

AGREEMENT OF LEASE

between

THE CITY OF NEW YORK,

Landlord,

and

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Tenant.

Premises

“Building 102, Fort Totten”
Queens County, New York

Dated as of September 12, 2002

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SCHEDULE A	CITY'S EQUIPMENT

AGREEMENT OF LEASE, made as of the 12th day of September, 2002 between THE CITY OF NEW YORK, a municipal corporation of the State of New York, having an address at City Hall, New York, New York 10007, as landlord, and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, a local development corporation pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, having its office at 110 William Street, New York, New York 10038, as tenant.

WITNESSETH:

WHEREAS, The City of New York is the owner of the Premises (as hereinafter defined), which Premises were conveyed by the federal government to the City of New York pursuant to a public benefit conveyance, dated September 12, 2002; and

WHEREAS, pursuant to Section 384(b)(4) of the Charter of The City of New York, the City is authorized to enter into this Lease; and

WHEREAS, the parties hereto desire to cause said Premises to be leased in accordance with this Lease and in connection therewith, The City of New York desires to serve the public health and educational needs of individuals who have suffered spinal cord injury or disease;

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

ARTICLE 1

DEFINITIONS

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

“Accounting Principles” means the then current generally accepted accounting principles consistently applied.

“Administrator” means EDC or such other Person as Landlord may designate to administer this Lease.

“Affiliate” or “Affiliates” means (A) any Person that has, directly or indirectly, a five percent (5%) or greater ownership interest in Tenant, or any Person in which Tenant, any partner or shareholder of Tenant, or any shareholder or partner of any Person that is a partner or shareholder of Tenant, has a five percent (5%) or greater ownership interest, and (B) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his/her spouse, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing, or a trust for the benefit of any of

the foregoing. Ownership of or by Tenant referred to in this definition includes beneficial ownership effected by ownership of intermediate entities.

“Agreements” has the meaning provided in Section 20.1(a)(5) hereof.

“Alterations” has the meaning provided in Section 12.01(b) hereof.

“Apple” means Apple Industrial Development Corporation, an affiliate of EDC performing certain property management services as may be designated by EDC.

“Architect” means any registered architect, architectural firm, professional engineer, or combined practice or association registered in the State of New York selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed.

“Assignee” has the meaning provided in Section 10.1(b)(ii) hereof.

“Assignment” has the meaning provided in Section 10.1(b)(i) hereof.

“Base Rent” has the meaning provided in Section 3.2 hereof.

“Building” means (i) Building 102 consisting of approximately 19,000 gross square feet, and (ii) any and all Equipment situated therein, alterations thereto, replacements thereof and substitutions therefor in accordance with this Lease.

“Building Index” has the meaning provided in Section 7.12 hereof.

“Bureau” has the meaning provided in Section 20.1 hereof.

“Capital Transaction” has the meaning provided in Section 10.1(b)(iii) hereof.

“Casualty Restoration” has the meaning provided in Section 8.2(a) hereof.

“CERCLA” has the meaning provided in Article 18 hereof.

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

“Certified Public Accountant” means any independent certified public accountant or accounting firms selected by Tenant and approved by Landlord, which approval shall not unreasonably be withheld or delayed; provided, however, that no accountant or accounting firm which shall have been disqualified from doing business with the City shall be the Certified Public Accountant.

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

“City’s Equipment” means the Equipment specifically listed on Schedule A.

“City’s Payment Rate” has the meaning provided in Section 4.5 hereof.

“Commencement Date” has the meaning provided in Article 2 hereof.

“Comptroller” has the meaning provided in Section 36.3 hereof.

“Condemnation Restoration” has the meaning provided in Section 9.1(d) hereof.

“Construction Agreement(s)” means a written agreement to do any Construction Work.

“Construction Work” means any work performed under this Lease including, without limitation, alterations, installations, additions, improvements, repairs, Restorations, or other construction work performed on or within the Premises.

“Cost Estimator” means a professional cost estimator or cost estimating firm selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed (including a construction, architectural, or engineering firm with a cost estimating department) having experience in estimating the cost of the design, construction, acceptance, operation and maintenance of Construction Work.

“Date of Taking” has the meaning provided in Section 9.1(c) hereof.

“Default” means any condition or event, or failure of any condition or event to occur, which constitutes or would, after notice or the lapse of time, or both, constitute an Event of Default.

“Depository” means an Institutional Lender selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed, which (a) has an office in the City of New York, and (b) has entered into a written agreement with Tenant and Landlord to hold funds as provided in this Lease.

“DHHS” means the United States Department of Health & Human Services.

“Director” has the meaning provided in Section 20.1 hereof.

“Disposition” means the actions taken pursuant to Section 384(b)(4) of the New York City Charter.

“EDC” has the meaning provided in Section 40.02 hereof.

“E.O. 50” has the meaning provided in Section 20.1 hereof.

“E.O. 50 Regulations” has the meaning provided in Section 20.1 hereof.

“E.O. 50 Requirements” has the meaning provided in Section 20.1(a)(9) hereof.

“Employment Report” has the meaning provided in Section 20.1(b) hereof.

“Equipment” means all fixtures and personal property incorporated in or attached to and used or usable in the operation of the Premises and shall include, but shall not be limited to, all machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; partitions, doors, cabinets, hardware; floor, wall and ceiling coverings of the public areas only; washroom, toilet and lavatory equipment; windows, window washing hoists and equipment; and all additions thereto or replacements thereof, and shall exclude any trade fixtures or other personal property not listed above which is owned by any Subtenant (other than an Affiliate) or contractors engaged in maintaining same.

“Equity Interest” has the meaning provided in Section 10.1(b)(viii) hereof.

“Event of Default” has the meaning provided in Section 23.1 hereof.

“Expiration Date” means the Fixed Expiration Date or such earlier date upon which this Lease may be terminated as herein provided.

“Expiration of the Term” means the Expiration Date

“Federal Courts” has the meaning provided in Section 41.16 hereof.

“Final Reuse Plan” means the Final Reuse Plan for Fort Totten submitted by the Fort Totten Redevelopment Authority and approved by the United States Department of the Army and the United States Department of Housing and Urban Development, dated April 1998, as the same shall be amended or supplemented.

“First Renewal Term” has the meaning provided in Section 2.3 hereof.

“Fixed Expiration Date” has the meaning provided in Section 2.2 hereof.

“Governmental Authority or Authorities” means the United States of America, the State of New York, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises or any portion thereof or any street, road, avenue, sidewalk or water immediately adjacent to the Premises, or any vault in or under the Premises.

“Gross Area” means the actual number of square feet of floor space within the exterior faces of the exterior walls of all floors, mezzanines, balconies, and sidewalk subspace or parts thereof, if any, without deduction or exclusion for any space occupied by or used for columns, stairs, elevators, escalators, or other interior construction or equipment.

“Imposition” or “Impositions” has the meaning provided in Section 4.1(b) hereof.

“Improvements” means the Building, Equipment, City’s Equipment, Permanent Leasehold Improvements and any and all other improvements now or hereafter situated on the Premises, or any portion thereof, including, but not limited to, landscaping, and any and all alterations thereto, replacements thereof, and substitutions therefor.

“Indemnitees” has the meaning provided in Section 19.1 hereof.

“Initial Fixed Expiration Date” has the meaning provided in Section 2.2 hereof.

“Initial Term” has the meaning provided in Section 2.2 hereof.

“Institutional Lender” means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a private pension fund, a credit union or company, an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee’s welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency or any syndicate, joint venture, or other combination of Institutional Lenders, provided that each member of any such syndicate, joint venture, or other combination would qualify individually as an Institutional Lender, and such other entities as may be approved in writing by Landlord, which approval will not be unreasonably withheld or delayed; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions pertaining to this Lease or the Premises, (b) have a net worth of not less than \$35,000,000 and assets of not less than \$100,000,000, or such lower amounts as are deemed acceptable in Landlord’s sole discretion, and (c) not be a Prohibited Person.

“Land” means the land described in Exhibit A hereto but excluding therefrom any land taken or condemned as provided in Section 9.2(a).

“Landlord” means the City, provided, however, that if the City or any successor to its interest hereunder transfers or assigns its interest in the Premises or its interest under this Lease, then from and after the date of such assignment or transfer, the term “Landlord” shall mean the assignee or transferee.

“Late Charge Rate” has the meaning provided in Article 6 hereof.

“Lease” means this Agreement of Lease and all exhibits hereto and all amendments, modifications and supplements hereof and thereof.

“Lease Execution Date” means the first date on which this Lease has been executed by both Tenant and Landlord.

“Lease Year” means the year beginning on the Commencement Date and each succeeding year falling within the Term.

“Mortgage” has the meaning provided in Section 11.1(b) hereof.

“New York State Courts” has the meaning provided in Section 41.15 hereof.

“Orders” has the meaning provided in Section 20.1 hereof.

“Owner” has the meaning provided in Section 20.1(a)(9) hereof.

“Partial Taking” has the meaning provided in Section 9.2(b) hereof.

“Permanent Leasehold Improvements” means all improvements to the Premises made by Permittee as part of any Construction Work made by Permittee and shall be deemed to include, without limitation, all electric, plumbing, sprinkler, heating, air conditioning and lighting systems, fixtures, equipment, meters and related installations necessary for the operation thereof within or serving the Premises and all other installations the removal of which will either cause damage to the Premises, its appurtenances or any other portion of the Premises or will render the item so removed inoperable or without significant value; however, Permanent Leasehold Improvements shall not include Tenant’s moveable trade fixtures, furniture, machinery, equipment and personal property.

“Permitted Person” has the meaning provided in Section 10.1(b)(vi) hereof.

“Person” means an individual, corporation, partnership, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“PILOT” has the meaning provided in Section 3.4(a) hereof.

“Planning Commission” means the New York City Planning Commission

“Premises” means the Land, and all Improvements now or hereafter located thereon, if applicable.

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

“Prohibited Person” has the meaning provided in Section 10.1(c) hereof.

“Renewal Term” has the meaning provided in Section 2.3 hereof.

“Renewal Term Fixed Expiration Date” has the meaning provided in Section 2.3 hereof.

“Rental” means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, Base Rent, PILOT, Impositions, the amounts, if any, payable pursuant to Article 19 hereof and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease, to pay and/or deposit.

“Replacement Value” has the meaning provided in Section 7.12 hereof.

“Requirements” has the meaning provided in Section 15.1(b) hereof.

“Restoration” means either a Casualty Restoration or a Condemnation Restoration, or both.

“Restoration Costs” has the meaning provided in Section 8.3(b)(i) hereof.

“Restoration Funds” means any moneys that may be received by Depository or Tenant pursuant to the provisions of Sections 7.2(a), 7.2(b), 9.2(b)(iii), or 9.3(a)(iii) hereof, as a result of property loss or condemnation, together with the interest and dividends, if any, earned thereon.

“Revised Program” has the meaning provided in Section 20.2 hereof.

“Security Deposit” has the meaning provided in Section 3.6(a) hereof.

“Second Renewal Term” has the meaning provided in Section 2.3 hereof.

“Sublease” has the meaning provided in Section 10.1(b)(iv) hereof.

“Substantially All of the Premises” has the meaning provided in Section 9.1(b) hereof.

“Subtenant” has the meaning provided in Section 10.1(b)(v) hereof.

“Taking” has the meaning provided in Section 9.1(a) hereof.

“Taxes” has the meaning provided in Section 3.4(b) hereof.

“Tax Year” means each tax fiscal year of New York City.

“Temporary Taking” has the meaning provided in Section 9.3(a) hereof.

“Tenant” on the Commencement Date, means EDC, provided, however, that whenever this Lease and the leasehold estate hereby created shall be assigned by Tenant to Eastern Paralyzed Veterans Association, Inc., a New York corporation having an office at 75-20 Astoria Boulevard, Jackson Heights, New York 11370, then from and after the date of such assignment or transfer the term “Tenant” shall mean Eastern Paralyzed Veterans Association, Inc., and its successors, and EDC shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed on or after the date of such assignment and it shall be deemed and construed without further agreement between the parties or their successors in interest that the assignee under such assignment has assumed and agreed to carry out any and all agreements, covenants and obligations of Tenant hereunder occurring from and after the date of such assignment, and after any subsequent transfer or assignment, Tenant shall mean the holder of the leasehold interest created by this Lease.

“Tenant’s Plans” has the meaning provided in Section 12.1(c) hereof.

“Term” has the meaning provided in Section 2.3 hereof.

“Third Renewal Term” has the meaning provided in Section 2.3 hereof.

“Title Matters” has the meaning provided in Section 2.1 hereof.

“Transfer” has the meaning provided in Section 10.1(b)(vii) hereof.

“Transferee” has the meaning provided in Section 10.01(b)(ix) hereof.

“Unavoidable Delays” means delays due to strikes, slowdowns, walkouts, lockouts, acts of God, catastrophic weather conditions (such as floods, extraordinary high water conditions, unusually high tides, or extraordinary rain, snow, or sleet), enemy action (including undeclared wars), civil commotion, fire, casualty or other cause not within Tenant’s control which, in Landlord’s sole reasonable discretion, is causing a delay in Tenant’s performance of its construction obligations hereunder, of which Tenant shall have notified Landlord in writing, stating when such delay commenced, not later than ten (10) business days after Tenant has first received knowledge of the occurrence of any of the foregoing conditions, provided, however, that in no event shall Tenant’s financial condition or inability to obtain financing or any delay arising out of disputes among or between shareholders of or partners in Tenant constitute an Unavoidable Delay.

“Zoning Resolution” has the meaning provided in Section 15.1(b)(i) hereof.

ARTICLE 2

DEMISE OF PREMISES; TERM OF LEASE

Section 2.1. Demise of Premises; Term. Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all improvements thereon and all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the terms and conditions hereof, and only those matters affecting title set forth in Exhibit B hereto (the “Title Matters”), including, without limitation, the rights of the federal government under the terms of any quitclaim deed or other conveyance between the federal government and the City.

TO HAVE AND TO HOLD unto Tenant, its permitted successors and assigns, for the term specified in Sections 2.2 and 2.3.

Section 2.2. The Initial Term.

(a) The initial term (“Initial Term”) of this Lease shall commence and this Lease shall be effective on the date of the delivery of this Lease to Tenant, as evidenced by a written acknowledgement executed by both parties (the “Commencement Date”).

(b) The Term shall expire at midnight on the day immediately preceding the thirtieth (30th) anniversary of the Commencement Date (the "Initial Fixed Expiration Date"), or on such earlier date upon which this Lease may be terminated as hereinafter provided.

Section 2.3. The Renewal Terms. Tenant shall have the option to extend the term of this Lease on the terms and conditions contained herein for a period of sixty-nine (69) years (the "Renewal Term") commencing upon the expiration of the Initial Term and expiring at midnight on the day immediately preceding the ninety-ninth (99th) anniversary of the Commencement Date (the Initial Term, and the Renewal Term, if applicable, are hereinafter collectively referred to as the "Term.") The option to extend the Initial Term with the Renewal Term shall be exercised automatically unless Tenant rejects the option to extend the Initial Term by giving written notice thereof to Landlord no later than six (6) months prior to the scheduled expiration of the Initial Term. The Term of this Lease shall be deemed extended for the period set forth in this Section for the applicable Renewal Term (the last such date to which the Term is extended at a given time being hereinafter referred to as the "Renewal Term Fixed Expiration Date," and the Initial Fixed Expiration Date and the Renewal Term Fixed Expiration Date, whichever is in effect at a given time, being hereinafter referred to as the "Fixed Expiration Date"); provided, however, that (i) if Tenant is in Default six (6) months prior to the scheduled expiration of the Initial Term, or at any time during the period from such date through the Fixed Expiration Date, Tenant's option to renew shall be deemed null and void and of no further force or effect unless Tenant cures any such Default(s) within the notice and the applicable grace period provided in Section 23.1, and provided further that the Landlord has the right to seek a new tenant for the Premises (but not enter into a lease) during that period during which a Default exists and is continuing, (ii) if, in any event, any Event of Default exists on the Fixed Expiration Date, such option to renew shall be deemed null and void and of no further force and effect, and (iii) if, in any event, any Default exists on the Fixed Expiration Date, such option to renew shall be deemed null and void and of no further force and effect if, but only if, such Default shall become an Event of Default within ninety (90) days after notice thereof to Tenant.

ARTICLE 3

RENT

Section 3.1. Method and Place of Payment. Except as otherwise specifically provided herein, all Rental shall be paid without setoff or deduction and without prior notice or demand. All Rental (except Impositions, if the rules and regulations of the City governing such payment are to the contrary) shall be paid by good checks payable to the order of Landlord and drawn on an account at a bank that is a member of the New York Clearing House Association or any successor body. Rental (other than PILOT and Impositions) shall be payable at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. PILOT shall be payable to the Landlord at the address set forth in Section 3.04 hereof. Impositions shall be payable in the form and to the location provided by rules and regulations governing the payment thereof.

