

## AMENDMENT TO LEASE

AMENDMENT TO LEASE (this "Agreement") dated May 12<sup>th</sup>, 2005 between THE CITY OF NEW YORK, a municipal corporation existing under the laws of the State of New York ("Landlord"), acting by and through its Department of Citywide Administrative Services, and ALEXANDER'S OF KINGS, LLC, a Delaware limited liability company ("Tenant").

### Preliminary Statement

Landlord and Tenant's predecessor in interest have heretofore executed and delivered a Indenture between The City of New York and U & F Realty Corp. dated as of November 29, 1967 (as amended by an Amendment of Indenture dated September 19, 1969, and as assigned by U & F Realty Corp. to Kings Plaza Shopping Center of Flatbush Avenue, Inc. and Kings Plaza Shopping Center of Avenue U, Inc. pursuant to an Assignment and Assumption Agreement dated January 27, 1970, as further amended by letter agreement dated May 25, 1972 and by Agreement dated May 25, 1976, as further assigned by Kings Plaza Shopping Center of Flatbush, Inc. to Alexander's Department Stores of Brooklyn, Inc. pursuant to an Assignment and Assumption of City Lease dated as of June 18, 1998, and as further assigned by Alexander's Department Stores of Brooklyn, Inc. to Alexander's of Kings, Inc. pursuant to an Assignment and Assumption of City Lease dated as of May 31, 2001, the "Lease").

Landlord and Tenant now desire to amend the Lease.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties agree as follows:


1. The description of the Premises on page 2 of the Lease is hereby deleted in its entirety and the metes and bounds description, dated April 29, 2005, prepared by Gregory S. Gallas of Control Point Associates, Inc., set forth in Exhibit A-1, attached hereto, is inserted in its place.
2. Exhibit "A" to the Lease is hereby deleted in its entirety and the drawing made part of Exhibit A-1, showing the Premises as modified, is inserted in its place.
3. In case of conflict between the Lease and this Agreement, the latter will prevail. This Agreement is made without any diminution of rent whatsoever. Except as expressly amended by this Agreement, the Lease is ratified and confirmed and will continue in full force and effect.
4. This Agreement inures to the benefit of and is binding upon the parties hereto and their respective successors and assigns.

5. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered the day and year first above written.


**LANDLORD:**

**THE CITY OF NEW YORK**, acting  
by and through its Department of  
Citywide Administrative Services

By:   
Lori Fierstein  
Deputy Commissioner

**TENANT:**

**ALEXANDER'S OF KINGS, LLC**

By:   
Joseph Macnow  
Executive Vice President and  
Chief Financial Officer

UNIFORM FORM OF ACKNOWLEDGMENT

STATE OF *New York* )  
 ) SS.:  
COUNTY OF *New York* )

On the ~~2nd~~ day of *May*, in the year 200*5*, before me, the undersigned, personally appeared *JOSEPH MACNOW* personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

*Florence Y. Legler*  
\_\_\_\_\_  
(Notary Public) ← Strike out → (Commissioner of Deeds)

**FLORENCE Y. LEGLER**  
Notary Public, State of New York  
No. 41-4705940  
Qualified in Queens County  
My Commission Expires March 30, 20*06*

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

On this *5<sup>th</sup>* day of *MAY*, 200*5*, before me, the undersigned, personally appeared *Lori Fierstein*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

*Jewel Nurse-Huntley*  
\_\_\_\_\_  
(Notary Public) ← Strike out → (Commissioner of Deeds)

**JEWEL NURSE-HUNTLEY**  
Commissioner of Deeds  
City of New York No. 3-5228  
Certificate Filed in New York County  
Commission Expires May 1, 2006



# CONTROL POINT ASSOCIATES, INC.

BOUNDARY & TOPOGRAPHIC SURVEYS • SUBDIVISIONS • CONSTRUCTION STAKEOUT

776 Mountain Boulevard  
Watchung, NJ 07069  
908.668.0099  
908.668.9595 fax  
www.cpasurvey.com

FEBRUARY 11, 2005  
REVISED APRIL 20, 2005  
REVISED APRIL 29, 2005  
C02463

## METES & BOUNDS DESCRIPTION

MODIFIED LEASE AREA FOR KINGS PLAZA  
PART OF LOT 50, BLOCK 8470, SECTION 25  
BOROUGH OF BROOKLYN  
KINGS COUNTY  
CITY & STATE OF NEW YORK

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF FLATBUSH AVENUE (200 FEET WIDE), SAID POINT BEING DISTANT SOUTH 40 DEGREES - 21 MINUTES - 18 SECONDS EAST, A DISTANCE OF 245.00 FEET FROM A POINT FORMED BY THE INTERSECTION OF SAID NORTHEASTERLY LINE OF FLATBUSH AVENUE WITH THE SOUTHEASTERLY LINE OF AVENUE U (VARIABLE WIDTH) AND FROM SAID POINT OF BEGINNING RUNNING, THENCE; THE FOLLOWING FOUR (4) COURSES ALONG THE DIVIDING LINE BETWEEN LOTS 50 & 55, BLOCK 8470:

1. NORTH 49 DEGREES - 38 MINUTES - 29 SECONDS EAST, A DISTANCE OF 71.59 FEET TO A POINT, THENCE;
2. SOUTH 42 DEGREES - 36 MINUTES - 19 SECONDS EAST, A DISTANCE OF 425.33 FEET TO A POINT, THENCE;
3. NORTH 49 DEGREES - 38 MINUTES - 29 SECONDS EAST, A DISTANCE OF 171.76 FEET TO A POINT, THENCE;
4. SOUTH 40 DEGREES - 21 MINUTES - 31 SECONDS EAST, A DISTANCE OF 644.08 FEET TO A POINT, THENCE;
5. ALONG THE DIVIDING LINE BETWEEN THE AFOREMENTIONED LOT 50, BLOCK 8470 AND MILL BASIN, SAID LINE ALSO BEING THE U.S. PIERHEAD AND BULKHEAD LINE, SOUTH 13 DEGREES - 44 MINUTES - 15 SECONDS WEST, A DISTANCE OF 247.03 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN THE AFOREMENTIONED LOT 50 & LOT 1, BLOCK 8470, THE FOLLOWING TWO (2) COURSES:
6. NORTH 40 DEGREES - 21 MINUTES - 18 SECONDS WEST, A DISTANCE OF 470.95 FEET TO A POINT, THENCE;

### Other Office Locations:

■ Chalfont, PA  
215.412.9055

■ Towson, MD  
410.494.9445

■ Sterling, VA  
703.904.9400



- 7. SOUTH 49 DEGREES - 38 MINUTES - 29 SECONDS WEST, A DISTANCE OF 60.00 FEET TO A POINT, THENCE;
- 8. ALONG THE AFOREMENTIONED NORTHEASTERLY LINE OF FLATBUSH AVENUE, NORTH 40 DEGREES - 21 MINUTES - 18 SECONDS WEST, A DISTANCE OF 389.00 FEET TO A POINT, THENCE; THE FOLLOWING THREE (3) COURSES RUNNING THROUGH THE INTERIOR OF THE AFOREMENTIONED LOT 50, BLOCK 8470:
- 9. NORTH 49 DEGREES - 38 MINUTES - 29 SECONDS EAST, A DISTANCE OF 60.00 FEET TO A POINT, THENCE;
- 10. NORTH 40 DEGREES - 21 MINUTES - 18 SECONDS WEST, A DISTANCE OF 294.00 FEET TO A POINT, THENCE;
- 11. NORTH 85 DEGREES - 21 MINUTES - 18 SECONDS WEST, A DISTANCE OF 84.85 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 176,970 SQUARE FEET OR 4.063 ACRES

THIS DESCRIPTION IS PREPARED WITH REFERENCE TO A MAP ENTITLED, "TOPOGRAPHIC SURVEY, VORNADO REALTY TRUST, FLATBUSH AVENUE @ AVENUE U, PART OF LOTS 50 & 55, BLOCK 8470, SECTION 25, BOROUGH OF BROOKLYN, KINGS COUNTY, CITY & STATE OF NEW YORK", PREPARED BY CONTROL POINT ASSOCIATES, INC. DATED JANUARY 19, 2005, LAST REVISED APRIL 29, 2005 AS REVISION NUMBER 4.

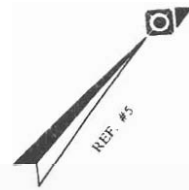
CONTROL POINT ASSOCIATES, INC.



ECR/gg P:\surveys\2002\C02463\M&B\M&B-Proposed Lease Parcel-2-11-05-REVISED-4-20-05-REVISED-4-29-05.doc

