perform all of the following, when and to the extent required by the provisions of this Article 3:

(a) Obtain good and marketable title to the Land subject only to the title exceptions set forth in Exhibit C. If Landlord shall extinguish, in the course of or as a result of any condemnation or eminent domain proceeding with regard to its acquisition of the Land, any easement subject to which Tenant is to hire the Demised Premises, Landlord shall have the right, at its option, after notice to Tenant, without cost to Landlord, to re-establish such easement to the extent of and for the duration of the easement so extinguished, except that there shall be no limitation with respect to the duration of any such easement which is a utility easement under any street.

(b) When Landlord elects, change the width of the bed of Flatbush Avenue Extension, to the extent shown on Exhibit I to the Master Lease, provided that the time elected by Landlord for such change shall not interfere with the construction of the Buildings to be constructed or caused to be constructed hereunder by Tenant.

(c) Remove any tenants or other occupants of Parcel II as described in Exhibit A and any building or buildings presently located thereon, and deliver to Tenant possession thereof free of tenants or other occupants and of the right of any Person to possess or occupy all or any part of the same.

(d) Rezone the Demised Premises once in order to enable the fulfillment of the Preliminary Plan (including, without limitation, the construction of the New Building).

Section 3.2 (a) Upon delivery or tender by Landlord of possession of the Land to Tenant free of possessory rights of other persons, Tenant shall substantially perform the work on Parcel II as described in Exhibit A, which work is set forth below and is hereinafter called the "Tenant's Work". The Tenant's Work shall be done in accordance with the applicable provisions of this Article, the Project Plan, and all applicable Legal Requirements. The Tenant's Work shall be the following:

1. Demolition of existing structures;
2. Clearance of the Land, including the removal of rubbish and debris therefrom (but not including removal of foundations);
3. Filling, grading and leveling the Land to street grade, except with respect to the Temporary Public Amenities, but only to the extent necessary for the construction of Buildings of a permanent nature thereon.

(b) All verified costs and expenses paid by Tenant in connection with Tenant's Work to the contractors and/or subcontractors who perform such work, up to the agreed reasonable cost thereof shall be reimbursed and/or paid by Landlord to Tenant. Such costs and expenses shall be certified to Landlord by Tenant, and the certificate or certificates of Tenant shall be accompanied by paid bills or other evidence reasonably satisfactory to Landlord of the sums paid; and such certificates shall be

thirty (30) 30
24

subject to audit and approval, within ~~twenty (20)~~ days after the delivery thereof, by the Comptroller in accordance with the provisions of subdivision 4 of Section 93d-10 of the Administrative Code of the City of New York. In any case, however, if Landlord shall fail to make such reimbursement and/or payment within sixty-five (65) days after request therefor made in accordance with the above conditions, Tenant shall have ~~the right, in addition to any other rights and remedies~~ available to Tenant in such event, to deduct such sums, with interest thereon at the rate of ten percent (10%) per annum commencing upon the expiration of said sixty-five (65) day period, from the rentals and/or any other sums (except from the security deposited under Article 30 hereof and the security deposited under the Master Lease) then or thereafter due or to become due to Landlord under this Lease in such order or priority as Tenant shall elect. Tenant shall have the right to maintain one or more actions against Landlord to recover only such sum or sums, but the failure of Landlord to pay the same shall not permit Tenant to terminate this Lease or otherwise modify Tenant's performance. Tenant shall have the right to make requests for such reimbursement and/or payment not more frequently than monthly, and such requests may be made during the course of Landlord's Work and before the same shall have been completed.

(c) With regard to any work performed by Tenant under this Section, Tenant shall comply or cause compliance with the applicable provisions of this Lease, including the provisions of Articles 12 and 13 hereof.

Section 3.3 The commencement of the term of this Lease shall not in any way relieve Landlord of any of its

obligations for the performance and observance of all of Landlord's covenants and obligations hereunder, except as herein provided to the contrary.

Section 3.4 Landlord shall cause all of the Conditions Precedent to be fully performed within one hundred fifty (150) days from the date hereof. If Landlord shall so deliver or tender possession of the Land free of possessory rights of other persons (except for any possessory rights described in Exhibit C) more than one hundred fifty (150) days after the date hereof, then for the purposes of this Lease the same shall be deemed to be a default hereunder on the part of Landlord, but Tenant shall not have a right of action against Landlord for damages resulting from such default nor shall Tenant be permitted to terminate this Lease under this Section 3.4, unless such default shall continue after two hundred ten (210) days from the date hereof. In the event that (a) all of the Conditions Precedent shall not have been fully performed by Landlord, or waived by Tenant, within two hundred ten (210) days from the date hereof, or (b) Landlord shall fail to fully and timely perform its covenants and obligations under subsection (d) of Section 3.1 above, then, in any such case or cases, Tenant may, at its option, at any time thereafter, terminate this Lease without liability therefor and without any obligation to restore the Demised Premises to its original condition, by giving notice to Landlord of such termination; and in such case (i) this Lease shall terminate and expire on the date therefor set forth in such notice; and (ii) all of Tenant's rights and remedies for damages as a result of such default shall survive such termination.

Article 4. Fixed Rent

Section 4.1 Subject to the provisions of, and except as provided to the contrary in, Section 4.2 hereof, Tenant shall, without any fraud or delay, and without manner of deduction or abatement, except as herein provided to the contrary, pay to Landlord, its successors and assigns, at the Office of the Commissioner, for each year during the Original Term of this Lease, a fixed annual rent of One Hundred Fifteen Thousand Five Hundred Nine and 55/100 (\$115,509.55) Dollars (hereinafter called the "fixed annual rent"). Landlord agrees that the taxes and assessments on the Buildings will not be increased by reason of the fact that Tenant shall not be required to pay taxes or assessments on the Land, the Consents and/or Air Rights.

Section 4.2 Notwithstanding anything contained to the contrary in Section 4.1 above, rental equal to twenty-five (25%) percent of said fixed annual rent in lieu of the full fixed annual rent, shall commence on the later to occur of (a) the Commencement Date, or (b) the date on which Tenant completes Tenant's Work. Such partial rental shall continue to be paid until the sooner to occur of (i) the issuance of a temporary or permanent Certificate of Occupancy with respect to substantially all (as such term is hereinafter defined) of the Buildings to be constructed on, or (ii) the fourth (4th) anniversary of the date on which such partial rental commenced.

At such time, the full fixed annual rental shall commence. For the purposes of this Article, the term "substantially all" shall be deemed to mean ninety-five (95%) percent or more, except that until the issuance of a temporary or permanent Certificate of Occupancy with respect to ninety-five (95%) percent or more of any Building to be constructed on any such parcel, there shall be paid a like percentage (but not less than 25%) of the full fixed annual rent with respect to the Land underlying such Building, as the number of square feet of subleased space in such Building for which Tenant is collecting rent from Subtenants bears to the number of square feet of space to be constructed in such Building, in lieu of the rental, if any, otherwise payable prior to the payment of the full fixed annual rent in respect of such parcel.

Section 4.3 Subject to the provisions of Section 4.2 above, the fixed annual rent shall be payable in equal monthly installments in advance on the first day of each month during the term hereof. If the payment of the fixed annual rent shall commence on any day other than the first day of a calendar month, a pro rata portion of the fixed annual rent for such fractional month and for the first full calendar month of the term of this Lease shall be payable on the first day of such first full calendar month. Said monthly installments of fixed annual rent, as well as all additional rent and all other costs, expenses and charges required to be paid by Tenant under this Lease, shall be paid promptly when due, without notice or demand therefor, and without set-off, except as herein provided to the contrary.

Tenant shall pay to Landlord, on demand, as additional rent, interest at the rate of ten (10%) percent per annum on all overdue installments of the fixed annual rent from the due date thereof, until paid in full.

Article 5. Extended Terms

Section 5.1 Tenant shall have two successive options, the first such option to extend this Lease for thirty (30) years and the second such option to further extend this Lease to and including the day preceding the ninety-ninth (99th) anniversary of the date on which the Master Lease shall have been executed and delivered (each such additional period being hereinafter referred to as an "extended term"). Each such option may be exercised only by Tenant's giving notice to that effect to Landlord at least two years prior to the expiration of the then current term of this Lease. In each instance, upon the giving of such notice, this Lease shall be extended for the extended term for which the option was exercised, without the execution of any further instrument; provided, however, Landlord and Tenant agree, at the request of either party, to execute and deliver to each other duplicate originals of an instrument in recordable form confirming the timely exercise of each of the aforesaid options. Each extended term shall be upon the same terms, covenants and conditions as shall be in effect immediately prior to such extension, except that (a) the amount of fixed annual rent which shall be payable during the extended terms shall be determined in accordance with the provisions of Section 5.2 hereof, and (b)

there shall be no right or option to extend the term of this Lease for any period of time beyond the expiration of the second extended term thereof. Said options may be assigned or otherwise transferred as collateral security for Institutional Leasehold Mortgages. Tenant shall have no option to extend this Lease (i) if this Lease is not in full force and effect in accordance with the provisions hereof at the time of the attempted exercise of such option, or (ii) if there shall then be a default hereunder on the part of Tenant which shall not have been remedied before the expiration of any applicable grace period.

Section 5.2 The fixed annual rent during the first extended term shall be an amount equal to the sum of \$2.35 multiplied by the number of square feet of land contained in the Land so long as the Telco Lease shall remain in force and effect and thereafter the fixed annual rent during the first extended term shall be an amount equal to the sum of \$3.60 multiplied by the number of square feet of land contained in the Land. The fixed annual rent during the second extended term shall be determined by appraisal in accordance with the provisions of Section 29.1 hereof.

Article 6. Real Estate Taxes

Section 6.1 Tenant shall pay, as additional rent hereunder, on or before the last day on which they may be paid without penalty or interest, all real estate taxes (or other taxes imposed in lieu of real estate taxes) and assessments levied or imposed upon the Buildings and Building Equipment hereafter erected upon the Land except as herein provided to the contrary. Tenant shall not be required or obligated to pay any real estate taxes, franchises, assess-

ments or other charges levied, assessed or imposed upon the Land, or on the Consents, or the Air Rights, or the S.L.P.C.S. (as distinguished from any commercial buildings or commercial areas which may be constructed by Tenant upon the S.L.P.C.S.). For the purposes of this Article 6, the portions of the S.L.P.C.S. constructed or to be constructed outside of the building lines of the Land shall be deemed to be Land (except for commercial structures constructed by Tenant on the S.L.P.C.S.).

Section 6.2 Said taxes and assessments, whether or not a lien upon the Demised Premises, shall be apportioned between Landlord and Tenant at the commencement and upon expiration or sooner termination of the term of this Lease, so that Tenant shall pay only the portion thereof allocable to the Demised Term in respect of the Land; provided, however, that no apportionment shall be required to be made in Tenant's favor if this Lease shall terminate as a result of any default hereunder of Tenant.

Section 6.3 In the event that Tenant contests or reviews by legal or administrative proceedings, any of the said taxes or assessments, imposed upon the Buildings, the Building Equipment or any of them, Tenant shall continue to pay the same in accordance with the provisions of Section 6.1 above, pending the outcome of such proceedings. Tenant, however, shall have the right to pay the same under protest and without prejudice, and any refund shall be Tenant's sole property; provided, however, that if this Lease shall terminate as a result of any default hereunder of Tenant, Landlord may retain such refund to the extent of the damages resulting from such default.

Section 6.4 If any real estate taxes (or other taxes imposed in lieu of real estate taxes) or assessments shall be levied or imposed upon or shall be or become a

lien against, all or part of the Land, or the Consents, or the Air Rights, or the S.L.P.C.S. (as distinguished from any commercial buildings or commercial areas constructed by Tenant upon the S.L.P.C.S.), or Tenant's interest therein, or the leasehold estate created hereunder, as a result of the conveyance of the fee title of all or part of the Demised Premises by the Landlord to a Person whose real property is not exempt or immune from real estate taxes or assessments, the then Landlord will pay or be responsible for any such real estate taxes (or other taxes imposed in lieu of real estate taxes) or assessments. If the then Landlord shall fail to do so, Tenant may, at its option, pay the same, and the amount so paid by Tenant (including interest and penalties) shall be due and payable by the then Landlord to Tenant on demand, or Tenant may, at its option, deduct or cause to be deducted the amount so paid from the next installment or installments of fixed annual or other rent or sums then due or to become due under the Master Lease, this Lease and/or any other Severance Leases then or thereafter in force, in such order of priority as Tenant shall elect, without diminishing or waiving any of Tenant's other rights and remedies.

Article 7. Use; New Building; Compliance with Legal and Insurance Requirements

Section 7.1 It is understood that a purpose of the letting of the Demised Premises by the City and the authorization of its use by the Board of Estimate of the City of New York is the creation of manufacturing, industrial, retail and commercial space within the City of New York in order to promote and increase employment opportunities and the tax base within the City of New York. The Demised Premises shall be used and occupied only for the uses and

purposes permitted in the Project Plan (as the same may be amended from time to time) which Project Plan permits the construction, maintenance, operation and use of the New Building for an office building, retail stores and related uses. Notwithstanding the foregoing, Landlord agrees that the Demised Premises may be used for the purposes permitted under the lease dated April 28, 1972 between Tenant and The New York Telephone Company ("Telco Lease").

Section 7.2 Tenant may construct on the Land the building described in the Telco Lease with such modifications as are permitted or required therein ("New Building") or any other Buildings permitted to be constructed under the Preliminary Plan and/or Project Plan (as amended from time to time). In addition to, and not in substitution of, Tenant's other obligations hereunder with regard to the Land, Tenant agrees to commence, or to cause the commencement of, the construction of the New Building or other Buildings to be constructed thereon in accordance with the Preliminary Plan and/or the Project Plan (as amended from time to time), within six (6) months after the Commencement Date pursuant to Section 2.2. If such construction shall not be commenced within said six (6) month period, then, such failure shall not be a default hereunder if Tenant shall promptly develop, complete and maintain thereon, in a first class manner, at Tenant's sole cost and expense, until Tenant shall commence the construction of the New Building or other Buildings thereon, one or more Temporary Public Amenities. Further with regard to the Land, and notwithstanding any other term, covenant or provision of this Lease (other than Article 41 of this Lease) Tenant agrees to complete, or

to cause the completion of, the New Building or other Buildings to be constructed thereon within thirty-six (36) months [or forty-eight (48) months in the case of any Buildings 40 stories or greater in height], measured from the date on which Tenant is required to commence, or cause the commencement of, the construction thereof. Subject to the applicable provisions of this Lease, Tenant shall have the right from time to time to make and construct, or cause to be made and constructed, (a) such Buildings, Building Equipment as may be permitted under the Project Plan (as amended from time to time) and the rezoning established or to be established under subparagraph (f) of Section 3.1 of the Master Lease, and (b) alterations, changes, additions and improvements in and to the Demised Premises as may be permitted under the Project Plan and the rezoning established or to be established under subsection (f) of Section 3.1 of the Master Lease.

Section 7.3 Tenant shall, throughout the Term of the Lease, at Tenant's own cost and expense, promptly comply or cause compliance with, all Legal Requirements and Insurance Requirements pertaining to the Demised Premises.

Section 7.4 Tenant, after notice to Landlord may contest by appropriate legal proceedings at Tenant's own cost and expense, the validity of any Legal Requirement applicable to the Demised Premises, and Tenant may defer compliance therewith during the pendency of such contest; provided, however, and upon condition that (a) such non-compliance shall not constitute a crime on the part of Tenant, (b) such non-compliance will not result in any lien, charge or other liability of any kind against the Demised Premises or against the Landlord's or Tenant's

interest in this lease, and (c) Tenant shall prosecute such contest with due diligence and in good faith to a final determination by a court, department or governmental authority having final jurisdiction. Landlord agrees to cooperate reasonably with Tenant, and to execute any documents or pleadings reasonably required for the purpose of any such contest, *except where legal requirements are being imposed by action of the City* provided that the same shall be without cost, expense or liability to Landlord. Tenant may, at its option, terminate any such contest at any time, and in such event Tenant shall promptly pay or perform all of the requirements of the contested Legal Requirement, and Tenant shall indemnify and hold harmless Landlord against and from any and all liability, loss and damage which Landlord may sustain by reason of Tenant's delay in complying therewith.

Section 7.5 If the Master Tenant, or a subtenant of the Master Tenant, or the tenant under any "Severance Lease" (as defined below) other than this Lease, shall fail to construct or cause to be constructed the pedestrian bridge portions of the S.L.P.C.S. which are to be attached to the Buildings and/or the landlord named in the Master Lease shall fail to construct the same, Tenant shall have the right, but not the obligation, to construct or cause to be constructed in, on or over the Air Rights: buildings, bridges, passageways and platforms (and buildings and improvements thereon), including such pedestrian bridge portions of the S.L.P.C.S., in accordance with the provisions of the Master Lease. The term "Severance Lease" shall, for the purposes of this Lease, have the same definition

as under the Master Lease. Tenant shall exercise the foregoing option by notice to Landlord. Within sixty (60) days after such notice is given, the City shall execute, acknowledge and deliver to Tenant an instrument in recordable form amending this Lease so as to lease to Tenant the Air Rights and the "Consents" (as such term is defined under the Master Lease) applicable thereto, in accordance with the provisions of Sections 3.1(g) and 5.1 of the Master Lease, to enable Tenant to construct, operate and maintain such buildings, bridges, passageways and platforms (and buildings and improvements thereon), including such pedestrian bridge portions of the S.L.P.C.S., in accordance with the provisions of the Master Lease. If there shall be any additional rent or any license, franchise, permit or other fee or charge therefor or in connection therewith, the amount thereof may be deducted by Tenant from the rentals or any other sums due or to become due under the Master Lease, this Lease and/or any Severance Leases, in such order of priority as Tenant shall elect. Tenant shall also have the right to construct or cause to be constructed, and operate, maintain and sublease, throughout the term of this Lease, retail stores on the portions of the S.L.P.C.S., constructed or caused to be constructed by Tenant, without additional rent or other charge therefor.