Section 3.2. Base Rent.

(a) Tenant shall pay Landlord annual rent ("Base Rent") during the Term in an amount equal to one dollar (\$1.00) per year.

(b) Payment of Base Rent. Base Rent shall be paid annually, in advance, beginning on the Commencement Date.

Section 3.3. [INTENTIONALLY OMITTED].

Section 3.4. Payments in Lieu of Taxes.

(a) Payment of PILOT. For each Tax Year or portion thereof within the Term, Tenant shall be deemed to have paid to Landlord as part of the Base Rent a payment in lieu of Taxes ("PILOT"), and Landlord agrees that throughout the term of this Lease, no Taxes shall be payable by Tenant under this Lease.

(b) Taxes Defined. "Taxes" means the real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes assessed and which would be levied if not for such exemption) pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 2 of the Administrative Code of New York City, as the same may now or hereafter be amended.

Section 3.5. Net Lease. It is the intention of Landlord and Tenant that except as provided in Section 4.5 of this Lease (a) Rental be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, setoff or offset whatsoever (except as expressly provided in this Lease and where not so expressly provided as may be required in any proceeding where the right to assert any claim against Landlord would be extinguished unless such a counterclaim, set off, or deduction is asserted in such proceeding) so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) Tenant shall pay all costs, expenses and charges of every kind relating to the Premises (except Taxes) that may arise or become due or payable during or after (but attributable to a period falling within) the Term.

Section 3.6. The Security Deposit: Amount, Use, Return.

(a) Tenant has deposited with the Administrator the sum of \$4,400, as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease (the "Security Deposit"). Upon thirty (30) days written notice to the Tenant, the amount of the Security Deposit may be increased, but in no event shall the amount of the Security Deposit exceed the greater of: (i) two (2) times the amount equal to the cost of required annual insurance premiums for the insurance requirements described in Article 7, or (ii) ten thousand dollars (\$10,000). It is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of the Rental, Landlord may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any Rental or any other sums as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's

default in respect of any of the terms, covenants and conditions of this Lease. In the event that Tenant shall fully and faithfully comply with all of the terms, covenants and conditions of this Lease, Landlord agrees to return the security to Tenant with interest, if any, when this Lease is terminated in accordance with the terms hereof and after Tenant has vacated the Premises and delivered possession thereof to Landlord.

(b) If Landlord at any time uses any portion of the Security Deposit as a result or by reason of default by Tenant, Tenant shall, within ten (10) days after demand, restore and pay Landlord the amount so used.

(c) Said Security Deposit shall be placed by Landlord in an interest-bearing account. Interest that may accrue thereon shall belong to Tenant, except such portion thereof as shall be equal to one per cent (1%) per annum (or such higher percentage as Landlord may from time to time be lawfully entitled to retain) which percentage shall belong to and be the sole property of Landlord and which Landlord may withdraw from time to time and retain. That portion of the interest belonging to Tenant shall be accumulated and paid to Tenant annually following the end of each calendar year and upon the expiration of this Lease (unless otherwise applied in accordance with this Section 3.6). The obligation to pay any taxes related to or affecting any interest earned on the Security Deposit (except as to that portion thereof which belongs to Landlord) shall be the sole responsibility of Tenant, and Tenant hereby agrees to pay same and to forever indemnify and save harmless Landlord with respect thereto. Tenant shall, within fifteen (15) days after demand, furnish Landlord or its agent with a tax identification number for use with respect to such deposit.

ARTICLE 4

IMPOSITIONS

Section 4.1. Payment of Impositions.

(a) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 4.1(c) hereof, all Impositions that, with respect to any period occurring during the Term, are, or would be, if the Premises or any part thereof or the owner thereof were not exempt therefrom, assessed, levied, confirmed, imposed upon, or would be charged to the owner of the Premises with respect to (i) the Premises, or (ii) the sidewalks, streets, or waterways in front of or adjoining the Premises, or (iii) any vault, passageway or space in, over or under such sidewalk, street, or waterway, or (iv) any other appurtenances of the Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) or any other amount payable by Tenant hereunder, or (vii) any document to which Tenant is a party creating or transferring an interest or estate in all or any part of the Premises, or (viii) the use and occupancy of the Premises, or (ix) this transaction. Tenant's obligation to pay Impositions under this Lease is neither intended to add to Tenant's obligations nor is it intended to reduce exemptions Tenant would otherwise have as a tax-exempt 501(c)(3) organization were it the owner of the Premises.

(b) Definition. "Imposition" or "Impositions" means:

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

(ii) personal property taxes,

(iii) occupancy and rent taxes,

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

(v) excises,

(vi) levies,

(vii) license and permit fees,

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

(ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed solely as a result of Landlord's acts or omissions in its proprietary capacity only.

(c) Payments of Impositions

(i) Subject to the provisions of Section 34.2 hereof, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty. However, if by law, at Tenant's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments when due with such interest as may be required by law.

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

(d) Income and Similar Taxes of Landlord. Tenant shall not be required to pay any municipal, state or federal corporate income, franchise, inheritance, estate, succession or gift taxes imposed upon Landlord which is based upon the income or capital of Landlord.

Section 4.2. Evidence of Payment. Tenant shall furnish Landlord, within thirty (30) days after the date when an Imposition is due and payable, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 4.3. Evidence of Non-Payment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

Section 4.4. Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration of the Term, shall be apportioned pro rata between Landlord and Tenant as of the Commencement Date or the Expiration of the Term (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment).

Section 4.5. Taxes. Provided the City shall be Landlord, Landlord shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord). If the City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof. The payment or other disposition of Taxes by Landlord under this Section 4.5 shall have no effect on Tenant's obligation to pay PILOT. If Landlord shall have failed to pay or discharge the Taxes as required hereunder and Tenant shall not have timely commenced a proceeding to contest the same as provided in Section 34.1 hereof, or if Tenant shall have timely commenced such a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises and the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next PILOT due, with interest at the rate (the "City's Payment Rate") which is the lesser of the City's Borrowing Rate or the interest rate specified in Section 3-a(1) of the General Municipal Law of the State of New York, as it may be amended from time to time.

Section 4.6. Utility Service to Premises and Payment Therefor. Tenant shall be responsible for obtaining all utility services necessary for the proper operation and functioning of the Premises, including, without limitation, gas, water, heat, electricity, air conditioning and telephone service. Tenant shall pay directly to the companies supplying such utility services all charges for such utility services, as the same shall become due. Tenant shall at its sole cost and expense, install meters for all such utility services including but not limited to, water, gas and electricity, and shall thereafter maintain such meters in good working order and repair.

Section 4.7. No Obligation on Landlord to Provide Utility Service. Landlord shall have no obligation to provide any utility services to the Premises, and Landlord shall have no responsibility or liability in the event any such utility services are not provided to the Premises.

Section 4.8. Survival Clause for Sections 4.6 and 4.7. The provisions of Sections 4.6 and 4.7 of this Article 4 shall survive any termination of this Lease.

ARTICLE 5

[INTENTIONALLY OMITTED]

ARTICLE 6

LATE CHARGES

If (a) any payment of Rental, or any other payment due hereunder, is not received by Landlord within ten (10) days after the day on which it first becomes due, or (b) Landlord has made a payment required to be made by Tenant hereunder, then a late charge on the sums so overdue or paid by Landlord, calculated at the rate of interest charged by the City during the period in question for delinquent Taxes (the "Late Charge Rate") from the date such Rental first becomes due or the date of payment by Landlord, as the case may be, to the date on which actual payment of such sums is received by Landlord, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make payment on or before the dates such payments are due. Subject to all other provisions of this Lease, Tenant shall pay Landlord, within ten (10) days after demand, which may be made from time to time, all late charges. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24 hereof.

ARTICLE 7

INSURANCE

Section 7.1. Insurance Requirements.

(a) Liability Insurance. At all times during the Term, Tenant, at its sole cost and expense, shall carry or cause to be carried insurance against liability with respect to the Premises and the Improvements and the operations related thereto, whether conducted on or off the Premises, in an amount of not less than three million dollars (\$3,000,000) per occurrence, combined single limit, and designating Tenant, Landlord, the Administrator and Apple as additional insureds. Such insurance shall meet all of the standards, limits, minimums and requirements described in Section 7.7.

(b) Property Insurance. At all times during the Term, Tenant, at its sole cost and expense shall carry or cause to be carried all risk property damage insurance protecting

Tenant and Landlord against loss to the Improvements and meeting all of the standards, limits, minimums and requirements described in Section 7.8.

(c) Other Insurance. At all times during the Term, Tenant shall carry insurance meeting all of the standards, limits, minimums, and requirements described in Section 7.9.

(d) Construction Insurance. Prior to the commencement of any Construction Work, Tenant shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance described in Section 7.10.

Section 7.2. Treatment of Proceeds.

(a) Proceeds of Insurance in General. Insurance proceeds payable with respect to a property loss shall be payable to Depository. The insurance proceeds with respect to such loss shall be held in trust for the purpose of paying the cost of the Restoration, and such proceeds shall be applied to the payment in full of the cost of such Restoration in accordance with Article 8 hereof.

(b) [INTENTIONALLY OMITTED]

(c) Cooperation in Collection of Proceeds. Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant and Landlord shall as soon as practical execute and deliver such proofs of loss and other instruments as may be required of Tenant or Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

(d) Adjustments for Claims. All property insurance policies required by this Article shall provide that all adjustments for claims with the insurers involving a loss in excess of \$50,000 be made with Landlord and Tenant.

Section 7.3. General Requirements Applicable to Policies.

(a) Insurance Companies. All of the insurance policies required by this Article shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A:VII" or better or another comparable rating reasonably acceptable to Landlord and Tenant considering market conditions.

(b) Required Forms. All references to forms and coverages in this Article shall be those used by the Insurance Services Office of New York or equivalent forms satisfactory to Landlord and Tenant in all material respects.

(c) Required Certificates. Certificates of insurance evidencing the issuance of all insurance required by this Article, describing the coverage and guaranteeing twenty (20) days prior notice to Landlord by the insurance company of cancellation or non-renewal, shall have been delivered to Landlord by the Commencement Date, and in the case of any policies replacing

or renewing any policies expiring during the Term, not later than thirty (30) days before the expiration dates of any expiring policies. The certificates of insurance shall be issued by the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance shall also deliver to Landlord, together with the certificates, proof reasonably satisfactory to Landlord that the premiums for at least the first year of the term of each policy (or installment payments to the insurance carrier then required to have been paid on account of such premiums) have been paid. Tenant shall deliver a copy of each entire original policy, or other evidence satisfactory to Landlord of the validity and accuracy of said certificate, immediately after the date each such policy is available, but no later than four (4) months after the date each such policy takes effect.

(d) Compliance With Policy Requirements. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article, and Tenant shall perform, satisfy and comply with or cause to be performed, satisfied and complied with all conditions, provisions and requirements of all such insurance policies.

(e) Required Insurance Policy Clauses. Each policy of insurance required to be carried pursuant to the provisions of this Article shall contain (i) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord and/or the Administrator, other than those acts which are committed by Landlord and/or the Administrator, respectively, (ii) a written waiver of the right to subrogation with respect to all of the named insureds and additional insureds, including Landlord and the Administrator, (iii) a clause designating Landlord and the Administrator as loss payee or additional insured, as their interests may appear, and (iv) an agreement by the insurer that such policy shall not be cancelled, modified, or denied renewal without at least twenty (20) days prior written notice to Landlord and, the Administrator, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium.

Section 7.4. Additional Coverage

(a) Other Insurance. Tenant shall maintain such other insurance in such amounts as from time to time reasonably may be required by Landlord against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated to the Premises or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises.

(b) Adjustment of Limits. All of the limits of insurance required pursuant to this Article 7 shall be subject to review by Landlord and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as Landlord may reasonably require from time to time. Any request by Landlord that Tenant carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of premises similarly situated to the Premises, or business operations of a size, nature or character similar to the size, nature and character of the business operations being conducted at the Premises. Landlord shall also have the right, throughout the Term, to approve the amount of any loss deductible contained in any insurance policy required pursuant to the provisions hereof, which approval Landlord shall not unreasonably withhold or

delay, taking into account Tenant's financial capability to pay such deductible, market conditions, and the deductible commonly included in insurance coverages obtained with respect to premises similarly situated to the Premises or business operations of a size, nature, or character similar to the size, nature, or character of the business operations being conducted on the Premises. A request by Landlord that Tenant reduce or cause to be reduced the amount of any such loss deductible shall not be deemed reasonable unless loss deductibles of such lower amounts are commonly included in policies insuring premises similarly situated to the Premises, or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises.

Section 7.5. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Landlord or Tenant that such insurance is in any respect adequate.

Section 7.6. Blanket or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at the option of Tenant, be effected by blanket and/or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant, provided, such policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insured hereunder, without possibility of reduction of co-insurance by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord certified copies of such policies as provided in Section 7.3(c) hereof, together with schedules annexed thereto, setting forth the amount of insurance applicable to the Premises and proof reasonably satisfactory to Landlord that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

Section 7.7. Liability Insurance Requirements. The insurance required by Section 7.1(a) shall consist of commercial general liability insurance protecting against liability for bodily injury, death, property damage, and personal injury. Such insurance shall:

- (a) include a broad form property damage liability endorsement with fire legal liability limit of not less than \$50,000;
- (b) contain blanket contractual liability insurance covering written and oral contractual liability;
- (c) contain contractual liability insurance specifically covering Tenant's indemnification obligations under Article 19 hereof;
- (d) contain independent contractors coverage;
- (e) contain a notice of occurrence clause;
- (f) contain a knowledge of occurrence clause;

- (g) contain an unintentional errors and omissions clause;
- (h) contain coverage for suits arising from the use of reasonable force to protect persons and property;
- (i) contain a cross liability endorsement;
- (j) contain coverage for water damage and sprinkler leakage legal liability;
- (k) contain coverage for owned and non-owned automobiles;
- (l) contain Products Liability/Completed Operations coverage;
- (m) provision for a deductible of not more than \$5,000 per loss; and
- (n) contain no exclusions or deductibles unless specifically approved in each instance by Landlord, which approval will not be unreasonably withheld or delayed.

Section 7.8. Property Insurance Requirements. The insurance required by Section 7.1(b) shall consist at least of property damage insurance under an “All Risk” policy or its equivalent covering the Premises and all Improvements with replacement cost valuation and a stipulated value endorsement in an amount not less than the full Replacement Value (determined in accordance with Section 7.12) and including the following coverages or clauses:

- (i) coverage for physical loss or damage to the Improvements;
- (ii) a replacement cost valuation without depreciation or obsolescence clause;
- (iii) debris removal coverage;
- (iv) provision for a deductible of not more than \$5,000 per loss, except for flood and earthquake coverage, which shall have a deductible of \$100,000;
- (v) contingent liability from operation of building laws;
- (vi) demolition cost for undamaged portion coverage;
- (vii) increased cost of construction coverage;
- (viii) an agreed or stipulated amount endorsement negating any coinsurance clauses;
- (ix) flood coverage;
- (x) earthquake coverage;
- (xi) hurricane coverage;

(xii) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by Landlord);

(xiii) a clause designating Landlord as insured; and

(xiv) contain no exclusion or deductible unless approved in writing by Landlord, which approval will not be unreasonably withheld or delayed.

If Tenant elects to insure Tenant's personal property used in connection with the Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section. Tenant and Landlord shall be named as their interests may appear, and the Depository shall be designated loss payee on such All Risk policy for the benefit of Landlord and Tenant. If not included within the All Risk coverage above, Tenant shall also carry or cause to be carried coverage against damage due to water and sprinkler leakage and collapse, flood and earthquake, which shall be written with limits of coverage of not less the full Replacement Value per occurrence.

Section 7.9. Other Insurance Requirements. The insurance required by Section 7.1(c) shall consist at least of the following:

(a) [INTENTIONALLY OMITTED].

(b) Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Premises or the Improvements (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount not less than \$500,000.

(c) Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air-conditioning systems, located on any portion of the Premises and other machinery located on such portion of the Premises, which shall name Landlord and Tenant, as insureds and the Depository as loss payee for the benefit of Landlord and Tenant, as their interests may appear.

Section 7.10. Insurance Requirements. The insurance required by Section 7.1(d) shall consist at least of the following:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value (non-reporting) basis, for property damage protecting Tenant, Landlord, the Administrator, and the general contractor, against all insurable legal liability claims resulting from any work being performed on the Premises.