PREPARED BY: ECR  
REVIEWED BY: EL

**AVENUE U**  
(VARIABLE WIDTH)  
FORMER LINE OF AVENUE U &  
DEED LINE PER REEL 4251, PG. 1520

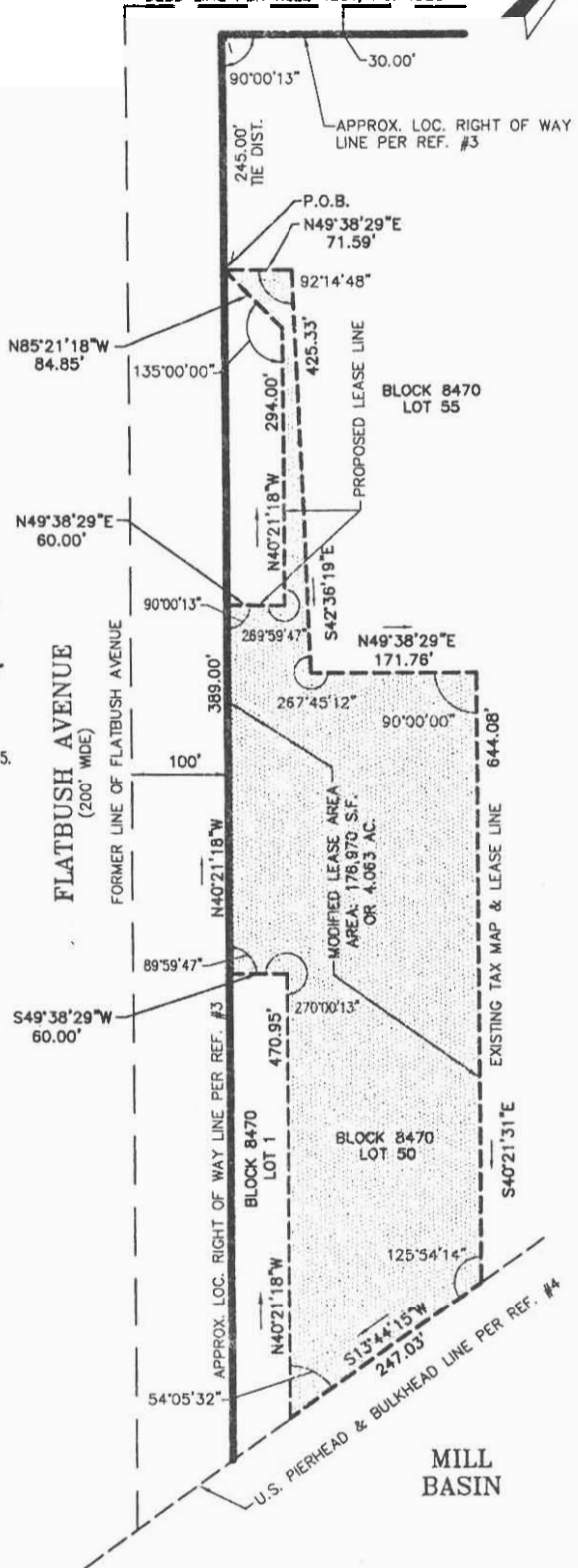


**NOTES:**

1. PROPERTY KNOWN AS PART OF LOTS 50 & 55, BLOCK 8470, SECTION 25 AS SHOWN ON THE TAX MAPS OF THE BOROUGH OF BROOKLYN, KINGS COUNTY, CITY AND STATE OF NEW YORK.
2. AREA: 176,970 S.F. OR 4.063 AC.
3. THIS PLAN IS BASED ON INFORMATION PROVIDED BY A SURVEY PREPARED IN THE FIELD BY CONTROL POINT ASSOCIATES, INC. AND OTHER REFERENCE MATERIAL AS LISTED HEREON. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
4. THIS PROPERTY MAY BE SUBJECT TO RESTRICTIONS, COVENANTS AND/OR EASEMENTS, WRITTEN OR IMPLIED.

**REFERENCES:**

1. THE OFFICIAL TAX MAPS OF THE BOROUGH OF BROOKLYN, KINGS COUNTY, CITY AND STATE OF NEW YORK.
2. MAP ENTITLED "OFFICE OF THE PRESIDENT OF THE BOROUGH OF BROOKLYN TOPOGRAPHICAL BUREAU, FINAL DAMAGE MAP, IN THE MATTER OF ACQUIRING TITLE IN FEE TO THE REAL PROPERTY REQUIRED FOR THE WIDENING OF FLATBUSH AVENUE, FROM AVENUE U TO A POINT 275 FEET SOUTHEASTERLY THEREFROM AND ACQUIRING TITLE TO THE PERMANENT AND PERPETUAL EASEMENT FOR SIDEWALK AND STREET PURPOSES REQUIRED FOR THE WIDENING OF AVENUE U, FROM FLATBUSH AVENUE TO EAST 55TH STREET, IN THE BOROUGH OF BROOKLYN, CITY OF NEW YORK" DATED: MARCH 26, 1970.
3. FINAL SECTION MAP NOS. 87 & 96 PROVIDED BY THE BOROUGH OF BROOKLYN TOPOGRAPHICAL BUREAU.
4. MAP OF LEASE AREA PREPARED BY BARTLETT, LUDLAM & DILL ASSOCIATES, DATED: JUNE 19, 1967.
5. MAP ENTITLED "OFFICE OF THE PRESIDENT OF THE BOROUGH OF BROOKLYN TOPOGRAPHICAL BUREAU, FINAL DAMAGE MAP, IN THE MATTER OF ACQUIRING TITLE IN FEE TO THE REAL PROPERTY REQUIRED FOR THE WIDENING OF FLATBUSH AVENUE, FROM AVENUE U TO A POINT 275 FEET SOUTHEASTERLY THEREFROM AND ACQUIRING TITLE TO THE PERMANENT AND PERPETUAL EASEMENT FOR SIDEWALK AND STREET PURPOSES REQUIRED FOR THE WIDENING OF AVENUE U, FROM FLATBUSH AVENUE TO EAST 55TH STREET, IN THE BOROUGH OF BROOKLYN, CITY OF NEW YORK" DATED: MARCH 26, 1970.
6. MAP ENTITLED "SITE PLAN & EXTERIOR DETAILS, KING'S PLAZA, EXTERIOR RENOVATION, BROOKLYN, NEW YORK" PREPARED BY DAL POS ARCHITECTS, LLC, PROJECT NO. 04019, SHEET A2.1.
7. MAP ENTITLED "TOPOGRAPHIC SURVEY, VORNADO REALTY TRUST, FLATBUSH AVENUE @ AVENUE U, PART OF LOTS 50 & 55, BLOCK 8470, SECTION 25, BOROUGH OF BROOKLYN, KINGS COUNTY, CITY AND STATE OF NEW YORK" PREPARED BY CONTROL POINT ASSOCIATES, INC., DATED: 1-19-2005, LAST REVISED: 1-20-2005.
8. MAP ENTITLED "MAP ENTITLED 'SURVEY OF PROPERTY SITUATED IN THE BOROUGH OF BROOKLYN, COUNTY OF KINGS, CITY OF NEW YORK, STATE OF NEW YORK' PREPARED BY CONTROL POINT ASSOCIATES, INC., DATED: JANUARY 24, 1995.



**GRAPHIC SCALE**



( IN FEET )  
1 inch = 200 ft.

No.	DESCRIPTION OF REVISION	DRAWN:	APPROVED:	DATE
4	REVISED TO EDIT MODIFIED LEASE AREA	E.C.R.	G.S.G.	4-29-05
3	REVISED TO EDIT MODIFIED LEASE AREA	E.C.R.	G.S.G.	4-20-05
2	REVISED PER CLIENT COMMENTS	E.C.R.	G.S.G.	3-3-05
1	REVISED PER CLIENT COMMENTS	E.C.R.	G.S.G.	2-16-05

**U & F REALTY CORP.  
LEASE INDEX**

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1 C 138  
EXHIBIT A

DEPARTMENT OF MARINE AND AVIATION  
THE CITY OF NEW YORK

THIS INDENTURE made the 29 day of November Parties  
in the year One Thousand Nine Hundred and Sixty-Seven, between  
THE CITY OF NEW YORK, acting by its Commissioner of Marine and  
Aviation, party of the first part, hereinafter called Lessor, and  
U & F REALTY CORP., a corporation organized under the laws of the  
State of New York, having its principal place of business at the  
S/E/C of Flatbush Avenue and Avenue U, Brooklyn, New York,  
party of the second part, hereinafter called Lessee.

WITNESSETH, that whereas the Board of Estimate of The City of Recital  
New York, pursuant to law, did by resolution adopted at a meeting  
held on Oct. 25, 1967 (Cal. No. 19 ), a copy of which is here-  
unto annexed and made a part hereof, approve of and consent to the  
execution of a lease by the Commissioner of Marine and Aviation to  
the above Lessee of the hereinafter described property, upon the  
terms and conditions in said resolution set forth and herein contained;

Now, THEREFORE, Lessor, for and in consideration of the rents, Term !  
covenants, terms and conditions hereinafter mentioned and contained  
on the part of Lessee to be paid, performed, kept and observed, has  
leased, demised, and farm let, and by these presents does lease,  
demise, and farm let unto Lessee for a term of twenty (20) years  
commencing:

(1) on the date certified by the Chief Engineer of the  
Department of Marine and Aviation to be the date when the  
work on the demised property, to be performed by Lessee as  
hereinafter provided, has been substantially completed, or

(2) six months from the date of execution of this lease by  
the Commissioner,

whichever of the dates set forth in (1) or (2) is earlier, subject to  
termination and cancellation as hereinafter provided:



**Premises**

ALL that certain property, situate in the Borough of Brooklyn, County of Kings, City and State of New York, described as follows, to wit:

BEGINNING at a point on the northeasterly side of Flatbush Avenue, distant 275 feet southeasterly from the corner formed by the intersection of the southeasterly side of Avenue U with the northeasterly side of Flatbush Avenue; running thence northeasterly parallel with Avenue U, 171.59 feet to the prolongation of the center line of former Hinsdale Avenue; thence southeasterly along the prolongation of the center line of former Hinsdale Avenue, 425.33 feet to a point on a line drawn parallel with and distant 700 feet southeasterly from the southeasterly side of Avenue U and 188.29 feet northeasterly from the northeasterly side of Flatbush Avenue measured along said line; thence northeasterly parallel with Avenue U, 171.76 feet to the prolongation of the center line of the block between East 52nd Street and East 53rd Street; thence southeasterly along the prolongation of said center line of the block, 644.08 feet to the conditional United States Pierhead and Bulkhead Line approved by the Secretary of War, May 1, 1911; thence southerly along said Pierhead and Bulkhead Line, 247.03 feet; thence northwesterly along a line 160 feet northeasterly from and parallel with Flatbush Avenue, 574.95 feet; thence southwestly parallel with Avenue U, 160 feet to the northeasterly side of Flatbush Avenue and thence northwesterly along the northeasterly side of Flatbush Avenue, 639 feet to the point or place of BEGINNING, all as shown outlined in red on print attached hereto, made a part hereof and marked Exhibit "A"; consisting of upland and lands under water. All dimensions are approximate.

On the following TERMS AND CONDITIONS which Lessee for itself, its successors and assigns, hereby covenants, promises and agrees to and with Lessor to keep and perform.