Article 8. Title to Improvements

Section 8.1 Title to the Buildings and Building Equipment and all changes, additions, alterations and renovations therein, and all renewals and replacements thereof, when made, erected, constructed, installed or placed upon the Demised Premises by or for Tenant, including the alterations and improvements which Tenant may make pursuant to Articles 7 and 13 hereof, shall be and remain in Tenant until the expiration of the Term of this Lease unless this Lease shall be sooner terminated as herein

provided. Upon the expiration or sooner termination of this Lease title to all such property shall automatically pass to, vest in and belong to Landlord, free of all liens and encumbrances (other than Leasehold Mortgages, Subleasehold Mortgages, and Subleases where the Subtenants shall have been given "non-disturbance agreements," as such term is herein defined), without further action on the part of either party and without cost or charge to Landlord except that in the event of the expiration or sooner termination of this Lease and if, at that time, the holder of any Leasehold Mortgage shall exercise any of the options to obtain a new lease for the remainder of the Term of this Lease pursuant to Article 22, then title thereto shall automatically pass to, vest in and belong to the tenant under such new lease until the expiration of the term of such new lease, unless the new lease shall thereafter be sooner terminated as otherwise herein provided. During the term of this Lease, Tenant alone shall be entitled to claim depreciation of the Buildings and the Building Equipment, and all changes, additions and alterations therein, and all renewals and replacements thereof, for all taxation purposes.

Article 9. Utilities and Services

Section 9.1 Tenant shall pay for all utilities and services, including, but not limited to, sewer charges, water, gas, heat, coolant and electricity consumed and used upon the Demised Premises during the term of this Lease, and shall procure without cost to Landlord, all meters, permits, approvals and licenses necessary to effectuate this provision.

Article 10. Indemnification and Non-Liability

Section 10.1 Tenant shall indemnify, save and keep Landlord harmless against and from any and all lia-

bility, loss, cost, expense and damages, and from and against any and all suits, claims and demands of every kind and nature, together with reasonable counsel fees, by or on behalf of any Person, arising out of or based upon any occurrence, accident, injury, damage, or death however occurring, which shall or may happen on or in the Demised Premises and that portion of the S.L.P.C.S. which Tenant is required to maintain under Article 11 (but excluding any easement areas below ground now or hereafter reserved by or granted to Landlord under this Lease and any portion of the S.L.P.C.S. which Tenant is not required to maintain under Article 11 unless the same shall be caused by the sole negligence of Tenant or its agents, servants or employees) during the term of this Lease, or on the sidewalks, vaults or curbs in front of or adjacent thereto (but excluding any easement areas below ground now or hereafter reserved by or granted to Landlord under this Lease), unless the same shall arise as a result of the fault or negligence of Landlord or its agents, servants, employees or contractors or as a result of any riot or like matter.

Section 10.2 Tenant shall resist or defend any such action or proceeding by counsel reasonably satisfactory to Landlord; provided, however, that counsel selected by the insurance company issuing Tenant's policy of liability insurance shall be deemed to be satisfactory to Landlord.

If in any action or proceeding a judgment shall be recovered

against Landlord, at Landlord's option, to be exercised by notice to Tenant (i) Tenant shall pay to Landlord the amount of such judgment, together with all reasonable and proper costs and expenses to which Landlord may or shall be subjected to in the defense of such action, or (ii) Tenant shall cause such judgment to be discharged within thirty days after the giving of such notice unless it is determined that the action or proceeding or the claim thereunder shall have arisen as a result of the fault or negligence of Landlord or its agents, servants, employees or contractors or as a result of any riot or like matter; provided, however, that if any such judgment shall be entered against Landlord for which Tenant is responsible hereunder, Tenant may appeal such judgment so long as Tenant bonds the same or such judgment may not be enforced against Landlord during the pendency of the appeal. If Tenant shall fail to timely perform its obligations under this Section, Landlord may, at its option, exercise the rights and remedies available to it under Section 37.1 hereof.

Section 10.3 During the term of this Lease, Landlord shall not be liable for any damage, injury or liability that may be sustained by Tenant or any other Person, or to their goods and chattels and from any cause whatsoever arising from or out of the occupancy of the Land or the Buildings thereon, including, but not limited to, leakage, obstruction or other defect of water pipes, gas pipes, electric apparatus, other leakage in or about such

Buildings, or the condition of such Buildings or any part thereof, unless the same shall arise as a result of the fault or negligence of Landlord or its agents, servants, employees or contractors. Tenant hereby expressly releases, discharges, and holds harmless Landlord from any and all liability, demands, claims, actions and causes of action arising from any of the aforesaid, unless the same shall arise as a result of the fault or negligence of Landlord or its agents, servants, employees or contractors.

Section 10.4 Landlord shall indemnify, save and keep harmless Tenant against and from any and all liability, loss, cost, expense and damages, and from and against any and all suits, claims and demands of every kind and nature, together with reasonable counsel fees, by or on behalf of any Person, arising out of or based upon (i) any fault or negligence of Landlord or its agents, servants, employees or contractors or any Persons claiming through or under Landlord (^{including} ~~including but not limited to~~, public utility companies) in respect of any occurrence, accident, injury, damage or death however occurring on or in any easement areas now or hereafter reserved by or granted to Landlord under Section 28.3 of this Lease, (ii) any occurrence, accident, injury, damage or death however occurring, which shall or may happen on or in any easement areas below ground now or hereafter reserved by or granted to Landlord under this Lease or on, in or under any portion of the S.L.P.C.S. which Tenant is not required to maintain under Article 11 unless the same shall arise as a result of the fault or negligence

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(any person claiming a right or under Tenant, or
a public utility company 5 JO
of Tenant or its agents, servants, employees, or contractors, 11
or (iii) the use, condition, repair, operation and/or
construction or maintenance of any easement areas below
ground now or hereafter reserved by or granted to Landlord
under this Lease or on, in or under any portion of the
S.L.P.C.S. which Tenant is not required to maintain under
Article 11 unless the same shall arise as a result of the
fault or negligence of Tenant or its agents, servants,
employees or contractors, or any improvements or facilities
installed or constructed on such easement areas or the S.L.P.C.S.
by Landlord or any Person (other than Tenant) claiming through
or under Landlord (~~including, but not limited to,~~ excluding public JO
utility companies), unless the same shall arise as a result 11
of the fault or negligence of Tenant or its agents, servants,
employees or contractors.

Article 11. Maintenance and Repairs

Section 11.1 Tenant shall, throughout the term
of this Lease, at Tenant's sole cost and expense, put,
keep and maintain in good order and repair the Demised
Premises (except the S.L.P.C.S. and any Building Equipment
now or hereafter attached to or used in connection with
the operation or maintenance of the S.L.P.C.S.), and the
sidewalks, curbs and vaults adjoining or appurtenant thereto
(except the easement areas below ground utilized by Land-
lord under Section 28.3 of this Lease), reasonable wear and
tear excepted. Tenant shall make all repairs, interior and
exterior, structural and non-structural, ordinary as well
as extraordinary, foreseen as well as unforeseen, necessary
to comply with the preceding sentence. Tenant shall replace,
when necessary, the sidewalks and curbs and any dead trees
adjoining the same, and any plazas constructed thereon.

Tenant shall keep and maintain the Demised Premises (except the S.L.P.C.S. and any Building Equipment now or hereafter attached to or used in connection with the operation or maintenance of the S.L.P.C.S.) and the sidewalks and curbs adjoining and/or appurtenant to the same (except the easement areas below ground utilized by Landlord under Section 28.3 of this Lease) in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice and unlawful obstruction. The necessity for and adequacy of repairs to the Buildings and the Building Equipment shall be measured by the standard which is appropriate for buildings or structures of similar age, construction and class in the downtown area of Brooklyn.

Section 11.2 Throughout the term of this Lease, Tenant shall, at its own cost and expense (except as provided to the contrary herein and in the Master Lease), (a) put, keep and maintain in good order and repair and in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice and unlawful obstruction (i) any portion of the S.L.P.C.S. lying within the building line of the Buildings which is constructed under Section 7.5, and (ii) any portion of the S.L.P.C.S. forming part of the public lobbies of the Buildings, and (iii) the portion of the S.L.P.C.S. constructed by the Master Tenant, or by its subtenant, or by the tenant under any Severance Lease other than this Lease, or by the Tenant, connected to the Buildings and lying between the building line of the Buildings and the center line of the street underlying that portion of the S.L.P.C.S. (with the maintenance of the balance of the S.L.P.C.S. to be the obligation of the owner of the other building to which such portion of the S.L.P.C.S. is attached, except as may be provided to the contrary in the Severance Lease, if any, for such other building, but such Severance Lease shall not impose any greater ob-

ligation on Tenant); and (b) make all needed repairs and replacements to the Building Equipment located in that portion of the S.L.P.C.S. which Tenant must maintain under this Section or located in the Buildings and installed by the Master Tenant, a subtenant of the Master Tenant, or the tenant under a Severance Lease other than this Lease and servicing the S.L.P.C.S. connected to the Buildings except that the cost of repairs and replacements of Building Equipment servicing the whole or substantially the whole of the S.L.P.C.S. connected to the Buildings and installed by Tenant, or the Master Tenant or its subtenant, or the tenant under such other Severance Lease, or any Person claiming through or under them, shall be shared equally by Tenant and the owner of the other building to which such portion of the S.L.P.C.S. is connected. In lieu of the foregoing, at Tenant's option, provision will be made hereunder for the establishment of a fund, which shall be reasonably satisfactory to the Administrator, to assure the performance by Tenant of such repair, operation, maintenance and replacement work.

Section 11.3 Notwithstanding the foregoing provisions of this Article, if the lessee under the Telco Lease shall, in addition to all of its other obligations thereunder, agree to contribute during the initial term of the Telco Lease, a minimum of 12.5 cents per square foot of space leased thereunder (as measured by the formula provided therein) per annum without set-off or deduction, into a trust fund which will be used solely to pay Tenant in respect of Tenant's share of the cost of maintaining and repairing those portions of the S.L.P.C.S. connected to the New Building and Building Equipment servicing such portions of the S.L.P.C.S., which Tenant must repair and maintain under Section 11.2, then (a) for the period from the date such contribution first becomes payable and so long as such contributions shall be made, and (b) during any period after the initial term of the Telco Lease (regardless of whether the lessee thereunder shall so

contribute), (Landlord's obligations under Section 11.2 with respect to such portions of the S.L.P.C.S. and such Building Equipment shall be extended to so obligate Tenant regardless of by whom the same are constructed and/or installed.

Article 12. Liens

Section 12.1. Except for Leasehold Mortgages and Subleasehold Mortgages as permitted hereunder, Tenant shall not suffer or permit any liens to be filed against the Demised Premises during the term of this Lease, nor against the Tenant's leasehold interest therein, by reason of work, labor, services or materials furnished or claimed to have been furnished to Tenant or anyone holding any interest in the Demised Premises or any part thereof through or under Tenant. If any such liens shall at any time be filed against the Demised Premises, or any part thereof, Tenant shall within sixty (60) days after notice of the filing thereof, cause the same to be cancelled and discharged of record by either payment, deposit, bond, order of a court of competent jurisdiction or otherwise, at the expense of Tenant. Tenant shall defend on behalf of Landlord, at the Tenant's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of any such lien, and Tenant shall pay any damages and discharge any judgment entered therein and save harmless Landlord from any claim or damage resulting therefrom; provided, however, that if any such judgment shall be entered against Landlord, Tenant may appeal such judgment so long as Tenant bonds the same or such judgment may not be enforced against Landlord during the pendency of the appeal. Tenant shall give prompt notice to Landlord if any such action, suit or proceeding shall be commenced.

Section 12.2 Nothing contained in this Lease shall be deemed to be, or construed in any way as constituting, the consent or request of Landlord, express or

implied, by inference or otherwise, to any Person, for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, improvement, or repair of or to the Demised 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 any material which might in any way give rise to the right to file any lien against the interest of Landlord in the Demised Premises. Landlord hereby gives notice to all persons who may furnish labor or materials to Tenant at the Demised Premises that Landlord does not consent to the filing of any mechanic's or other lien against the interest or estate of Landlord in the Demised Premises, and that all persons furnishing labor and materials to Tenant shall look only to the credit of Tenant and such security as Tenant may furnish to such persons for the payment of all such labor and materials.

Section 12.3 The provisions of this Article shall not be deemed to prohibit the lien of that certain refunding mortgage dated October 1, 1921, together with supplemental indentures thereto made by New York Telephone Company, as mortgagor, to Bankers Trust Company, as trustee, or any renewal, modification or replacement thereof, from attaching to the New York Telephone Company's leasehold estate under the Telco Lease.

Article 13. Alterations and Conditions for Tenant's Work

Section 13.1 Tenant, or to the extent permitted under a Sublease, a Subtenant may alter the Buildings and/or Building Equipment in accordance with the provisions of this Article 13, unless such alteration would (a) adversely affect the value of the Buildings or Building Equipment, or (b) weaken the structure of the Buildings.

~~Section 13.2 Tenant agrees (the construction~~
of the Buildings, and all alterations, additions, improvements,
restoration and rebuilding which Tenant or a Subtenant
shall be required or permitted to do under Section 13.1
and/or Articles 7, 11, 15 and 16 of this Lease (each
hereinafter in this Article called "Work") shall be
done in accordance with the following terms and condi-
tions:

(a) If the Work shall involve the construction
of any of the Buildings and if the plans and specifications
therefor shall vary materially from the outline plans and
specifications therefor previously approved by City Planning
Commission in respect of the requirements set forth in
Exhibit D annexed hereto and hereby made a part of this
Lease, then, Tenant shall not proceed with the Work until
such plans and specifications shall have been submitted
to and approved by the City Planning Commission in respect
of such requirements.

(b) If the Work (other than Work to be performed
by the lessee under the Telco Lease where the provisions of
the Telco Lease do not require the consent of Tenant or
Landlord hereunder in respect of such Work) shall involve
any structural repair, addition, change, alteration,
restoration, or rebuilding to completed Buildings and
the cost of such Work will exceed One Hundred Thousand
(\$100,000) Dollars (as estimated in writing by the registered
architect, engineer or contractor of Tenant who shall be
reasonably satisfactory to the Administrator, which
estimate shall be delivered to the Administrator at least
one week before the commencement of such Work), then,
such Work shall not be commenced until the preliminary
plans and specifications for the Work shall have been submitted
to and approved by the Administrator, which approval shall

not be unreasonably withheld.

(c) No structural Work shall be undertaken except under the supervision of a registered architect reasonably satisfactory to the Administrator. Any of the architects specifically named in Section 1.1 of the Telco Lease shall be deemed satisfactory to the Administrator.

(d) All Work shall be commenced only after all required municipal and other governmental permits, authorizations and approvals shall have been obtained by Tenant, at its cost and expense. Landlord will, at the request of Tenant, execute any documents necessary to be signed by Landlord to obtain any such permits, authorizations and approvals.

(e) Except in the case of (i) the construction of the New Building, or (ii) any Work to be performed by the lessee under the Telco Lease where the provisions thereof do not require the deposit of any payment bond, if the Work will cost more than One Hundred Thousand (\$100,000.00) Dollars in the aggregate (as estimated in writing by such registered architect, engineer or contractor of Tenant, which estimate shall be delivered to Landlord at least one week before the Work is commenced), it shall not be commenced until Tenant, or any Subtenant or their contractors, shall have furnished or caused to be furnished to the Commissioner a payment bond (issued by a corporate surety authorized to do business in the State of New York) to secure payment

of the Work; provided, however, that (i) no such bond shall be required if the Work to be performed under a particular contract or subcontract will cost (as estimated as aforesaid) less than \$15,000, and (ii) the Administrator may in his sole discretion waive any one or more of the requirements of the provisions of this subsection (c). Any such bond shall be for the benefit of Landlord, and, at Tenant's option, Tenant and any Leasehold Mortgagee and/or any Subleasehold Mortgagee may be named as an obligee thereunder. When the Work has been completed for which the bond shall have been furnished, at Tenant's request, such bond shall be surrendered by Landlord to Tenant or to the surety for cancellation, accompanied by a statement by the Commissioner that such bond is no longer required.

(f) All Work shall be performed in a first-class workmanlike manner, and in accordance with all Legal Requirements and Insurance Requirements, as well as substantially in accordance with the plans and specifications therefor which shall have been approved by City Planning Commission, if such approval is required under subsection (a) of this Section 13.2. All Work after the commencement thereof shall be performed and completed with due diligence, without cost to Landlord, except as herein provided to the contrary.

(g) Tenant shall furnish or cause to be furnished to Landlord progress reports with regard to the Work, at least quarter-annually, and Tenant shall furnish to Landlord such additional information with regard to the progress

of the Work as Landlord shall reasonably request within thirty days after request therefor.

(h) At all times when any Work is in progress, and before the commencement of the same, Tenant shall maintain or cause to be maintained (i) workmen's compensation insurance covering all persons employed in connection with the Work, in an amount at least equal to the minimum amount of such insurance required by law; and (ii) for the mutual benefit of Landlord and Tenant, comprehensive general liability insurance against all hazards, with limits of not less than \$1,000,000 for bodily injury or death to any one person and \$3,000,000 for bodily injury or death to any number of persons in respect of any one accident or occurrence, and with limits of not less than \$100,000 for property damage. Such comprehensive general liability insurance shall be in addition to the insurance required under Section 14.2 of this Lease, but may be effected by an endorsement, if obtainable, upon the insurance policy referred to in said Section 14.2. The provisions of this subsection shall not apply to Work done by the New York Telephone Company under the Telco Lease where there is an indemnity in force in favor of Landlord with respect to such claims from the New York Telephone Company.

(i) At all times when any Work is in progress, and before the commencement of the same, the cost of which will exceed \$100,000 (as estimated as aforesaid), Tenant shall maintain or cause to be maintained, for the benefit of Landlord and Tenant, Builder's Risk Insurance - Completed Value Form Insurance against loss or damage by fire and

standard extended coverage perils; and such insurance may be affected by an endorsement, if obtainable, upon the insurance policy referred to in Section 14.2 of this Lease.

The provisions of this subsection shall not apply to Work done by the New York Telephone Company under the Telco Lease where there is an indemnity in force in favor of Landlord with respect to such claims from the New York Telephone Company.

Section 13.3 In any case under subsection (a) of Section 13.2 where approval or consent of the City Planning Commission is requested by Tenant, such approval or consent shall be given or declined by the City Planning Commission within thirty (30) days after the date of Tenant's request for such approval or consent. In any case, under subsection (b) of Section 13.2 where the Administrator's approval or consent is requested by Tenant, such approval or consent shall be given or declined by the Administrator within fourteen (14) days [or within thirty (30) days, if the cost of the Work will exceed \$500,000.00] after the date of Tenant's request of such approval or consent.