(b) Automobile liability insurance covering any automobile or other motor vehicle used in connection with work being performed on or for the Premises in an amount not

less than \$1,000,000 per occurrence

(c) The insurance specified in subsections (a) and (b) above shall contain:

(i) independent contractors coverage;

(ii) specific contractual liability specifically covering any indemnification agreement protecting Tenant, Landlord, the Administrator, and the City (if the City is no longer Landlord), as their interests may appear;

(iii) an endorsement providing that excavation and foundation work are covered and that the "XCU exclusions" have been deleted; and

(iv) shall contain no exclusions other than those included in the basic forms described unless approved by Landlord.

Section 7.11. Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

Section 7.12. Determination of Replacement Value.

(a) **Definition.** The current replacement value of the Premises (the "Replacement Value") shall be the full cost of replacing the Premises, including, without limitation, all hard costs of construction as well as the costs of post-casualty debris removal, and soft costs, including without limitation, architect's and development fees, but exclusive of the cost of foundation and excavation. Replacement Value shall be determined periodically by an insurance appraiser, selected and paid by Tenant and reasonably approved by Landlord, initially on the Commencement Date and at such additional times as Landlord may reasonably request. If the insurance required by Section 7.8 above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such appraisal, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements. Any dispute with respect to the determination of Replacement Value shall be subject to the provisions of Section 33.1.

(b) **Adjustment.** The amount of Replacement Value shall be adjusted on each anniversary of the initial determination of Replacement Value and of each subsequent redetermination of Replacement Value throughout the Term by a percentage equal to the percentage change in the Building Index in effect on such anniversary date.

(c) **Building Index.** As used herein, the "Building Index" shall mean the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by Landlord and reasonably agreed to by Tenant, provided that such index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of the Improvements.

Section 7.13. Subleases. All Subleases, if any, shall require the Subtenant to carry liability insurance naming Tenant, Landlord, and the Administrator, as additional insureds with limits reasonably prudent under the circumstances.

Section 7.14. Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Landlord and Landlord's agent, if any.

Section 7.15. Unavailability. If any of the insurance required to be carried under this Lease shall not, after diligent efforts by Tenant, and through no act or omission on the part of Tenant, be obtainable from domestic carriers customarily insuring premises similar to the Premises and business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted by Tenant at the Premises, then Tenant shall promptly notify Landlord of Tenant's inability to obtain such insurance and Landlord shall have the right, but not the obligation, to arrange for Tenant to obtain such insurance. If Landlord shall be able to arrange for Tenant to obtain such insurance, Tenant shall obtain the same up to the maximum limits provided for herein. If Landlord shall be unable to arrange for Tenant to obtain the insurance required hereunder, Tenant shall promptly obtain the maximum insurance obtainable, and in such case, the failure of Tenant to carry the insurance which is unobtainable shall not be a Default hereunder for as long as such insurance shall remain unobtainable. Types or amounts of insurance shall be deemed unobtainable if such types or amounts of insurance are (a) actually unobtainable, or (b) virtually unobtainable as a result of commercially unreasonable premiums for such insurance with respect to premises similar to the Premises, located in New York City and used for purposes similar to those for which the Premises are used.

ARTICLE 8

DAMAGE, DESTRUCTION AND RESTORATION

Section 8.1. Notice to Landlord. Tenant shall notify Landlord promptly if the Improvements are damaged or destroyed in whole or in part by fire or other casualty.

Section 8.2. Casualty Restoration.

(a) Restoration. Subject to the provisions of Section 8.2(d), if all or any portion of the Improvements are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, in accordance with the provisions of this Article and Article 13 hereof, restore the Improvements to the extent of the value and as nearly as practicable to the character of the Improvements as they existed immediately before such casualty and otherwise in substantial conformity with the Plans and Specifications (a "Casualty Restoration"), whether or not (i) such damage or destruction has been insured or was insurable, (ii) Tenant is entitled to receive any insurance proceeds, or (iii) the insurance proceeds are sufficient to pay in full the cost of the Construction Work in connection with the Casualty Restoration.

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration and within ninety (90) days of the

damage or destruction, Tenant shall furnish Landlord with an estimate, prepared by a Cost Estimator, of the cost and duration of such Construction Work. Landlord, at its election and at Tenant's cost, which cost shall be reasonable, may engage a Cost Estimator to prepare its own estimate of the cost of such Construction Work. If Landlord shall fail to disapprove Tenant's estimate of such cost within thirty (30) days of receipt of such estimate, Tenant's estimate shall be deemed approved. If Landlord shall dispute the estimated cost of such Construction Work, the dispute shall be resolved by a Cost Estimator chosen by agreement of Landlord and Tenant (or if the parties cannot agree by a panel of arbitrators in accordance with Article 33 hereof), which Cost Estimator (or panel of arbitrators) shall resolve the dispute by choosing either Landlord's or Tenant's estimate, which choice shall be binding on the parties.

(c) Commencement of Construction Work. Tenant shall commence such Construction Work promptly after adjustment of the insurance claim, if any, relating to the damages or destruction (which settlement will be diligently prosecuted), but in any event within three hundred sixty-five (365) days of the damage or destruction, subject to Unavoidable Delays relating to the Construction Work in connection with a Casualty Restoration for an aggregate period of six months for each such Casualty Restoration, provided that during any such period after the occurrence of a casualty Tenant shall have secured the damaged portion of the Improvements against further damage, injury to persons, and/or damage to other property.

(d) Option not to Restore. Notwithstanding the foregoing, if at any time during the Term, all or substantially all of the Premises are damaged or destroyed by casualty and the insurance policies required pursuant to Article 7 are in effect, then Tenant may, at its option, in lieu of performing the Casualty Restoration required by Section 8.2(a) hereof, terminate this Lease within one hundred eighty (180) days. Such termination shall be made by (A) serving upon Landlord, at any time within said one hundred eighty (180) day period, a ten (10) days' written notice of Tenant's election to so terminate; (B) assigning over to Landlord all of Tenant's right, title and interest in and to all available insurance and other proceeds payable due to such damage or destruction but subject to the continuing obligation of Tenant to assist in the prosecution of all insurance and other claims, and (C) paying to Landlord concurrently with the service of such notice an amount equal to all Rental due up to and including said date of termination whether or not otherwise payable at such time. Upon the service of such notice and the making of such assignment and payment within the period aforesaid, this Lease shall terminate on the date specified in such notice with the same force and effect as if such date were the Fixed Expiration Date, and Tenant shall comply with all surrender requirements of Article 30 hereof.

Section 8.3. Restoration Funds.

(a) Reimbursement of Depository's and Landlord's Expenses. Before paying the Restoration Funds to Tenant, Depository shall reimburse itself, Tenant, and Landlord therefrom to the extent of all documented necessary and proper expenses (including, without limitation, reasonable and customary attorneys' fees and disbursements) paid or incurred by each of them respectively in the collection of such Restoration Funds.

(b) Disbursement of Restoration Funds.

(i) Application for Disbursement. Subject to the provisions of Sections 8.3(a), 8.3(b)(ii), 8.4 and 8.5 hereof, Restoration Funds held by Depository shall be paid to Tenant in installments as the Restoration progresses, after application to be submitted by Tenant to Depository and Landlord stating Restoration costs, including architect's and engineer's fees, construction labor costs and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Improvements since the last previous application and paid for by Tenant (or payments that are then due and owing), or (B) not been incorporated in the Improvements but have been purchased since the last previous application and paid for by Tenant (or payments that are then due and owing) and insured by Tenant for one hundred percent (100%) of the cost thereof and stored at a secure and safe location on the Premises or at such other location as shall be reasonably satisfactory to Landlord (such costs collectively referred to as "Restoration Costs"). The Depository shall not make any installment payment to Tenant for materials, fixtures and equipment purchased but not yet incorporated in the Improvements until Tenant shall have delivered to Landlord certificates of insurance evidencing that such materials, fixtures and equipment are insured for one hundred percent (100%) of the cost thereof.

(ii) Holdback of Restoration Funds. The amount of any installment of the Restoration Funds to be paid to Tenant for Restoration Costs shall be equal to the amount by which (A) ninety percent (90%) of the product derived by multiplying the Restoration Funds by a fraction, the numerator of which shall be the total Restoration Costs already paid or owed (including any amounts that may have been retained by Tenant from any contractors), and the denominator of which shall be the total estimated Restoration Costs, exceeds (B) all prior installments of Restoration Funds paid to Tenant. The ninety percent (90%) figure in the preceding sentence shall increase to ninety-five percent (95%) after the Architect certifies that the Restoration is at least fifty percent (50%) complete. Upon completion of the Restoration, and upon application for final payment submitted by Tenant to Depository and Landlord and compliance with the conditions set forth in Section 8.4 hereof, the remaining portions of the Restoration Funds shall be first paid to each of Tenant's contractors in payment of the amounts due and remaining unpaid on account of work performed in connection with the Restoration and not disputed by Tenant and any amounts retained under such contracts and then according to the provisions of subparagraph (c).

(c) Disbursement of Remaining Restoration Funds. Provided that no Default or Event of Default exists, any Restoration Funds, together with any interest earned thereon, remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 12.3 and 12.7 hereof shall be paid to Tenant.

Section 8.4. Conditions Precedent to Disbursement of Restoration Funds. The following conditions shall apply to each payment of Restoration Funds to be made to Tenant pursuant to Section 8.3(b) hereof:

(a) Certificate of Architect. A certificate of the Architect shall be submitted to Depository and Landlord stating that:

(i) The sum then requested to be withdrawn either has been paid by Tenant or is justly due to contractors, sub- contractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons with respect thereto, and stating, in reasonable detail, the progress of the Construction Work in connection with the Restoration up to the date of the certificate;

(ii) No part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of Restoration Funds or has been paid out of any of the Restoration Funds previously received by Tenant;

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

(iv) The materials, fixtures and equipment, for which payment is being requested pursuant to Section 8.3(b)(i) hereof, are equal in quality and character to the materials, fixtures, and equipment being restored or replaced;

(v) Except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depository shall in the reasonable opinion of the Architect be sufficient, upon completion of the Construction Work in connection with the Restoration, to pay for the Construction Work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Construction Work;

(vi) The Construction Work has been performed substantially in accordance with the Plans and Specifications, as such may be required to be modified in the course of construction in order to adapt to field conditions, and fully in accordance with all Requirements; and

(vii) In the case of the final request for payment by Tenant, the Construction Work in connection with a Restoration shall have been completed, except for punch list items, in accordance with the provisions of Sections 12.3 and 12.7 hereof.

(b) Certificate of Title Insurance. There shall be furnished to Landlord a report or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence satisfactory to Landlord, showing that there are no (i) vendor's, mechanic's, laborer's or materialman's statutory or other similar liens filed against the Premises or any part thereof, or (ii) public improvement liens created or caused to be created by Tenant affecting Landlord or the assets of, or any funds appropriated to, Landlord, except those as will be discharged upon payment of the amount then requested to be withdrawn or the discharge of which is guaranteed to the satisfaction of Landlord by a bond, letter of credit or similar security instrument.

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

Section 8.5. [INTENTIONALLY OMITTED]

Section 8.6. Effect of Casualty on This Lease. Except as specifically provided in Section 8.2(d), this Lease shall neither terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental, by reason of damage to, or total, substantial or partial destruction of, the Improvements, or by reason of the untenability of the Improvements or any part thereof, nor for any reason or cause whatsoever. Tenant's obligations hereunder, including the payment of Rental, shall continue as though the Improvements had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.7. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any casualty to the Improvements. It is the intention of Landlord and Tenant that the provisions of this Article 8 are an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

Section 8.8. Effect of Events of Default. Notwithstanding anything to the contrary contained herein, if an Event of Default shall have occurred and be continuing, the Depository shall pay any Restoration Funds then held by them in accordance with Landlord's directions.

Section 8.9. Effect of Lease Termination. Notwithstanding anything to the contrary contained herein, if this Lease has been terminated (and such termination, if challenged by Tenant, is upheld by a court of competent jurisdiction and, if applicable, final appeal) the Depository shall pay any Restoration Funds then held by it in accordance with Landlord's directions (and this provision shall survive the termination of this Lease).

ARTICLE 9

CONDEMNATION

Section 9.1. Certain Definitions.

(a) "Taking" shall mean a taking of the Premises or any part thereof for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right irrespective of whether the same affects the whole or Substantially all of the Premises or a lesser portion thereof but shall not include a taking of the fee interest in the Premises or any portion thereof if, after such taking, Tenant's rights under this Lease are not affected.

(b) "Substantially All of the Premises" shall be deemed to mean such portion of the Premises as would leave remaining after a Taking a balance of the Premises which would not readily accommodate a facility to support the uses described in Section 22.1 hereof on a commercially reasonable basis due either to the area so taken or the location of the part so taken in relation to the part not so taken in light of economic conditions, zoning laws, physical constraints, or building regulations then existing or prevailing and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be

observed by Tenant. The determination of “commercially reasonable basis” shall be subject to arbitration in accordance with Section 33.2.

(c) “Date of Taking” shall be deemed to be the date on which title to the whole or Substantially All of the Premises or a lesser portion thereof, as the case may be, shall have vested in any lawful power or authority pursuant to the provisions of applicable federal, state, or local condemnation law or the date on which the right to the temporary use of the same has so vested in any lawful power or authority as aforesaid.

(d) “Condemnation Restoration” shall mean a restoration of any portion of the Premises remaining after a partial Taking and/or a restoration of any portion of the Premises which have been changed or altered as a result of a temporary Taking or as a result of any governmental action not constituting a Taking but creating a right to compensation as provided in Section 9.4 hereof so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units and, to the extent practicable, of a size and condition of, and having a character similar to, the character of the Premises existing immediately prior to the Date of Taking or the date of such other governmental action.

Section 9.2. Permanent Taking.

(a) Taking of the whole etc. If during the Term there shall be a Taking of the whole or Substantially All of the Premises (other than a temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall terminate and expire on the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned to the Date of Taking, and all such Rental shall be paid to Landlord on the Date of Taking; and

(ii) the award payable in respect of such Taking shall be paid as follows: (A) there shall first be paid to Landlord so much of the award which is equal to the sum of outstanding amounts due and payable under this Lease to the date of the Taking; (B) then, to the extent proceeds are available, there shall next be paid to Landlord so much of the balance of such award as shall equal the value of the Premises other than the Improvements made and paid for by Tenant without reimbursement or funding by any federal, state, municipal, or other public entity; (C) then, to the extent proceeds are available there shall next be paid to Landlord so much of the balance of such award which is for or attributable to the value of Landlord’s reversionary interest in the Improvements made and paid for by Tenant; and (D) then Tenant shall receive the balance of the award, if any.

(b) “Partial Taking.” If there shall be a Taking of less than Substantially All of the Premises (other than a Temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall continue without diminution of any of Tenant’s obligations hereunder, except that this Lease shall terminate as to the portion of the Premises so taken, and from and after the Date of Taking, a just proportion of Base Rent as fixed by mutual agreement of Landlord and Tenant, according to the extent and nature of such Taking, shall abate for the remainder of the Term;

(ii) Tenant shall at its sole cost and expense proceed with diligence (subject to Unavoidable Delays) to effect a Condemnation Restoration of the remaining portion of the Premises not so taken, whether or not the award, if any, shall be sufficient for the purpose of paying for such Condemnation Restoration in full, but Landlord shall in no event be called upon to restore any remaining portion of the Premises not so taken or to pay any costs or expenses thereof; and

(iii) any award shall be paid to Depository and shall be disbursed in accordance with the provisions hereof first to the cost of a Restoration and thereafter as provided in Section 9.2(a)(ii).

Section 9.3. Temporary Taking.

(a) Not extending beyond Term. If during the Term there shall be a Taking of the temporary use of the whole or Substantially All of the Premises or a lesser portion thereof for a period not extending beyond the Term (a "Temporary Taking"), the following consequences shall result:

(i) this Lease and the Term shall continue without reduction or diminution of any of Tenant's obligations hereunder and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, but Tenant shall be entitled to receive for itself any award or payments for such use to the extent provided in Section 9.3(a)(iii) hereof;

(ii) if such Taking results in changes or alterations to the Premises or any part thereof, Tenant shall effect a Condemnation Restoration with respect thereto;

(iii) the award or payment payable with respect to such Taking shall be paid to and held by the Depository and (X) shall first be disbursed by the Depository to Landlord on account of the Rental payable by Tenant as and when the same shall become due and payable hereunder, and the balance shall be disbursed to Tenant; provided however, that if Tenant shall be required to effect a Condemnation Restoration pursuant to Section 9.3(a)(ii) hereof, then (Y) a portion of such award or payment equal to the estimated cost (calculated as provided in Section 8.2(b) hereof) of such Condemnation Restoration shall instead be retained by the Depository for the purpose of paying the cost of said Condemnation Restoration and shall be disbursed by the Depository to Tenant in accordance with the terms and conditions contained in Section 9.5(a) hereof with any balance remaining thereafter to be applied in accordance with Section 9.3(a)(iii)(X) hereof.