**Use of Property**

FIRST: Lessee may use the demised property (a) for the maintenance and operation of a marina and marine repair shop, (b) for the storage, sale and rental of pleasure boats, marine equipment, marine gasoline, oil, accessories and incidentals, automotive oil, gasoline, accessories and incidentals, (c) for the parking of motor vehicles on the ground or in structures, incidental to the use of the demised property and Parcel A as shown on Exhibit "B" annexed hereto and

made a part hereof, (d) for the purpose of egress and ingress between Flatbush Avenue and said Parcel A; only, and for no other purpose except with the prior written approval of the Commissioner of Marine and Aviation in each instance.

Lessee agrees that notwithstanding the foregoing provisions, a portion of the demised property containing in the aggregate, not less than 100,000 square feet, shall be used for the following purposes:

- (1) maintenance and operation of a marina and marine repair shop; and
- (2) storage, sale and rental of pleasure boats, marine equipment, marine gasoline, accessories and incidentals,

provided, however, that Lessee shall be required to use the demised property for the uses set forth in (1) and (2) only during the boating season of each year.

It is agreed that the demised property may be used, for the purposes specified in this article, in connection with the development of a shopping center on adjacent land owned by an affiliate of Lessee.

For all of the purposes and provisions of this lease any persons, firms, partnerships, joint ventures or corporations participating in the development of the shopping center on Parcel A, as shown on Exhibit "B" shall be deemed to be an affiliate of Lessee.

Lessor makes no representation as to the legality of the use of the demised property for Lessee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction, Lessee covenants and agrees that Lessor, its agents, officers, employees and the Commissioner, or any person whatsoever, shall not be liable for any damages arising out of or related to such illegal use or proposed use.

**SECOND:** Lessee shall not at any time assign, sublet, mortgage or pledge this lease or any part thereof, or in any way charge or encumber the rights or property granted herein, or any part thereof, or issue or grant any permit or license to use the property or any part thereof, for any purpose, without the prior written consent of the Commissioner and approval of the Board of Estimate except that approval of the Board of Estimate shall not be required for subleases. Any such consent shall provide for the amount of rent to be charged by Lessee for any assignment or subletting of the demised property

**Assignment  
or Mortgage**

or any part thereof, or the granting of any permit to use the said demised property or any part thereof, by persons other than Lessee. It is further provided, nevertheless, that such consent of Lessor to any assignment or subletting of the demised property or any part thereof, or the granting of any permission to use the said demised property or any part thereof, by persons other than Lessee shall in any event be upon the express condition that any rent, commissions, premiums or other bonuses charged or received by Lessee in excess of the rental provided as in the aforesaid written consent, and all other profits or gains in excess of such rental realized by each such assignment or subletting shall be deemed and considered to be received for Lessor and shall be automatically the property of Lessor, and such excess rents, profits or gains shall be paid over forthwith to Lessor; it being further understood and agreed that such excess rents, profits, or gains shall be deemed to be trust funds, as to which Lessee is to be the Trustee thereover and acting as such for and in behalf of Lessor. The granting by Lessor of consent to any of the foregoing in one or more instances shall not dispense with the necessity for Lessee thereafter to obtain consent as to any further assignment, sublease, mortgage, pledge, charges, encumbrances, permit or license, as aforementioned.

**Rent**

**THIRD:** Lessee shall well and truly, and without any manner of deduction, abatement, fraud or delay, pay or cause to be paid to Lessor, its successors or assigns, at the office of the Commissioner, during the term of this lease, an annual rent of Seventy-six Thousand Two Hundred Twenty Dollars (\$76,220) payable quarterly in advance to the Cashier of the Department of Marine and Aviation.

**Renewal**

**FOURTH:** If at any time, but not less than three months before the expiration of the term of these presents and any renewal term, Lessee shall give to Lessor notice in writing by certified mail directed to the Commissioner of its desire that this lease shall be renewed, and if Lessee shall not then be in default under any of the terms, covenants and conditions contained in this lease and in any renewal thereof, then and in that case Lessor will again lease, demise and farm let unto Lessee for a first renewal term, and then for a second renewal term, and then for a third renewal term, each such renewal term to

be for a period of ten years next ensuing the date on which the term hereby demised or then in effect shall expire, all and singular the property described in this lease, by an indenture on the same terms, covenants and conditions as are contained in this lease, except that such renewal lease shall not contain any provisions for amortization of any improvements, and that the annual rent to be paid during the first renewal term shall be Ninety-one Thousand Four Hundred Sixty-four Dollars (\$91,464), and that the annual rent to be paid in the second renewal term shall be One Hundred Nine Thousand Seven Hundred Fifty-seven Dollars (\$109,757), and that the annual rent to be paid during the third renewal term shall be One Hundred Thirty-one Thousand Seven Hundred Eight Dollars (\$131,708), and there shall be no further option to renew this lease.

FIFTH: Lessee shall be obliged, and hereby agrees to pay the rent reserved herein throughout the term of the within lease notwithstanding any provision or clause contained in Section 227 of the Real Property Law.

Total and  
Partial  
Destruction

In the event of total destruction or in the event of partial destruction so extensive as to render the demised property unsuitable for the purpose of this letting, provided that such destruction did not occur as a result of the act, fault or neglect of (a) Lessee, its servants, agents, employees or representatives or (b) others on or at the premises with Lessee's consent, then Lessee, within sixty (60) days from the date of such destruction, may at its option terminate this lease as of the date of the exercise of such option by Lessee. Such sixty-day option shall, however, be conditioned as follows:

(a) There shall be no abatement of rent by reason of such destruction, from the date of the destruction to the time of the exercise of the option by Lessee; and

(b) Lessee shall immediately after such destruction and pending such exercise of the option, take all necessary safety measures and measures for preservation, and in default of Lessee taking such measures promptly, Lessor may do so at Lessee's expense.

If such option is not exercised by Lessee within such time, then Lessor must notify Lessee in writing, within ninety (90) days from the date of such destruction as to its intention to repair, rebuild or replace such destroyed property. Should Lessor fail or neglect so to notify Lessee within such time or should the notice state that Lessor does not intend to repair, rebuild or replace, then this lease may, at Lessee's option, be cancelled by notice within thirty (30) days from the expiration of said ninety (90) day period and the obligation to pay rent shall then cease as of the date of such destruction. If Lessor elects to so repair, rebuild or replace such destroyed property, it agrees to proceed promptly with such work and there shall be no abatement of rent.

In the event such destruction is caused by the act, fault or neglect of (a) Lessee, its servants, agents, employees or representatives or (b) others on or at the premises with Lessee's consent, Lessee may not terminate this lease and shall continue to be liable for the payment of rent and shall comply with all of the other terms, covenants and conditions of this lease.

In the event of destruction not so extensive as to render the demised property unsuitable for the purposes of this letting, Lessor shall promptly proceed to repair, rebuild, or replace such destroyed property; but the continuing obligation of Lessee to pay rent uninterruptedly and to comply with all of the terms, covenants and conditions of this lease shall remain unimpaired, provided, however, that if Lessor fails to fully repair, rebuild or replace such destroyed property, the rent to be paid by Lessee for the premises as so repaired shall be adjusted to a lesser amount by the Commissioner subject to the approval by the Board of Estimate.

Except as otherwise provided in this article, this lease shall remain in full force and effect and the continuing obligation of Lessee to pay rent uninterruptedly and to comply with all of the other terms, covenants and conditions of this Lease shall remain unimpaired.

In the event of such termination of the lease, and if the Lessee shall have constructed or installed any structure, addition or improvement upon the demised property in accordance with an amortization agreement with Lessor, Lessee shall during the original term only,

be entitled to compensation for the unamortized cost of such structure, addition or improvement, which unamortized cost shall be based upon the original term only, on the basis of the amount stated in a Certificate of Established cost to be issued and filed in connection therewith.

**SIXTH:** No advertisement, notice or sign shall be placed or affixed to any of the structures, appurtenances, or any other part of the outside or inside of the demised property, except such as shall have first received the written approval of the Commissioner. **Advertising**

The Commissioner may place and affix an appropriate sign or signs designating the demised property as City-owned under the jurisdiction of the Department of Marine and Aviation in the locations specified therefor on Exhibit "A" or in such other locations as may be agreed upon by Lessor and Lessee, and Lessee shall at its own cost and expense maintain such sign or signs.

**SEVENTH:** (a) Lessee shall upon the execution and delivery of this lease furnish a surety company bond, approved by the Comptroller of The City of New York, in an amount equal to the estimated cost, as approved by the Chief Engineer of the Department of Marine and Aviation, of the work to be performed pursuant to Article "THIRTY-FIFTH" of this lease, as security for the full and faithful commencement and completion of such work within the periods of time in said article set forth. **Bond**

(b) Lessee shall upon the execution and delivery hereof furnish either a surety bond in an amount equal to the annual rent and approved by the Comptroller, or in place of such bond, Lessee may deposit with the Comptroller securities of The City of New York, the par value of which shall be an amount equal to the rent for a period not less than six months as security for the faithful performance of each and every term, condition, and covenant of this lease.

**EIGHTH:** In the event the demised property shall be condemned, taken, or acquired by a body having superior power of eminent domain to Lessor, then this lease shall terminate and come to an end **Condemnation**

immediately upon vesting of title in such superior body and Lessee shall not be entitled to any compensation from Lessor by reason of the termination of this leasehold.

Lessee shall, however, be entitled to payment from such superior body for the improvements which it has constructed on said premises to the extent and limit as herein provided and for any other damages it may sustain by reason of such condemnation, taking or acquisition, except that Lessee waives its right to receive payments from Lessor or such superior body for improvements on that part of the demised property which may be taken for street widening purposes along Flatbush Avenue to a depth of 100 feet therefrom. The condemnation court shall be requested to make a separate determination as to the value of the improvements upon the premises so taken and as to any other damages sustained by Lessee. From so much of the award as shall be made for improvements, there shall first be retained by Lessor the actual cost of the improvements on the demised property other than those placed or to be placed thereon by Lessee or those holding under Lessee, that being the value as agreed by the parties hereto of the value of such improvements, less 2% for each year that has expired since the commencement of the term of this lease.

The provisions of this article shall not give rise to any claim by Lessee against Lessor, without prejudice to Lessee's rights against such superior condemning body.