Article 14. Insurance

Section 14.1 Tenant, at its sole cost and expense, during the Demised Term, shall keep, or shall cause to be kept, the Buildings and the Building Equipment and those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, insured for the mutual benefit of Landlord and Tenant as their respective interest may appear, against loss or damage by fire and against loss or damage by all other risks customarily included in extended coverage endorsements attached to fire insurance policies

covering buildings and structures of similar age, construction and class to the Buildings and Building Equipment and the S.L.P.C.S. in the downtown area of Brooklyn, New York, in an amount sufficient to prevent Landlord and Tenant from becoming a co-insurer under the terms of the applicable policies, but in any event, in an amount not less than one hundred (100%) percent of the full replacement cost of the Buildings and those portions of the S.L.P.C.S. which are insured by Tenant under this Section 14.1 (less physical depreciation and exclusive of the cost of excavation, foundations and footings), to the extent obtainable from insurance companies licensed to do business in the State of New York or from any agency or department of the City or State of New York or of the United States. Such full replacement cost may be determined from time to time, but not more frequently than once every thirty-six (36) calendar months, at the request of the Administrator, by an appraiser, architect or engineer designated by Tenant and approved by the Administrator, which approval shall not be unreasonably withheld, whose fee shall be paid or caused to be paid by Tenant.

Section 14.2 Tenant, at its sole cost and expense, during the Demised Term, for the mutual benefit of Landlord and Tenant, shall maintain or shall cause to be maintained personal injury and property damage liability insurance against claims for bodily injury, death and property damage, occurring in or about the Demised

Premises and those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, during the Term of this Lease, with limits of not less than \$1,000,000 in respect of bodily injury or death to any one person, and \$3,000,000 for bodily injury or death to any number of persons in respect of any one accident, and with limits of not less than \$100,000 for property damage. The provisions of this Section 14.2 shall not apply during the term of the Telco Lease to the space leased thereunder so long as the New York Telephone Company is the lessee under the Telco Lease and there is an indemnity in force in favor of Landlord with respect to such claims from the New York Telephone Company.

Section 14.3 All insurance to be provided and kept in force by Tenant under the provisions of this Lease [other than workmen's compensation insurance referred to in Section 13.2(h) above] shall name as the insured Landlord and Tenant as their respective interests may appear. In addition, at Tenant's option, the policies of insurance required to be obtained or caused to be obtained by Tenant under this Article and under Section 13.2(h) shall be carried in favor of Subtenants and/or the holder or holders of any Leasehold Mortgages or Subleasehold Mortgages, as insureds, and, in the case of any such mortgages, under standard non-contributing mortgagee clauses attached to such policies. Said policies shall be obtained or caused to be obtained by Tenant upon the commencement of the term hereof and the originals or certificates thereof shall be delivered to Landlord within fifteen (15) days thereafter, with proof of payment of the premium or the current installment thereof, and

shall be taken in responsible companies of recognized responsibility licensed to do business in the State of New York or from any agency or department of the City or State of New York or of the United States. Said policies shall be for a period of not less than one (1) year and shall contain a provision whereby the same cannot be cancelled or materially changed unless the Commissioner and the Administrator (and each Subtenant and mortgagee named as an insured thereunder) is given at least ten (10) days' prior written notice of such cancellation or change. Tenant shall procure or cause to be procured renewals of such insurance from time to time at least twenty (20) days before the expiration thereof, and Tenant shall promptly deliver to Landlord the originals or certificates of the renewal policies, with proof of payment of the premium or the then current installment thereof. Any insurance required to be provided for and kept in force by Tenant under this Lease may be effected by a policy or policies of blanket insurance or by policies of insurance obtained by Tenant or by Subtenants in accordance with their respective Subleases. Tenant shall request of said insurers (and furnish Landlord with a copy of such request) that a copy of any notice given by them to Tenant regarding premiums, cancellation or change of coverage be given simultaneously to the Commissioner.

Section 14.4 The policy of insurance required under the provisions of Sections 13.2(1) and 14.1 above shall provide that the loss, if any, shall be (a) adjusted with both Landlord and Tenant, subject to the rights of any Subtenant and/or Leasehold Mortgagees and/or Sublease-

hold Mortgages named as insureds, and (b) payable to Tenant or, at Tenant's option, to any Subtenant, if \$100,000 or less, and to the "Depository," if more than \$100,000. The Depository shall be the holder of any first Institutional Leasehold Mortgage, and if there shall be no such mortgage, then the Depository shall be a bank or trust company, having its principal office in the City and State of New York, having assets in excess of \$500,000,000, selected by Tenant, and approved in writing by the Administrator, which approval shall not be unreasonably withheld. The Depository shall hold such insurance moneys as a trust fund for the purpose of paying the cost of the work required to be performed by Tenant under Article 15 hereof, and the Depository shall disburse such moneys as provided in said Article 15. Any compensation required to be paid to the Depository shall be paid or caused to be paid by Tenant.

Section 14.5 Notwithstanding the provisions of Section 14.4, so long as the New York Telephone Company shall be the lessee under the Telco Lease, if any part of the New Building leased thereunder or any of the Building Equipment therein shall be damaged by fire or other casualty insured against by the policy of insurance required under Sections 13.2(1) and 14.1 and (a) the remainder of the New Building shall not be damaged thereby, then:

(i) the loss shall be adjusted solely by the New York Telephone Company; and

(ii) the insurance proceeds shall be paid over to the New York Telephone Company;

or if (b) all or part of the remainder of the New Building shall be damaged thereby, then the net insurance proceeds after reimbursement out of such proceeds for any costs and expenses (including reasonable attorneys fees) for collection thereof shall be allocated between the repair, restoration, replacement and rebuilding of that part of the New Building leased under the Telco Lease and the remainder of the New Building, pro-rata to the estimated cost of such work. Any dispute over such cost shall be resolved by "Contractors Arbitration" as defined in Article 36 of the Telco Lease. The net insurance proceeds so allocated to the part of the New Building leased under the Telco Lease shall be paid to the New York Telephone Company and the remainder shall be paid under the provisions of Section 14.4.

Section 14.6 Neither party shall carry separate or additional insurance, concurrent in form and contributing, in the event of any loss or damage to the Demised Premises with any insurance required to be obtained by Tenant under this Lease, unless such separate or additional insurance shall comply with and conform to all of the provisions and conditions of this Article.

Section 14.7 Upon the expiration or sooner termination of this Lease, landlord may, at its option, elect to continue in force any or all of the transferable policies of insurance required to be obtained by Tenant under this Lease, and in such case Landlord shall within thirty days thereafter reimburse Tenant for the amount of the unearned premiums; provided, however, if Tenant shall then be in default of any term, covenant or condition of this Lease

beyond the expiration of any applicable grace period, Landlord may retain so much of the amount of the unearned premiums as shall be required to correct any such default.

Section 14.8 Landlord shall have two options, each to require that the amount of the liability insurance to be provided and kept in force by Tenant under Section 13.2(h) and/or Section 14.2 be increased during the extended term for which the option shall be exercised, so that the amount of such insurance adequately protects Landlord's interest during such extended term. Each such option may be exercised by Landlord giving notice thereof to Tenant within sixty days after the commencement of the extended term for which such option is exercised. If Tenant shall dispute any such requirement, the dispute shall be submitted to and determined by any Institutional Leasehold Mortgagee designated by Landlord. Tenant shall, thereafter, when applicable, carry or cause to be carried the insurance determined by such Institutional Leasehold Mortgagee, but in no event shall the amount of such liability insurance be less than the amounts specified in Section 13.2(h) and Section 14.2.

Article 15. Damage or Destruction

Section 15.1 If any of the Buildings or Building Equipment or those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, shall be damaged or destroyed by fire or other casualty during the Demised Term, whether or not covered by insurance, Tenant shall, except as provided to the contrary in Section 15.4, promptly repair, restore, replace and rebuild the same to as nearly as may be practicable its condition and character immediately

prior to such damage or destruction, with such alterations and additions as may be permitted to be made under Article 7 and Section 13.1 above; and

(a) The net amount of the insurance moneys, if any, paid over to the Depository, shall be applied by the Depository in the following manner:

(i) there shall be paid to Tenant from said insurance moneys such part thereof as shall equal the cost to Tenant of making such temporary repairs or doing such other work, as may be reasonably necessary in order to protect the Land and the Buildings and Building Equipment and those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacement or rebuilding of the Buildings and/or Building Equipment, and those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11;

(ii) there shall be paid to Tenant from said insurance moneys such part thereof as shall equal the actual cost to Tenant of repairing, restoring, replacing or rebuilding the Buildings and/or Building Equipment and those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, or any part thereof;

(iii) payment to Tenant pursuant to subdivisions (i) or (ii) of this subsection (a) from such insurance moneys shall be made by the Depository to Tenant from time to time as the work progresses, in amounts equal to the cost of labor and material incorporated into and used in such work, and actual builders', architects' and engineers' fees, and other reasonable charges in connection

with such work, upon delivery to Landlord and the Depository, of a certificate of Tenant's architect, engineer or contractor in charge of such work, who shall be reasonably satisfactory to Landlord, certifying (1) that the amounts so to be paid to the Tenant are payable to Tenant in accordance with the provisions of this Section and that such amounts are then due and payable by Tenant or have heretofore been paid by Tenant; (2) the progress of the work; (3) that the work has been done in accordance with the plans and specifications therefor and Legal Requirements and Insurance Requirements; and (4) in the case of the final payment, that (aa) all necessary waivers or releases of liens have been obtained in respect of any work, labor, services or materials furnished or claimed to have been furnished to Tenant or anyone holding any interest in the Demised Premises through or under Tenant, or (bb) in respect of such work, labor, services or materials for which a waiver or release of lien has not been obtained, that the cost thereof has been bonded or will be paid out of the final payment.

(iv) in addition, at Landlord's request, Tenant shall furnish to Landlord and the Depository at the time of any such payment, an official search, title search, or other evidence satisfactory to the Depository, that there has not been filed, with respect to the portion of the Demised Premises on which such work is being or has been performed, any lien which has not been discharged of record, in respect of any work, labor, services or materials furnished or claimed to have been furnished to Tenant or anyone holding any interest

~~In the Demised Premises through or under Tenant. Further,~~
~~the Depository shall not pay out any sum to Tenant after~~
~~it shall have received written notice from Landlord to the~~
~~effect that Tenant is in default hereunder in the payment~~
~~of fixed annual rent or real estate taxes or that Tenant is in~~
~~default with respect to Tenant's other obligations hereunder beyond~~
the expiration of any applicable grace period.

(b) The insurance moneys, if any, paid to Tenant as provided in Article 14 above, on account of any loss or destruction to the Demised Premises or those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, shall be held by Tenant in trust and applied only for the purpose of repairing, reconstructing or restoring said portion of the Demised Premises or those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11.

(c) The provisions and conditions of Section 13.2 shall similarly apply to work to be performed by Tenant under this Article.

(d) If any of the insurance moneys paid by the insurance company to the Depository or Tenant as hereinabove provided, shall remain after the completion of such repairs, restoration, replacement or rebuilding, the excess shall be retained by or paid over to Tenant, subject to the rights of the holder or holders of any Leasehold Mortgages and/or Subleasehold Mortgages.

(e) If Tenant shall fail to commence any work required to be performed by it under this Section within a reasonable time after the insurance proceeds shall have

been collected (but, in any case, within one year from the date of such damage or destruction), or having commenced such work shall fail to complete the same in accordance with the provisions of this Lease with reasonable diligence (but, in any case, not later than four years, measured from the date on which Tenant is required to commence such work), and such failure shall continue for a period of thirty (30) days after notice from Landlord to Tenant, then, any Leasehold Mortgagee or Subleasehold Mortgagee may, at its option and upon serving notice upon Landlord and Tenant that it elects to do so, perform such work. In such event, such Leasehold Mortgagee or Subleasehold Mortgagee shall have the right, subject to compliance with this Section, to receive the insurance proceeds from the Depository and to apply the same to the cost of such work to the extent that the same shall not theretofore have been applied to the payment or reimbursement of the cost and expenses of Tenant as aforesaid.

(f) If neither Tenant or any Leasehold Mortgagee or Subleasehold Mortgagee shall commence any work required to be performed by Tenant under this Section within the period of time therefor set forth in Section 15(e) above, or having commenced such work, shall fail to complete it within the period of time therefor set forth in said Section 15(e), and such failure shall continue for a period of thirty (30) days after notice by Landlord, then, Landlord may, at its option and upon serving written notice upon Tenant and any such Leasehold Mortgagee or Subleasehold Mortgagee that it elects so to do, make and complete such

work. In such event, and whether or not this Lease may have theretofore been terminated by reason of any default by Tenant, any moneys then held by the Depository shall be paid over to Landlord, subject to the rights of the holder or holders of any Leasehold Mortgages and/or Subleasehold Mortgages.

(g) Notwithstanding anything contained to the contrary in this Article, no Institutional Leasehold Mortgagee in possession of the Demised Premises shall be required to pay any cost of such rebuilding, repairing or restoration in excess of the insurance proceeds which it receives in respect thereof pursuant to this Article.

Section 15.2 Landlord and Tenant each agrees that it will cooperate with the other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance moneys that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance moneys.

Section 15.3 Tenant agrees to give prompt notice to Landlord with respect to all fires and other casualties occurring in, on, at or about the Land and the Buildings and Building Equipment or those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, which result in any personal injury or death or in any material damage or destruction to any of the

~~Buildings or Building Equipment or those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11.~~

Section 15.4 Notwithstanding anything contained to the contrary in this Lease, in the event that (a) any of the Buildings or Building Equipment or those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, shall be damaged or destroyed by fire or other casualty at any time during the last ten years of either of the extended terms of this Lease, and (b) the cost of repairing, rebuilding, replacing or restoring the same would exceed \$1,000,000 and the necessary work would take more than six months to perform (as estimated in writing by Tenant's architect, engineer or contractor who shall be reasonably satisfactory to Landlord, which estimate shall be delivered to Landlord within sixty (60) days after the date that such damage or destruction occurs), then, in such case, Tenant may elect to terminate this Lease, by giving not less than thirty (30) days' notice thereof to Landlord, provided and upon condition that:

(i) such notice of termination (which shall make references to the notice which Landlord may give to Tenant under subdivision (iv) of this Section) is given within ninety (90) days after the date that such damage or destruction occurs, and at least ten (10) days after the delivery to Landlord of said architect's, engineer's or contractor's certificate;

(ii) at the time of the giving of such notice, and on the termination date set forth therein, Tenant is

not in default under this Lease in respect of rent or the payment of real estate taxes and that Tenant is not in default under its other obligations hereunder beyond the applicable grace period provided herein for remedying the default;

~~(iii)~~ Tenant shall first have obtained and delivered to Landlord the written consent to the termination of this Lease by the holder or holders of any Leasehold Mortgages then in force; and

(iv) on the termination date set forth in such notice of termination Tenant shall have (x) demolished any Buildings on the Demised Premises and/or those portions of the S.L.P.C.S. which Tenant is required to maintain under Article 11, and (y) cleared the Demised Premises, and (z) filled, graded and levelled the Land underlying the same to street grade; provided and upon condition that Tenant is given notice to do so by Landlord within twenty (20) days after the giving of such notice of termination by Tenant to Landlord.

If Tenant shall effectively elect to terminate this Lease in part as provided above in this Section, then (1) the Lease shall terminate and expire on the date set forth in such notice of termination, (2) the fixed annual rent and additional rent and all other charges provided to be paid by Tenant shall be apportioned and paid to such termination date, (3) Tenant shall not be required to repair the damage or destruction, and (4) all the insurance moneys arising out of such damage or destruction shall be paid to and be the sole property of Landlord

(subject to the rights of the holder or holders of any Leasehold Mortgages). The termination of this Lease pursuant to the provisions of this Section 15.4 shall not terminate or otherwise affect the Master Lease or any other Severance Leases then in force.

Section 15.5 Tenant hereby expressly waives the provisions of Section 227 of the Real Property Law and of any other law to the same or similar effect, whether now or hereafter enacted or in force.

Article 16. Condemnation

Section 16.1 If at any time during the term of this Lease the whole of the Demised Premises shall be taken for any public or quasi-public use by any public or quasi-public body having lawful authority or right to do so by eminent domain (hereinafter called "taking"), then this Lease shall end upon the vesting of title in the condemning authority, and the fixed annual rent, additional rent and other charges payable under this Lease shall be apportioned and paid to the date of such vesting, and the total award with respect thereto shall be paid in the following order of priority:

(a) There shall be paid to Landlord the portion of the award attributable to the Land so taken, considered as vacant and unimproved but subject to this Lease, together with interest thereon payable by the condemning authority;

(b) There shall next be paid to Tenant (subject, however, to the rights of Leasehold Mortgagees) the portion of the award attributable to the Buildings and Building

Equipment so taken, together with the interest thereon payable by the condemning authority;

(c) There shall be paid to Landlord fifty (50%) percent of the portion of the award attributable to those portions of the S.L.P.C.S. which Landlord constructs under Section 28.3; and

(d) The balance, if any, of the award, together with the interest thereon payable by the condemning authority, shall be shared equally (i.e., 50% to each) between Landlord and Tenant, except that Tenant's share of any such balance shall be reduced at the rate of one percent (1%) per annum commencing on the fortieth (40th) anniversary of the Commencement Date and annually thereafter.