(b) Extending Beyond Lease Term. If during the Term there shall be a Taking of the temporary use of the whole or Substantially All of the Premises or a lesser portion thereof for a period extending beyond the Term, the consequences specified in clauses(i), (ii) and (iii) of Section 9.3(a) hereof shall result, except that the award or payment payable with respect to such Taking shall be apportioned between Landlord and Tenant as of the last day of the Term. The amount of the award or payment attributable to the period up to and including the last day of the Term shall be paid and applied in accordance with the provisions of Section 9.3(a)(iii) hereof, and the portion of the award attributable to the period after the last day of the Term shall belong

to Landlord; provided, however, that the amount of any award or payment allowed or retained to pay for a Condemnation Restoration which shall not have been previously applied for that purpose, shall remain the property of, and shall be paid over to Landlord if this Lease shall terminate for any reason prior to completion of the Condemnation Restoration in accordance with the provisions of this Article.

Section 9.4. Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental; provided, however, that if such governmental action results in changes or alterations of the Premises, then Tenant shall effect a Condemnation Restoration with respect thereto. Any award payable in the case of such governmental action shall be paid to and held by the Depository and shall be applied first to Tenant by Depository for the purpose of paying for the cost of the Condemnation Restoration in accordance with Section 9.5(a) hereof. Any balance of the award remaining after completion of the Condemnation Restoration shall be shared by Tenant and Landlord based upon the value of their respective interests in the Premises at that time.

Section 9.5: Condemnation Restoration Procedure.

(a) **Disbursement of Award.** If Tenant shall [be required by the terms hereof to] effect a Condemnation Restoration, the Depository shall, subject to the provisions and limitations in this Article 9, make available to Tenant in the manner specified in Section 8.3(b) hereof, as much of that portion of the award or payment payable in respect of a Taking actually received and held by the Depository, if any (less all necessary and proper expenses paid or incurred by the Depository in connection with the condemnation proceedings), as may be necessary to pay the cost of such Condemnation Restoration. Any balance of the award held by the Depository after completion of, and payment for the Condemnation Restoration shall be paid in accordance with the requirements of this Lease.

(b) **Performance of Condemnation Restoration.** The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, and disbursement of the condemnation award by Depository shall be done, determined, made and governed in accordance with the provisions of Article 12 and Sections 8.2(c), 8.3 (except Section 8.3(c)) and 8.4 hereof. If the portion of the award paid to Depository is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, then, subject to all other applicable provisions of this Lease, Tenant shall nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work.

Section 9.6. Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article and shall cooperate with each other to permit collection of the award.

Section 9.7. Landlord's Right To Award on Termination. Notwithstanding anything to the contrary contained herein, the amount of any award or payment allowed or

retained to effect a Condemnation Restoration which shall not have been previously applied to that purpose shall become the property of and shall be paid over to the Landlord, if this Lease shall terminate for any reason prior to completion of said Condemnation Restoration in accordance with the provisions of this Article 9.

Section 9.8. Allocation of Award. Upon a Taking, the parties shall make every effort to agree to an allocation of the award or payment as delineated in Section 9.2. If, after a reasonable time, the parties cannot agree, the dispute shall be resolved in accordance with the arbitration procedure pursuant to Section 34.2 hereof.

Section 9.9. Tenant's Appearance at Condemnation Proceedings. Tenant shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith.

Section 9.10. Intention of the Parties. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Taking of less than Substantially All of the Premises, except as specifically provided in Section 9.5(d). It is the intention of Landlord and Tenant that the provisions of this Article 9 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

ARTICLE 10

ASSIGNMENT, TRANSFER AND SUBLETTING

Section 10.1. Tenant's Right to Assign, Transfer, Etc.

(a) Limitations on Right to Assign, Transfer or Enter into a Sublease. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, at any time during the Term enter into a Capital Transaction:

(A) If on the effective date of such Capital Transaction, there exists any uncured Default, or an Event of Default;

(B) If the proposed Assignee, Transferee or Subtenant is not a Permitted Person;

(C) If Tenant shall have failed to comply in all material respects with any and all of the applicable provisions of this Article 10;

(D) In the case of an Assignment, without a written assumption, in form and substance reasonably satisfactory to Landlord and executed by the Assignee, of all of Tenant's obligations under this Lease, whether accruing before or after the date of such Assignment;

(E) If the proposed Assignee, Transferee or Subtenant is not an Affiliate;

(F) If the proposed Assignee, Transferee or Subtenant is not a state or its political subdivision, tax-supported institution, or a non-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code; and

(G) If the proposed Assignee, Transferee or Subtenant is not approved in writing by DHHS.

(b) Definitions.

(i) “Assignment” means the sale, exchange, assignment or other disposition of all or any portion of Tenant’s interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise, but not including any sale, exchange, assignment or disposition by EDC.

(ii) “Assignee” means an assignee under an Assignment.

(iii) “Capital Transaction” means an Assignment, a Transfer or a Sublease, or any other transaction by which any of the benefits of ownership or control of the leasehold estate created hereby are transferred in a manner allowing Tenant or the beneficial owners of Tenant to realize appreciation in the value of the leasehold estate created by this Lease or which would constitute the functional equivalent of an Assignment, Transfer, or Sublease.

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

(v) “Subtenant” means any subtenant, operator, licensee, franchisee, concessionaire or other occupant of the Premises or any portion thereof.

(vi) “Permitted Person” shall mean any Person which meets the following conditions: (A) such Person submits to the City’s “Vendex” background investigation system (or any successor system serving the same function) sixty (60) days prior to the anticipated date of the proposed Capital Transaction for the purpose of determining whether such Person is a Prohibited Person; (B) such Person is found not to be a Prohibited Person; (C) such Person, in Landlord’s reasonable judgment, has sufficient financial capability to manage the Premises and to support the Project and to otherwise perform Tenant’s obligations under the Lease including all recourse obligations which survive termination of the Lease; and (D) such Person, in Landlord’s reasonable judgment, possesses a level of experience and management skill at least equal to that of Tenant.

(vii) “Transfer” means any disposition of an Equity Interest in Tenant or in any direct or indirect constituent entity of Tenant, where such disposition directly or indirectly produces any change in the direct or indirect beneficial ownership of an interest in, or control of, Tenant. The term “Transfer” also includes any (i) transaction or series of transactions, including, without limitation, the issuance of additional Equity Interests, or (ii) direct or indirect revision of the beneficial ownership structure or control of Tenant or any direct or indirect constituent entity of Tenant, which, in either case, produces any change in the direct or indirect beneficial ownership of an interest in, or control of, Tenant.

(viii) "Equity Interest" means, with respect to any entity, (A) the beneficial ownership of (i) outstanding stock, or the right to buy outstanding stock, of such entity if such entity is a corporation, a real estate investment trust or a similar entity, (ii) a capital, profits, or partnership interest in such entity, or the right to buy such an interest, if such entity is a partnership or joint venture, (iii) interest in a trust, or the right to buy such an interest, if such entity is a trust, (B) any right of a mortgagee to participate in cash flow, gross or net profits, gain or appreciation, or (C) any other beneficial interest that is the functional equivalent of any of the foregoing.

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

(c) Definition of Prohibited Persons. The term "Prohibited Person" as used in this Lease shall mean:

(i) Any Person (A) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City, as the case may be.

(ii) Any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

(iii) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof.

(iv) Any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended.

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

(vi) Any Person (A) that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City

by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City, or (B) that, directly or indirectly controls, is controlled by, or is under common control with a Person that has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

(d) Determination of Organized Crime Figure. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or directly or indirectly controls, is controlled by, or is under common control with a Person that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of Landlord exercised in good faith.

(e) Notice to Landlord. Tenant shall notify Landlord of its intention to enter into any Capital Transaction not less than sixty (60) days before the proposed effective date of such Assignment, Transfer or Sublease.

(f) Contents of Notice.

(i) The notice required by Section 10.1(e) hereof shall contain the name and address of the proposed Assignee, Transferee, or Subtenant and the following information:

(A) in the case of a proposed corporate Assignee, Transferee or Subtenant, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee, Transferee or Subtenant (other than a corporation whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission), a certificate of an authorized officer of such corporation giving the names and addresses of all current directors and officers of the corporation and Persons having more than a five percent (5%) interest in such Assignee, Transferee or Subtenant;

(B) in the case of a proposed corporate Assignee, Transferee or Subtenant, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee, Transferee or Subtenant whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission, all of the periodic reports required to be filed with the Securities and Exchange Commission by such corporation pursuant to the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder within the last twelve (12) months, including, without limitation, its most recently filed annual report on form 10-K and all reports required to be filed by any Person owning stock of such corporation with the Securities and Exchange Commission pursuant to the reporting requirements of Sections 13(d), (e), (f) and (g) of the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder;

(C) in the case of a proposed partnership or joint venture Assignee, Transferee or Subtenant, a certificate of the managing general partner or other authorized general partner or managing venturer of the proposed Assignee, Transferee or Subtenant giving the names and addresses of all current general and limited partners and joint venturers of the partnership or joint venture and describing their respective interests in said partnership or joint venture;

(D) in all cases, a certification by an authorized officer, managing general partner, or other authorized general partner or managing venturer, whichever shall be applicable, of the proposed Assignee, Transferee, or Subtenant to the effect that to his or her knowledge the Capital Transaction will not, as of the date of closing, violate the provisions of Section 10.1(a) hereof;

(E) in the case of an Assignment, a proposed form of assumption agreement from the Assignee to Landlord, which assumption agreement shall be reasonably satisfactory to Landlord; and

(F) any other information or documents which Landlord may reasonably request.

(ii) If any change in circumstances prior to the closing of the transaction renders the information provided in (i) above incomplete or incorrect, Tenant shall notify Landlord of the change, which notification, if relating to a change which is material in any respect in Landlord's reasonable judgment, shall recommence the period for Landlord's notification to Tenant under Section 10.1(g) below.

(g) Objections and Waiver. Landlord shall notify Tenant, within thirty (30) days after receipt of notice from Tenant pursuant to the provisions of Section 10.1(e) hereof and submission of all necessary information, except with regard to the provisions of Section 10.1(a)(i)(B), and shall notify Tenant within forty-five (45) days with regard to the provisions of Section 10.1(a)(i)(B), whether the consummation of the Capital Transaction would violate the provisions of Section 10.1(a) hereof and, if consent by Landlord to such Capital Transaction is required under this Article 10, whether such consent is given or denied.

(h) Capital Transaction Instruments. Tenant shall deliver to Landlord, or shall cause to be delivered to Landlord, within fifteen (15) days after the execution of (i) in the case of an Assignment, an executed counterpart of the instrument of assignment and an executed counterpart of the instrument of assumption by the Assignee of all of Tenant's obligations under this Lease (such assumption to be for the benefit of Landlord), in form and substance reasonably satisfactory to Landlord, (ii) in the case of a Transfer, an executed counterpart of the instrument of Transfer, and if the Transfer is effected through admission of a new or substitute partner or joint venturer of Tenant all relevant amendments to the partnership agreement or the joint venture agreement and, if applicable, the certificate of limited partnership, and (iii) in the case of a Sublease, an executed counterpart of the Sublease.

(i) Invalidity of Transactions. Any Capital Transaction entered into without Landlord's consent to the extent required in this Lease, or which in any other respect fails to

comply with the provisions of this Lease, shall have no validity and shall be null and void and without any effect.

ARTICLE 11

MORTGAGES

Section 11.1. Effect of Mortgages.

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

(b) Definition. “Mortgage” means any mortgage or deed of trust that constitutes a lien on Tenant’s interest in this Lease and the leasehold estate created hereby.

Section 11.2. Mortgagee’s Rights.

(a) Not Greater Than Tenant’s. With the exception of the rights granted to Recognized Mortgagees pursuant to the provisions of Sections 11.3, 11.4 and 11.7 hereof, the execution and delivery of a Mortgage or a Recognized Mortgage shall not give nor shall be deemed to give a Mortgagee or a Recognized Mortgagee any greater rights against Landlord than those granted to Tenant hereunder.

(b) Definition. “Recognized Mortgage” means a Mortgage (i) which shall be subordinate to and shall comply with the provisions of this Lease, (ii) a photostatic copy of which has been delivered to Landlord, together with photostatic copies of all other relevant loan documents related thereto and a certification by Tenant confirming that said photostatic copies are true copies of the Mortgage and related documents and giving the name and post office address of the holder of the Mortgage, (iii) copies of all modifications and extensions of which have been similarly delivered to Landlord, (iv) held by a mortgagee which is an Institutional Lender or an Affiliate, (v) which shall comply with all Requirements, if any, which are applicable to mortgages, (vi) which is not also a lien on real property or any interest therein which is not located at the Premises, (vii) which is recorded against Tenant’s leasehold interest in the Premises, and (viii) which has received the prior written approval of DHHS.

Section 11.3. Notice and Right to Cure Tenant’s Defaults.

(a) Notice to Recognized Mortgagee. Landlord shall give to each Recognized Mortgagee, at the address(es) of the Recognized Mortgagee stated in the certification referred to in Section 11.2(b)(ii) hereof, or in any subsequent notice given by the Recognized Mortgagee to Landlord, and otherwise in the manner pursuant to the provisions of Article 24 hereof, a copy of each notice of Default at the same time as it gives notice of Default to Tenant, and no such notice of Default shall be deemed effective unless and until a copy thereof shall have been so given to each Recognized Mortgagee. If Tenant shall fail to cure a Default within the time required in this Lease, Landlord shall give a notice to each Recognized Mortgagee of such failure. In no event will notices be delivered to more than two addresses per Recognized Mortgagee.

(b) Right and Time to Cure. Subject to the provisions of Section 11.5 hereof, each Recognized Mortgagee shall have a period of, after written notice that Tenant has failed to cure a Default within the time required in this Lease, (i) thirty (30) days more, in the case of a Default in (A) the payment of Rental, or (B) the obligation to maintain insurance pursuant to Article 7 hereof, and (ii) forty-five (45) days more, in the case of any other Default, than is given Tenant under the provisions of this Lease to remedy the Default, cause it to be remedied, or cause action to remedy a Default to be commenced; provided, such Recognized Mortgagee (X) in the case of a Default of the type described in clause (i) of this subsection (b), (A) delivers to Landlord within the period set forth in clause (i) of this subsection (b) all unpaid Rental, or (B) cures the Default of the type described in clause (i)(B) of this subsection (b) within the period set forth in such clause; and (Y) in the case of a Default of the type described in clause (ii) of this subsection (b), delivers to Landlord within thirty (30) days after expiration of the time given Tenant pursuant to the provisions of this Lease to remedy (or commence to remedy, if applicable) the event or condition which would otherwise constitute an Event of Default hereunder, its written agreement to take the action described in clauses (i) or (ii) of subsection (d) below.

(c) Acceptance of Recognized Mortgagee's Performance. Subject to the provisions of Section 11.5 hereof, Landlord shall accept performance by a Recognized Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(d) Commencement of Performance by Recognized Mortgagee for Non-Rental Defaults.

(i) Curable without Possession. In the case of a Default that is curable without possession of the Premises by the Recognized Mortgagee, no Event of Default (other than an Event of Default arising from the nonpayment of Base Rent) shall be deemed to have occurred if, within the period set forth in Section 11.3(b)(ii) hereof, a Recognized Mortgagee shall have commenced in good faith to cure the Default and is prosecuting such cure to completion with diligence and continuity.