From the portion of the award made for improvements remaining after such deduction, Lessee shall receive the amount, if any, expended by it for improvements on the demised property as shown by a Certificate of Established Cost theretofore filed with and approved by Lessor, less five per cent (5%) for each year of the demised term from the date of commencement of the term of this lease to the time of vesting of title in such condemnation. As used in this lease, the "Certificate of Established Cost" is defined to mean a statement setting forth the total cost of any such improvement and certified by the Chief Engineer of the Department of Marine and Aviation.

The balance, if any, of such portion of the award remaining after such deductions, shall be paid to Lessor.

Lessee shall not have any claim whatever against Lessor, by reason of the insufficiency or claimed insufficiency of the award, to reimburse Lessee for the unamortized portion of the amounts expended by it for improvements, or otherwise.

Nothing herein contained shall be deemed to entitle Lessee to any part of the award made for land.

In the event that part of the demised property shall be condemned, or taken or acquired by Lessor or by a body having superior power of eminent domain, and the condemning of such part of the demised property shall make it impracticable for Lessee to use the remainder in its business for the purposes set forth in this lease, Lessee shall have the right to cancel and terminate this lease or to remain in possession of the premises and under all the terms of the within lease, except that the rent to be paid by Lessee for the part remaining shall be fixed by the Commissioner subject to the approval of the Board of Estimate provided, however, that in the event of any condemnation or taking by Lessor or by a body having superior power of eminent domain, in respect of street widening purposes along Flatbush Avenue to a depth of 100 feet easterly of the easterly street line thereof, the annual rent to be paid by Lessee for the part of the demised property remaining thereafter shall be reduced proportionately to the number of square feet so taken and such reduction shall be effective from the date of taking.

**NINTH:** Lessee shall comply with and observe and this lease shall be subject to the Waterfront Commission Act (Laws of 1953, Chapters 882, 883) and amendments thereto and to any and all other laws, and to regulations and orders of any and all departments, bureaus and boards of the Federal and State governments.

Requirements  
of Law

Lessee shall also comply with and observe, and this lease shall be subject to any and all laws and to regulations and orders of any and all departments, bureaus and boards of the City government insofar as they may so act in their governmental capacities in the exercise of general police power, as distinguished from the City's capacity as a landlord or exercise of its power as a landlord.



**Bankruptcy  
and  
Insolvency**

**TENTH:** In the event that Lessee shall become a voluntary bankrupt, or that proceedings in bankruptcy shall be instituted by or against it or that a trustee or receiver of all or part of Lessee's assets shall be appointed, or that Lessee shall be divested of its estate herein by other or any operation of law, or if Lessee makes an assignment for the benefit of creditors, the Commissioner may cancel and terminate this lease by a notice to be served as herein provided and the term hereby demised shall thereupon cease and expire in the same manner and to the same effect as if that were the expiration of the term and in which event, neither Lessee nor any person claiming through or under Lessee by virtue of any statute or order of any Court shall be entitled to possession or to remain in possession of the premises demised, but shall forthwith quit and surrender the premises. In the event an involuntary petition in bankruptcy is filed against Lessee, or in the event of an appointment of a receiver in such involuntary proceeding, the Commissioner may cancel this lease by notice served as herein provided and the term hereby demised shall thereupon cease and expire in the same manner and to the same effect as if that were the expiration of the term, unless such involuntary proceeding and/or receivership are vacated within sixty (60) days from the filing of the petition in involuntary bankruptcy. In the event of such cancellation by the Commissioner, all structures, additions, improvements, machinery or appurtenances then upon the property shall be undisturbed and remain on the property unless Lessor otherwise directs.

It is the purpose and spirit of this lease that the letting is to the above mentioned Lessee only. This lease shall not be deemed transferred by operation of law.

In the event of such cancellation by the Commissioner, the terms and conditions of any amortization agreement between the parties hereto shall be deemed abrogated and annulled and of no effect whatsoever. Lessor, in addition to any other rights and remedies given in this lease or by virtue of any statute or rule of law, may retain as liquidated damages any rent, security, deposit or moneys received by it from Lessee or others in behalf of Lessee upon the execution hereof. In the event of the termination of this lease as

provided in this article, Lessor shall forthwith, notwithstanding any other provisions of law or of this lease to the contrary, be entitled to recover from Lessee as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised, and the rental value of the demised property at the time of termination for the unexpired term or portion thereof, both discounted at the rate of four (4%) per cent per annum to present worth.

Notwithstanding anything contained in this article to the contrary, this article shall not become operative and the term of this lease shall not expire so long as Lessor continues to receive the rent herein provided.

**ELEVENTH:** The acceptance of rent by Lessor for any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee, shall not be deemed a waiver of any right on the part of the Commissioner to cancel this lease for failure by Lessee so to perform, keep or observe any of the terms, covenants, or conditions of this lease. No waiver by Lessor of default by Lessee of any of the terms, covenants, or conditions hereof, to be performed, kept and observed by Lessee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee.

Acceptance  
of Rent  
No Waiver

**TWELFTH:** Lessee shall not erect nor maintain nor permit to be erected or maintained upon the premises hereby demised, structures of any kind other than those now on said premises or specifically authorized by this lease, nor erect any structures within 100 feet of Flatbush Avenue in the area so delineated on the print attached hereto, made a part hereof and marked Exhibit "A", without the consent in writing of the Commissioner. Lessee will, at the Commissioner's option, upon twenty-four (24) hours' notice so to do, remove any and all structures that may have been placed by it on said premises without such consent of said Commissioner, and in case of its failure to remove the same, the Commissioner may remove, or

Erection of  
Structures

cause to be removed, such structures and Lessee shall pay the cost of such removal and of the storage of any material which Lessor may, if Lessor so elects, deal with as though it were abandoned property.

**Improvements**

**THIRTEENTH:** All alterations, decorations, installations, additions and improvements made by Lessee to and upon the demised property shall remain the property of Lessee, and shall be removed by Lessee and the premises restored to its original condition by Lessee, at its sole cost and expense, immediately upon the expiration or sooner termination of this lease or any renewal thereof and if Lessee fails or neglects so to do, the Commissioner shall have the right to remove the said structures and improvements and effect restoration of the premises or any part thereof at the expense of Lessee.

However, Lessee hereby agrees that if at any time on or before the expiration or sooner termination of this lease or any renewal thereof, the Commissioner, by written notice to Lessee served in the manner provided by Article "TWENTY-FIRST" hereof, elects to have any and all or any part or portion of such structures and improvements remain upon the demised property then upon the giving of such notice by the Commissioner, ownership of and title to the structures and improvements designated in such notice, shall pass to and vest in Lessor upon such expiration or sooner termination of this lease or any renewal thereof without cost to Lessor.

Lessee shall pay all real estate taxes and assessments levied on the structures, buildings, or improvements so erected by Lessee on the demised property, throughout the term of this lease or any renewal thereof. Such real estate taxes and assessments shall be additional rent and Lessor shall have the right to enforce collection in the same manner as though there was a default in the payment of rent hereunder.

Nothing herein contained shall be construed as a limitation upon the right of Lessee to challenge the value of the structures, buildings or improvements erected by Lessee on the demised property assessed for tax purposes, or to deprive Lessee of any other rights that are enjoyed by an owner of real property in the City of New York to challenge a tax or other assessment in respect of real property.

**FOURTEENTH:** Lessee shall, at its own cost and expense, during the said term and any renewal thereof, put, keep and maintain the said property and every part thereof, and the structures thereon or to be erected thereon in good and sufficient repair and condition including painting. The Commissioner shall be the sole judge of the amount of repairs and painting necessary under the terms of this lease. Nothing contained in this article, however, shall be deemed to require Lessee to make any capital improvements, as distinguished from maintenance and repairs, to said property or the structures thereon.

**Repairs  
Painting  
and  
Maintenance**

**FIFTEENTH:** If Lessee shall default in the performance of any covenant on Lessee's part to be performed by virtue of any provision in any article in this lease contained, Lessor may immediately, or any time thereafter, without notice, perform the same for the account of Lessee in the name of, or as agent of Lessee, or otherwise. If Lessor at any time elects to pay any sum of money, or do any act which will require the payment of any sum of money, by reason of Lessee's failure to comply with any provision hereof, or if Lessor is compelled to incur any expenses in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Lessee hereunder, the sum or sums so paid by Lessor with all interest, costs, and damages shall be deemed to be additional rent hereunder and shall be due from Lessee to Lessor on the first day of the month following the incurring of such respective expenses.

**Fees and  
Expenses**

**SIXTEENTH:** Lessee accepts the demised property "as is" and will not at any time make any claim that the property or any structures thereon are not, or at the time of the commencement of the term hereof, were not well painted and in suitable repair or condition for the uses and purposes for which the premises were demised, nor will Lessee at any time make any claim for or by way of reduction of rent, or otherwise, for damage arising from or consequent upon any repairs or dredging that Lessor may do or cause to be done pursuant to the provisions of this lease, or in consequence of the occupation of the said property by Lessor, or its agents or contractors.

**Condition  
of Premises**

The term "as is" as used in this article relates to the condition of the demised property as they are when Lessee first enters into possession thereof, as will be shown on a joint incoming survey to be made by the parties hereto at or about the commencement of the term hereof.

**Insurance**

**SEVENTEENTH:** Lessee shall for the benefit of Lessor during the term hereof, keep the demised property and City-owned improvements thereon insured against loss or damage by fire, floating ice, collision, action of the elements and such other hazards, casualties and contingencies as the Commissioner may from time to time certify as risks to be insured against, in an amount determined in the manner hereinafter set forth, equal to the estimated replacement value of the demised property and City-owned improvements thereon without deduction for depreciation, including the cost of the removal of the debris. Policies providing for such insurance for replacement value as herein defined, without deduction for depreciation and including the costs of the removal of the debris, shall be issued by such insurance company or companies as are satisfactory to the Commissioner and shall insure Lessor solely and unconditionally, with loss adjusted with and payable solely and unconditionally to Lessor, without restriction or regard as to whether or not Lessee carried additional or other insurance.

In addition to the other insurance provided for in this lease, Lessee shall furnish Lessor, prior to the commencement of any work, Owners Protective Liability Insurance for the benefit of Lessor and which may include Lessee, within limits of at least \$50,000 for property damage and at least \$500,000 for one person, and \$2,000,000 for more than one person injured or killed in any one occurrence. A duplicate original of such policy shall be furnished to Lessor.