Anything to the contrary contained in this Section 16.1 notwithstanding, if there shall be a taking of so much of the space leased under the Telco Lease during the term thereof, that such lease shall terminate as a result thereof, then the award therefor shall be paid in the following order of priority:

(i) the reasonable costs and expenses of the proceeding shall first be paid;

(ii) the unpaid principal balance of that Leasehold Mortgage to which the Telco Lease is subordinate and which is first in priority of lien shall be paid in full (except as hereinafter set forth);

(iii) there shall be paid to Landlord the portion of the award attributable to the Land so taken, considered as vacant and unimproved but subject to this Lease, together with interest thereon payable by the condemning authority, provided, however, that if the balance of such award is insufficient for that purpose, there shall be deducted from the payment to be made under (ii) above and paid to Landlord, an amount equal to

such insufficiency;

(iv) ~~there shall next be paid to Tenant (subject, however, to the rights of Leasehold Mortgagees) the portion of the award attributable to the New Building and the Building Equipment (except the S.L.P.C.S. and any Building Equipment now or hereafter attached to or used in connection with the operation or maintenance of the S.L.P.C.S.) so taken, together with the interest thereon payable by the condemning authority, less an amount equal to the depreciation thereon which Tenant could have claimed on a straight-line basis over the shortest useful life of each item included in the New Building and the Building Equipment therein permissible under present Internal Revenue Service Guidelines;~~

(v) there shall be paid to Tenant an amount equal to the architectural and engineering fees paid by Tenant in connection with the construction of the New Building (except the S.L.P.C.S. and any Building Equipment now or hereafter attached to or used in connection with the operation or maintenance of the S.L.P.C.S.), but in no event to exceed an amount equal to the deduction for depreciation under (iv) above;

(vi) there shall be paid to the lessee under the Telco Lease the portion of the award attributable to Tenant's Work, Alteration and Tenant's Repairs (as defined in the Telco Lease) less (x) an amount equal to the depreciation thereon which such lessee could have claimed on a straight-line basis over the shortest useful life of each item included in the New Building and the Building Equipment therein permissible under present Internal Revenue Service Guidelines, and (y) any sums paid such lessee therefor by reason of any prior casualty or taking;

(vii) there shall be paid to the lessee under the Telco Lease an amount equal to the architectural and engineering fees paid by such lessee in connection with Tenant's Work, Alteration and Tenant's Repairs (as defined in the Telco Lease);

(viii) there shall be paid to the lessee under the Telco Lease fifty (50%) percent of the remainder of the award, less three (3%) percent thereof for each full year of the Telco Lease, if any, which has elapsed between the twenty-fifth (25th) anniversary of the commencement of the term thereof and the date of such taking, if such taking occurs during the Initial Term thereof (as defined therein) or, if such taking occurs during the Extended Period thereof (as defined therein) then less five (5%) percent thereof for each full lease year of the Extended Period which has elapsed prior to such taking;

(ix) there shall be paid to Tenant (subject, however, to the rights of Leasehold Mortgagees) the portion of the award attributable to those portions of the S.L.P.C.S. which Tenant constructs under Section 7.5;

(x) there shall be paid to Landlord fifty (50%) percent of the portion of the award attributable to those portions of the S.L.P.C.S. which Landlord constructs under Section 28.3; and

(xi) the balance, if any, of the award, together with the interest thereon payable by the condemning authority, shall be shared equally [i.e., fifty (50%) percent to each] between Landlord and Tenant, except that Tenant's share of any such balance shall be reduced at the rate of one (1%) percent per annum commencing on the fortieth (40th) anniversary of the Commencement Date and annually thereafter.

Section 16.2 If only part of the Demised Pre-

mises is so taken, and if the portion of the Demised Premises not so taken shall be insufficient to permit the restoration of the Buildings and Building Equipment so as to constitute a complete rentable building, capable of being economically used and occupied for the purposes for which the same were being used immediately prior to the taking, then Tenant shall have the right, at its option, to terminate this Lease, by giving notice thereof to Landlord within one (1) month after such taking. In such case, (i) this Lease shall end and expire as of the vesting of title in the condemning authority, (ii) the fixed annual rent, additional rent and other charges shall be apportioned and paid to the date of such termination, and (iii) the award shall be paid and apportioned as provided in Section 16.1 above.

Section 16.3 If only part of the Demised Premises is taken, and if this Lease shall not terminate by reason of such taking, or if there shall be any change of grade, the entire award shall be paid to the Depository, and the Depository shall hold, apply and pay over the same towards the cost of demolition, repair and restoration, substantially in the same manner and subject to the same terms and conditions as those provided in Article 15 hereof, including, without limitation, the provisions of Sections 15.1(e) and (f) thereof. Any balance remaining in the hands of the Depository after payment of such costs of demolition, repair and restoration as aforesaid, shall be paid in equal shares to Landlord and to Tenant, subject to the rights of the holder or holders of any Leasehold Mortgage or Leasehold Mortgages. Tenant's obligation to pay the cost of such demolition, repairs and restoration shall be limited to the net

amount of the award made available to Tenant for such purposes. Landlord shall not be required to pay all or any part of the cost of such demolition, repairs and restoration. Tenant's obligations under the provisions of this Section shall be subject to the provisions of Section 13.2 above.

Anything to the contrary contained in this Section 16.3 notwithstanding, if there shall be a taking of part of the space leased under the Telco Lease and such lease shall not terminate as a result thereof, then the award therefor shall be paid in the following order of priority:

(a) The reasonable costs and expenses of the proceeding shall first be paid;

(b) The remainder of the award, less any award for the Land (the "Restoration Fund") shall be received and held by Tenant, unless the provisions of any Institutional Leasehold Mortgage require the Institutional Leasehold Mortgagee to receive and hold the same, in which event the Restoration Fund shall be received and held by such Institutional Leasehold Mortgagee. The Restoration Fund shall be applied by the Person holding the same to reimburse the lessee under the Telco Lease for the cost of restoring the space leased under the Telco Lease as nearly as may be practicable to its condition, character and value immediately prior to such taking. The restoration shall proceed under Article 13, to the extent applicable. If the Restoration Fund shall be insufficient to pay for the entire cost of restoration, Tenant shall pay, or cause to be paid, the deficiency.

(c) The unpaid principal balance of that Leasehold Mortgage to which the Telco Lease is subordinate and which is first in priority of lien shall be paid in full (except as hereinafter set forth).

(d) There shall be paid to Landlord the portion of the award attributable to the Land so taken, considered as vacant and unimproved, but subject to this Lease, together with interest thereon payable by the condemning authority; provided, however, that if the balance of such award is insufficient for that purpose, there shall be deducted from the payment to be made under (c) above and paid to Landlord, an amount equal to such insufficiency.

(e) There shall next be paid to Tenant (subject, however, to the rights of Leasehold Mortgagees) the portion of the award attributable to that part of the Buildings and any Building Equipment (except the S.L.P.C.S. and any Building Equipment now or hereafter attached to or used in connection with the operation or maintenance of the S.L.P.C.S.) so taken, together with the interest thereon payable by the condemning authority, less an amount equal to the depreciation thereon which Tenant could have claimed on a straight-line basis over the shortest useful life of each item included in that part of the Buildings and any Building Equipment therein, permissible under present Internal Revenue Service Guidelines.

(f) There shall be paid to the lessee under the Telco Lease the portion of the award attributable to Tenant's Work, Alteration and Tenant's Repairs (as defined in the Telco Lease) less (x) an amount equal to the

depreciation thereon which such lessee could have claimed on a straight-line basis over the shortest useful life of each item included in the New Building and the Building Equipment therein permissible under present Internal Revenue Service Guidelines, and (y) any sums paid such lessee therefor by reason of any prior casualty or taking;

(g) The balance, if any, of the award, together with the interest thereon payable by the condemning authority, shall be shared equally (i.e., 50% to each) between Landlord and Tenant, except that Tenant's share of any such balance shall be reduced at the rate of one percent (1%) per annum commencing on the fortieth (40th) anniversary of the Commencement Date and annually thereafter.

Section 16.4 Subject to the provisions of Sections 16.2 and 16.3 hereof, if title to less than the whole of the Demised Premises shall be taken as aforesaid, this Lease shall continue, except that thereafter, the fixed annual rent, additional rent and other charges thereunder shall be reduced pro rata (i.e., on the basis of per square foot rental) for the part so taken. The reduction applicable to the space leased under the Telco Lease shall be computed in the manner described in Exhibit C to that lease.

Section 16.5 Tenant further agrees that if, at any time after the date hereof, the whole or any part of Tenant's interest under this Lease shall be taken or condemned by any competent authority for its or their temporary use or occupancy, this lease shall not terminate by reason thereof and Tenant shall continue to pay, in the manner and at the time herein specified, the full amount of the fixed

annual rent and all additional rent and other charges then required to be paid by Tenant hereunder, and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, to perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking had not occurred. In the event of any such taking as in this Section 16.5 referred to, Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise; provided, however, that if such period of temporary use or occupancy shall extend beyond the expiration date of this Lease such award shall be apportioned between Landlord and Tenant as of such date of expiration of the term hereof.

Section 16.6 Notwithstanding anything contained to the contrary in this Article, if all or any part of the S.L.P.C.S. which Tenant constructs under Section 7.5 shall be taken, the award (or the portion thereof) attributable to the part of the S.L.P.C.S. which Tenant constructs under Section 7.5 (as distinguished from any buildings and improvements constructed thereon) so taken, together with the interest thereon payable by the condemning authority, shall be paid in the following order of priority:

(1) There shall be paid to the holder or holders of any Institutional Leasehold Mortgages covering the the part of the S.L.P.C.S. which Tenant constructs under Section 7.5, so taken, the award attributable thereto, to the extent that the principal amounts of such Institutional Lease-

hold Mortgages are attributable to the part of the S.L.P.C.S. which Tenant constructs under Section 7.5, so taken (and for such other purpose any allocations in respect thereof set forth in any Institutional Leasehold Mortgage or any instrument collateral thereto shall be deemed accurate for all purposes under this Lease), together with the interest thereon payable by the condemning authority;

(ii) There shall next be paid to Landlord, unless the taking shall be by The City of New York or by any agency, department, bureau or subdivision thereof, the balance, if any, of the award attributable to the part of the S.L.P.C.S. which Tenant constructs under Section 7.5, so taken, to the extent that Landlord has paid to Tenant its share of the cost of construction thereof, together with the interest thereon payable by the condemning authority;

(iii) There shall next be paid to Tenant the balance, if any, of the award attributable to the part of the S.L.P.C.S. which Tenant constructs under Section 7.5, so taken, to the extent of Tenant's cost of construction thereof, together with interest thereon payable by the condemning authority, less any sums paid to the holders of any Institutional Leasehold Mortgages under subdivision (i) above;

(iv) If the taking shall be by The City of New York or by any agency, department, bureau or subdivision thereof, there shall next be paid to Landlord the balance, if any, of the award attributable to the part of the S.L.P.C.S. which Tenant constructs under Section 7.5, so taken, to the extent that Landlord has paid to Tenant its share of the cost of construction thereof, together with the interest thereon payable by the condemning authority; and

(v) The balance, if any, of the award, together with the interest thereon payable by the condemning authority shall be paid (1) to Landlord and Tenant, in the manner provided in Section 16.3(g) above, provided that the taking shall not be by The City of New York or by any agency, department, bureau or subdivision thereof, or (2) to Tenant, if the taking shall be by The City of New York or by any agency, department, bureau or subdivision thereof.

For all purposes under this Lease, if any of the Consents necessary or required for the construction, maintenance, use and operation of the part of the S.L.P.C.S. which Tenant constructs under Section 7.5 shall expire or terminate for any reason whatsoever prior to the sooner to occur of (x) the expiration of the fifty (50) year term of the Consents, or (y) the expiration or earlier termination of this Lease then, (1) The City of New York shall be deemed to have taken by eminent domain the part of the S.L.P.C.S. which Tenant constructs under Section 7.5 and the buildings and improvements thereon and shall pay just compensation therefor, and (2) Tenant shall have no obligation to remove any part of the S.L.P.C.S. or any buildings and improvements thereon, nor shall Tenant have any obligation whatsoever to restore any part of the S.L.P.C.S.

Section 16.7 Tenant, Leasehold Mortgagees, and, at Tenant's option, Subtenants and Subleasehold Mortgagees, shall have the right without cost to Landlord [except as otherwise provided in Sections 16.1(1) and 16.3(a)] to participate in any action or proceeding involving or relating to the taking of all or any part of the Demised Premises in order to protect their respective interests and rights therein.

Section 16.8 Any dispute arising under this Article affecting the rights and obligations of the lessee under the Telco Lease shall be resolved in accordance with the provisions of Article 36 of that lease.

Section 17.1 This Lease and the Demised Term are subject to the limitation that if, at any time during the Demised Term, any one or more of the following events (herein called an "event of default") shall occur, that is to say:

(a) if Tenant shall make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts as they become due; or

(b) if any petition shall be filed against Tenant in any court, whether or not pursuant to any statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and such petition shall be approved by the court, or the court shall assume jurisdiction of the subject matter, and if any such proceedings shall not be dismissed within fifty (50) days after the institution of the same; or if any such petition shall be so filed by Tenant; or

(c) if, in any proceeding, a receiver or trustee shall be appointed for all or any portion of Tenant's property, and such receivership or trusteeship shall not be vacated or set aside within fifty (50) days after the appointment of such receiver or trustee; or

(d) if Tenant shall assign, mortgage or encumber this Lease, or sublet the whole or any part of the Demised Premises, otherwise than as expressly permitted hereunder; or

(e) if Tenant shall fail to pay any installment of the fixed annual rent set forth in Article 4 of this Lease, or any part thereof, and such failure shall continue for

fifteen (15) days after notice thereof from Landlord to Tenant;
or

(f) if Tenant shall fail to pay any item of additional rent or any other charge required to be paid by Tenant hereunder, and such failure shall continue for fifteen (15) days after notice thereof from Landlord to Tenant; or

(g) if Tenant shall abandon any portion of the Demised Premises, and such abandonment shall continue for twenty (20) days after notice thereof from Landlord or Tenant; or

(h) if Tenant shall fail to perform or observe any other requirement, term, covenant or condition of this Lease (not hereinbefore in this Section 17.1 specifically referred to) on the part of Tenant to be performed or observed, and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant (subject, however, to the provisions of Section 17.5):
then upon the happening of any one or more of the afore-said events of default, and the expiration of the period of time for remedying the same, the same shall be deemed to be, at Landlord's option, a breach of this Lease, and Landlord may immediately, or at any time thereafter, if the event of default shall not have been remedied, give to Tenant a notice (hereinafter called "notice of termination") of its election to terminate this Lease at the expiration of five (5) days from the date of service of such notice of termination, and, at the expiration of such five (5) days, this Lease and the term hereof, as well as all of the right, title and interest of the Tenant

hereunder, shall wholly cease and expire in the same manner and with the same force and effect as if the date of expiration of such five (5) day period were the date originally specified herein for the expiration of this Lease and the Demised Term, subject, however, to the rights, if any, of the Leasehold Mortgagees, Persons to whom Landlord shall have granted non-disturbance agreements, and the mortgagees (including Subleasehold Mortgagees) of such Persons; provided, however, that the Master Lease and any other Severance Leases in effect at such time shall not be terminated or otherwise affected by such termination of this Lease.

Section 17.2 If this Lease shall be terminated as provided in Section 17.1, Landlord, or Landlord's representatives, agents or servants, may immediately, or at any time thereafter, re-enter the Demised Premises without further notice, except as provided to the contrary in said Section 17.1, and, subject, however, to the rights, if any, of Leasehold Mortgagees, Persons to whom Landlord shall have given non-disturbance agreements, and the mortgagees (including Subleasehold Mortgagees) of such Persons:

(a) remove therefrom Tenant, its agents, employees, servants, licensees, contractors, and any persons holding or claiming by, through or under Tenant, and all or any of its or their property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law and repossess and enjoy the Demised Premises, together with all additions, alterations and improvements thereto; and

(b) all the right, title, estate and interest of Tenant in and to (i) the Buildings and Building Equipment, all changes, additions and alterations therein, and all renewals and replacements thereof, (ii) all rents, issues and profits of the Demised Premises, or any part thereof, whether then accrued or to accrue, (iii) all insurance policies and all insurance moneys paid or payable thereunder; (iv) all fuel and supplies then upon the Demised Premises, and (v) the then entire and undisbursed balance of funds and/or security or other deposits held hereunder by the Depository and/or Landlord, shall automatically pass to, vest in and belong to, Landlord, without further action on the part of either party, free of any and all claims thereto by Tenant and/or other Persons.

Section 17.3(a) Further, if this Lease shall be terminated pursuant to Section 17.1 above, the fixed annual rent, additional rent and all other charges required to be paid by Tenant hereunder, in respect of the Demised Premises shall thereupon become due and payable to the time of such termination, reentry or dispossession, and Tenant shall also be responsible for all reasonable expenses which Landlord may then or thereafter pay for legal expenses, brokerage commissions, and all other costs paid or incurred by Landlord for restoring the said portion of the Demised Premises to good order and condition and for altering and otherwise preparing the same for reletting. Landlord may, at any time from time to time, relet said portion of the Demised Premises in whole or in part, in its own name, for a term or terms which, at Landlord's option,

may be for the remainder of the then current term of this Lease, or for any longer or shorter period, and (unless the statute or rule of law which governs the proceeding in which such damages are to be proved limits the amount of such claim capable of being so proved and allowed, in which case Landlord shall be entitled to prove as and for liquidated damages, and have allowed an amount equal to the maximum allowed by or under any such statute or rule of law) Landlord shall be entitled to recover, at the election of Landlord, either (a) liquidated damages, in an amount which at the time of such termination, reentry or dispossession by Landlord, as the case may be, is equal to the excess, if any, of the then present value of the installments of fixed annual rent, additional rent and other charges required to be paid hereunder by Tenant in respect of the Demised Premises for the period which would otherwise have constituted the unexpired portion of the term of this Lease, over the then net rental market value of the Demised Premises for such unexpired portion of the term of this Lease, both discounted at the nominal rate of four (4%) percent per annum convertible monthly, or (b) damages (payable in monthly installments, in advance, on the first day of each calendar month following such termination, reentry or dispossession and continuing until the date fixed herein for the expiration of the term of this Lease) in an amount or amounts equal to the excess, if any, of the sum of the aggregate expenses paid by Landlord during the month immediately preceding such calendar month for all such items as, by the terms of this Lease, are required to be

paid by Tenant, plus an amount equal to the amount of the ~~installment of fixed annual rent and additional rent and other charges which would have been payable by Tenant hereunder in respect of such calendar month had this lease and the term of this Lease not been so terminated, or had Landlord not so re-entered, over the rents, if any collected by or accruing to Landlord in respect of such calendar month pursuant to such reletting.~~ Landlord shall in no event be liable in any way whatsoever for failure to relet the Demised Premises, or in the event that the Demised Premises are relet, for failure to collect rent thereof under such reletting, and in no event shall Tenant be entitled to receive any excess of such annual rents over the sums payable by Tenant to Landlord hereunder.

(b) However, and notwithstanding anything contained to the contrary in this Lease (whether in this Section or elsewhere other than Section 33.1) or as a matter of law, (i) the provisions of this Section shall be subject to the provisions of Section 18.1 hereof, and (ii) Landlord shall look only to the security, if any, deposited by Tenant under this Lease, and to Landlord's rights under Sections 17.2(b) and 17.7, with respect to any liability or obligations of Tenant arising out of, under or in connection with this Lease, and (iii) there shall be no personal or other liability whatsoever of Tenant with respect to, under, arising out of, or in connection with, this Lease.

Section 17.4 Tenant, for itself and any and all Persons claiming by, through or under Tenant, including its creditors, upon the termination of this Lease, and

of the term of this Lease, in accordance with the terms hereof, or in the event of entry of judgment for the recovery of the possession of the Demised Premises in any action or proceeding, or if Landlord shall enter the Demised Premises by process of law or otherwise, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have under and by reason of any present or future law or decision to redeem the Demised Premises or for a continuation of this Lease for the term of this Lease after having been dispossessed or ejected therefrom by process of law or otherwise.