(ii) Possession Required for Cure. In the case of a Default, (A) where possession of the Premises is required in order to cure the Default or (B) which is a Default that is otherwise not susceptible of being cured by a Recognized Mortgagee, no such Event of Default shall be deemed to have occurred if, within the period set forth in Section 11.3(b)(ii) hereof, a Recognized Mortgagee has instituted foreclosure proceedings and is continuously prosecuting the foreclosure proceedings with diligence and continuity to obtain possession of the Premises and, upon obtaining possession of the Premises, immediately commences to cure the Default (other than a Default which is not susceptible of being cured by a Recognized Mortgagee) and prosecutes such cure to completion with diligence and continuity; provided that during the period in which such action is being taken and/or any foreclosure proceedings are pending, no Event of Default shall exist under Section 23.1(a), hereof, except with respect to a Recognized Mortgagee which is an Affiliate of Tenant, such period shall not exceed twelve (12) months. At any time after the delivery of the agreement referred to in Section 11.3(b)(ii) such Recognized Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings shall have

been commenced, that it has discontinued such proceedings (such notice from a Recognized Mortgagee to Landlord shall be referred to hereinafter as a “Cure Termination Notice”), and, in such event, such Recognized Mortgagee shall have no further liability under such agreement from and after the date on which it delivers such notice to the Landlord. Upon the delivery of a Cure Termination Notice, Landlord shall have the unrestricted right to terminate this Lease and to take any other action it deems appropriate by reason of any Event of Default by Tenant, unless Tenant shall have cured the Event of Default prior to Landlord’s delivery to Tenant of notice of the termination of the Term, and upon any such termination, the provisions of Section 11.4 hereof shall apply.

Section 11.4. Execution of New Lease.

(a) Notice of Termination. If this Lease is terminated by reason of an Event of Default or otherwise (other than an expiration of the Term), Landlord shall give prompt notice thereof to each Recognized Mortgagee.

(b) Request for and Execution of New Lease. If, within one hundred eighty (180) days of the giving of the notice referred to in Section 11.4(a) hereof, a Recognized Mortgagee shall request a new lease, then subject to the provisions of Sections 11.4(c) and 11.5 hereof, within ninety (90) days after Landlord shall have received such request, Landlord shall execute and deliver a new lease of the Premises for the remainder of the Term to the Recognized Mortgagee, or any designee or nominee of the Recognized Mortgagee (A) which in the reasonable determination of Landlord is a Permitted Person, or (B) to which Landlord fails to give written notice of disapproval within ninety (90) days of written request therefor. Said Recognized Mortgagee (or designee or nominee thereof) shall simultaneously execute such new lease, as tenant thereunder. The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease, provided, however, Landlord shall not be deemed to have represented or covenanted that such new lease shall be superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant.

(c) Conditions Precedent to Landlord’s Execution of New Lease. The provisions of Section 11.4(b) hereof notwithstanding, Landlord shall not be obligated to enter into a new lease with a Recognized Mortgagee unless the Recognized Mortgagee (i) shall pay to Landlord, concurrently with the execution and delivery of the new lease, all Base Rent due under this Lease (as though the Lease had not been terminated) up to and including the date of the commencement of the term of the new lease and all expenses, including, without limitation, reasonable attorneys’ fees and disbursements and court costs, incurred in connection with the Event of Default, the termination of this Lease and the preparation of such new lease, (ii) agrees that it shall promptly, within the grace periods and/or cure permitted under the new lease, cure all Defaults then existing under this Lease (as though this Lease had not been terminated), and (iii) shall deliver to Landlord a statement, in writing, acknowledging that Landlord, by entering into such new lease with such Recognized Mortgagee or such designee or nominee, shall not have or be deemed to have waived any Defaults or Events of Default then existing under this Lease notwithstanding that any such Defaults or Events of Default existed prior to the execution of such new lease and that the breached obligations which gave rise to the Defaults or Events of Default are also obligations under such new lease.

(d) No Waiver of Default. The execution of a new lease shall not constitute a waiver of any Default existing immediately before termination of this Lease and, except for a Default which is not susceptible of being cured by the Recognized Mortgagee, the tenant under the new lease shall cure, within the applicable periods set forth in Section 23.1 hereof (extended by the time necessary for the Recognized Mortgagee to obtain physical possession of or access to the Premises, if such is required to cure the Default, except with respect to a Recognized Mortgagee which is an Affiliate of Tenant such period shall not exceed twelve (12) months, all Defaults existing under this Lease immediately before its termination.

(e) Assignment of Depository Proceeds. Concurrently with the execution and delivery of a new lease pursuant to the provisions of Section 11.4(b) hereof, Landlord shall assign to the tenant named therein all of its right, title and interest to moneys (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Landlord or Depository that Tenant would have been entitled to receive but for the termination of this Lease. Any sums then held by, or payable to, Depository, shall be deemed to be held by, or payable to, Depository as depository under the new lease.

Section 11.5. Recognition by Landlord of Recognized Mortgagee Most Senior in Lien. If more than one Recognized Mortgagee has exercised any of the rights afforded by Sections 11.3 or 11.4 hereof, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized by Landlord as having exercised such right, for so long as such Recognized Mortgagee shall be diligently exercising its rights under this Lease with respect thereto, and thereafter only the Recognized Mortgagee whose Recognized Mortgage is next most senior in lien shall be recognized by Landlord, unless such Recognized Mortgagee has designated a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right. If the parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined by a title insurance company chosen by Landlord, and such determination shall bind the parties. Any costs or expense of securing such determination by a title company shall be paid by the Recognized Mortgagees seeking to exercise such rights.

Section 11.6. Application of Proceeds from Insurance or Condemnation Awards. To the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to the Improvements or the proceeds of an award paid in connection with a Taking referred to in Article 9 hereof, be applied to restore any portion of the Improvements, no Mortgagee shall have the right to apply the proceeds of insurance or such condemnation awards toward the payment of the sum secured by its Mortgage.

Section 11.7. Appearance at Condemnation Proceedings. A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 11.8. Rights Limited to Recognized Mortgagees. The rights granted to a Recognized Mortgagee under the provisions of this Lease shall not apply in the case of any Mortgage that is not a Recognized Mortgage.

ARTICLE 12

CONSTRUCTION WORK

Section 12.1. Construction Work.

(a) Construction Work. Subject to prior written notice to the Landlord, and to the provisions of this Article 12, Tenant at Tenant's expense, may perform Construction Work in or to the Premises. Tenant shall, at its expense, before performing Construction Work obtain all permits, approval and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Landlord. Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Landlord may require. If any mechanic's lien is filed against the Premises, or the building of which the same forms a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this Article, the same shall be discharged by Tenant within twenty (20) days thereafter, at Tenant's expense, by filing the bond required by law or otherwise. All fixtures and all Permanent Leasehold Improvements installed in the Premises at any time, either by Tenant or by Landlord on Tenant's behalf, shall, upon installation, become, the property of Tenant and shall remain upon and be surrendered with the Premises unless Tenant elects to have them removed by Tenant, in which event the same shall be removed from the Premises by Tenant prior to the expiration or termination of the Lease, at Tenant's expense. Nothing in this Article 12 shall be construed to give Landlord title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but, upon removal of any such from the Premises or upon removal of other installations as may be required by Landlord, Tenant shall immediately and at its expense, repair and restore the Premises to the condition existing prior to installation and repair any damage to the Premises due to such removal. All property permitted or required to be removed, by Tenant at the end of the Term remaining in the Premises after Tenant's removal shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or removed from the Premises by Landlord, at Tenant's expense.

(b) General Requirements for Construction Work; Alterations. In amplification, and not in limitation, of any of the requirements and covenants to be observed and performed by Permittee pursuant to this Article 12, Tenant agrees that no Construction Work in or to the Premises the aggregate cost of which is estimated to exceed fifty thousand dollars (\$50,000) or any structural work, regardless of the scope or the cost (collectively, "Alterations") shall be undertaken by Tenant unless at the time and prior to the commencement thereof: (i) Tenant shall have observed and performed all of the covenants of this Lease on Tenant's part to be observed and performed by such time; (ii) Administrator shall have been furnished with detailed plans and specifications for the proposed Alterations; and (iii) Tenant and its contractors shall have furnished the insurance required by Article 7. Tenant shall not call upon Landlord or Administrator for any costs or expenses connected with such Alterations and shall reimburse Landlord or Administrator for all reasonable expenses of outside consultants incurred on account of any failure of Tenant to comply with any applicable Requirements or provisions of this Lease pertaining to the performance of such Alterations. At all times during the progress of such Alterations and until final certificates of approval therefor (as described in this Article 12) shall

have been delivered to Administrator, Landlord and Administrator shall have the right to have its representatives inspect the work being performed in the Premises and to verify compliance with the plans and specifications therefor submitted to the Administrator. Administrator's inspection of such Alterations to verify conformance with Tenant's plans and specifications therefor, shall not constitute an opinion or agreement by Landlord or Administrator that the same are adequate or sufficient or that the same are in compliance with law or fire underwriters' requirements; such inspection shall not impose any present or future liability on Landlord or Administrator, waive any of Landlord's or Administrator's rights or release Tenant from any of its obligations hereunder.

(c) Copies of City Planning Commission Submissions. Tenant shall furnish to Administrator copies of all submissions made by Tenant to the Planning Commission in connection with any Construction Work proposed to be done by Tenant at the Premises requiring the approval of the Planning Commission. Such submissions shall be delivered to the Administrator at the same time as such are submitted to the Planning Commission.

Section 12.2. Commencement and Completion of All Construction Work. All Construction Work, once commenced, shall be performed and completed promptly, in a good and workmanlike manner and in accordance with all Requirements. All materials, equipment, and workmanship utilized or furnished in connection with any and all Construction Work shall be in new (unless otherwise specified in applicable plans and specifications submitted in accordance with this Lease) and good condition, fully operational without defects, in accordance with such plans and specifications.

Section 12.3. Completion of Construction Work. Upon substantial completion of any Construction Work for which plans are required to be submitted to the Administrator, Tenant shall furnish the Administrator with (a) a certification of the Architect or a licensed professional engineer acceptable to the Administrator (certified to Landlord and the Administrator) that it has examined the applicable plans and specifications and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Construction Work has been substantially completed in accordance with the plans and specifications applicable thereto and, as constructed, the Construction Work complies with the Building Code of New York City and all other Requirements, (b) if requested by the Administrator, a copy or copies of the temporary or permanent (whichever is applicable) Certificate(s) of Occupancy for the Construction Work (or the relevant portion thereof), and (c) copies of official certificates evidencing compliance with all Requirements.

Section 12.4. Title to the Construction Work and Materials. Title to the Premises shall be and vest in Landlord. Materials to be incorporated in any Construction Work and remaining at the end of the Term shall constitute the property of Landlord. However, (a) Landlord shall not be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such materials, and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to the materials. Notwithstanding the foregoing, Tenant may, during the Term, take all depreciation deductions and tax credits to which it may be entitled, if any, with regard to the Premises and Improvements thereon.

ARTICLE 13

REPAIRS, MAINTENANCE, ETC.

Section 13.1. Maintenance of the Premises, Etc. Tenant shall take good care of the Premises, including without limitation, the Building, the surfaces, roofs, foundations and appurtenances thereto, all sidewalks, grounds, plazas, vaults, sidewalk hoists, railings, gutters, curbs, and the water, sewer and gas connections, pipes and mains appurtenant thereto, and shall keep and maintain the Premises (including all of the foregoing) in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or desirable to keep the Premises in good and safe order and condition, however the necessity or desirability therefor may occur. Tenant's obligations hereunder shall include, without limitation, performing routine maintenance and capital repairs, and securing the Premises during the performance of any and all Construction Work in accordance with the applicable terms and conditions of this Lease. **Tenant shall neither commit nor suffer, and shall use all reasonable precautions to prevent, waste, damage or injury to the Premises.** All repairs and maintenance shall be made at no cost or expense to Landlord and shall be made in compliance with the Requirements and all materials therefor shall be substantially equal in quality to the original work. As used in this Section 13.1, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions.

Section 13.2. Removal of Equipment. Tenant shall not, without the consent of Landlord, remove or dispose of any of the City's Equipment. Tenant shall not, without the consent of Landlord, which consent will not be unreasonably withheld, remove or dispose of any Equipment unless such Equipment (a) is promptly replaced by Equipment of substantially equal utility and quality, or (b) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Equipment on the Premises with reasonable diligence; except, however, Tenant shall not be required to replace any Equipment that has become obsolete, or that performed a function that has become obsolete, unnecessary or undesirable in connection with the operation of the Premises.

Section 13.3. Free of Dirt, Snow, Etc. Tenant, at its sole cost and expense, shall at all times keep reasonably clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the Premises and the sidewalks, sidewalk hoists, railings, gutters, or curbs located in front of, or adjacent to, the Premises or any of such areas or spaces adjacent to the Premises for which Tenant or the fee owner of the Premises has or would have responsibility under applicable law.

Section 13.4. No Obligation of Landlord to Repair or to Supply Utilities. Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and Landlord shall not have any duty or obligation to make any repair, alteration, change, improvement, replacement, Restoration or repair to the Project, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises.

Section 13.5. Window Cleaning. Tenant shall not clean, nor require, permit, suffer or allow to be cleaned, any window in the Project from the outside in violation of Section 202 of the Labor Law of the State of New York or of the rules of the Industrial Board or any other Governmental Authority.

ARTICLE 14

EASEMENTS

Section 14.1. Municipal Easement. Landlord hereby reserves for itself and Lease Administrator, and their respective officers, employees, agents, servants, representatives and invitees, with respect to the Premises an easement and a right of access: (i) to enter upon the Premises to maintain, replace and repair existing municipal facilities located within the Premises, if any; (ii) to maintain its fire communications facilities, sewers, water mains and street sub-surface below the Premises, if any; and (iii) to access other facilities adjacent to the Premises, with the right in Landlord, at all times to enter upon the Premises with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect Landlord's facilities in or adjacent to the Premises. The easement reserved hereby is in addition to any other easement, right-of-way or other right that constitutes a Title Matter as described in Exhibit B hereto.

ARTICLE 15

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 15.1. Requirements.

(a) Obligation to Comply. In connection with any Construction Work, maintenance, management, use and operation of the Premises and Tenant's performance of each and every of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises, and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put. No actual or deemed consent to, approval of or acquiescence in any plans or actions of Tenant by EDC, Landlord, in its proprietary capacity as landlord under this Lease, or Landlord's designee, shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient.

(b) Definition. "Requirements" means:

(i) the Zoning Resolution of The City of New York (as the same may be amended and/or replaced) (the "Zoning Resolution") and any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions, and requirements of all Governmental Authorities (currently in force or hereafter adopted, including, without limitation, the requirements of any federal public benefit conveyance) applicable to the Premises or any

street, road, avenue, service areas, or sidewalk comprising a part of, or lying in front of, the Premises, or any vault in or under the Premises, or any body of water adjacent to, above, or below the Premises (including, without limitation, the Building Code of New York City, and any applicable equivalent, and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions).

(ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease, and

(iii) the Certificate or Certificates of Occupancy issued for the Building as then in force.

ARTICLE 16

DISCHARGE OF LIENS; BONDS

Section 16.1. Creation of Liens. Tenant shall not create or cause to be created (a) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, or (c) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises or any part thereof might be impaired.

Section 16.2. Discharge of Liens. If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease) is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, then within thirty (30) days after receipt by Tenant of notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, Tenant shall cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

Section 16.3. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Premises or any part thereof or against assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that to the extent enforceable under New York law, Landlord shall not be liable for any work performed or to be performed at the Premises or any part thereof for Tenant or any Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, the City.

ARTICLE 17

REPRESENTATIONS

Section 17.1. No Brokers. Landlord and Tenant each represents to the other that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby and such mutual representations with regard to this Lease shall survive the termination of this Lease.

Section 17.2. Tenant's Acknowledgement of No Other Representations. Tenant acknowledges, represents and confirms that it or its authorized representatives have visited the Premises and are fully familiar therewith, the physical condition thereof, and Title Matters affecting the Premises. Tenant accepts the Premises in its existing condition and state of repair, free of occupants other than Tenant, and Tenant confirms that: (a) except for the representation contained in Section 17.1 hereof, no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord or EDC with respect to the Premises or the transactions contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, the use that may be made of the Premises, or the absence of "hazardous substances" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCA § 9601 et. seq.) on or under the Premises, (b) Tenant has relied on no such representations, statements or warranties, and (c) Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

Section 17.3. Tenant's Representations, Warranties, and Covenants. Tenant represents, warrants, and covenants that: (a) none of the members, directors or officers of Tenant (or any entity having an ownership interest in Tenant or in such other entity) are Prohibited Persons, and (b) no officer, agent, employee or representative of the City of New York has received or will receive any payment or other consideration for the making of this Lease and that no officer, agent, employee or representative of the City of New York has or will have any interest, directly or indirectly, in this Lease or the proceeds thereof.

ARTICLE 18

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Landlord shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises (including, but not limited to, any of the common areas within the Building, hatches, openings, installations, stairways or hallways or other common facilities, the streets, sidewalk areas or water within or adjacent to the Premises) or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which any such injury or damage is determined to be caused by Landlord or its agents' or employees' or contractors' negligent or intentional tortious acts or omissions.

Landlord shall not be liable to Tenant or to any Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or body of water under or adjacent to the Premises, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless, and only to the extent of the proportion by which caused by Landlord's, or its agents' or employees' or contractors' negligent or intentional tortious acts or omissions.