It is agreed that once every six months an engineer, appraiser or other representative of the Commissioner shall inspect and examine the demised property for the purpose of determining the replacement value of the demised property and the City-owned improvements thereon without deduction for depreciation, including the cost of debris removal. The amount so ascertained shall be certified to the

Commissioner, and upon such certification, the Commissioner shall notify Lessee in writing of the amount so certified and within one week after receipt of such notice, if the amount of outstanding insurance is greater or less than the amount so certified, Lessee shall increase or decrease the said insurance so as to make it equal to and conform with the amount so certified.

The furnishing of any policy or policies as hereinbefore provided shall, with respect to the risks insured thereby, and while such policy or policies are actually in force, constitute a complete fulfillment and satisfaction of Lessee's liability to The City of New York in respect of any loss or damage to the demised property from the perils described in such policy or policies to the extent that Lessor is actually reimbursed therefor by the insurance carrier under the policy or policies furnished, Lessee remaining liable for the difference, if any.

Lessee, however, shall be, continue and remain liable for any uninsured destruction, loss or damage from any cause arising from breach of the covenant of the several articles of this lease by Lessee. In the event of any such loss or damage for which Lessee becomes liable as aforesaid, Lessee shall, at its sole cost and expense, promptly repair or replace the property so lost or damaged in accordance with plans and specifications approved by the Chief Engineer of the Department of Marine and Aviation, but in no event shall the cost of such repair or replacement exceed the amount last certified to the Commissioner as hereinbefore provided.

Lessee shall also furnish Lessor with liability insurance from the commencement of the term of this lease, and throughout the term hereof, issued by a responsible company or companies approved by the Commissioner for the protection of Lessor and/or Lessee against any claims, suits, demands or judgments by reason of personal injuries, including death, and for any claims of damage to property occurring on or in proximity to the demised property or arising out of or as a result of the occupancy thereof by Lessee. Such liability insurance shall provide limits of at least \$50,000 for property damage and at least \$500,000 for one person, and \$2,000,000 for more than one person injured or killed in any one occurrence.

All policies of insurance required by this article shall contain the terms and conditions of policies and endorsements available for such risks. Should other, different or additional types of insurance or clauses thereafter become available, Lessee agrees to furnish such new policies on demand by the Commissioner. Such policy or policies required by this article shall be filed in the office of the Commissioner.

Lessee further agrees to execute and deliver any additional instruments and to do or cause to be done all acts and things that may be requested by Lessor properly and fully to insure Lessor against all damages and loss as herein provided for and to effectuate and carry out the intents and purposes of this indenture. The policy or policies furnished may provide that there be no subrogation against Lessee.

All insurance policies shall be subject to approval by the Commissioner as to form and sufficiency of coverage. If Lessee neglects or refuses to obtain any of the insurance required in this lease, then Lessor may procure same, wherever available, at the expense of Lessee. If Lessee is unable to obtain such insurance, then Lessor may procure same, wherever available at the expense of Lessee but as hereinabove limited.

If no such insurance is obtainable, however, then the failure to obtain it shall not be considered a default or breach of this lease by Lessee.

All amounts due from Lessee to Lessor, under the several paragraphs of this article shall be deemed additional rent payable with and collectible as rent.

**Waiver of  
Liability**

**EIGHTEENTH:** Lessee further covenants and agrees that Lessor shall not be liable for any damage, injury or liability that may be sustained by Lessee or any other person whatsoever, or to their goods and chattels from any cause whatsoever arising from or out of the occupancy of the demised property, including but not limited to damage by the elements, leakage, obstruction or other defect of water pipes, gas pipes, soil pipes, electric apparatus, other leakage in or about the property or in and from any other part of the structure or structures of which the demised property are part, or the condition

of said property or any part thereof; and Lessee hereby expressly releases and discharges Lessor from any and all demands, claims, actions and causes of action arising from any of the aforesaid.

**NINETEENTH:** If at any time during the aforesaid term, in any action or actions brought to recover damages for injuries to any person or persons or property by reason of any accident happening on or in proximity to the demised property, by reason of any act or occupancy under this lease, a judgment shall be recovered against Lessor, then upon written demand being made upon it, Lessee, its successors or assigns, shall pay to Lessor, its successors or assigns, the amount of such judgment, together with all reasonable and proper costs, expenses, and counsel fees to which said Lessor may or shall be subjected in defense of such action. **Accidents**

**TWENTIETH:** If Lessee shall fail to perform, keep and observe any of the terms, covenants, or conditions herein contained on the part of Lessee to be performed, kept, or observed, the Commissioner may terminate this lease by a notice to be served as herein provided, and the term hereby demised shall thereupon cease and expire in the same manner and to the same effect as if that were the expiration of the original term. **Termination on Default**

**TWENTY-FIRST:** All notices, demands and orders herein provided to be given by Lessor to Lessee shall be in writing and served either by personal service upon any officer of Lessee or by posting same in a conspicuous place upon the property hereby demised or by ordinary first class mail addressed to Lessee at: **Notices**

U&F REALTY CORP.  
Flatbush Avenue and Avenue U  
Brooklyn, New York

and to Lessee's attorneys at:

JAVITS TRUBIN EDELMAN SILLOCKS & PURCELL  
375 Park Avenue  
New York, New York



and to the mortgagee, if any, at the address to be furnished hereafter, or at such other addresses with respect to Lessee, attorneys and mortgagee as Lessee shall designate in writing to Lessor.

All notices or demands by Lessee to Lessor must be served by certified mail addressed as follows:

COMMISSIONER OF MARINE AND AVIATION  
The City of New York  
Battery Maritime Building  
Foot of Whitehall Street  
New York, New York 10004

Notwithstanding any other provision contained in this lease (i) if Lessee shall fail to perform, keep and observe any of the terms, covenants or conditions herein contained requiring the payment of moneys by Lessee, then this lease shall not be terminated and the term hereby demised shall not cease and expire unless and until the Commissioner shall have given notice of such default to Lessee and Lessee has not cured such default within five (5) business days of such notice or (ii) if Lessee shall fail to perform, keep and observe any of the terms, covenants or conditions herein contained, with the exception of the payment of money, on the part of Lessee to be performed, kept or observed, then this lease shall not be terminated and the term hereby demised shall not cease and expire unless and until the Commissioner shall have given notice of such default to Lessee and Lessee has not cured, or commenced to cure and diligently prosecuted the curing, of such default within thirty (30) days of such notice.

**Commissioner**

TWENTY-SECOND: Wherever the word "Commissioner" is used herein, it shall mean the Commissioner of the Department of Marine and Aviation, City of New York, his successor or duly authorized representative.

**Surrender**

TWENTY-THIRD: Lessee will peaceably and quietly leave, surrender, and yield up unto the possession of Lessor, without any fraud or delay, the property hereby leased and demised, at the end of said term or other sooner termination thereof, and the said property shall then be well and sufficiently repaired, painted and in good order and condition.

In the event the demised property at the end of the lease term or any renewal thereof or sooner termination are in a state of disrepair resulting from the failure of Lessee to repair, paint and maintain said property during said term, then and in that event or either of such events, Lessee shall be required to sufficiently repair, paint and place the premises in good order and condition as though all of such work had properly been done during such term. However, nothing contained in this article shall be deemed to require Lessee to make capital improvements.

At the end of said lease term or any renewal thereof or sooner termination, Lessee shall remove any and all of its structures and improvements so as to restore the demised property, upland and lands under water, to their original condition as shown on a joint incoming survey to be made by the parties hereto prior to the commencement of work by Lessee in a manner satisfactory to the Chief Engineer of the Department of Marine and Aviation, except as otherwise provided herein.

**TWENTY-FOURTH:** Lessee hereby further covenants that if any **Default** default be made in the payment of the said rent or any part thereof, at the time above specified, or if any default be made in the performance of any of the covenants and agreements herein contained, or if the property shall become vacant, Lessor may, in addition to the right to re-enter without notice, and in addition to the right to regain possession by means of summary proceedings or any other method permitted by law, upon resuming possession relet the property without terminating this lease or in any manner affecting the obligation of Lessee to pay, as damages, the amount herein covenanted to be paid as rent, in which event, however, there shall be credited to the account of Lessee the amount received from such reletting after deducting the expenses of such proceedings as may have been necessary in order to regain possession under this provision, as well as the costs of reletting the property; and the execution of a new lease for the same property regardless of the term and/or provisions thereof, shall not terminate Lessee's liability or obligations hereunder which shall, in all events, remain in full force and effect for the full term of this

lease; and if Lessee shall have once vacated the demised property, Lessee may not re-enter.

**No Surrender  
without  
Resolution**

**TWENTY-FIFTH:** No act done by Lessor, or its officers or agents, during the term hereby granted, shall be deemed an acceptance of a surrender of the demised property, and no agreement of surrender, or to accept a surrender of the demised property, shall be valid, unless the same shall be duly authorized by resolution of the Board of Estimate.

**Damages  
Collectible  
as Rent**

**TWENTY-SIXTH:** In the case of the re-entry or taking of possession by Lessor in the manner, or by the means provided or referred to in Article TWENTY-FOURTH of this lease, the amount of damages or deficiency shall become due and payable as soon as the amount of such damage or deficiency shall have been ascertained in the manner herein provided, and separate actions may be maintained monthly to recover the damage or deficiency then due, without waiting until the end of the term; and no notice or demand shall be necessary in order to maintain such action.

**No Right of  
Redemption**

**TWENTY-SEVENTH:** Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws, whether in the event of Lessee being evicted or dispossessed for any cause, or in the event of Lessor obtaining possession of the demised property, by reason of the violation by Lessee of any of the covenants and conditions of this lease, or otherwise.

**Access**

**TWENTY-EIGHTH:** Lessee at all times during the term shall permit inspection of the demised property during reasonable hours by Lessor's agents or representatives, and during the six (6) months next preceding the expiration of this lease shall permit inspection thereof by or on behalf of prospective future lessees. Lessee shall allow an adjoining owner desiring to excavate on his property, or Lessor desiring to excavate a nearby street, to enter the demised property and shore up an intervening wall during such excavation.