Tenant waives (i) all right to trial by jury in any summary or other judicial proceedings hereafter instituted by Landlord against Tenant in respect to the Demised Premises, and (ii) any right to assert or interpose a counterclaim in any summary proceedings or other action or proceeding commenced by Landlord to recover or obtain possession of the Demised Premises, unless such waiver would bar, preclude or prevent Tenant from asserting or making a claim or counterclaim against Landlord in a separate action, suit or proceeding if the subject matter of such claim or counterclaim ^{hereby or} were raised as a defense, in whole or in part, in any such summary proceeding or other action or proceeding commenced by Landlord to recover or obtain possession of the Demised Premises.

Section 17.5 Anything in this Article 17 to the

contrary notwithstanding, it is expressly understood that, with respect to any default or event of default under the provisions of Articles 11 and 42 and Sections 7.3 and 13.2(f) hereof as to which the provisions of subsection (h) of Section 17.1 above apply, if such default or event of default cannot be cured within the period of thirty (30) days provided for in said subsection (h), Landlord shall not be entitled to serve a notice of termination upon Tenant, as provided in Section 17.1, if Tenant shall (a) within said thirty (30) day period give notice to Landlord of Tenant's intention to institute all action necessary to remedy the default, and (b) commence the curing of such default within such thirty (30) day period, and shall thereafter proceed with all due diligence to complete the curing of such default, it being the intention hereof that, in connection with any default not capable of being cured with all due diligence within said period of thirty (30) days, the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all due diligence. If, for any reason whatsoever, Tenant shall fail to cure any such default within said thirty (30) day period, then, in addition to Landlord's other rights and remedies hereunder, the same shall constitute an Unavoidable Delay extending Landlord's time for performance of any work to be performed by Landlord under this Lease which is affected by such default on Tenant's part.

Section 17.6 The words "re-enter" and "re-entry" as used herein are not restricted to their technical legal meaning.

Section 17.7 - If this Lease shall be terminated pursuant to Section 17.1 above, then, to the extent only of Landlord's damages hereunder, and subject, nevertheless, to the rights of any Leasehold Mortgagees, Subtenants and Subleasehold Mortgagees:

(a) Tenant waives all claims which it shall then have against Landlord arising out of or in connection with this Lease, but expressly excluding from such waiver any and all claims or sums (i) which Tenant may then or thereafter deduct from the rent or other sums due or to become due under this Lease and/or any Severance Leases, except that Tenant waives fifty (50%) percent of the sums which Tenant shall then have the right to so deduct under Section 3.2(b) of this Lease, and (ii) arising from the fault or negligence of Landlord or its agents, servants, employees or contractors or any Persons acting through or under Landlord, and (iii) arising under or in connection with the indemnity provisions of Articles 10 and 28 hereof, which claims or sums shall survive the termination of this Lease and shall not be subject to any set-offs or counterclaims on the part of Landlord; and

(b) All rights of Tenant in and to any pending claims for real estate tax refunds shall automatically be deemed to have been assigned to Landlord.

Section 17.8 If this Lease is terminated as a result of an event of default hereunder by Tenant, Tenant agrees that Landlord may resort to the security deposited under Sections 34.1, 34.2 and 34.4 of the Master Lease, to the extent of an amount equal to the fixed annual rent for three (3)

months under this Lease.

Section 17.9. Further if this Lease shall be terminated pursuant to Section 17.1 above, Tenant waives the right to contest any taking by eminent domain or condemnation by Landlord of the real property, if any, other than the Demised Premises, owned by Tenant or any Person having a controlling interest in Tenant, and located within the Urban Renewal Area, or any transfer of sponsorship of the project; but Tenant reserves and shall have the right to contest the amount of the award or compensation therefor, except that Tenant shall not claim any increase in value of its property as a result of any change in zoning effected or to be effected pursuant to Section 3.1(f) of the Master Lease unless such taking shall occur five years or more after any such termination of the Master Lease. The provisions of this Section shall survive the termination of this Lease.

Article 18. Tenant's Limitation of Liability

Section 18.1 Notwithstanding anything contained to the contrary in this Lease, whether express or implied, it is agreed that Landlord will look only to the Tenant's interest in and to the Demised Premises for the collection of any claim or judgment (or other judicial process) involving or requiring the payment of money by Tenant in the event of a breach or default under this Lease by Tenant (including, without limitation, any provision of this Lease which survives the expiration or other termination of this Lease), and no other property or assets of Tenant, including, but not limited to, the Master Lease or any other Severance Leases then or thereafter in force, shall be subject to levy, execution, set-off or counterclaim or other enforcement procedures for the satisfaction of any such claim or judgment (or other judicial process). In confirmation of the foregoing, if Landlord shall acquire a lien on such other property or assets of Tenant, by judgment or otherwise, it shall promptly release such lien by executing and delivering an instrument in recordable form to that effect prepared by Tenant; but such instrument of release shall not release any such lien on the interest of Tenant in the Demised Premises. The foregoing shall only limit Landlord's right to recover damages from Tenant, but shall not limit or restrict Landlord's rights to claim (as distinguished from recover) damages from Tenant. Further, Landlord shall and does hereby waive any right to obtain specific performance or affirmative injunctive relief against Tenant in respect of any breach or default by Tenant of its obligations

under this Lease. The provisions of this Section shall not limit or reduce Landlord's rights under any security deposited hereunder.

Section 18.2 The provisions and conditions of Section 18.1 above are not intended to, and shall not, in any way whatsoever, affect or limit any right or remedy which any party may have against the other under any agreement, matter, claim or thing which is extrinsic to, and does not arise out of this Lease, nor shall the provisions and conditions of Section 18.1 above affect or limit Landlord's rights under any security deposited hereunder. The provisions of this Article shall survive the expiration or other termination of this Lease.

Article 19. Quiet Enjoyment

Section 19.1 Landlord covenants and agrees that Tenant, upon paying the fixed annual rent and additional rent herein reserved, and performing and observing the covenants, conditions and agreements hereof upon the part of the Tenant to be performed and observed, shall and may peaceably hold and enjoy the Demised Premises during the term hereof, without any let, interruption or disturbance, unless such term shall cease, terminate or expire as provided in Article 16 of this Lease. This covenant shall be construed as a covenant running with the Land to and against subsequent owners and successors in interest and, in addition, shall be deemed to be a personal covenant of the Landlord named herein with respect to Landlord's obligations under Articles 10, 28 and 30 hereof.

Article 20. Surrender of Premises.

Section 20.1 Tenant shall, upon the expiration or sooner termination of this Lease for any reason whatsoever

surrender to Landlord the Land, the Buildings, Building Equipment and other improvements then upon the Demised Premises, together with all alterations and replacements thereof then on the Demised Premises, in good working order and repair, less reasonable wear and tear (except as provided in Section 15.4 above) free and clear of all liens and encumbrances other than Leasehold Mortgages, the rights of Persons to whom non-disturbance agreements shall have been given, and the rights of mortgagees (including Subleasehold Mortgagees) of such Persons.

Section 20.2 Title to all of Tenant's trade fixtures, furniture and equipment (other than Building Equipment) shall remain in Tenant, and, upon the expiration or other termination of this Lease, the same may be removed by Tenant. If any such property remains in the Demised Premises, after such expiration or termination, Landlord may deal with the same as though the same had been abandoned and charge the removal expenses to Tenant.

Section 20.3 If this Lease shall expire or otherwise terminate the same shall not result in the expiration or termination of, or otherwise affect, the Master Lease or any other Severance Leases then or thereafter in force. Similarly, the expiration or other termination of the Master Lease or any other Severance Lease now or hereafter in force shall not result in the

expiration or termination of, or otherwise affect, this Lease.

This Lease, the Master Lease and each other Severance Lease now or hereafter in force shall expire and otherwise terminate solely in accordance with the respective provisions thereof.

Section 20.4 The provisions of this Article 20 shall survive the expiration or sooner termination of this Lease.

Article 21. Assignment and Subletting

Section 21.1 Tenant shall not assign this Lease without the prior written consent in each instance of the Administrator; provided, however, that:

(a) Landlord agrees that such consent shall not be unreasonably withheld after (1) the Minimum Facilities (as such term is defined in the Master Lease) shall have been completed, or (2) the Master Lease shall terminate for any reason whatsoever (including, without limitation, by reason of a default of the tenant thereunder, whichever shall sooner occur), if (i) the instrument of assignment effectively assigning this Lease is in recordable form and in form and substance reasonably satisfactory to the Administrator, (ii) the assignee shall assume and agree, by instrument in recordable form and in form and substance reasonably satisfactory to the Administrator, to perform all of the covenants and obligations to be performed under this Lease by Tenant from and after the effective date of the assignment, and (iii) a duplicate original of such instrument or instruments are delivered to the Administrator within ten (10) days after the execution and deliver thereof; and

(b) Tenant shall have the right, without the Administrator's consent, to assign this Lease to (1) any

provided that Stephen Klein or George Klein (or, if both of them are deceased, any of those listed in subdivision (i) of this subsection) shall be a trustee thereof (those listed in subdivisions (i) and (ii) of this subsection being hereinafter referred to as the "Immediate Family"); and

~~(e) Tenant shall have the right, from time to time, without the Administrator's consent, to assign this~~
Lease to a corporate assignee, provided that the corporate assignee shall reassign this Lease to Tenant within seven (7) days after the making and delivery of the assignment of this Lease from Tenant to the corporate assignee.

In any event, however, except for assignments made pursuant to the next preceding paragraph of this Section, Tenant shall have no right to assign this Lease if there shall then be an event of default.

The form of assignment and assumption of lease attached hereto as Exhibit E, and hereby made a part of this Lease, is in form and substance satisfactory to the Administrator.

Section 21.2 (a) Subject to the provisions of Sections 21.2(d) and 21.3 hereof, Tenant shall have the right from time to time, without Landlord's consent, to sublease all or any part of the Demised Premises, upon such terms, covenants and conditions as Tenant shall deem proper in its sole discretion. Tenant shall have the right, at its option, to request the Administrator to deliver a non-disturbance agreement on behalf of Landlord (as such term is herein defined), in connection with any actual or proposed Sublease; and the Administrator shall

Institutional Leasehold Mortgagees as collateral security for its or their Leasehold Mortgages or in lieu of foreclosure thereof; and (ii) any other Leasehold Mortgagees as collateral security for its or their Leasehold Mortgages or in lieu of foreclosure thereof, so long as any such assignment in favor of any other Leasehold Mortgagees shall be conditioned upon, or shall not be effective unless, there shall have been a default under its or their Leasehold Mortgage; and

(c) Tenant shall have the right, without the Administrator's consent, to assign this Lease to Stephen Klein or George Klein, or both, or to a corporation or other legal entity in which either or both of them shall have a controlling interest, if (i) the instrument of assignment effectively assigning this Lease is in recordable form and in form and substance reasonably satisfactory to the Administrator, (ii) the assignee shall assume and agree, by instrument in recordable form and in form and substance reasonably satisfactory to the Administrator, to perform all of the covenants and obligations to be performed under this Lease by Tenant from and after the effective date of the assignment, and (iii) a duplicate original of such instrument or instruments shall be delivered to the Administrator within ten (10) days after the execution and delivery thereof; and

(d) Tenant shall have the right, without the Administrator's consent, to assign or transfer this Lease by will or by intestacy to (i) the wife, sister, brother, child or children of Stephen Klein or George Klein, or (ii) to a trust for the benefit of any of the foregoing,

deliver such a non-disturbance agreement on behalf of Landlord in connection therewith in the form of Exhibit F (such agreement in said form being herein sometimes called a "non-disturbance agreement") attached hereto and made a part hereof, upon condition that:

(1) The actual or proposed Sublease is made or is to be made to a Person of good reputation for a reputable use; and

(2) The actual or proposed Subtenant has a net worth of \$250,000 or more (or \$500,000 or more if the Sublease is made during the first extended term of this Lease, or \$1,000,000 or more if the Sublease is made during the second extended term of this Lease); and

(3) The floor area of the premises subleased or to be subleased (the "subleased premises") is not less than (i) 3,000 square feet in the case of a Sublease for any retail use, or (ii) 7,000 square feet in the case of a Sublease for any office use, or (iii) 20,000 square feet in the case of a Sublease for any industrial use; and

(4) The subleased premises is not to be used for a Temporary Public Amenity; and

(5) The annual rental and additional rental under the actual or proposed Sublease is in an amount at least equal to a "proportionate share" of (i) the fixed annual rent then payable under this Lease in respect of the Land on which the Buildings, in which the subleased premises is or is to be located, is constructed or is to be constructed, and (ii) the annual payments for principal and interest then

payable under all Leasehold Mortgages then in force with respect to the leasehold estate pertaining to the Buildings in which the subleased premises is or is to be located; and (iii) the then annual real estate taxes and all other annual operating expenses of the Buildings in which the subleased premises is or is to be located. For such purpose the term "proportionate share" shall mean a fraction of which the numerator shall be the number of square feet of floor space in the subleased premises and the denominator is the number of square feet of floor space in the Buildings in which the subleased premises is or is to be located; and

(6) Any of the following: (i) the actual or proposed Sublease, or the terms thereof, have been approved by the holder of the Institutional Leasehold Mortgage, or by any prospective Institutional Leasehold Mortgagee which has issued a commitment to make an Institutional Leasehold Mortgage; or (ii) the annual rental or additional rental under the actual or proposed Sublease includes an increment for estimated reasonable increases in real estate taxes and operating expenses; or (iii) the actual or proposed Sublease contains a provision whereby the Subtenant will pay a proportionate share of increased real estate taxes and operating expenses.

(b) In each case, where a non-disturbance agreement is requested, so long as there shall be no event of default hereunder on Tenant's part, the Administrator shall deliver the requested non-disturbance agreement in respect of any actual or proposed Sublease within thirty (30) days after the making of such request by notice from Tenant,

provided that within five (5) days after the giving of such notice from Tenant the Administrator is furnished with reasonably necessary information with regard to the proposed Subtenant and the matters set forth in subsections (ii), (iv), (v) and (vi) of Section 21.2(a) above. The administrator may disapprove any request of Tenant for a non-disturbance agreement only if the conditions set forth in subdivisions (i) to (vi), inclusive, of Section 21.2(a) are not met, and in such case the Administrator shall do so by giving notice thereof to Tenant within said thirty (30) day period, which notice shall set forth the reasons for such disapproval; and if the Administrator shall fail, within said thirty (30) day period, to give notice to Tenant of the Administrator's disapproval, setting forth therein the Administrator's reasons therefor, the Administrator shall be deemed to have approved the request of Tenant for a non-disturbance agreement and shall be required to deliver the same.

(c) Any Sublease or Subleases may provide, at Tenant's option, that Landlord's consent shall not be required in respect of any further subletting thereunder. However, Landlord shall not be required to deliver any non-disturbance agreement in connection with any actual or proposed further subletting thereunder unless (i) the Administrator shall have approved the further subletting, or (ii) the further subletting is to a Subtenant which has a net worth of \$10,000,000 or more and which is subleasing either seventy-five (75%) percent, or 125,000 square feet, or more, of the square foot area of

the Buildings in which the subleased premises of such Subtenant is located or is to be located, or (iii) the further subletting complies with the conditions set forth in Section 21.2(a) above and shall be made at a time when the Telco Lease is in force and the further subletting is made by the lessee under the Telco Lease, or any Person holding through or under such lessee. Each non-disturbance agreement delivered under this subsection (c) shall be substantially in the form of said Exhibit F.

(d) Each Sublease made by Tenant which requires the Subtenant to pay a separate charge on account of real estate taxes in respect of the Buildings in which the subleased premises is located shall provide in substance that if (i) this Lease shall terminate as a result of an event of default on Tenant's part and (ii) by reason of such termination of this Lease the fee owner of such Buildings shall be The City of New York, then, so long as The City of New York shall be the fee owner of the Buildings, the Subtenant shall continue to pay, in the manner and upon the dates provided in its Sublease, an amount equal to the charge on account of said real estate taxes which the Subtenant would have been required to pay under its Sublease as though Tenant had continued to own such Buildings subject, nevertheless, to the Subtenant's right to contest the amount of the real estate taxes, to the extent permitted under its Sublease.

(e) The Administrator has approved the Telco Lease and agrees to deliver a non-disturbance agreement in connection therewith in the form of Exhibit F.

Section 21.3 In the case of any Sublease:

(a) made to Stephen Klein or George Klein, or both, or to a corporation or other legal entity in which either or both of them shall have a controlling interest, or to their Immediate Family, the consent thereto of the Administrator shall not be required;

(b) of only the Land, or only a portion or portions of the Land then, unless the provisions of subsection (a) of this Section shall apply:

(i) the Subtenant shall be required under the Sublease to construct or cause to be constructed the Buildings on the Land subleased and such Sublease shall provide that the Subtenant's failure to do so shall constitute a default on the part of the Subtenant under the Sublease (provided however, if the subleased premises are to be used as a landscaped parking lot or other Temporary Public Amenity, no construction by the Subtenant shall be required); and

(ii) the term of the Sublease shall not commence until the Subtenant shall have commenced or caused the commencement of the construction of the Buildings where such construction is required; but the Subtenant under any such Sublease may be given the right, prior to the commencement of the term of the Sublease, to enter the subleased premises in order to commence, and to do all things necessary to commence, such construction.

Section 21.4 In selecting Subtenants, priority shall be given by Tenant to the existing occupants of the Urban Renewal Area to sublease commercial or retail space in the Buildings at the then comparable rent and other

terms and conditions for similar space, so long as the reputation, credit and financial condition of such existing occupants meet the criteria set forth in Exhibit G annexed hereto and made a part of this Lease.

Section 21.5 No Sublease as to which a non-disturbance agreement shall have been delivered by the Administrator shall be modified or amended in any material respect without the Administrator's prior written consent, which consent shall not be unreasonably withheld; provided, however, that the cancellation of any such Sublease during the last three years of the term thereof shall not require the Administrator's consent, so long as, there shall then be no event of default hereunder on Tenant's part. In the event of any such cancellation of any such Sublease, Tenant shall give reasonable notice thereof to Landlord.