ARTICLE 19

INDEMNIFICATION

Section 19.1. Obligation to Indemnify. Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof, which subjects Landlord or the Administrator to any liability or responsibility for injury or damage to Persons or property or to any liability by reason of any violation of law or of any legal requirement of any public authority, but shall exercise such control over the Premises so as to protect fully Landlord and the Administrator against any such liability. The foregoing provisions of this Section shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of Section 34.3 hereof. To the fullest extent permitted by law, Tenant shall indemnify and save Landlord, the Administrator, Apple, and their officers, directors, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following, except that no Indemnitee shall be so indemnified and saved harmless to the extent such liabilities, etc., are caused by the negligent or intentional tortious acts of such Indemnitee:

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

(b) Control. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises or any part thereof or of any street, plaza, sidewalk, curb, vault, pier deck, body of water, or space comprising a part thereof or adjacent thereto, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant or any Subtenant or any of its or their respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees;

(d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or

about the Premises or any part thereof, or in, on, or about any street, plaza, sidewalk, curb, vault, pier deck, body of water, or space comprising a part thereof or immediately adjacent thereto;

(e) Lease Obligations. Tenant's failure to make any payment or to perform or comply with any of the other covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and/or the exercise by Landlord or its designee of any remedy provided in this Lease with respect to such failure;

(f) Lien, Encumbrance or Claim Against Premises. Any lien or claim that may be alleged to have arisen against or on the Premises, or any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, Landlord or any liability that may be asserted against Landlord with respect thereto;

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

(h) Execution, Delivery and Recording Fees. Any tax attributable to the execution, delivery or recording of this Lease or a memorandum thereof;

(i) Contest and Proceedings. Any contest or proceeding brought or permitted to be brought pursuant to the provisions of Article 33 hereof; or

(j) Brokerage. Any claim for brokerage commissions, fees or other compensation by any Person who alleges to have acted or dealt with Tenant in connection with this Lease or the transactions contemplated by this Lease.

Section 19.2. Contractual Liability. The obligations of Tenant under this Article 19 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

Section 19.3. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 19.1 hereof, then upon demand by Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Landlord shall reasonably approve. The foregoing notwithstanding, such Indemnitee or another Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and Tenant shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

Section 19.4. Notification and Payment. Each Indemnitee shall promptly notify Tenant of the inurrence by or assertion against such Indemnitee, or the imposition of any cost or

expense as to which Tenant has agreed to indemnify such Indemnitee pursuant to any of the provisions of this Article 19. Tenant agrees to pay such Indemnitee all amounts due under this Article 19 within ten (10) days after such payment is determined to be Tenant's obligation, and any non-payment thereof by Tenant shall constitute a Default for which Landlord may declare an Event of Default in accordance with the provisions of Section 23.1(e) hereof.

Section 19.5. Survival Clause. The provisions of this Article shall survive the Expiration of the Term.

ARTICLE 20

NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 20.1. Non-Discrimination and Affirmative Action. So long as the City or its designee shall be Landlord and subject to any applicable future amendments to E.O. 50, the Regulations, and/or Orders, Tenant shall be subject to the requirements of Executive Order No. 50 (April 25, 1980), as amended ("E.O. 50"), or any successor thereto, as long as E.O. 50 or any successor thereto, in whatever form and whenever enacted, is in force, in whole or in part, and the regulations promulgated thereunder ("E.O. 50 Regulations") and orders ("Orders") of the Director ("Director") of the Bureau of Labor Services ("Bureau"), and Tenant shall be bound for such period or periods by the following requirements, which will be deemed amended by such applicable future amendments:

(a) Non-Discrimination.

(1) Tenant will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, advertising, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, lay-off and termination and all other terms and conditions of employment;

(2) Tenant will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation;

(3) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation, or (ii) that Tenant is an equal opportunity employer;

(4) Tenant will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write the

Bureau of Labor Services, General Counsel's Office, 66 Leonard Street, 4th Floor, New York, New York 10013, (212) 431-1772";

(5) Tenant will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement or understanding, written notification of its equal employment opportunity commitments under E.O. 50, the E.O. 50 Regulations, Orders and all employment programs and other agreements between Tenant and the Bureau (collectively, "Agreements");

(6) Tenant will, before any contract for Construction Work in the amount of \$1,000,000 or more is awarded, furnish or cause its contractor to furnish an Employment Report to the Bureau in the form annexed hereto as Exhibit C ("Employment Report"), as it may be amended from time to time by the Bureau, and obtain from the Bureau written approval of the proposed contractor(s). After Construction Work commences, Tenant will submit all information and reports required by E.O. 50, the E.O. 50 Regulations and Orders, including but not limited to certified payrolls covering Tenant's construction work force and additional information required pursuant to a Conditional Certificate of Compliance, employment program or other Agreement, in such frequency and format as the Bureau may require;

(7) Tenant will permit the Bureau to have access to all relevant books, records, accounts and work sites, to investigate compliance with this Lease and E.O. 50, the E.O. 50 Regulations, Orders, and all other Agreements;

(8) Tenant will refrain from entering into any contract, other written or oral agreement or contract modification subject to E.O. 50 submission requirements with a contractor who has not been approved by the Bureau;

(9) Tenant, as "Owner" (as such term is used in AIA Form 201), will include, or cause to be included, the following provisions and such additional language as the Bureau may in writing require in every Construction Agreement of \$1,000,000 or more or subcontract for Construction Work of \$750,000 or more in such a manner that the provision will be binding upon all contractors and subcontractors, and will cause each contractor and subcontractor to provide access to books, records and the work site(s) and to submit the information required by the Bureau and/or Landlord, and will cause each contractor or subcontractor engaged in Construction Work to comply with the following provisions. Landlord reserves the right to inspect all contracts and subcontracts prior to execution to ensure that the required language is included:

"This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980), as amended ("E.O. 50") and the regulations promulgated thereunder ("Regulations"), and orders ("Orders") of the Director ("Director") of the Bureau of Labor Services ("Bureau") (collectively, "E.O. 50 Requirements"). The Bureau may examine this contract to ensure that these provisions are included. By signing this contract, contractor agrees:

(A) that it

(1) will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions, including, but not limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, layoff and termination and all other terms and conditions of employment;

(2) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of contractor (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (ii) that contractor is an equal opportunity employer;

(4) will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write the Bureau of Labor Services, General Counsel's Office, 66 Leonard Street, 4th Floor, New York, New York 10013, (212) 431-1772;"

(5) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement or understanding, written notification of its equal employment opportunity commitments under E.O. 50 Requirements, and all employment programs and other agreements between the contractor and the Bureau (collectively, "Agreements");

(6) will furnish before any Construction Work commences an Employment Report, copies of which are available upon request from Owner. After Construction Work commences, contractor will submit all information and reports required by E.O. 50

Requirements, including but not limited to certified payrolls covering contractor's construction work force and additional information required pursuant to a Conditional Certificate of Compliance, employment program or other Agreement, in such frequency and format as the Bureau may require;

(7) will permit the Bureau to have access to all relevant books, records, accounts and work sites, to investigate compliance with this contract and E.O. 50 Requirements and Agreements.

(B) Contractor's failure to file timely, complete and accurate Employment Reports or other information required by E.O. 50 Requirements and any other Agreement (or other document(s) required by a Federal or state agency providing assistance to the Construction Work) or contractor's violation of the nondiscrimination clauses (A)(1) through (7) of this contract, contractor's failure to comply with an employment program or other Agreement and/or contractor's failure to cause compliance on the part of a subcontractor as provided below shall constitute a material breach of this contract. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the union's refusal to comply with E.O. 50 Requirements, shall excuse contractor's obligations to abide by E.O. 50 Requirements. If the Bureau's staff, as a result either of the Bureau's review of or a complaint by a job applicant, employee or former employee, finds that contractor may not be in compliance, the Bureau's staff and the contractor will meet to negotiate an employment program of corrective actions to achieve contractor's full compliance with this contract and E.O. 50 Requirements. If contractor fails or refuses either to meet, to agree to take necessary corrective measures, or to implement agreed corrective measures, this contract or any portion hereof may be disapproved, cancelled, terminated or suspended, or liquidated damages may be assessed by Owner (or the general contractor, construction manager, prime contractor or their subcontractors, as the case may be) or payments thereon may be withheld and such other sanctions may be imposed and remedies invoked in accordance with law. Liquidated damages for contractor's failure to comply with the equal opportunity requirements hereunder will be the amount of wages and fringe benefits that would have been paid to the parties that should have been employed, as determined by the Bureau or Owner. Nothing herein before stated in these requirements shall limit the Owner or the Bureau from pursuing any other remedy available by law to enforce the E.O. 50 Requirements or Agreements as the Director may order.

(C) Contractor agrees to include the provisions of the foregoing paragraphs (A) and (B) in every subcontract of \$750,000 or more to which it becomes a party. Contractor agrees, and will state in every subcontract, that contractor will take such action with respect to the subcontract as

Owner or the Director may direct, including canceling, suspending or terminating the subcontract and/or stopping payments under the subcontract, to enforce the E.O. 50 Requirements and Agreements.

(D) Contractor further agrees that it will refrain from entering into any subcontract, written or oral agreement or contract modification subject to E.O. 50 submission requirements with a subcontractor who has not been approved by the Bureau.”

(b) Training

(1) Tenant will, for any Construction Work costing in the aggregate more than \$1,000,000 in any one Lease Year, employ (or cause the employment of) trainees for training-level jobs as provided below. “Trainee” means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program approved by the Bureau and, where required by law, the New York State Department of Labor or the United States Department of Labor, Bureau of Apprenticeship and Training. An apprenticeship program is not an approved training program. Tenant shall make a good faith effort to achieve the ratio of one (1) trainee to four (4) journey-level employees for each trade employed in Construction Work if the four (4) journey-level employees will be working for four (4) consecutive weeks. Tenant shall be considered to employ four (4) journey-level employees in a particular trade when it employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours four (4) full-time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 1/2 hours, etc. For example, in a craft with a forty-hour work week, the employment of four (4) journey-level employees results in 160 hours of employment (4 x 40 hours). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal four (4) journey-level employees, e.g., three (3) journey-level employees who work 53 1/3 hours (3 x 53 1/3 hours = 160 hours). The training requirement shall not apply to any trade in which the equivalent of four (4) or more journey-level employees and the trainee shall work for less than four (4) consecutive weeks; provided, that four (4) weeks shall mean four (4) weeks of full-time work as defined by the prevailing practice in the industry for the particular craft, e.g., if a week of full-time work for journey-level workers is 160 hours, the journey-level workers in that trade must work 160 hours in each of the four (4) consecutive weeks. The trainees shall work for the same period as the journey-level workers e.g., 160 hours (4 weeks x 40 hours), 150 hours (4 weeks x 37 1/2 hours), 140 hours (4 weeks x 35 hours) etc. Tenant shall attempt to provide continuous employment for trainees after the completion of the Construction Work, to enable them to complete their course of training.

(2) Tenant, as Owner, will incorporate or cause to be incorporated into every contract for Construction Work of \$1,000,000 or more, or subcontract of \$750,000 or more, the following language:

“The contractor further agrees that it shall employ trainees for training-level jobs. “Trainee” means an economically disadvantaged person who qualifies for and receives training in one of the construction trades

pursuant to a program approved by the Bureau and, where required by law, the New York State Department of Labor or the United States Department of Labor, Bureau of Apprenticeship and Training. An apprenticeship program is not an approved training program.

(A) The contractor shall make a good faith effort to achieve the ratio of one (1) trainee to four (4) journey-level employees for each trade employed in Construction Work, if the four (4) journey-level employees will be working for four (4) consecutive weeks.

(B) The contractor shall be considered to employ four (4) journey-level employees in a particular trade when he or she employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours four (4) full-time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 1/2 hours, etc. For example, in a craft with a forty-hour work week, the employment of four (4) journey-level employees results in 160 hours of employment (4 x 40 hours). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal four (4) journey-level employees, e.g., three (3) journey-level employees who work 53 1/3 hours (3 x 53 1/3 hours = 160 hours).

(C) The training requirement shall not apply to any trade in which the equivalent of four (4) or more journey-level employees and the trainee shall work for less than four (4) consecutive weeks; provided, that four (4) weeks shall mean four (4) weeks of full-time work as defined by the prevailing practice in the industry for the particular craft, e.g., if a week of full-time work for journey-level workers is 160 hours, the journey-level workers in that trade must work 160 hours in each of the four (4) consecutive weeks. The trainees shall work for the same period as the journey-level workers e.g., 160 hours (4 weeks x 40 hours), 150 hours (4 weeks x 37 1/2 hours), 140 hours (4 weeks x 35 hours) etc.

(D) The contractor shall attempt to provide continuous employment for trainees after the completion of the contract, to enable them to complete their course of training.

(E) The contractor, if a union contractor, shall refer, recommend and sponsor for union membership any of its trainees who can perform the duties of a qualified journey-level employee who have satisfactorily completed the training program. Such former trainees shall be paid full journey-level wages and fringe benefits, whether or not union membership is granted after the referral, recommendation or sponsorship, and the contractor shall attempt to continue employing these persons.

(F) The contractor shall also include the training provisions of this Section in every subcontract of \$750,000 or more to which it becomes a party so that the provisions will be binding upon each subcontractor. The contractor agrees and will state in each subcontract to which the training requirement applies that the contractor will take such action to suspend or terminate the subcontract because of the subcontractor's repeated failure to comply with the training requirements.

(G) Neither the provisions of any collective bargaining agreement, memorandum of agreement, practice, or other contract or understanding with a union, nor the union's refusal to recognize the validity of the training program shall excuse the contractor's obligation to provide training pursuant to E.O. 50 Requirements.

(H) If, during performance of the Construction Work, Owner's or the Bureau's review of the Employment Report or other forms, inspections of the contractor's work site(s), and/or audits of the contractor's certified payroll records show that the contractor is failing to provide training to the required number of trainees for the required number of weeks, Owner or the Bureau shall require the contractor to attend a conference at which the Bureau will negotiate an employment program to ensure that the contractor meets the training requirements. As part of the employment program, the Bureau may require the contractor to provide individual trainees in a trade with continuous employment as long as that trade is employed on the Construction Work, on the contractor's non-City funded projects, and/or on the contractor's future projects subject to the training requirements. If the contractor either willfully or repeatedly refuses or fails to make a good faith effort to employ trainees, the Bureau may direct Owner to terminate the contract.

(I) If, after completion of the Construction Work, Owner or the Bureau finds that the contractor failed to provide training to the required number of trainees for the required number of weeks, either (i) the contractor's compensation shall be decreased by an amount equal to the difference between the wages and fringe benefits paid by the contractor to the trainees and the wages and fringe benefits which would have been paid to the trainees had the required number of trainees been employed for the required number of weeks or (ii) contractor shall be assessed a like amount as liquidated damages, unless the contractor can demonstrate that it made a good faith effort to provide training and was unsuccessful. A good faith effort includes at least:

(i) documented efforts to secure trainees from approved training programs; and

(ii) documented outreach efforts to the New York State Employment Service, New York City Department of Employment,

TAP Centers, and community and civil rights groups to identify candidates for the training positions, and the contractor's sponsorship of those persons for entrance into an approved training program; and

(iii) written notification by certified mail to the Bureau that the contractor has been unable to secure trainees pursuant to subsections (i) and (ii) above, requesting the Bureau's assistance in securing trainees, and taking actions recommended by the Bureau to obtain trainees. To demonstrate its good faith effort, the contractor may supply documentation concerning its employment of trainees on all its construction sites, both City and non-City funded. The Bureau will review this documentation as part of its analysis to determine whether the contractor made a good faith effort to employ trainees."