In the event such work is done by Lessor, then Lessor agrees to hold Lessee harmless from any claims for damages to person or

property resulting from such work by Lessor. In the event, however, such work is done by an adjacent owner or lessee of such adjoining property desiring to excavate on his property, then and in that event, as a condition for the granting of a permit for the performance of such work, Lessor shall require such adjacent owner or lessee of such adjoining property to furnish appropriate insurance to protect Lessor and Lessee herein from any loss or damage to person or property by reason of the performance of such work. Lessee herein agrees to promptly notify Lessor of any claim presented against it by reason of such work by Lessor and to permit the Corporation Counsel of Lessor to either conduct the defense on behalf of Lessee herein by reason of such claim, or to permit such Corporation Counsel to cooperate with the Counsel for Lessee herein in the defense of any such action.

**TWENTY-NINTH:** Lessee shall pay for all sewer charges, if any, water, gas, heat and electricity consumed and used on the demised property and shall procure at Lessee's own cost and expense, all meters, permits, approvals and licenses necessary to effectuate this provision.

Water, Gas,  
Heat and  
Electricity.  
Sewer Charge

Lessee will in no event make any charge to or accept any money, commission, premium, bonus or other valuable consideration from any person, firm or corporation for the sale of water, gas, heat or electricity, or for any sewer charge, in excess of the rates actually charged to or paid therefor by Lessee; and Lessee will make no charge to or accept any money from any person, firm or corporation for any handling services rendered by Lessee in connection with any such sewer charge, or sale of water, gas, heat or electricity in excess of a reasonable sum expended by Lessee.

**THIRTIETH:** In the event that this lease shall be terminated as hereinbefore provided or by summary proceedings or otherwise, or in the event that the demised property, or any part thereof, shall be abandoned by Lessee, or shall become vacant during the said term, Lessor, or its agents, servants, or representatives may, immediately or any time thereafter, re-enter and resume possession of said

Right of  
Entry

property or such part thereof, and remove all persons and property therefrom, either by summary dispossess proceedings or by a suitable action or proceeding at law or in equity, or by force or otherwise, without being liable for any damages therefor. No re-entry by Lessor shall be deemed an acceptance of a surrender of this lease.

Depth of  
Water

**THIRTY-FIRST:** Lessee at its own cost and expense shall do such dredging from time to time during the term hereby created as shall be necessary to conduct its own operations.

It is hereby further covenanted and agreed that at the expiration of the term of the within lease or sooner termination thereof, Lessee shall at its own cost and expense perform the necessary dredging or other work required to restore the depths of water in the areas outlined in blue on the print attached hereto, as shown by soundings to be taken by the Department of Marine and Aviation at or about the commencement of the term of this lease.

Quiet  
Enjoyment

**THIRTY-SECOND:** Lessor covenants and agrees that Lessee on paying the rent herein reserved promptly when due, and on performing all of the other terms, covenants and conditions set forth in this lease promptly as required, shall and may peacefully have, hold and enjoy the demised property for the term stated, unless such term shall cease, close or expire sooner as hereinbefore provided.

Telephone,  
Vending  
Machines and  
Concessions

**THIRTY-THIRD:** No telephone booths, merchandise vending machines or concessions shall be installed on the demised property without the written permission of the Commissioner. Should Lessee, after obtaining such written permission from the Commissioner, place or install any telephone booths, merchandise vending machines or concessions thereon, then Lessee shall deliver to Lessor fifty per cent (50%) of all gross revenue derived by it from these operations whether such telephone booths, merchandise vending machines or concessions are presently installed or in operation, or are hereafter installed or operated.

Such fifty per cent (50%) of all sums so collected shall be the property of Lessor, and shall be remitted by Lessee to Lessor on each of the days fixed for the payment of rent under this lease.

The Commissioner may require Lessee to keep records in such form as he designates relating to collection of any of the aforesaid monies; and the books and records of Lessee with respect to such collections shall be open to inspection by the Commissioner and/or the Comptroller of The City of New York and their designees at all reasonable times for the purpose of determining any amounts due Lessor.

**THIRTY-FOURTH:** If during the term of this lease, the areas outlined in blue on the print attached hereto shall become obstructed in whole or in part by the sinking of any waterborne craft, other than a waterborne craft owned or operated by The City of New York, Lessee, after notice from the Commissioner, shall promptly remove such obstruction, or cause the same to be removed, without cost or expense to Lessor. Sunken Craft

If, after such notice from the Commissioner, Lessee fails to remove such obstruction, Lessor may in its discretion undertake the removal thereof, and in such event Lessee shall reimburse Lessor for the expenses so incurred. If during the term of this lease, the areas outlined in blue on the print attached hereto shall become obstructed in whole or in part by the sinking of any waterborne craft owned or operated by The City of New York, through no fault or negligence of Lessee, then Lessor, after written notice served upon the Commissioner by Lessee, shall promptly remove such obstruction or cause it to be removed, without cost or expense to Lessee. If after notice from Lessee, Lessor fails to remove such obstruction, Lessee may in its discretion undertake the removal thereof, and in such event, Lessor shall reimburse Lessee for the expenses so incurred.

Lessee shall save harmless Lessor from any damages or claims for damages that may arise by reason of the presence in said areas outlined in blue on the print attached hereto, of any sunken waterborne craft other than one owned or operated by The City of New York, and Lessor shall save harmless Lessee from any damages or claims for damages that may arise by reason of the presence in said areas outlined in blue on the print attached hereto, of any sunken waterborne craft owned or operated by The City of New York.

**Work to be  
Performed**

**THIRTY-FIFTH:** Lessee shall at its sole cost and expense, perform or cause to be performed the construction of buildings and other necessary construction required for the uses set forth in this lease. Such construction may include decking the entire premises hereby demised, except such portion as is specifically delineated "no structures" on the print attached hereto, marked Exhibit "A"; said decking, if Lessee so elects, to be suitable for the use of the decked area for parking facilities and the area beneath the decking for the docking and storage of watercraft.

The foregoing enumerated items of work are, of necessity, general in nature and are set forth primarily for descriptive purposes.

Lessee agrees to file with the Chief Engineer of the Department of Marine and Aviation for approval, copies of all plans and specifications for any improvements to be performed hereunder, including contracts with general contractors and other major agreements affecting the construction of all of the aforesaid improvements. All of the above work and improvements which may be performed hereunder shall be in accordance with applicable Federal, State and City laws, rules and regulations and zoning resolution and regulations and in accordance with sound engineering practices and in accordance with the approved plans and specifications and any approved modification or alteration thereof. All such work shall be subject to the approval and acceptance of the Chief Engineer of the Department of Marine and Aviation.

It is agreed that the work to be performed by Lessee shall commence within eighteen (18) months from the date of the execution of this lease by the Commissioner and it is further agreed that the work to be performed shall be substantially completed by Lessee within thirty-six (36) months thereafter, provided, however, that the time herein set forth for the commencement or completion of construction shall be extended for a period equal to (i) the period of any delay not due to the fault or neglect of Lessee which shall include, without limitation, strikes or other labor disputes, shortages of material or labor, default of any contractor or subcontractor, governmental restrictions, acts of God or the public enemy, civil commotion, fires, floods, epidemics, quarantine restrictions and other embargoes, extreme

weather conditions, unsuitable conditions of the ground due to frost, undue precipitation or other similar weather conditions and (ii) plus the period of any consequential delays resulting from any of the above causes.


In the event Lessee either fails to commence the work or fails to substantially complete the work within the periods of time set forth hereinabove, then the Commissioner shall have the right to terminate this lease without being liable for any damages therefor.

**THIRTY-SIXTH:** If at any time during the term of this lease or any extension or renewal thereof, Lessor shall deem it necessary for a public purpose to enter upon and repossess the whole or any part of the premises hereby demised, then upon 30 days written notice, describing the premises or the part thereof required, this lease shall terminate as to those portions of the premises described in said notice and Lessee shall not be entitled to compensation by reason of the termination of this leasehold.

Recapture

*67 104 100 100*

In the event only a part of said premises shall be required by Lessor, the rent shall be reduced in such proportion as the Commissioner shall deem reasonable and just. In the event Lessee does not vacate the premises described in said notice and Lessor is required to institute any legal proceedings to recover possession, then Lessee shall be liable for and agrees to pay all costs and expenses incurred by Lessor, including a reasonable amount for legal services. In the event of any recapture by Lessor as herein provided, Lessee shall nevertheless have access from Flatbush Avenue to such portion of the demised premises remaining in the possession of Lessee, and access shall be afforded to affiliates of Lessee from Flatbush to Parcel A, such Access Area being shown on Exhibit "B" attached hereto and made a part hereof.

  
By \_\_\_\_\_  
MS

Notwithstanding the foregoing provisions of this Article **THIRTY-SIXTH**, Lessor shall not have any right to enter upon and repossess a part of the premises hereby demised unless the entering upon and repossession by Lessor will not adversely affect the legality of use by Lessee of that portion of the demised property remaining in its possession.



No Liability  
of Lessor  
Upon Prior  
Termination  
of Lease

**THIRTY-SEVENTH:** In the event this lease is terminated for any reason whatsoever prior to the termination date of the term of this lease or any extension or renewal thereof, this lease shall terminate immediately and Lessor, its agents, employees or representatives shall not be liable in any manner whatsoever for any damages arising therefrom or incidental or related to such termination or any expenditures made by Lessee in connection with same.

Waiver of  
Immunity

**THIRTY-EIGHTH:** Upon the refusal of Lessee or, if Lessee is a corporation, firm or partnership, then any individual who is either an officer, director or partner thereof, when called before a grand jury to testify concerning any transaction had relating to the making 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 or officer 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 and this lease may be cancelled or terminated by the Commissioner without Lessor or the Commissioner incurring any penalty or damages on account of such cancellation or termination.

Leasehold  
Mortgage

**THIRTY-NINTH:** (A) Lessor understands that Lessee may, but is not obligated to, finance all or part of the cost of construction of the buildings, structures and improvements, constructed or placed on the demised property as set forth in Article **THIRTY-FIFTH** of the lease herein, by a first mortgage loan from a bank, insurance company or other lending institutions (which loan may also include an interim construction loan), such permanent and interim financing to be secured by a leasehold mortgage.