Section 21.6 The term "controlling interest" as used herein shall mean, in the case of (a) a corporation, that Stephen Klein or George Klein, or both, or any permitted assignee under Section 21.1(d) above, shall be directors or active officers, and the controlling stockholder or stockholders therein; (b) a general partnership, that Stephen Klein or George Klein, or both, or any permitted assignee under Section 21.1(d) above, shall be a general partner or general partners therein and shall have in the aggregate at least a ten percent (10%) equity interest therein; and (c) a limited partnership, that (i) Stephen Klein or George Klein, or both, or any permitted assignee under Section 21.1(d) above, shall be a general partner or general partners therein, and shall

have in the aggregate at least a ten percent (10%) equity interest therein, or (ii) that Stephen Klein or George Klein, or both, or any permitted assignee under Section 21.1(d), shall be directors or active officers and the controlling stockholder or stockholders of a corporate general partner therein. Further, for the purposes of this Lease, the holder or holders of ten percent (10%) or more of the authorized and issued shares of the voting stock of a corporation shall be deemed to be the controlling stockholder or stockholders of such corporation for the purpose hereof.

Section 21.7 Any Sublease of all or any part of the Demised Premises, shall be subject to all of the terms, covenants and conditions of this Lease.

Section 21.8 Upon written request by Landlord, but not more frequently than once in each calendar year, Tenant shall furnish Landlord with a verified statement setting forth the names of all Subtenants of the Demised Premises or any part or parts thereof, the approximate amount of space occupied by each such Subtenant, the term of each such subletting and rights of renewal, if any, and the security, if any, deposited by each such Subtenant. Further, upon written request of Landlord, Tenant shall make available for inspection by Landlord or its representatives, during reasonable business hours, the Subleases covering the various portions of the Demised Premises. If Tenant shall commence any action or proceeding to terminate any Sublease

as to which Landlord shall have given a non-disturbance agreement, Tenant shall give prompt notice thereof to the Administrator.

Article 22. Leasehold Mortgages

Section 22.1 Landlord assumes no liability for the payment of any Leasehold Mortgage and shall not be liable for the debt of Tenant for which any Leasehold Mortgage shall be given as security, and each Leasehold Mortgage or the obligation secured thereby shall expressly therein so state.

Section 22.2 Tenant shall have the right, at any time and from time to time, if Tenant is not then in default hereunder beyond the expiration of any applicable grace period, to mortgage all or part of the leasehold estate and any interest in the Buildings and Building Equipment created by this Lease, on such terms as Tenant shall deem advisable (except as may be specifically provided to the contrary in this Article 22), without Landlord's consent. A duplicate original or photostatic copy of each such Leasehold Mortgage, and the note or other obligation secured thereby, shall be delivered to Landlord within thirty (30) days after the execution and delivery thereof. Further, Tenant shall not execute and deliver a Leasehold Mortgage on any vacant and unimproved portion of the Land, unless the same shall be executed in connection with a construction or building loan pertaining to the construction thereon of any of the Buildings and Building Equipment to be constructed in accordance with the provisions of this Lease (excluding Temporary Public Amenities).

Section 22.3 Tenant shall have the right to assign this Lease, and existing or future Subleases, to any Leasehold Mortgagees or to the designee or nominee of such Leasehold Mortgagee, without the consent of Landlord, as collateral security for the Leasehold Mortgage, or in the event the Leasehold Mortgagee or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of such Leasehold Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, provided that any such assignment made to any Leasehold Mortgagee which is not an Institutional Leasehold Mortgagee shall be conditioned upon, or shall not be effective unless, there shall have been a default under its Leasehold Mortgage. In the event the Leasehold Mortgagee or its designee or nominee shall acquire ownership of the leasehold estate, or shall obtain a new lease pursuant to Section 22.4(h):

(a) the Leasehold Mortgagee or its designee or nominee shall have the right, without the consent of Landlord but subject to the other requirements of Section 22.1 to further assign this Lease, and any purchase money Leasehold Mortgage accepted in connection therewith shall enjoy all rights, powers and privileges granted herein to Leasehold Mortgages; and

(b) the Administrator may, in his sole discretion, refuse to consent to a further assignment of this Lease to Stephen Klein or George Klein, or both, or to a corporation or other

legal entity in which either or both of them shall have a controlling interest, unless such corporation or other legal entity shall be listed on either the New York Stock Exchange or the American Stock Exchange, or unless the Leasehold Mortgagee who shall have so acquired ownership of the leasehold estate or so obtained a new lease pursuant to Section 22.4(h) shall be, as holders of a purchase money Leasehold Mortgage, Stephen Klein or George Klein, or both, or a corporation or other legal entity in which either or both shall have a controlling interest.

Section 22.4 If Tenant shall execute and deliver a Leasehold Mortgage, and if the provisions of Section 22.2 and 22.3 shall have been fully complied with and observed with respect to such Leasehold Mortgage, then if Tenant or the Leasehold Mortgagee shall have notified Landlord in writing of the making thereof and of the name and address of such Leasehold Mortgagee:

(a) this Lease may not be modified, amended, cancelled or surrendered by agreement between Landlord and Tenant, without the prior written consent of such Leasehold Mortgagee;

(b) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Demised Premises, notwithstanding that this lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Leasehold Mortgagee;

(c) ~~Landlord shall serve upon each such lease-~~
~~hold Mortgagee, by registered or certified mail, return~~
~~receipt requested, a copy of each notice of default and~~
~~each notice of termination given to Tenant under this~~
~~Lease, at the same time as such notice is served upon~~
~~Tenant. No such notice to Tenant shall be effective~~
unless a copy thereof is thus served upon each Leasehold
Mortgagee;

(d) each Leasehold Mortgagee shall have
the same period of time after the service of such notice
upon it within which Tenant may remedy or cause to
be remedied the default which is the basis of the notice
plus an additional period of twenty (20) days; and
Landlord shall accept performance by such Leasehold
Mortgagee within the time specified herein as timely
performance by Tenant;

(e) in case of default by Tenant under this
Lease, other than a default in the payment of money,
Landlord shall take no action to effect a termination of
this Lease by service of a notice of termination, with-
out first giving to such Leasehold Mortgagee a reasonable
time (not more than 90 days in the case of a Leasehold
Mortgagee which is not an Institutional Leasehold Mortgagee)
within which either: (1) to obtain possession of the lease-
hold estate of that portion of the Demised Premises which is
the subject of the Leasehold Mortgage in the case of a default
which is capable of being cured only when such Leasehold

Mortgagee has obtained possession of that portion of the De-
mised Premises and to cure the default within the grace
period set forth in Section 22.4(d) above measured from the
date that possession is so obtained, or (ii) to institute
and with reasonable diligence to complete foreclosure pro-
ceedings or otherwise acquire Tenant's leasehold estate
under this Lease in the case of a default which is not so
capable of being remedied by such Leasehold Mortgagee, pro-
vided that the Leasehold Mortgagee shall deliver to Landlord
prior to the expiration of the grace period set forth in
Section 22.4(d) an instrument in recordable form and in
form and substance reasonably acceptable to the Corporation
Counsel whereby the Leasehold Mortgagee agrees to remedy
such default (other than a default not capable of being
remedied by a Leasehold Mortgagee) within the grace period
provided in this Lease applicable to Tenant, plus 20 days,
measured from the date on which the Leasehold Mortgagee
obtains possession or completes foreclosure proceedings or other-
wise acquires Tenant's leasehold estate. Landlord agrees that
this Lease will not be terminated or cancelled by reason of the
failure of a Leasehold Mortgagee to remedy any defaults or events of
default which it is not capable of remedying; and Landlord specifi-
cally agrees, for all purposes hereunder, that during the original
term hereof defaults under subsections (a), (b), (c) and (d)
of Section 17.1 above are not capable of being remedied by an
Institutional Leasehold Mortgagee;

(f) ~~such Leasehold Mortgagee shall not be required to continue possession or continue foreclosure proceedings under subsection (c) of this Section if the particular default has been cured;~~

(g) ~~Landlord may exercise any of its rights or remedies with respect to any other default by Tenant occurring during the period of such forbearance provided for under subsection (c), subject to the rights of the Leasehold Mortgagee under this Article as to such other defaults;~~

(h) if this Lease shall terminate prior to the expiration of the Demised Term, Landlord shall enter into a new lease for the leasehold estate of that portion of the Demised Premises which is the subject of the Leasehold Mortgage, with any such Leasehold Mortgagee, or its wholly owned subsidiary for the remainder of the Term of this Lease, effective as of the date of such termination, at the fixed annual rent and (except as provided in Section 22.3 and 22.7 hereof) upon the same terms, covenants and conditions contained herein (including, but not limited to, renewal or extension options) and Landlord, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all moneys, if any, then held by Landlord under this Lease on behalf of Tenant, on condition that:

(1) such Leasehold Mortgagee shall make written request

for such new lease within thirty (30) days after the date of such termination; (ii) on the commencement date of the term of the new lease, such Leasehold Mortgagee shall cure all defaults of Tenant under this Lease which are capable of being cured by such Leasehold Mortgagee (or, in the case of defaults not involving the payment of money, shall commence action to cure and thereafter prosecute such action with all due diligence, except as provided in Section 22.6 hereof), and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, including all expenses legally incurred by Landlord in executing the new lease and any sums due to Landlord under Section 36.1 hereof; and (iii) if more than one Leasehold Mortgagee shall request such new lease, the same shall be made with and delivered to the Leasehold Mortgagee (or its wholly owned subsidiary) whose mortgage is prior in lien to those of any others.

Section 22.5 Upon the execution and delivery of a new lease under Section 22.4(h), Landlord shall assign and transfer to the tenant under the new lease, without recourse, all of Landlord's rights, title and interest in and to any Subleases theretofore assigned and transferred to Landlord.

Section 22.6 If the Landlord shall enter into a new lease with a Leasehold Mortgagee under Section 22.4(h), and the premises covered by such new lease includes any Buildings to be constructed hereunder, then:

(a) Such new lease shall provide that the time of the tenant thereunder to complete such Buildings shall not exceed the time of Tenant hereunder to complete the same, plus one year, except that no additional time shall be given under such new lease if the Leasehold Mortgage of such Leasehold Mortgagee shall be a purchase money Leasehold Mortgage held by George Klein or Stephen Klein, or both, or a corporation or other legal entity in which either or both shall have a controlling interest (unless such corporation or other legal entity shall now or hereafter be listed on either the New York Stock Exchange or the American Stock Exchange); and

(b) Such new lease shall provide that in the case of any default on the part of the tenant thereunder which shall result in the granting or making of another new lease between Landlord and a Leasehold Mortgagee of the first such new lease, the time for the completion of such Buildings shall not be further extended thereby.

Section 22.7 If this Lease shall be terminated in whole or in part as a result of an event of default, hereunder on the part of Tenant, Landlord shall have the right to resort to the security of any deposited hereunder and no Leasehold Mortgagee shall have any claim or rights with respect thereto.

Article 23. Assignment of Subleases; Subleasehold Mortgages

Section 23.1 Subject to the provisions of Section 22.3 hereof, Landlord hereby consents to the assignment by Tenant to any Leasehold Mortgagee, as collateral security for a Leasehold Mortgage, of all of Tenant's right, title and interest in and to any Subleases upon any part of the Demised Premises and all of the subrents and other sums of

money payable thereunder, including security deposits. Landlord also hereby consents, if approved by Tenant in any case or cases, to the assignment by any Subtenant to any Institutional Leasehold Mortgagee and/or any Institutional Subleasehold Mortgagee of all such Subtenant's right, title and interest in and to any further sublettings of the part of the Demised Premises sublet to such Subtenant. Landlord hereby subordinates any rights it may have with respect to said Subleases and/or further sublettings, subrents and other sums of money payable thereunder, including security deposits, to any assignment thereof in favor of, and as collateral security for, such Leasehold and/or Institutional Subleasehold Mortgagees.

Section 23.2 Tenant may, at its option, grant to any Subtenant the right to mortgage such Subtenant's Sublease, upon such terms, covenants and conditions as Tenant shall deem advisable, in its sole discretion; and Tenant shall have the right, at its option, to subordinate all or any part of its leasehold estate to any such Sublease and to any Institutional Subleasehold Mortgage thereon. If Tenant shall consent to the making of any Subleasehold Mortgage, such Subleasehold Mortgage and the holder thereof shall, unless Tenant shall elect otherwise, enjoy the same rights, powers and privileges with respect to the mortgaged Sublease, and any further sublettings thereunder, as those granted to Institutional Leasehold Mortgages or other Leasehold Mortgages, as the case may be, and the holders thereof and shall have the rights of Institutional Leasehold Mortgagees or other Leasehold Mortgagees, as the case may be, under Sections 22.2, 22.3 and 22.4, at Tenant's option.

No Subleasehold Mortgagee shall have any rights superior to those which may be granted hereunder to any Institutional Leasehold Mortgagee or Leasehold Mortgagee, as the case may be.

• Article 24. Estoppel Certificates

Section 24.1 Landlord and Tenant each agrees at any time and from time to time, upon not less than thirty (30) days prior request by the other party or by any Leasehold Mortgagee or Subleasehold Mortgagee, to execute, acknowledge and deliver to the other party or any such Mortgagee a statement or certificate in writing and in recordable form containing a description of the Land, the amount of fixed annual rent then payable hereunder, the commencement and expiration dates of this Lease and the extended terms, a certification that this Lease is unmodified and in full force and effect(or if there have been modifications that the same is in full force and effect as modified and stating the modification), and the date to which the fixed annual rent and other charges have been paid in advance, if any, and stating whether or not to the knowledge of the signer of such certificate there is any existing default under this Lease on the part of either party thereto and, if so, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, Subtenant, assignee or mortgagee of the leasehold estate created under this Lease or of any Sublease, as well as assignees of any Sublease, Leasehold Mortgages and/or Subleasehold Mortgages.

Article 25. Invalidity of Particular Provisions

Section 25.1 If any term or provision of this Lease or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, 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 invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Article 26. Prohibition Against Fee Mortgages

Section 26.1 Landlord expressly covenants and agrees that it shall not mortgage or otherwise encumber all or any part of the fee title to the Demised Premises, and in any case this Lease shall not be subject or subordinate to the lien of any mortgage or mortgages hereafter made affecting all or any part of the fee title of the Demised Premises; and the term, rights and leasehold estate of Tenant (and of all persons holding or claiming through or under Tenant, including, without limitation, Subtenants, Leasehold Mortgagees, and Subleasehold Mortgagees) shall be senior and superior to any such fee mortgages and to all renewals, modifications, consolidations, replacements or extensions thereof.

Article 27. Non-Merger

Section 27.1 There shall be no merger of this Lease nor of the leasehold estate created by this Lease, with the fee estate in the Demised Premises by reason of the fact that this Lease or the leasehold

~~estate created by this Lease or any interest in this~~
~~Lease or any such leasehold estate may be held,~~
~~directly or indirectly, by or for the account of any~~
~~Person or Persons who shall own the fee estate in the~~
~~Demised Premises or any interest in such fee estate,~~
~~and no such merger shall occur unless and until all~~
~~Persons at the time having an interest in the fee~~
estate in the Demised Premises and all Persons (including
Leasehold Mortgagees) having an interest in this Lease
or in the leasehold estate created by this Lease shall
join in a written instrument effecting such merger
and shall duly record the same.

Article 28. Utility and Other Easements

Section 28.1 At Tenant's request, and without
charge to Landlord or any compensation therefor to Tenant or
any tenant under any Severance Lease, including any con-
demnation award, Landlord will promptly grant appropriate
easements for utilities reasonably satisfactory to the
supplier of the utility service, on, over and/or under
the Demised Premises, to utility companies, governmental
agencies or other Persons furnishing utilities and services
to the Demised Premises, or to any occupant thereof. The grant
of any such easements shall, at Tenant's request, be contained
in an instrument in recordable form and in form reasonably
satisfactory to the appropriate utility company, governmental
agency or other Person. Landlord shall have no obligation
or cost with regard to the construction or maintenance of
the improvements to be constructed in connection with any
such easement.

to the extent permitted by and in accordance with all applicable Legal Requirements, the Master Lease, and any other applicable Severance Leases, grant to Tenant, without annual or other charge therefor, for the benefit of Tenant, Subtenants and their respective Leasehold and Subleasehold Mortgagees, such easements, licenses and rights of way as shall be reasonably necessary for the beneficial use and enjoyment of the Demised Premises, provided that (a) the establishment or creation of the same shall be without cost or expense to Landlord, and (b) Tenant shall pay the customary and normal charges therefor imposed by The City of New York (except that there shall be no charge with respect to the Air Rights and/or the construction, maintenance, repair, use and/or operation of all or any part of the S.L.P.C.S.). Such grants shall be contained in instruments in recordable form and in form reasonably satisfactory to the Administrator. Further, such grants shall survive the expiration or sooner termination of the Master Lease or any other Severance Lease, so long as the same shall be required for the benefit of this Lease, or any new lease made pursuant to Section 22.4(h), or any Sublease or any other Severance Lease then remaining in force.

Section 28.3 Landlord hereby reserves an irrevocable easement in favor of the City, in respect to the Demised Premises (including the public lobbies of the Buildings to which the S.L.P.C.S. is to be connected pursuant to the Preliminary Plan) for the construction, maintenance, repair, operation and replacement of the S.L.P.C.S., and the replacement when needed of building equipment utilized in connection with the operation of the S.L.P.C.S., in the event that the Master Tenant or subtenant of the Master Tenant, or the tenant under any severance lease other than this Lease

shall fail to ~~only do so in accordance~~ ~~with the provisions~~ of the Master Lease or such Severance Lease, as the case may be. Landlord also hereby reserves an irrevocable easement in favor of the City to connect the S.L.P.C.S. to the Buildings (and the public lobbies thereof) in the manner shown or described in Section 2 of Exhibit J to the Preliminary Plan and the zoning established or to be established pursuant to Section 3.1(f) of the Master Lease, in the event that ~~the Master Tenant shall fail to do so in accordance with the provisions of the Master Lease.~~ In addition, Landlord hereby reserves to itself in, or over and through the portion or portions of the Demised Premises set forth in Exhibit H annexed hereto and made a part hereof, an irrevocable easement in favor of the City for construction, maintenance, repair, replacement and operation, at the City's sole cost and expense, of the improvements below ground shown on Exhibit H. No compensation shall be paid to Tenant by Landlord or its assignee for any such easement. Tenant, at its sole cost and expense shall construct the subway entrance shown in Exhibit H, prior to the completion of the initial Buildings constructed by Tenant on the Land. Said easements shall not be exclusive, and Tenant may, and may grant others the right to, construct, install, use, operate and maintain, Buildings and Building Equipment and the S.L.P.C.S., in, on, over and under such easements so long as the same do not unreasonably interfere with such easements. The City may utilize or grant to other Persons the right to utilize any one or more of such easements, but in any event (1) the City shall be responsible for and shall indemnify and hold Tenant harmless from and against any claim, cost, liability and expense (including reasonable attorneys' fees) arising from or in connection with the construction, condition, repair, operation, maintenance and/or use of any facilities or improvements constructed or installed

pursuant to such easement, unless the same shall arise out of the fault or negligence of Tenant or its agents, servants, employees or contractors or the Tenant under the Master Lease in respect of the design of the S.L.P.C.S.; (ii) the City shall at its own cost and expense promptly repair any and all damage to the Demised Premises as a consequence of any construction, condition, repair, operation, maintenance or use of any facilities or improvements constructed or installed pursuant to or in connection with such easements, unless the same shall arise out of the fault or negligence of Tenant or its agents, servants, employees or contractors or the Tenant under the Master Lease in respect of the design of the S.L.P.C.S.; and (iii) the City agrees that the use of any such easement, and the construction, operation, use and maintenance of any improvements made in connection therewith, shall not unreasonably interfere with the use or occupancy of any Buildings, unless the same shall arise out of the fault or negligence of Tenant or its agents, servants, employees or contractors or the Tenant under the Master Lease in respect of the design of the S.L.P.C.S.