(c) Defaults. Tenant's failure (i) to file or cause the timely filing of complete and accurate Employment Reports or other information required by E.O. 50, the E.O. 50 Regulations, Orders, or other Agreements (or other document(s) required by a federal or state agency providing assistance to Construction Work) or (ii) to comply with nondiscrimination clauses (1) through (8) of Section 20.1(a) or (iii) to comply with the trainee provisions of Section 20.1(b) or (iv) to comply with the nondiscrimination and trainee provisions of clauses (a)(9), (b)(1) and (b)(2) of Section 20.1 or to enforce the requirements imposed on contractors or subcontractors by such clauses at the direction of the Bureau, shall constitute a material breach of this Lease. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the union's refusal to comply with E.O. 50 shall excuse Tenant's obligations to abide by E.O. 50 and the E.O. 50 Regulations or its obligations to include and enforce the contractor clauses of Section 20.1(a) and (b) hereof. If Landlord, acting through the Bureau, as a result either of the Bureau's review or the complaint by a job applicant, employee or former employee, finds that Tenant or a contractor or subcontractor may not be in compliance, Landlord, acting through the Bureau, may notify Tenant (and the contractor or subcontractor, as the case may be) describing the extent of non-compliance. If the non-compliance is not remedied within thirty (30) days of Tenant's receipt of notice, the Bureau shall request a meeting with Tenant (and with the contractor or subcontractor, as appropriate) to negotiate an employment program of corrective actions to achieve Tenant's full compliance with these clauses, E.O. 50, the E.O. 50 Regulations and Orders. If Tenant fails or refuses either to meet, to agree to take necessary corrective measures, to implement agreed corrective measures, or to enforce contractors' obligations pursuant to the contract provisions set forth in clauses (a)(9) and (b)(2) of this Section 20.1 and to cause contractors to enforce subcontractors' obligations thereunder, Landlord, acting through the Director may (i) require Tenant to take corrective measures pursuant to an employment program, (ii) assess Tenant as liquidated damages an amount equal to the wages and fringe benefits that would have been paid to the parties that should have been employed pursuant to the non-discrimination clauses of this Lease or the trainee provisions or (iii) impose such other sanctions as may be imposed and remedies invoked in accordance with law. Nothing herein before stated in these requirements shall limit Landlord from pursuing any other remedy available by law to enforce the E.O. 50 Requirements and Agreements or from seeking additional damages.

Section 20.2. Compliance with Revised Program. In the event that a “Pre-apprenticeship” or similar program is developed after the date of this Lease by the Bureau in consultation with New York State and City agencies and construction industry representatives, to provide opportunities for and recruitment of economically disadvantaged persons, women and minorities in the construction trades (a “Revised Program”), Tenant shall also implement and comply with the requirements of such Revised Program if, as and when such requirements are incorporated into the provisions of Executive Order No. 50 and/or the regulations in connection therewith.

ARTICLE 21

LANDLORD’S RIGHT TO PERFORM TENANT’S COVENANTS

Section 21.1. Landlord’s Right to Perform. If the Tenant shall at any time fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 7 hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, including, without limitation, the obligation to cause the discharge of liens pursuant to Article 16, then Landlord, after thirty (30) days’ notice to Tenant (or, in case of any emergency or any other circumstances which may materially adversely affect Landlord or Landlord’s interest in the Premises, on such notice, or without notice, as may be reasonable under the circumstances), and without releasing Tenant from any obligation of Tenant hereunder and without waiving the right to terminate this Lease upon an Event of Default in accordance with the provisions hereof or any other right or remedy permissible hereunder, may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 7 hereof, or

(b) make any other payment or perform any other act on Tenant’s part to be made or performed as in this Lease provided (except for (x) any maintenance or repair obligation imposed on Tenant pursuant to this Lease, or (y) any act which would require Landlord, its agent, employee, contractor, or any other person acting on Landlord’s behalf to enter upon the Premises or any portion thereof for any such purpose), and may take all such action as may be necessary therefor.

Section 21.2. Amount Paid by Landlord as Additional Rental. All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord’s making of each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant, additional Rental under this Lease and shall be paid by Tenant to Landlord with and in addition to the Base Rent payable on the first day of the month following the giving of such notice.

Section 21.3. Waiver, Release and Assumption of Obligations. Landlord’s payment or performance pursuant to the provisions of this Article 21 shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord’s right to terminate this Lease in

accordance with the provisions hereof and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 21.4. Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. However, Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the reasonable costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 22

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 22.1. Permitted Uses. Tenant shall use and operate the Premises for public health and related educational purposes, related office uses, and parking as appropriate, subject to the then existing zoning, specifically, the Premises shall be used by Tenant to provide public health, rehabilitation and educational programs for the spinal cord injured, and ancillary uses thereto. Tenant shall not use the Premises in a manner that is inconsistent with U.S. Department of Health and Human Services public health use, the terms of any federal public benefit conveyance, or Requirements.

Section 22.2. No Unlawful Occupancy. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or for any purpose, or in any way, in violation of the provisions of Section 22.1 or Article 15 hereof, or in such manner as may make void or violable any insurance then required to be carried under Article 7 hereof. Immediately upon discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 22.1 or Article 15 hereof, Tenant shall take all necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using any portion of the Premises for any unlawful or illegal business, use or purpose or in violation of Section 22.1 or Article 15 hereof.

ARTICLE 23

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 23.1. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) (i) if Tenant shall fail to make any payment (or any part thereof) of Rental (including, without limitation, Base Rent) as and when due hereunder and such failure shall continue for a period of thirty (30) days after notice;

(ii) if Tenant shall fail to maintain the Premises as provided in Sections 13.1 and 13.3 hereof and if such failure shall continue for a period of ninety (90) days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such ninety (90) day period, in which case no Event of Default shall exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(b) [INTENTIONALLY OMITTED].

(c) [INTENTIONALLY OMITTED].

(d) if Tenant shall enter into (or permit to be entered into) a Capital Transaction, or any other transaction, in violation of the provisions of this Lease and such Capital Transaction or other transaction shall not be made to comply with the provisions of this Lease or cancelled within thirty (30) business days after Landlord's notice thereof to Tenant;

(e) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of (i) twenty (20) days after Landlord's notice to Tenant in the case of cancellation or non-renewal of insurance required by Article 7, or (ii) ninety (90) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such ninety (90) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

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

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

(h) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if a petition under Title 11 of the United States Code shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant shall take any partnership, joint venture or corporate action in furtherance of any action described in Section 23.1(g) or this Section 23.1(h) or Section 23.1(i);

(i) to the extent permitted by law, if within one hundred twenty (120) days after the commencement of a proceeding against Tenant seeking any reorganization,

arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated;

(j) if any of the material representations made by Tenant herein is or shall become false or incorrect in any material respect, provided that, if such misrepresentation was unintentionally made, the underlying condition is susceptible to being corrected, and Landlord has not been adversely affected by such misrepresentation or underlying condition, Tenant shall have a period of thirty (30) days after Landlord's notice of such misrepresentation to correct the underlying condition and thereby cure such Default; or

(k) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall not be vacated or an action to bond or contest the lien shall not be commenced within a period of sixty (60) days.

Section 23.2. Enforcement of Performance. If an Event of Default occurs, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 23.3. Expiration and Termination of Lease.

(a) If an Event of Default occurs and Landlord, at any time thereafter, at its option, gives Tenant notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date shall not be less than thirty (30) days after the giving of the notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and surrender the Premises forthwith unless Tenant shall cure such Event of Default prior to said 30-day period, in which case the Lease shall continue in full force and effect. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 23.1(h) or (i) hereof or by federal or state statute, then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 23.10 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the

five (5) day period this Lease shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(b) If this Lease is terminated as provided in Section 23.3(a) hereof, Landlord may, without notice, re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

(c) If this Lease shall be terminated as provided in Section 23.3(a) hereof:

(i) Landlord may draw from the Security Deposit in accordance with Section 3.5;

(ii) Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the Expiration Date and Tenant shall remain liable for Rental thereafter falling due on the respective dates when such Rental would have been payable but for the termination of this Lease, less any amount applied under clause (iii)(D) of this subsection (c); and

(iii) Landlord may complete all Construction Work required to be performed by Tenant hereunder and may repair and alter any portion(s) of the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall (A) first, pay to itself the reasonable cost and expense of termination of what would otherwise have constituted the unexpired portion of the Lease Term, re-entering, retaking, repossessing, repairing, altering and/or completing construction of any portion(s) of the Premises and the reasonable cost and expense of removing all persons and property therefrom, including in such costs reasonable brokerage commissions, legal expenses and attorneys' fees and disbursements, (B) second, pay to itself the reasonable cost and expense of completing any Construction Work required to be performed by Tenant hereunder, (C) third, pay to itself the reasonable cost and expense sustained in securing any new tenants and other occupants, including in such costs, reasonable brokerage commissions, legal expenses and attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises and, to the extent that Landlord shall maintain and operate any portion(s) of the Premises, the cost and expense of operating and maintaining same and (D) fourth, pay to itself any balance remaining. Landlord shall in no way be responsible or liable for any failure to relet any portion(s) of the Premises or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 23.4. [INTENTIONALLY OMITTED].

Section 23.5. Receipt of Moneys after Notice of Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any

notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 23.6. Waiver of Rights. Tenant hereby expressly waives service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Tenant, for and on behalf of itself and all Persons claiming through or under Tenant, also waives and releases any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession, or (d) to restore the operation of this Lease, if Tenant is dispossessed by a judgment or by warrant of a court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings. Tenant shall execute, acknowledge, and deliver within ten (10) days after request by Landlord any instrument evidencing such waiver or release that Landlord may request.

Section 23.7. Strict Performance. No failure by either party to insist upon the other's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to it hereunder, including, without limitation, Landlord's acceptance of full or partial Rental during the continuance of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default by Tenant, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default.

Section 23.8. Right to Enjoin Defaults or Threatened Defaults. In the event of Tenant's Default or threatened Default, Landlord shall be entitled to enjoin the Default or threatened Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or by this Lease, other remedies that may be available to Landlord notwithstanding. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute.

Section 23.9. Payment of All Costs and Expenses. Tenant shall pay Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant shall also pay Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants or provisions of this Lease. All of the sums paid or obligations incurred by Landlord, with interest (at the Late Charge Rate, accruing from the date incurred) and costs, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 23.10. Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to protect adequately Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under the Lease, shall include, without limitation, all of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease;
- (b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;
- (c) that Tenant shall continue to use the Premises in the manner required by this Lease;
- (d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;
- (e) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;
- (f) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the Base Rent payable hereunder, for the then current Lease Year;

(g) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

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

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C. § 365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. § 365(b), as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Lease.

Section 23.11. Funds Held by Depository. If this Lease shall terminate as a result of an Event of Default, any funds held by Depository shall be paid to Landlord free of any claim by Tenant, or any Person claiming through Tenant.

Section 23.12. Funds Held by Tenant. From and after the date, if any, on which Tenant receives notice from Landlord that a Default or an Event of Default shall have occurred hereunder (but only, in the case of a Default, until such Default has been cured), it shall not pay, disburse or distribute the proceeds of any insurance policies covering or relating to the Premises or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Article 8 or 9), except to creditors which are not Affiliates, in payment of amounts then due and owing by Tenant to such creditors with respect to work at the Premises.

ARTICLE 24

NOTICES

Section 24.1. All Notices, Communications, Etc. in Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or

other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served as follows:

(a) If to Tenant, in duplicate, by hand with proof of delivery or by mailing the same to Tenant by express or certified mail, postage prepaid, return receipt requested, one addressed to:

Eastern Paralyzed Veterans Association, Inc.
75-20 Astoria Boulevard
Jackson Heights, New York 11370-1178
Attention: James J. Peters, Executive Director

and one to:

Sonnenschein Nath & Rosenthal
1221 Avenue of the Americas
New York, New York 10020
Attention: Stephen L. Solomon, Esq.

or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord.

(b) If to Landlord, in triplicate, by hand with proof of delivery or by mailing the same to Landlord by express or certified mail, postage prepaid, return receipt requested, one addressed to:

The City of New York
c/o New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attention: Lease Administrator

and one to

The New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant.

Section 24.2. Service. Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served, as aforesaid, except that notice by express or certified mail, return receipt requested, shall be deemed effective on the date such receipt is dated by the Post Office or express mail carrier, as the case may be, and notice by hand shall be effective upon delivery, as evidenced by a signed receipt.

ARTICLE 25

NO SUBORDINATION

Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises. This Lease and the leasehold estate of Tenant created hereby and all rights of Tenant hereunder are and shall be subject to the Title Matters.

ARTICLE 26

STREET WIDENING

Section 26.1. Proceedings for Widening Street. If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment from the Premises on, under or above any such street, or any changes or alterations upon the Premises, or in the appurtenant sidewalks, grounds, plazas, areas, vaults, gutters, alleys, curbs or other appurtenances, Tenant shall comply promptly with such requirements, at its sole cost and expense, and if Tenant shall fail to comply with such requirements within thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, if, within such thirty (30) day period, Tenant shall fail to commence to remedy such failure or shall fail to diligently and continuously, subject to Unavoidable Delays, prosecute the same to completion), then Landlord, upon notice to Tenant may comply with the same, and the reasonable amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder and shall be payable by Tenant to Landlord on demand.

Section 26.2. Contest of Proceedings. Tenant shall be permitted to contest in good faith any proceeding or order to which Section 27.1 pertains, provided that such contest shall be brought in accordance with the provisions of Section 35.3 hereof as though Tenant were contesting a Requirement thereunder.

Section 26.3. Distribution of Award. Any award made or damages paid in connection with such proceedings shall be deemed to be an award made in connection with a Partial Taking (other than a temporary Taking) and shall be first paid to Tenant to the extent of its reasonable costs and expenses actually incurred in effecting compliance therewith and the remainder shall be paid, distributed and applied in accordance with provisions of Section 9.2(b) hereof.

ARTICLE 27

EXCAVATIONS AND SHORING

In accordance with Section 26-229 of the Administrative Code of the City, if any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, Tenant, at its option, shall either:

(a) afford to Landlord, or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner upon reasonable notice for the purpose of doing such work, at Landlord's or such other Person's expense, as may be necessary to preserve any of the walls of the Improvements from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant, provided that such representative is available when the entry and work are scheduled to be done, and in all events such work shall be performed with reasonable diligence, subject to Unavoidable Delays, in accordance with, and subject to, any applicable Requirements and, to the extent possible, with minimum interference with the on-going operations of Tenant and Subtenants; or

(b) perform or cause to be performed, at Tenant's expense, unless otherwise agreed in writing, all such work as may be necessary to preserve any of the walls of the Improvements from injury or damage and to support them by proper foundations.

Tenant shall not, by reason of such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder.

ARTICLE 28

ENVIRONMENTAL INDEMNITY

Tenant shall not have liability to Landlord for pre-existing contamination from hazardous materials or wastes at or on the Premises that arose prior to Tenant's occupancy at the Premises. Landlord shall indemnify Tenant and hold Tenant harmless from and against any and all claims and liabilities arising out of such pre-existing contamination to the extent that Landlord is indemnified and held harmless by the federal government for the same.

ARTICLE 29

CONSENTS AND APPROVALS

Section 29.1. Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be required under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 29.2. Remedy for Failure or Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is required, then unless expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party within thirty (30) days or such other period as is expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted; provided, however, that if it is Landlord's consent or approval that is to be deemed granted, it shall not be deemed granted unless Tenant shall have included in its written request for such consent or approval, or if no such written request was made, then in a separate notice, a specific statement that failure of Landlord to respond by a particular date shall be deemed consent or approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 29.3. No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease (but this provision shall limit Landlord only in its proprietary capacity as owner of the Premises and landlord under this Lease and it shall not affect Landlord in its governmental capacity).

ARTICLE 30

SURRENDER AT END OF TERM

Section 30.1. Surrender of Premises. Upon the Expiration of the Term, early expiration of the Term pursuant to Section 2.5 hereof, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof, Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord in reasonably good order, condition and repair, reasonable wear and tear excepted, free and clear of all Subleases, liens and encumbrances. In addition, Tenant shall deliver to landlord the City's Equipment, in reasonably good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens and encumbrances. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 30.2. Delivery of Subleases, Etc. Upon the Expiration of the Term, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases, if any, and any service and maintenance contracts then affecting the Premises, all true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for the Premises and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Project, together with a duly executed assignment thereof to Landlord, and all financial reports, books and records required by Article 37 hereof

and any and all other documents of every kind and nature whatsoever relating to the operation of the Premises and the condition of the Project which are in Tenant's control at such time (or copies thereof, to the extent Tenant is required by law or Accounting Principles to retain the originals).

Section 30.3. Trade Fixtures and Personal Property. Tenant, or any Subtenants which entered into a Sublease in accordance with the provisions of this Lease, may remove trade fixtures (for which it was not reimbursed by Landlord or other Governmental Authority), if any, but upon removal of any such fixtures or equipment from the Premises, Tenant shall immediately and at its sole expense repair and restore, or cause to be repaired and restored, the Premises to the condition existing prior to installation of such fixtures or equipment and repair any damage to the Premises due to such removal. Any trade fixtures or other personal property of Tenant or of any Subtenant which shall remain on the Premises after the Expiration of the Term, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof and after the removal of Tenant or such Subtenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by Landlord as its property or be disposed of at Tenant's expense without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant.

Section 30.4. Survival Clause. The provisions of this Article 30 shall survive the Expiration of the Term.