(B) Lessee from time to time, during the term of this lease, may make a leasehold mortgage, with prior written consent of the Commissioner, which consent shall not be unreasonably withheld, provided that the Lessee or the leasehold mortgagee shall promptly deliver to the Commissioner in the manner herein provided for the giving of

notice to the Commissioner, a true copy of the leasehold mortgage and of any assignment thereof, and shall notify the Commissioner of the address of the leasehold mortgagee or assignee thereof to which notice may be sent.

The leasehold mortgagee may assign his interest in the mortgage only upon the prior written consent of the Commissioner, which consent shall not be unreasonably withheld.

(C) A lending institution for the purpose of this lease shall include a trust account, college, university, teachers' retirement fund, union pension fund, or any other similar institution permitted to make first mortgage loans.

(D) With respect to any leasehold mortgage referred to hereunder, the following provisions shall apply:

(1) When giving notice to the Lessee with respect to any default under the provisions of Article TWENTIETH, the Commissioner will serve a copy of such notice upon the leasehold mortgagee and no such notice to Lessee shall be effective unless a copy of such notice is so served upon the leasehold mortgagee.

(2) In the event any notice of default is given by the Commissioner to the Lessee and leasehold mortgagee pursuant to the provisions of this lease, the leasehold mortgagee will have the same period as is given the Lessee for remedying or causing to be remedied the default specified in such notice, plus an additional ten-day period.

(3) In case the Lessee shall make default under any of the provisions of this lease, the leasehold mortgagee, without prejudice to its rights against the Lessee, shall have the right to cure such default within the applicable grace periods provided for in subparagraph (D) (2) of this Article and the Lessor shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by the Lessee, and for the purpose of remedying or curing any such default, the Lessor and the Lessee hereby authorize the leasehold mortgagee to enter upon the demised property and to exercise any of its rights and powers under this lease, and, subject to the provisions of this lease, under the leasehold mortgage.

(4) In the case of any default by Lessee, other than in the payment of rents under this lease, and if the Commissioner shall have received notice in writing from the leasehold mortgagee that the latter intends to institute foreclosure proceedings to acquire Lessee's interest under this lease or to exercise any other remedy of the leasehold mortgagee under the leasehold mortgage, the Commissioner will take no action to effect a termination of this lease by reason of any such default without first giving to the leasehold mortgagee, twenty (20) days from and after the date of such notice acting with all due diligence within which either (i) to obtain possession of the demised property and diligently cure such default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession, or (ii) to institute and prosecute foreclosure proceedings or otherwise acquire the Lessee's interest under this lease, whether the default is or is not susceptible of being cured by the leasehold mortgagee, provided that in the case of a default which is susceptible of being cured the curing of said default shall be diligently prosecuted to completion by Lessee, the leasehold mortgagee or any person acting for or on behalf or for the benefit of said leasehold mortgagee; provided further, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for terminating the lease shall be cured, and provided further that nothing herein shall preclude the Commissioner from terminating this lease or exercising any other rights or remedies under this lease with respect to any other default during any period of such forbearance.

(5) Subparagraphs D (3) and (4) herein above are subject to the condition that during all the times mentioned in said subparagraphs, the demised property will be continuously operated in accordance with the other provisions of this lease either by the Lessee or by the leasehold mortgagee, or by any person acting for or on behalf or for the benefit of the leasehold mortgagee, with prior written consent of the Commissioner, which consent shall not be unreasonably withheld, so that the public generally may enjoy the use of the leased premises.

(6) Without the consent of the Commissioner the leasehold mortgagee, in the event of a default by the Lessee under this lease or the leasehold mortgage, may become the legal owner

and holder of the leasehold interest created by this lease by foreclosure of its leasehold mortgage or as a result of the assignment by Lessee of this lease in lieu of foreclosure. In the event that the leasehold mortgagee becomes the legal owner and holder of the leasehold interest created by this lease, pursuant to this subparagraph, then the provisions of Article "THIRTY-EIGHTH" of this lease shall apply, with equal force and effect, specifically to such leasehold mortgagee.

(7) In case of the termination of this lease by reason of the happening of any default by Lessee or by reason of the bankruptcy or insolvency of Lessee as provided in Article TENTH of the lease, the Commissioner shall give notice thereof to the leasehold mortgagee and if within thirty days after the mailing of such notice such leasehold mortgagee shall pay all rent and any and all other moneys due and payable by Lessee hereunder, as of the date of such termination, together with an amount of money equal to the amount which but for such termination would have become due and payable under this Lease, from such termination date up to and including a period of sixty days beyond the date of mailing of such notice, the Commissioner shall upon the written request of such leasehold mortgagee, made at any time within such sixty day period, execute and deliver a new lease of the premises to such leasehold mortgagee, or its designee or nominee, for the remainder of the term of this lease, at the rent and upon the covenants, conditions, limitations and agreements herein contained, provided that such leasehold mortgagee shall have paid to Lessor all rent and other charges due under this lease up to and including the date of the commencement of the term of such new lease, together with all expenses incident to the execution and delivery of such new lease, but nothing herein contained shall be deemed to impose any obligations on the part of the Lessor to deliver physical possession of the premises to such leasehold mortgagee.

(8) Should the leasehold mortgagee at any time have foreclosed its mortgage or shall have taken an assignment of the lease in lieu of foreclosure, then the Commissioner shall, upon the written request of such leasehold mortgagee and within sixty (60) days after said request, execute and deliver a new lease of the premises to such leasehold mortgagee, or its designee or nominee for the remainder of the term of this lease, at the rent and upon the covenants, conditions, limitations and agreements

herein contained, provided that such leasehold mortgagee shall have paid to Lessor all rent and other charges due under this lease up to and including the date of the commencement of the term of such new lease, together with all expense, incident to the execution and delivery of such new lease, but nothing herein contained shall be deemed to impose any obligations on the part of Lessor to deliver physical possession of the premises to such leasehold mortgagee.

(9) Any leasehold mortgagee, its designee or nominee, acquiring the leasehold interest created by this lease, by foreclosure or by assignment in lieu of foreclosure, or having entered into a new lease pursuant to the provisions of subparagraph D (7) or (8) of this paragraph, may with the prior written consent of the Commissioner, assign its interest in this lease or in the new lease, which consent shall not be unreasonably withheld.

(10) Upon request of any leasehold mortgagee, Commissioner shall certify in writing whether this lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as modified and stating any such modification.

(11) Any leasehold mortgagee, if such right is granted in the leasehold mortgage, shall have the right as attorney in fact for Lessee to exercise on behalf of Lessee the renewal options granted in Article FOURTH of this lease.

(E) Notwithstanding any other provisions of this lease:

(1) And in addition to the rights of the Lessee under paragraph (A) of this Article THIRTY-NINTH, Lessee may finance all or part of the cost of construction of the buildings, structures and improvements constructed or placed on the demised property as set forth in Article THIRTY-FIFTH of this lease by a "sale and leaseback" of this lease whereby the Lessee acquires as a part of the same transaction a sub-lease from the lender, or the party to whom this lease has been assigned, in all or substantially all of the property transferred by Lessee to the lender or the assignee, and the lender to whom this lease has been assigned shall have all of the rights of a leasehold mortgagee under the provisions of this lease;

(2) Including specifically, without limitation, the provisions of paragraph (B) of this Article THIRTY-NINTH, the Commis-

sioner's consent to the making or assignment of a leasehold mortgage shall be deemed to have been given by the execution and delivery of this lease if the leasehold mortgagee or assignee of any leasehold mortgage shall be a bank, mutual savings bank, trust company, insurance company, savings and loan association, college, university or governmental employees' retirement fund or any other lending institution specified in paragraph (C) hereof; a bank or trust company leasehold mortgagee may act under this lease for its own account; as a trustee (x) for beneficiaries under a trust agreement or (y) as a trustee for bondholders under a trust indenture or (z) in any other similar capacity; as an administrator of a pension or similar fund; or in any other fiduciary capacity. Upon the making of a leasehold mortgage or an assignment thereof for which the approval of the Commissioner is deemed to have been given under this subparagraph (E)(2), the Lessee, leasehold mortgagee or assignee shall, nevertheless, promptly deliver to the Commissioner, in the manner herein provided for the giving of notice to the Commissioner, a true copy of the leasehold mortgage and of any assignment thereof, and shall notify the Commissioner of the address of the leasehold mortgagee or assignee thereof to which notice may be sent; the leasehold mortgagee may, from time to time, change the address to which notice may be sent;

(3) Including specifically, without limitation, the provisions of subparagraph (D)(2) of this Article THIRTY-NINTH, in the event any notice of default is given by the Commissioner to the Lessee and leasehold mortgagee pursuant to the provisions of this lease, the leasehold mortgagee will have the same period as is given the Lessee for remedying or causing to be remedied the default specified in such notice plus an additional period of time sufficient to allow the leasehold mortgagee, acting diligently, to cause a receiver to be appointed for the purpose of taking and holding possession of the demised property and safeguarding the leasehold mortgagee's interests therein including any period of time which may be necessary under the provisions of any mortgage moratorium laws, and the phrase "applicable grace periods provided for in subparagraph (D)(2) of this Article" set forth in subparagraph (D)(3) shall be deemed to include the period of time set forth in subparagraph (D)(2) as supplemented by the provisions of this subparagraph (E)(3);

(4) Including specifically, without limitation, the provisions of subparagraph (D) (4) of this Article THIRTY-NINTH, if there

shall be a default by Lessee, other than in the payment of rents under this lease, and if the Commissioner shall have received notice in writing from the leasehold mortgagee that the latter intends to institute foreclosure proceedings to acquire Lessee's interest under this lease, or to exercise any other remedy of the leasehold mortgagee under the leasehold mortgage, the Commissioner will take no action to effect a termination of this lease by reason of any such default without first giving to the leasehold mortgagee twenty (20) days from and after the date of such notice, acting with all due diligence, within which to institute (i) foreclosure proceedings or (ii) proceedings by which the leasehold mortgagee will otherwise acquire the Lessee's interest under this lease, whether the default is or is not susceptible of being cured by the leasehold mortgagee; it being understood that after the institution of any such action the leasehold mortgagee in order to preserve its rights against the Commissioner shall prosecute any such action diligently; and it is further understood that the rights reserved to the Commissioner to terminate this lease or to exercise any other rights or remedies under this lease with respect to any other default during any period of forbearance by subparagraph (D) (4) are subject to the forbearance rights of the leasehold mortgagee under subparagraph (D) (4) as supplemented by this subparagraph (E) (4);