The provisions of this Section shall survive the expiration or other termination of this Lease and shall be construed to supplement the provisions of Section 10.4 hereof.

Article 29. Appraisal

Section 29.1 The appraisal to be made pursuant to Section 5.2 above, shall be accomplished in the following manner:

at the request of Tenant

(a) Landlord and Tenant, *not* earlier than thirty-six (36) months and not later than thirty-three (33) months prior to the expiration of the first extended term of this Lease, shall each appoint an appraiser [which term or the plural thereof shall mean, as used in this Section, a duly qualified impartial real estate appraiser having at least

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or by a majority of them if their decision is not unanimous, or by the appraiser making the middle appraisal in the event each such appraiser shall arrive at a different appraisal, shall be binding upon the parties and shall be the fixed annual rent during the second extended term. The fee of the appraiser appointed by or for each party thereto shall be paid by such party, and the fee of such third appraiser, if any, and the other expenses in connection with determining such fair rental value shall be borne equally by Landlord and Tenant.

(d) In any case, promptly after the fixed annual rent for the second extended term is determined, the parties will at the request of either one, execute and deliver to each other duplicate originals of an instrument in recordable form and approved as to form by the Corporation Counsel, setting forth the amount of the fixed annual rent during the second extended term.

Article 30. Rent Security

Section 30.1 Notwithstanding anything contained herein to the contrary, promptly after the Telco Lease shall have expired or terminated, Tenant shall deposit, at Tenant's option, an amount equal to three months' fixed annual rent under this Lease, in cash, or furnish either a surety bond or letter of credit (which letter of credit will be in the form of Exhibit I annexed hereto and made a part hereof), approved by the Comptroller in said amount or, in the place of such bond or letter of credit, Tenant may deposit with the Comptroller securities of the City of New York or other securities acceptable (in the Comptroller's sole

discretion) to the Comptroller, the market value of which shall be in an amount equal to three (3) months' fixed annual rent under this Lease, as security for the faithful performance by Tenant of each and every term, condition and covenant of Tenant in this Lease; provided, however, that no such deposit shall be required to be made if an Institutional Leasehold Mortgagee shall then be the Tenant under this Lease, but only so long as an Institutional Leasehold Mortgagee shall be Tenant. The surety bond shall remain in effect or said cash, letter of credit or securities shall remain so deposited with the Comptroller, but reduced as aforesaid, during the balance of the Demised Term, except that if the market value of the securities deposited pursuant to this Section shall be (i) less than the par value thereof, then such securities shall be in an amount, the market value of which shall equal three (3) months' fixed annual rent under this Lease, or (ii) an amount greater than 110% of three months' fixed annual rent under this Lease for more than sixty days, then, at Tenant's request, the amount of such excess shall be returned to Tenant. Interest, if any, payable on said security shall be paid to Tenant so long as Tenant is not in default hereunder beyond the expiration of any applicable grace period; and if all or part of said security shall be in cash, the same shall be deposited by Landlord in an interest bearing account in a bank in the City of New York designated by Tenant and reasonably acceptable to the Administrator. Upon the expiration or sooner termination of this Lease said security and the interest thereon shall be refunded or returned to Tenant, unless such termination shall occur as a result of an event of default

hereunder on the part of Tenant. Tenant shall have the right from time to time to make substitutions for the item or items then comprising said deposit, so long as the foregoing conditions of this Section regarding approval are complied with and observed.

Article 31. Notices, Etc.

Section 31.1 All notices, consents, demands, elections, requests and reports which are required or desired to be given by either party to the other shall be in writing. All notices, consents, demands, reports and requests by either party to the other shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) to Landlord:

Commissioner of Real Estate
of the City of New York
2 Lafayette Street
New York, New York 10007

with a copy to:

Administrator of the Economic
Development Administration
225 Broadway
New York, New York 10007
Attn: Legal Department

with an additional copy to:

Downtown Brooklyn Development Group
186 Montague Street
Brooklyn, New York
Attn: Economic Development Administration

(b) to Tenant:

Fulton DeKalb Associates
c/o Kaye, Scholer, Fierman,
Hays & Handler
425 Park Avenue
New York, New York 10022

or at such other place as either party may from time to time designate in a written notice to the other party given pursuant to the provisions of this Section. Notices, consents, demands, requests and reports which are served upon Landlord or Tenant in the manner aforesaid, shall be deemed to have been given or served for all purposes hereunder on the second business day next following the date on which such notice, consent, demand, report or request shall have been mailed as aforesaid.

Article 32. Waiver of Jury Trial

Section 32.1 The parties shall and do hereby each waive trial by jury in any action, suit or proceeding arising out of or in connection with this Lease, or the interpretation, construction or enforcement thereof. The provisions of this Section shall survive the expiration or sooner termination of this Lease.

Article 33. General Provisions

Section 33.1 The specified remedies to which each party may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which either party may be lawfully entitled in case of any breach or threatened breach by the other of any provision of this Lease, except as herein expressly provided to the contrary. Notwithstanding anything contained to the contrary in this Lease, Landlord shall have the right to (a) obtain declaratory relief, as well as negative injunctive relief restraining Tenant from performing any act which would violate any of Tenant's obligations under this Lease; and (b) commence one or more

actions against Tenant for damages arising out of or in connection with any event of default hereunder by Tenant, subject, nevertheless, to the provisions and conditions of Section 18.1 hereof and to the provisions and conditions of subdivisions (11) and (111) of Section 17.3(b) hereof.

Section 33.2 Except as expressly provided herein to the contrary, the failure of either party to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements of this Lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of any such term, covenant, condition, provision, agreement or option. No waiver by either party of any term, covenant, condition, or agreement of this Lease shall be deemed to have been made unless expressed in writing and signed by the party granting such waiver.

Section 33.3 This Lease may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of the change, modification or discharge is sought.

Section 33.4 Tenant shall not, except as required by law, be responsible for the operation and maintenance of the streets, street lighting, signal boxes, water, sewer and other such public facilities, except that Tenant shall be responsible for any street closed and any Air Rights delivered pursuant to Sections 3.1 and 37.1 of the Master Lease from and after the time that the same shall become a part of the Demised Premises.

Section 33.5 In any case under this Lease where the Administrator or the Commissioner is authorized or required to act or to give his consent or approval, the action or the consent or approval by such officer or official, or his failure to do so, shall be deemed to be the act, consent or approval, or failure to do so, as

the case may be, by Landlord.

Section 33.6 Landlord shall, at its sole cost and expense, defend its acquisition of title to the Land and the buildings and improvements then erected thereon, whether by condemnation or eminent domain or otherwise, and Landlord shall indemnify and hold harmless Tenant from and against all reasonable legal fees paid by Tenant in respect thereof. Such defense shall include (a) the defense of any appeal taken by any condemnee, and (b) the taking of all proper appeals if any decision, order, judgment or decree is entered which shall be adverse with respect to Landlord's right, power or authority to acquire any such property.

Section 33.7 The Administrator shall have the right, in his sole discretion, to extend the time for the performance by Tenant of any one or more of Tenant's covenants and obligations hereunder, but no such extension shall be binding unless in writing and signed by the Administrator.

Section 33.8 If the City Planning Commission or the Board of Estimate, or both, as the case may be, shall fail to grant its or their approval of any request made by Tenant within the Time for Landlord's Approval, then, the request shall be deemed to have been denied upon the expiration of said period of time. If Landlord or the Commissioner or the Administrator, as the case may be, shall fail to approve or disapprove any request made by Tenant within the Time for Landlord's Approval or any other applicable period of time specified in this Lease,

then, to the extent permitted by law, the request shall be deemed to have been approved upon the expiration of said period of time.

Section 33.9 In the case of an event of default at a time when there shall be a Leasehold Mortgage, Landlord shall take no action to terminate this Lease or to exercise any of Landlord's other rights and remedies in such case without first giving to Tenant a notice of termination, with a copy to the Leasehold Mortgagee.

Section 33.10 All references in this Lease to Lot and/or Block numbers shall be deemed to refer to the correspondingly numbered Lots and/or Blocks on the Tax Map of the City of New York, Kings County, as said Tax Map was on January 1, 1971.

Section 33.11 Landlord's and Tenant's covenants and obligations under this Lease shall be deemed to be both affirmative and negative covenants.

Section 33.12 Tenant intends to use real estate brokers in connection with the subleasing of space in the Buildings to be constructed hereunder. Tenant shall indemnify and hold harmless Landlord, the Administrator and the Commissioner against and from any claims for brokerage commissions arising from the making of any Sublease or Subleases under which Tenant shall sublet all or any part of the Demised Premises to any Person.

Section 33.13 Notwithstanding anything contained to the contrary in this Lease, in all cases under this Lease where Tenant shall have the right to deduct or cause to be deducted sums from the rental or other sums due or to become

due under this Lease, the Master Lease and/or any other Severance Leases now or hereafter in force, in no event shall such deductions be made from the sums to be deposited under Article 30 of this Lease (or the corresponding provisions of the Master Lease or any other Severance Lease). In any event, Tenant may not deduct any amounts, whether for damages or otherwise, from the rentals and other sums due or to become due under this Lease, the Master Lease and/or any other Severance Leases, or from any security deposited under this Lease, the Master Lease and/or any other Severance Leases, except as expressly provided to the contrary in this Lease, the Master Lease and/or any other Severance Leases.

Section 33.14 If there shall be any conflict between the provisions of this Lease and the provisions of the Master Lease and/or of any other Severance Lease, then the provisions of this Lease shall prevail and be controlling.

Section 33.15 Tenant shall construct or cause to be constructed the Buildings to be constructed hereunder to which the S.L.P.C.S. is to be connected so that Landlord shall be able to effectively use the easements reserved by Landlord under Section 28.3 in respect of the S.L.P.C.S. Further, Tenant shall construct or cause to be constructed the public lobbies and other public areas to be constructed in such Buildings in accordance with the Preliminary Plan (as the same may be amended from time to time by mutual consent; however, in any event the public lobbies shall be constructed in accordance with the zoning established or to be established pursuant to Section 3.1(f) of the Master Lease and the Preliminary Plan, as the same may be amended from time to time), but Tenant shall not be obligated or required hereunder to construct any improvements in respect of which Tenant would be entitled to any deduction under Section 37.5 if Tenant had constructed or were to construct the same.

Section 33.16 Nothing contained in the Consents, or any of them, shall increase Tenant's obligations or reduce or diminish Tenant's rights and remedies under this Lease. In that connection, and without limiting the foregoing:

(a) Tenant shall have no obligation to remove the S.L.P.C.S. or any buildings and improvements thereon, or restore any streets to their original condition;

(b) Tenant shall not be required to deposit or furnish any other additional security and/or bonds in respect of any work contemplated by the Consents;

(c) Landlord shall be liable for all damages caused by the fault or negligence of the City and its agents, servants, employees and contractors; and

(d) If the City shall break through, remove or otherwise damage any improvements authorized by the Consents, Tenant need not pay the cost of such removal, and instead, Landlord shall be liable to Tenant for all damages caused thereby.

Article 34. Index and Captions

Section 34.1 The index and captions of this Lease are for convenience and reference only, and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this lease.

Article 35. Memorandum of Lease

Section 35.1 The parties agree to execute and deliver to each other duplicate originals of an instrument, in recordable form, which will constitute a memorandum of lease (and amendments thereof) setting forth a description of the Demised Premises, the Term of this Lease and any other provisions hereof, except the rental provisions, as either party may request.

Article 36: Landlord's Right to Perform Tenant's Obligations:

Section 36.1 Tenant agrees that if it shall fail to make any payment or perform any act, obligation which Tenant is obligated to make under this Lease, other than the preparation of the Project Plan and the construction of or installation of any Building Equipment, and may, but shall not be obligated so to do, after days notice to and demand upon Tenant and Tenant's pay or to perform the same within such thirty (30) (or sooner in the case of emergency, or work is required to be performed sooner as any Legal Requirement and Tenant fails to do without waiving or releasing Tenant from any of Tenant under this Lease, make such payment such act which Tenant is obligated to perform Lease. Landlord and its agents, officers es shall have the right to enter the mises at all reasonable times (and es in the case of emergency) for such for the purpose of inspecting the Demised All reasonable and verified sums so paid by ith interest thereon at the rate of 10% per l be deemed to be additional rent and shall Tenant to Landlord on demand or, at Landlord's the first day of the month following the pay- h expense and the giving of notice thereof by Tenant. Anything to the contrary above set chstanding, if the obligation in default (a) ured by the payment of a sum of money, and (b) pect to the space leased under the Telco Lease, and

(c) is one which Tenant claims is an obligation of the lessee under the Telco Lease and which such lessee disputes as being its obligation thereunder, and if Tenant is diligently proceeding to resolve such dispute under the Telco Lease and so notifies Landlord, then: Landlord shall not perform the same unless (i) such dispute is resolved in Tenant's favor by the order or judgment of a court of competent jurisdiction, or (ii) the failure to cure such default would result in material damage to the property of other occupants of the New Building, or potential danger to the health or safety of persons in or about the New Building, in any of which events Landlord may cure such default.

Article 37. Deductions From Rent

Section 37.1 Subject to the provisions of Section 33.13 hereof, Tenant shall have the right to deduct from the rentals or other sums due or to become due under this Lease, the amounts which may be so deducted pursuant to the Master Lease and any other Severance Lease now or hereafter in force, provided that no such deduction shall be made until Landlord shall have been given notice thereof.

Section 37.2 Subject to the provisions of Section 33.13 hereof, Tenant also shall have the right to deduct or cause to be deducted the reasonable and verified cost of constructing (a) the portion of the S.L.P.C.S. constructed or caused to be constructed by Tenant under Section 7.5 of this Lease, (b) the portion of the S.L.P.C.S. constructed by the Master Tenant, its subtenant or the tenant under any other Severance Lease pursuant to the Project Plan and the rezoning established or to be established under Section 3.1(f) of the Master Lease, and (c) the costs of connecting all or any part of the S.L.P.C.S. to the Buildings, all to the extent provided

in Section 37.4 hereof, from the rentals or any other sums due or to become due under this Lease, the Master Lease and/or any other Severance Lease, in such order of priority as Tenant shall elect, until the full amount of such cost shall have been so recovered, but (i) such costs shall not include the cost of constructing store fronts and all other improvements in respect of any stores constructed or caused to be constructed by Tenant on the S.L.P.C.S.; and (ii) nothing contained in this Lease shall require Tenant to construct or connect to the Buildings all or any part of the S.L.P.C.S. The verified cost of such improvements shall mean all of the following actual costs and expenses paid in connection with, and which are properly allocable to, the construction thereof: (1) all sums paid to surveyors, contractors, subcontractors, laborers, suppliers and materialmen; (2) architect's, engineer's and attorney's fees; and (3) insurance, real estate taxes, assessments and water and sewer charges or surcharges until such portion or portions of such improvements shall be completed (as to which the issuance of a Certificate of Occupancy shall be conclusive).

Said costs and expenses shall be certified to Landlord by Tenant, from time to time (but not more frequently than monthly), and each certificate of Tenant with regard thereto shall be accompanied by paid bills or other evidence reasonably satisfactory to Landlord of the sums paid; and such certificates shall be subject to audit by the Comptroller in accordance with the provisions of subdivision 4 of Section 93 d-1.0 of the Administrative Code of the City of New York.

Section 37.3 Tenant shall also have the right to deduct or cause to be deducted from the rentals and any other sums due or to become due under the Master Lease, this Lease and/or any other Severance Leases in such order of priority as Tenant shall elect, the actual cost, as reasonably approved by the Comptroller, of maintaining, repairing and replacing the improvements and other public amenities referred to in Section 37.2 to the extent provided in Section 37.4

hereof. The cost of maintaining, repairing and replacing the same shall include, without limitation, the costs paid for salaries of maintenance and security employes (including payroll, unemployment, and other charges and benefits), lighting, electricity, cleaning snow removal, insurance premiums, painting, repairs and renewals and replacements (including, without limitation, capital improvements to Building Equipment and other capital improvements approved by the Administrator), or the sums paid to contractors for performing any one or more of the foregoing; but such costs shall not include any overhead costs of Tenant. The sums as to which Tenant requests reimbursement and/or payment from Landlord shall be certified to Landlord by Tenant, and the certificate or certificates of Tenant shall be accompanied by paid bills or other evidence reasonably satisfactory to Landlord of the sums paid; and such certificates shall be subject to audit by the Comptroller in accordance with the provisions of subdivision 4 of Section 93d-1.0 of the Administrative Code of the City of New York. The public portion of the S.L.P.C.S. (i.e., all of the S.L.P.C.S., other than any buildings or commercial structures which may be constructed thereon) shall be kept

open to the public twenty-four (24) hours per day when the same shall be connected to completed bridges which are part of the S.L.P.C.S., unless Tenant and the Administrator shall agree otherwise.

Section 37.4 The extent to which Tenant shall have the right to deduct or cause to be deducted the costs and expenses referred to in Sections 37.2 and 37.3 above from the rentals or any other sums due or to become due under the Master Lease, this Lease and/or any other Severance Lease now or hereafter in force shall be as follows:

Fifty percent (50%) of such costs and expenses in respect of (a) the portion or portions of the improvements referred to in said Sections 37.2 and 37.3 which are outside of the building line or which Tenant constructs under Section 7.5 hereof (other than the retail stores which Tenant may construct under Section 7.5) and (b) any escalators and one stairway per Building to the S.L.P.C.S. or to any public areas (including to the public lobbies of Buildings as shown on the Preliminary Plan), leading to the S.L.P.C.S. (whether or not the same shall be within any building line) provided that the part of the S.L.P.C.S. connected to the Buildings and extending across either Flatbush Avenue Extension or Fulton Street is either (i) constructed by Tenant under Section 7.5, or by the Master Tenant, a subtenant of the Master Tenant, or by a tenant under any Severance Lease, other than this Lease, or (ii) is to be repaired and maintained by Tenant under Section 11.3, and (c) connecting the S.L.P.C.S., or any part thereof, to the Buildings (whether or not the connection shall be within any building line).

Article 38 Termination of Master Lease

Section 38.1 If this Lease shall expire or otherwise terminate the same shall not result in the expiration or termination of, or otherwise affect the Master Lease or any other Severance Leases then in force. Similarly, the expiration or other termination of any other Severance Lease or the Master Lease shall not result in the expiration or termination of, or otherwise affect, this Lease. This Lease shall expire and otherwise terminate solely in accordance with the provisions hereof.

Article 39 Waiver of Immunity

Section 39.1 Upon the refusal of the Tenant, or if Tenant is a corporation, firm or partnership, then any individual who is an officer, director ^{or} partner ~~or employee~~ thereof, when called before a Grand Jury, or the head of a department or agency of the City of New York which is empowered in an investigation to compel the attendance of witnesses and to examine them under oath, to testify concerning any transaction had relating to the making or administration of this Lease, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or lease, such person, and any firm, partnership or corporation of which he is a member, partner, director, officer or employee shall be disqualified from thereafter entering into any contracts or leases with The City of New York for goods, work or services or for the

use and occupancy of any City-owned property, for a period of five (5) years after such refusal. This Lease may be cancelled or terminated by the Commissioner without Landlord, the Commissioner or the Administrator incurring any penalty or damage on account of such cancellation or termination, if Tenant refuses to discharge and sever its relationship with such individual or individuals who refuse to testify or sign a waiver of immunity as herein provided. The provisions of this Section are subject, nevertheless, to the rights of Leasehold Mortgagees, any Persons to whom Landlord shall have given non-disturbance agreements, and the mortgagees of any such Persons (including Subleasehold Mortgagees).

Article 40. Extensions of Time

Section 40.1 In the event of any Unavoidable Delay under this Lease or the Master Lease, the time for performance (and any grace periods with respect thereto) by either party of its covenants and obligations under this Lease which are affected by the Unavoidable Delay, shall automatically be extended for a period of time equal to the aggregate period of the Unavoidable Delays. Any party who experiences an Unavoidable Delay shall exercise its best efforts to remedy the same as soon as practicable.

~~Section 40.2~~ If either party shall default in or delay the performance of its covenants and obligations hereunder or under the Master Lease and such default or delay prevents or delays the performance by the other party of its covenants and obligations hereunder, then, the same shall be deemed to be an Unavoidable Delay extending the other party's time for performance of its covenants and obligations which were so prevented or delayed for a period of time equal to the aggregate period of the Unavoidable Delay.

Article 41. Payment or Performance Under Protest

Section 41.1 If at any time a dispute shall arise as to the amount or sum of money claimed to be due hereunder from one party to the other, the party upon whom such claim shall be made shall have the right to make any such payment under protest, and without prejudice, and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of the party making such payment to institute suit for the recovery of such sum or any part thereof as may have been paid by it under protest.

Section 41.2 If at any time a dispute shall arise between Landlord and Tenant under any other provisions of this Lease, either party shall have the right to comply with the demands of the other and/or perform (under protest) as demanded by the other, and the party so complying may in connection therewith pay the cost of such compliance under protest,

and without prejudice, and the fact that the party so complying has performed or complied with such demand shall in no event be regarded as a voluntary compliance or performance, and there shall survive on the part of the party so complying (subject to the applicable statute of limitations), the right to institute suit for the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of the party so complying to perform the same or any part thereof, then, the party so complying, if this Lease shall not terminate as a result of its default, shall be entitled to recover the cost of such work or the cost of so much thereof as the party so complying was not legally required to perform under the provisions of this Lease. The provisions hereof shall not be deemed or construed to extend the time for the performance by any party of its covenants and obligations hereunder.

Article 42. Nondiscrimination

Section 42.1 At all times during the construction, maintenance and operation of the Buildings and Building Equipment, Tenant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, age or sex. Tenant shall take affirmative action to ensure that employees and applicants for employment with Tenant, and its contractors, are treated without regard to their race, color, creed, national origin, age or sex. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or

other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded, downgraded; demoted; transferred; laid off; and terminated. Tenant will post in conspicuous places on the Demised Premises available to employees of Tenant and applicants for employment, notices provided by Landlord setting forth the language of this non-discrimination provision; and (i) Tenant shall, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will be considered for employment without regard to race, color, creed, age, sex or national origin; (ii) Tenant shall send each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of Tenant's agreement as contained in this paragraph and a copy thereof shall be sent to Landlord within three (3) days of notification to such union or representative; and (iii) to the extent permitted by law, Tenant shall furnish to Landlord all information required by Landlord pursuant to this paragraph and will permit access by Landlord to its books, records, and accounts for the purposes of investigations to ascertain compliance with this Section, and (iv) Tenant will give minority contractors a reasonable opportunity to bid on jobs involving the construction of the Buildings and Building Equipment.

Section 42.2 To evidence compliance with the provisions of Section 42.1, Tenant shall to the extent permitted by law furnish such compliance reports as may from

time to time be required by Landlord, such reports to contain information as to the Tenant's practices, policies, programs, employment policies and employment statistics. Such compliance reports shall, if Landlord so requests, contain the following additional information, to the extent permitted by law and to the extent available to Tenant:

(i) information as to the practices, policies, programs, employment policies and employment statistics of the Tenant's contractors; (ii) if Tenant has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, such information as to such labor union's or agency's practices and policies affecting compliance as Landlord may reasonably require, provided that to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training, and such labor union or agency shall refuse to furnish such information to Tenant, Tenant shall so certify to Landlord as part of its compliance report and shall set forth what efforts it has made to obtain such information.

Section 42.3 Tenant shall include or cause to be included, to the extent applicable, the provisions of Sections 42.1 and 42.2 in every Sublease under which the Subtenant is required to construct any Building and Building Equipment, and every contract of Tenant and each obligation of each such Subtenant or contractor regarding the

construction of any Building and Building Equipment... Tenant shall likewise include or cause to be included in every such Sublease or contract, to the extent applicable, all non-discrimination provisions required by federal, state or local law, including the City's Executive Orders 72, 20 and 31, as all of the same may be amended from time to time. All such provisions to the extent applicable are hereby incorporated in this Lease. Except where inappropriate, such as in the case of professional firms, (a) Tenant will exercise its best efforts to provide in each Sublease with a Subtenant which will have fifty or more employees (but less than one hundred) located in the portion of the Urban Renewal Area demised to to be demised under the Master Lease that such Subtenant will have or initiate a job training and career ladder advancement program; and (b) Tenant will provide in each Sublease with a Subtenant which will have one hundred or more employees located in the portion of the Urban Renewal Area demised or to be demised under the Master Lease that such Subtenant will have or initiate a job training and career ladder advancement program.

Section 42.4 Landlord and Tenant shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work on the Demised Premises, and any contractor or subcontractor performing work on the Demised Premises for Tenant shall be required by the applicable contract or subcontract to

meet such goals; and if Landlord and Tenant shall fail to agree upon such goals then the goals shall be deemed to be those set forth in the applicable City-wide agreements referred to in Section 42.5 hereof.

~~Section 42.5~~ In all contracts for the construction of Buildings or Building Equipment pursuant to this Lease: (i) the contractor shall employ minority individuals for training level jobs and shall participate in an on-the-job training program for them, which is acceptable to the City of New York. The program set forth in the Training Agreement dated December 10, 1970 between the New York Building and Construction Industry Board of Urban Affairs Fund, executed by the Mayor and any such other signatories thereto, which is incorporated herein by reference and shall be included in Rules and Regulations to be adopted pursuant to Executive Orders Numbers 20 and 31, is a program acceptable to the City of New York. Training programs required by Executive Orders Numbers 20 and 31 shall be consistent and in no way conflict with the Training Agreement referred to above. The contractor shall make a good-faith effort to achieve the goal of one trainee to every four journeymen of each trade, where practical. The term "where practical" shall mean and include, but it is not limited to, the following situations indigenous to the nature and practice of the building and construction industry: the length of the job in terms of the amount of time required from start to completion of the work; the physical layout of the job and the feasibility of handling trainees; the unemployment ratio in any particular trade;

the number of men already in training related to job opportunity; the dollar value of the contract; the type of work involved in its relation to the trade involved; availability of potential trainees; geographical location of the job site; (ii) the contractor shall participate in programs for rapid advancement to full journeymen pay scale for new minority employees who, by training and experience, can perform the duties of a qualified journeyman, as long as such programs are not inconsistent with the agreed upon Training Program referred to herein.

Section 42.6 The foregoing provisions of this Article shall not apply to any architect's agreement or to any construction or other contracts already in force or with respect to any property other than the Demised Premises and the Buildings and Building Equipment, or the work done or which may be done thereon; but Tenant agrees to use its best efforts to request them to comply with the provisions of this Article. Tenant reserves all of its rights to be reimbursed, to the extent permitted by law and the funds available for such purposes, for all costs and expenses paid or incurred by Tenant in performing its covenants and obligations under this Article.

Article 43. Landlord Time to Cure Defaults;
Landlord's Limitation of Liability

Section 43.1 Notwithstanding anything contained to the contrary in this lease, it is expressly understood and agreed that with respect to any failure by Landlord to fully and promptly perform its covenants and obligations under the provisions of subsection (b) of Section 3.1 of this Lease, Landlord shall cure the same within thirty (30) days

after notice to do so given by Tenant to Landlord; provided, however, that if such failure cannot with due diligence be cured within said thirty (30) day period, then:

(a) the same shall not constitute a default hereunder by Landlord, if Landlord shall (i) within said thirty (30) day period give notice to Tenant of Landlord's intention to institute all action necessary to remedy such failure and (ii) commence the curing of such failure within said thirty (30) day period, and shall thereafter proceed with all due diligence to complete the curing of such failure, it being the intention hereof that, in connection with any such failure not capable of being cured with due diligence within said thirty (30) days, the time of Landlord within which to cure the same shall be extended for such period as may be necessary to cure the same with all due diligence; and

(b) if for any reason whatsoever Landlord shall fail to cure any such failure within said thirty (30) day period, then, in addition to Tenant's other rights and remedies hereunder, the same shall constitute an Unavoidable Delay extending Tenant's time for performance of any work to be performed by Tenant under this Lease which is affected by such failure on Landlord's part.

Article 44. Entire Agreement

Section 44.1 This instrument constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no verbal or collateral understandings, agreements, representations or warranties not expressly set forth herein.

Article 45. Covenants Binding on Respective
Parties

Section 45.1 The Terms, conditions, covenants, provisions and undertakings herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have
duly executed this Lease on the day and year first above
written.

LANDLORD:

ATTEST:

THE CITY OF NEW YORK

City Clerk

By *Irish Duchen*
Commissioner of Real Estate

TENANT:

FULTON DE KALB ASSOCIATES

Approved as to form

By *Stephen V. Henry*
Partner

Accepted
Samuel I. Friedman
Corporation Counsel

Approved:

ECONOMIC DEVELOPMENT ADMINISTRATION

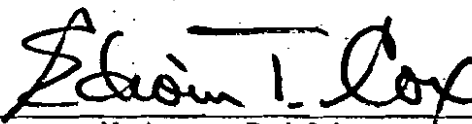
By *D. L. Patton*
Administrator

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On this 21st day of SEPTEMBER, 1972, before
me personally came IRA DUCHAN
to me known and known to me to be the Commissioner of REAL ESTATE 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 Commissioner, pursuant to the authority vested in
him.


Notary Public

EDWIN T. COX
Notary Public, State of New York
No. 31-5841215
Qualified in New York County
Commission Expires March 30, 1974

STATE OF NEW YORK

COUNTY OF New York

SS. . . .

On the 21st day of September, 1972, before me personally came GEORGE KLEIN ^{and Stephen Klein} to me known and known to me to be ~~a~~ partners of the partnership of FULTON DeKALB ASSOCIATES, and the persons described in and who executed the foregoing instrument in the name of said partnership, and duly acknowledged to me that ~~they~~ executed the same as and for the act and deed of said partnership.

Jonathan M. Lehr

JONATHAN M. LEHR
Notary Public, State of New York
No. 03-7478360
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1974

STATE OF NEW YORK

)

ss.:-

COUNTY OF

)

On this day of , 1972, before me personally came ~~HERMAN KATZ~~, with whom I am personally acquainted, and known to me to be the City Clerk of the City of New York, who being by me duly sworn, did depose and say that he resides at 308 East 79th Street, in the Borough of Manhattan, City of New York; that he is the City Clerk of the City of New York, the corporation described in 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 as provided by law, and that he signed his name thereto as City Clerk by like authority, and further, that he knows and is acquainted with IRA DUCHAN and knows him to be the person described in and who, as Commissioner of Real Estate of the City of New York, executed the said instrument; that he executed the said instrument pursuant to law; that the City Clerk saw IRA DUCHAN subscribe and execute the same, and that he acknowledged to him the said HERMAN KATZ, that he executed the same, and he, the same HERMAN KATZ, thereupon subscribed his name thereto.

EXHIBIT A

ALL that certain lot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the northeasterly side of Flatbush Avenue Extension with the northerly side of Fulton Street running thence easterly along the northerly side of Fulton Street 129.62 feet to the westerly side of Hudson Avenue; thence northerly along the westerly side of Hudson Avenue 365.03 feet to the corner formed by the intersection of the southerly side of DeKalb Avenue with the westerly side of Hudson Avenue; thence westerly along the southerly side of DeKalb Avenue 193.11 feet to the corner formed by the intersection of the northeasterly side of Flatbush Avenue Extension with the southerly side of DeKalb Avenue thence southerly along Flatbush Avenue Extension 333.52 feet to the point or place of BEGINNING.

Temporary Public Amenities1. Landscaped Park

A landscaped park shall have a minimum area of 2000 sq.ft., minimum dimension of 20 ft.; not more than 5 ft. above or below curb level. Park shall be paved with brick, Belgian block or similar material. Shall have not less than one tree per 500 sq.ft., each tree being minimum caliper of four inches.

2. Plaza

An open area accessible to the public at all times, having minimum area of 500 sq.ft and a minimum dimension of 15 ft. paved with brick, Belgian block or similar material. Not more than 5 ft. above or below curb level.

1 and 2 both may have obstructions permitted by definition of plaza (Section 12.10), and in addition kiosks or open uses for public recreation, eating and entertainment. No more than two thirds of area may be occupied by obstructions or uses, and they must be located to reserve conveniently located space for circulation, sitting, etc. shall be lit to 2 F.C.

3. Playground

Minimum area 750 sq. ft.; minimum dimension of 20 ft.; sturdy equipment provided; seating required; area around seating shall be paved with brick, Belgian block, or equal. Lit to 4 F.C. at night.

A. Location of Access to the Street

The entrances and exits of all parking lots with 10 or more spaces, shall be located not less than 50 feet from the intersection of any two street lines.

B. Surfacing

Parking lots shall be graded, constructed, surfaced and maintained so as to provide adequate drainage and to prevent the release of dust, in accordance with rules and regulations promulgated by the Commissioner of Buildings. Any area intended for such use shall be surfaced with asphaltic or portland cement concrete, or other naro-surfaced dustless material, at least 4 inches thick.

C. Driveways

To ensure pedestrian safety, cannot exceed 30'-0" in width where they cross the sidewalks. Adjacent driveways must be separated by a 6'-0" wide island.

D. Lighting

Lighting must be provided at parking stations which operate after dark. (2 F.C. at any point within station measured at surface). Lights should be arranged to prevent glare to motorists, nearby residents and pedestrians. 3 F.C. required at entrance and exits.

A perimeter definition of lighting, such as incandescent globe lights on stanchion, 20' on center, must be placed in close proximity to screening.

E. Grade of Entrance and Exit

Driveway grade must not exceed 8% from the property line to a point 50'-0" inside.

F. Screening

There must be provided an adequate visual buffer between cars and people along street sides of facility. It must be in the form of a low divider, not exceeding 48" in height and a minimum 2" thickness, which adds an amenity to street life (planting, support for seating, etc.). It can also contain luminaires for street and station.

G. Regulations on Attendant Buildings

Attendant buildings and ticket machines must be located inside the parking station far enough from the entrance to prevent congestion at the sidewalk; these buildings should be designed so that they are integral with the parking system as a whole and enhance the appearance of the surrounding neighborhood. They must be:

- a. on a platform at least 4" above adjacent lot paving.
- b. enclosed and weather tight.
- c. equipped with a lockable door and window.
- d. provided with utility connections screened from public view.
- e. materials of construction should be the same as, or compatible with, materials used for screening.
- f. where the parking facility is attendant operated, the attendant building must incorporate a weather protection station for customers. This need not be airtight, but must also include a platform 4" above adjacent lot paving.

H. Alterations

Alterations in entrance and exit grades, drive-ways or attendant buildings must have the approval of the City Planning Commission in advance.

I. Regulations on Signing

Each commercial parking station must have a permanent sign showing the name and address of the parking lot, hours of operation and rates. This information should be located only at the entrance locations.

The entrance sign should be incorporated into the design of the attendant building.

J. Minimum Area of 7500 square feet.

K. Trees, Planting and Shrubs

There shall be planting of various trees and shrubs around the perimeter of the site in the ground. In the event that conditions prohibit ground planting, planting pots may be used.

L. Sidewalks

Sidewalks adjoining parking lots shall be constructed, graded and surfaced with portland cement concrete or comparable hard-surface material and maintained so as to provide adequate drainage and prevent the release of dust.

M. Party Walls

All party walls, adjacent to parking lots, from which adjoining structures have been removed, must be restored and painted.

EXHIBIT C
Title Exceptions

1. Zoning regulations and ordinances of
the city, town or village in which the
Premises lie;
2. Any state of facts which an accurate
survey or an inspection of the Demised
Premises would show, provided the same
do not prevent the Demised Premises
from being used for the purposes set
forth in Article 7;
3. Permanent transit easement as shown on
New York Transit Authority Map dated June
14, 1961 - File No. 90 - Drawing No.
151;
4. Any easements, rights of way, or rights
of use, of record, in favor of any
utility company;
5. Permanent subway stairway easement as
shown on New York Transit Authority
Drawing No. 1048, dated February 24,
1956, File No. 10;
6. The Telco Lease.