(5) It is hereby specifically agreed that the covenant of continuous operation set forth in subparagraph (D) (5) of this Article THIRTY-NINTH shall, in the case of the leasehold mortgagee, be satisfied if the leasehold mortgagee, within a reasonable period after the receipt of notice from the Commissioner, setting forth that Lessee or any other occupant has ceased the operation, shall initiate and diligently prosecute a proceeding to either enforce compliance with the covenant in question by the Lessee or the then occupant of the demised property; or, in the alternative, oust the Lessee or then occupant from occupancy of the demised property and upon the ousting of the Lessee or other occupant, within an additional period of time secure another operator of the improvements on the demised property, and the Commissioner shall, by the execution and delivery of this lease, be deemed to have consented to any person, firm or corporation acting, in the operation of the demised property and the improvements thereon, for or on behalf of or for the benefit of the leasehold mortgagee; it being further understood and agreed that any rights that the public generally may enjoy in the use of the

demised property (reference is here made to subparagraph (D)(5) of this Article THIRTY-NINTH), shall be subject to the rights of the Lessee and the leasehold mortgagee under the terms of this lease;

(6) Including specifically the provisions of subparagraph (D)(6) of this Article THIRTY-NINTH, the leasehold mortgagee, in the event of a default by the Lessee under this lease or the leasehold mortgage, may foreclose the right, title and interest of the Lessee in and to the demised property and any successful bidder at a foreclosure sale shall then succeed to all of the right, title and interest of the Lessee under this lease, including the right to make a leasehold mortgage under this Article THIRTY-NINTH. In the event that the leasehold mortgagee becomes the legal owner and holder of the leasehold interest created by this lease, under subparagraph (D)(6) hereof, then the provisions of Article THIRTY-EIGHTH of this lease shall not apply to such leasehold mortgagee;

(7) Any new lease of the premises to the leasehold mortgagee or its designee or nominee (reference is here made to subparagraphs (D)(7) and (8) of this Article THIRTY-NINTH) shall have a priority equal to the priority enjoyed by this lease and shall permit the leasehold mortgagee, its designee or nominee, to take possession of the demised property;

(8) Including specifically, without limitation, the provisions of subparagraph (D)(9) of this Article THIRTY-NINTH, the consent of the Commissioner under subparagraph (D)(9) of this Article THIRTY-NINTH (i) shall be withheld only if (x) the particular proposed assignee in question, or if a corporation, any officer or director thereof, shall have, if previously called before a grand jury to testify concerning any transaction had relating to the making of this lease, refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or lease, or (y) the particular assignee (or a guaranteeing person, firm or corporation) in question shall not have a net worth equal to at least four times the annual rental to be paid under this lease and (ii) shall be deemed to have been given if not withheld by written notice to the Lessee within thirty (30) days of notice from Lessee to the Commissioner (a) setting forth the identity of the proposed assignee, (b) forwarding a certified and verified balance sheet of the proposed assignee (or the guaranteeing



person, firm or corporation) as of a date not more than one year prior to the date of the notice, and (c) forwarding an assumption agreement by which the assignee in question, for the benefit of Lessor, assumes all the obligations of this lease. An assignment under subparagraph (D)(9) of Article THIRTY-NINTH may be made without the prior written consent of the Commissioner if the leasehold mortgagee, its designee or nominee, shall remain liable to Lessor for the performance of all the applicable terms and conditions of this lease;

(9) Including specifically, without limitation, the provisions of subparagraph (D)(10) of Article THIRTY-NINTH, if, within ten (10) days after written notice from a leasehold mortgagee or any person, firm or corporation planning to become a leasehold mortgagee requesting a certification in writing by the Commissioner, under subparagraph (D)(10) that (u) the lease is unmodified, (v) in full force and effect and (w) that there are no defaults claimed by the Commissioner as of the date of certification, the Commissioner shall not have delivered a certification as above set forth or, if such be the case, a statement (x) in what particular the lease has been modified, (y) that the lease is not in full force and effect or (z) the particular default, if there be any, the certification shall have been deemed to have been given that the lease is unmodified, in full force and effect and that there are no defaults thereunder, all as set forth in the requesting notice;

(10) Lessor understands that Lessee and its affiliates, or any successor or assign of each, are developing a regional shopping center on property adjoining the demised property, which adjoining property is shown as Parcel A on Exhibit B attached hereto and made a part hereof. Lessor further understands that Lessee and its affiliates, or any successor or assign of each, may finance the construction of the buildings, structures and improvements on the adjoining property shown as Parcel A on Exhibit B by a mortgage or mortgages and that the holders of the mortgage or mortgages in order to protect more adequately the security of their liens may require the conveyance to them of certain rights in respect of the demised property. Accordingly the leasehold mortgage may contain a provision whereby the leasehold mortgagee may declare the Lessee in default under the leasehold mortgage if Lessee or its affiliates, or any successor or assign of

each, is in default of any term or condition of any mortgage with respect to the adjoining property shown as Parcel A on Exhibit B;

(11) For all the purposes of this Article THIRTY-NINTH, the term "leasehold mortgage" shall include (w) the landlord under a sale and leaseback indulged in by Lessee at any time during the term of this lease (x) the original holder of a leasehold mortgage, and (y) a subsequent holder of a leasehold mortgage whether by assignment or succession and (z) may, at the option of Lessee, include several persons, firms, or corporations, each to the extent of an undivided fractional interest in and to the leasehold mortgage; the priorities of each thereof to be determined in appropriate instruments to be executed and delivered among all or any thereof and shall include the plural as well as the singular.

For all of the purposes of this Article THIRTY-NINTH, the term "leasehold mortgage" shall include an instrument creating a lien or other encumbrance securing (x) a loan or loans made to finance all or part of the cost of construction of the buildings, structures and improvements to be constructed or placed on the demised property by Lessee or others; (y) any loan or replacement thereof; and (z) any other loan which Lessee may obtain at any time or from time to time and shall include the plural as well as the singular.

For all of the purposes of this lease the terms "term of this lease, term of the lease, leasehold term" or any other term having a similar meaning shall be deemed to include any renewal or extension of the initial twenty (20) year term (reference is here made to the provision with respect to term on the first page hereof); any renewal under Article FOURTH shall be accomplished by notice in which case all of the terms and conditions of this lease will apply without the necessity of executing and delivering a new lease and the right of the leasehold mortgagee to receive a new lease under subparagraph (D)(7) of Article THIRTY-NINTH shall include all rights to renew the term of this lease previously unexercised.

**FORTIETH:** Each and every of the terms, covenants and provisions of this lease shall inure to the benefit of and be binding upon the parties hereto and, except as otherwise provided, their respective legal representatives, successors and assigns.

**Binding on  
Successors**

Marginal  
Notes

Forty-First: The marginal notes are inserted for reference only and in no way define, limit or describe the scope or intent of this lease, nor affect the lease in any way.

IN WITNESS WHEREOF, the parties hereunder have caused this lease to be executed the day and year above written.

THE CITY OF NEW YORK

By Herbert P. Halbey  
Commissioner of Marine and Aviation <sup>12/14</sup>

ATTEST:

Annita D. Pitney  
Secretary

Approved as to form

William T. Hoff  
Acting Corporation Counsel U & F REALTY CORP.

WJH

By George Farkas  
George Farkas, President  
Harold Rubins  
Marvin Fenster, Vice President  
Harold Rubins

ATTEST:

Marvin B. A.  
Secretary

CITY, COUNTY AND STATE OF NEW YORK: ss.:

On this 29 day of November, 1967 before me personally came HERBERT B. HALBERG, Commissioner of Marine and Aviation, to me known and known to me to be the person described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

*William J. Sexton*

WILLIAM J. SEXTON  
Commissioner of Deeds, City of New York 3-119  
Certificate filed in New York County  
Commission Expires Nov. 22, 1968

CITY, COUNTY AND STATE OF NEW YORK: ss.:

On this 29 day of November, 1967 before me personally came *Donald D. Tisney*, to me known, who being by me duly sworn, did depose and say: That he resides at *162 East 80th Street New York N.Y.* that she is the *Secretary* of the DEPARTMENT OF MARINE AND AVIATION; that he knows the seal of the DEPARTMENT OF MARINE AND AVIATION; that the seal affixed to the foregoing instrument is the common seal of said Department; that it was so affixed by order of the Commissioner of Marine and Aviation; and that she signed his *ss* name attesting the same.

*William J. Sexton*

WILLIAM J. SEXTON  
Commissioner of Deeds, City of New York 3-119  
Certificate filed in New York County  
Commission Expires Nov. 22, 1968

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

On the 21<sup>st</sup> day of June, 1967, before me personally came GEORGE FARKAS, to me known, who being by me duly sworn, did depose and say: That he resides at 24 Central Park South, New York, N. Y.; that he is the President of U & F REALTY CORP., the corporation described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said agreement is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Sherwin B. Abrams*

SHERWIN B. ABRAMS  
NOTARY PUBLIC, State of New York  
No. 31-5008350  
Qualified in New York County  
Cert. Filed with New York Co. Board of  
Notary Publics Expires March 30, 1968

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

On the \_\_\_\_\_ day of June, 1967, before me personally came HAROLD GRABINO, to me known, who being by me duly sworn, did depose and say: That he resides at Dentree Drive, Orange, Connecticut; that he is a Vice President of U & F REALTY CORP., the corporation described in and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said agreement is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Sherwin B. Abrams*

SHERWIN B. ABRAMS  
NOTARY PUBLIC, State of New York  
No. 31-5008350  
Qualified in New York County  
Cert. Filed with New York Co. Board of  
Notary Publics Expires March 30, 1968