ARTICLE 31

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto. The Occupancy Permit dated February 1, 1995 between the City and Tenant, and any amendments and extensions thereto, are fully superseded by this Lease and the documents executed simultaneously herewith, and such Occupancy Permit shall be of no further force and effect except to the extent any terms and obligations survive the termination of the Occupancy Permit pursuant to the Occupancy Permit.

ARTICLE 32

QUIET ENJOYMENT

Landlord covenants that, as long as Tenant faithfully shall perform the agreements, terms, covenants and conditions hereof, Tenant shall and may, subject to the exceptions, reservations, terms and conditions of this Lease, peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or

any Person claiming through or under Landlord. This covenant shall run with the land and shall bind Landlord (and all assigns and successors of Landlord) and shall inure to the benefit of Tenant (and all assigns and successors of Tenant).

ARTICLE 33

APPRAISAL AND DISPUTE RESOLUTION

Section 33.1. Procedure for Appraisals. In each instance under this Lease where an appraisal is required, or it shall become necessary to resort to appraisal, such appraisal shall be conducted as follows:

(a) (i) Each Appraisal of the fair market value of the Premises shall be determined by considering all available appraisal approaches and shall be based on the Premises as then improved, excluding therefrom the value of long term capital improvements made and paid for by Tenant without any reimbursement by any Governmental Authority, as encumbered by Subleases, if any (unless the appraiser determines that the terms of any such Subleases are not relevant because they were of below-market value at the time made) but otherwise unencumbered by any leasehold, including this Lease, and subject to the Zoning Resolution (as amended up to the time of such appraisal). If this Lease permits without amendment hereto, or Landlord and Tenant agree to amend this Lease to permit, any alteration of the Project or redevelopment of the Premises needed to take advantage of a higher and better use permitted by the Zoning Resolution, as amended to the time of such appraisal, such appraisal shall consider such agreed upon higher and better use. If this Lease does not permit without amendment hereto, and Landlord and Tenant do not agree to amend this Lease to permit, such alteration or redevelopment, then the appraisal will be based on the highest and best use of the Premises permitted by this Lease.

(ii) With respect to any other appraisals required hereunder, the party required to obtain such appraisal shall give notice to that effect to the other party, specifying therein the name and address of the person designated to act as appraiser on its behalf and setting forth the proposed scope of the appraisal and, within fifteen (15) business days after the service of such notice, the other party shall give notice to the first party approving or disapproving the person designated by the first party to act as appraiser and providing comments, if any, on the scope of the appraisal. This process shall be repeated until the other party approves both the appraiser and the scope of the appraisal. The appraisal shall then be performed by the appraiser, and based on the scope, so agreed to. Within fifteen (15) business days after delivery of such appraisal to the other party, such other party may, at its option, select another appraiser, from Landlord's then current list of approved appraisers, and proceed as provided in subsection (b). If the other party does not so elect, such appraisal shall be binding on the parties. If either party fails to notify the other party of the appointment of its appraiser, as aforesaid, within or by the time above specified, then the appointment of the second appraiser shall be made in the same manner as provided in subsection (c) for the appointment of a third appraiser in a case where the two appraisers appointed hereunder and the parties are unable to agree upon such appointment.

(b) The appraisers so chosen shall meet within fifteen (15) business days after the second appraiser is appointed. If, within fifteen (15) business days after such first meeting,

the said two appraisers shall be able to agree on the valuation, such appraisal shall be binding on the parties. If they are unable to agree upon the valuation, the appraiser selected second shall make a second appraisal within thirty (30) business days after such first meeting and during the period between fifteen (15) and thirty (30) business days after such first meeting, the two appraisers shall appoint a third appraiser. Within a period of thirty (30) business days after the appointment of such third appraiser, such third appraiser shall be required to choose between the two appraisals previously given.

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

(d) Any appraiser selected or appointed pursuant to this Section shall be on the Landlord's then current list of approved appraisers. All appraisers chosen or appointed pursuant to this Section shall be sworn fairly and impartially to perform their duties as such appraiser. In the event of the failure, refusal or inability of any appraiser to act, his successor shall be appointed within ten (10) days by the party who originally appointed him or in the event such party shall fail so to appoint such successor, or in case of the third appraiser, his successor shall be appointed as herein above provided.

(e) The reasonable costs of all appraisals shall be paid by Tenant. Photocopies of the reports of all appraisals shall be provided to all the parties. In rendering their decision, the appraisers shall have no power to modify or reform any of the provisions of this Lease.

Section 33.2. Procedure for Dispute Resolution. Every dispute between the parties which is specifically provided in this Lease to be determined by dispute resolution, or in accordance with Article 33 or Section 33.2, shall be settled by arbitration by a panel of three (3) neutral arbitrators, administered by the American Arbitration Association (or any successor body of similar function) under its Commercial Arbitration Rules.

The fees and expenses of the arbitrators and all other expenses of the resolution procedure shall be shared equally by the parties, provided further that each party shall be responsible for the fees and disbursements of its own attorneys and witnesses. Landlord shall not be liable in any manner for any costs, damages or penalties as a result of any dispute subject to the dispute resolution procedure.

In rendering their decision, the arbitrators shall have no power to modify or reform any of the provisions of this Lease, and the jurisdiction of the arbitrators is expressly limited accordingly. The decision of the arbitrators shall be final and conclusive on the parties, and judgment may be entered on the decision of the arbitrators rendered in accordance with this Section 33.2 and may be enforced in accordance with the laws of New York State.

ARTICLE 34

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 34.1. Tax Contest Proceedings. Tenant shall have the exclusive right, at its sole cost and expense, to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith, in accordance with the Charter and Administrative Code of New York City.

Section 34.2. Imposition Contest Proceedings. Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.1 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, could be, by reason of such postponement or deferment, in the judgment of Landlord, in danger of being forfeited and Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 34.2(b) hereof by reason of nonpayment thereof; and

(b) Tenant has either (i) deposited with Depository cash, or (alternatively, at Tenant's option) given to Landlord a letter of credit in form and substance reasonably satisfactory to Landlord, issued by an Institutional Lender located in New York City, in the amount so contested and unpaid together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might, in Landlord's judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings, or (ii) provided other equivalent security in form, substance and amount, and on terms, satisfactory to Landlord. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and, upon such payment, Depository shall return any cash deposited with it with respect to such Imposition, together with the interest, if any, earned thereon and Landlord shall return any form of security being held by it together with interest, if any, earned thereon. If Tenant shall not pay the amounts referred to in the preceding sentence of this paragraph, then Depository shall, at Landlord's direction, disburse any moneys deposited with it by Tenant pursuant to the first sentence of this paragraph directly to the Person to whom or to which such Imposition is payable, and the Landlord shall likewise be entitled to apply the proceeds of any security deposited with it by Tenant pursuant to said sentence to such Person in payment of said amounts. Tenant shall remain liable for any unpaid balance of said amounts remaining after application by Depository or Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it within ten (10) days after Landlord's demand. If at any time during the continuance of such proceedings Landlord, in its sole judgment, shall deem insufficient the amount or nature of the security deposited, Tenant, within ten (10) days after Landlord's

demand, shall make an additional deposit with Depository of such additional sums or deliver to Landlord such other acceptable security as Landlord may request, and upon failure of Tenant to so do, the amount theretofore deposited (or made available by alternative security), together with the interest, if any, earned thereon, may be applied by Depository (or Landlord, if it is the holder of the security) to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Depository or Landlord as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand.

Section 34.3. Requirement Contest. Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant on the condition that before instituting any such proceeding, Tenant shall furnish a cash deposit to Depository or, alternatively at Tenant's option, furnish to Landlord a letter of credit or other security, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith, all such forms of security to be satisfactory to Landlord in form, substance, amount, and identity of the issuing party. Any such proceeding instituted by Tenant shall be commenced as soon as is possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 15.01(a) hereof if the Premises, or any part thereof, are in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as herein above provided, by reason of noncompliance therewith, or if failure to comply is hazardous to persons or property or would violate any Mortgage or insurance policy provisions.

Section 34.4. Landlord's Participation in Contest Proceedings. Landlord shall not be required to join in any action or proceeding brought by Tenant referred to in this Article or permit the action to be brought by Tenant in Landlord's name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Landlord in connection therewith.

ARTICLE 35

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to

which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 36

FINANCIAL REPORTS

Section 36.1. Reports. Tenant shall furnish to Landlord and DHHS such reports, documents, or other materials as may be required by DHHS relating to the Premises or to this Lease.

Section 36.2. Maintenance of Books and Records. Tenant shall keep and maintain at an office in New York City complete and accurate books and records of accounts of the operations of the corporation pursuant to Financial Accounting Standards Board requirements for non-profit corporations for each Lease Year for a period of at least six (6) years after the end of each applicable period of time. However, if, at the expiration of such six (6) year period, Landlord is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest.

Section 36.3. Inspection and Audits of Books and Records. During the period from the Commencement Date to the date which is the sixth (6th) anniversary of the Expiration Date, Landlord, the Comptroller of the City (the "Comptroller") and/or Landlord's agents or representatives shall have the right from time to time during regular business hours, upon two (2) business days notice, to inspect, audit, and, at its option, duplicate, at Landlord's expense, all of Tenant's books and records and all other papers and files of Tenant, relating in any manner to the Premises or to this Lease. Tenant shall produce all such books, records, papers and files, upon request of Landlord, the Comptroller and/or Landlord's agents and representatives.

Section 36.4. Survival Clause. The obligations of Tenant under this Article shall survive the Expiration of the Term.

ARTICLE 37

RECORDING OF LEASE

On the Commencement Date, or promptly thereafter, Landlord and Tenant shall execute a memorandum of this Lease. At its sole option, Tenant may cause such memorandum and any amendments thereto to be recorded in the Office of the Register of the City of New York (Queens County) promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

ARTICLE 38

INVESTIGATIONS, SOLICITATIONS, ETC.

Section 38.1. Cooperation by Tenant. Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is

empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to this Lease, when it is the subject of the investigation, audit or inquiry. If:

(a) any Person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State of New York or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, EDC or any local development corporation, or any public benefit corporation organized under the laws of the State of New York, or

(b) any Person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of a Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or performance under this Lease,

then the commissioner or agency head whose agency is a party in interest to the submitted bid, submitted proposal, transaction, contract, lease, permit or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a Person to testify.

Section 38.2. Adjournments of Hearing, Etc. If Tenant or any agent, employee or associate of Tenant requests an adjournment in any proceeding investigating the events surrounding the negotiation and consummation of this Lease of up to thirty (30) days, such adjournment shall be granted. If a further adjournment is sought it must be done by a written request to the agency head or commissioner who convened the hearing, at least three (3) business days prior to the scheduled hearing date, setting forth the reasons for the request. If the commissioner or agency head denies the request for an additional adjournment, then Tenant, its agent, employee or associate must appear at the scheduled hearing or commence an action to obtain a court order, pursuant to Article 78 of the Civil Practice Laws and Rules, substantiating a claim that the denial of the adjournment was capricious or arbitrary. If Tenant, its agent, employee or associate fails to appear at the rescheduled hearing or to diligently pursue such judicial relief, as the case may be, then, if in the sole judgment of the commissioner or agency head the failure to appear would have a material adverse effect on the investigation, the commissioner or agency head who convened the hearing may suspend this Lease pending the final determination pursuant to Section 38.5 below without the City's incurring any penalty or damages for delay or otherwise; provided, that the right to suspend this Lease shall not be invoked if Tenant shall have discharged or disassociated itself from such agent, employee or associate and said agent, employee or associate is not reemployed either directly or indirectly or otherwise compensated by Tenant.

Section 38.3. Penalties. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any Person, or any entity of which such Person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged, to an unaffiliated and unrelated Institutional Lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination.

Section 38.4. Criteria for Determination. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in subsections (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any Person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 38.3 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 38.3 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

Section 38.5. Definitions. As used in this Article:

(a) The term "license" or "permit" shall mean a license, permit, franchise or concession not granted as a matter of right.

(b) The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal, or employee.

(c) The term “entity” shall mean any firm, partnership, corporation, association or Person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

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

Section 38.6. Failure to Report Solicitations. In addition to and notwithstanding any other provision of this Lease, the commissioner or agency head may in his or her sole discretion terminate this Lease upon not less than three (3) days written notice in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by the Tenant, or affecting the performance of this Lease.

ARTICLE 39

[INTENTIONALLY OMITTED]

ARTICLE 40

[INTENTIONALLY OMITTED]

ARTICLE 41

MISCELLANEOUS

Section 41.1. Captions. The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 41.2. Table of Contents. The table of contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 41.3. Reference to Landlord and Tenant. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant. The use herein of the words “successors and assigns” or “successors or assigns” of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 41.4. Person Acting on Behalf of a Party Hereunder. If more than one Person is named as, or becomes a party hereunder, the other party may require the signatures of

all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each Person acting through or named as a party shall be fully and jointly and severally liable for all of such party's obligations hereunder. Any notice by a party to any Person acting through or named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 41.5. [INTENTIONALLY OMITTED]

Section 41.6. Limitation on Liability.

(a) Landlord Exculpation. The liability of Landlord, or of any other Person who has at any time acted as Landlord hereunder, for damages or otherwise, shall be limited to Landlord's interest in the Premises, the proceeds, payable to Landlord, of any insurance policies covering or relating to the Premises, and any awards payable to Landlord in connection with any condemnation of part or all of the Premises. In no event, however, shall Landlord's interest in the Premises include: (i) any rights, claims, or interests of Landlord that at any time may exist pursuant to a loan document to which the Landlord is a party or any note or mortgage given to Landlord in connection with the Premises; (ii) any rights, claims, or interests of Landlord that at any time may arise from or be a result of Landlord's governmental powers or rights or Landlord's actions in its governmental capacity; (iii) any rents, issues, or proceeds from or in connection with the Premises, or that would otherwise be within Landlord's interest in the Premises, from and after such time as such items have been received by the Landlord; or (iv) any proceeds resulting from a levy under execution or attachment against Landlord's fee interest in the Premises (it being understood and agreed that Tenant shall not seek to effect such a levy under execution or attachment). None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Landlord or EDC shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder.

(b) Governs Lease. The provisions of this Section 41.6 shall govern every other provision of this Lease. The absence of explicit reference to this Section 41.6 in any particular provision of this Lease shall not be construed to diminish the application of this Section 41.6 to such provision. This Section 41.6 shall survive the Expiration of the Term.

(c) Other Remedies. Nothing in this Section 41.6 is intended to limit the remedies available to any party under this Lease other than by limiting the enforcement of those remedies to a party's interest in the Premises, in the manner and to the extent provided in this Section 41.6. Nothing in this Section 41.6 is intended to prevent or preclude any person from obtaining injunctive or declaratory relief with respect to any claim arising under this Lease or in connection with the Premises.

Section 41.7. Remedies Cumulative. Each right and remedy of either party provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or

by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 41.8. Merger. There shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 41.9. Performance at Tenant's Sole Cost and Expense. All of Tenant's obligations hereunder shall be performed at Tenant's sole cost and expense.

Section 41.10. Relationship of Landlord and Tenant. This Lease is not to be construed to create a partnership or joint venture between the parties, it being the intention of the parties hereto only to create a landlord and tenant relationship.

Section 41.11. Waiver, Modification, Etc. No covenant, agreement, term or condition of this Lease shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Landlord and Tenant. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default thereof.

Section 41.12. Depository Charges and Fees. Tenant shall pay any and all fees, charges and expenses owing to Depository in connection with any services rendered by Depository pursuant to the provisions of this Lease.

Section 41.13. Ownership and Investment of Deposited Funds. All funds held by Depository pursuant to this Lease shall be and shall be deemed to be trust funds and shall be disbursed only in accordance with the provisions of this Lease. The Depository shall invest all funds deposited with it pursuant to this Lease, in United States Treasury bills or notes, or, at the option of Tenant, in certificates of deposit or bankers' acceptances of any State or United States commercial bank with gross assets in excess of one billion dollars (\$1,000,000,000) and which is reasonably satisfactory to Landlord, or in the notes of corporations, reasonably satisfactory to Landlord, listed on the New York Stock Exchange. The Depository will not be liable for any loss which may be incurred by reason of any such investment of the funds which it holds hereunder. Any income resulting from such investment, including any gains realized on the sales thereof, shall be added to and be deemed to be part of the funds which generated such income, and shall be reinvested in accordance with this Section 41.13.

Section 41.14. Governing Law. This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 41.15. Claims. Any and all claims asserted by or against Landlord arising under this Lease or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in the County of New York or in the courts of the State of New York ("New York State Courts") located in either of the County of New York or the County of

Queens. To effect this agreement and intent, Landlord and Tenant agree and, where appropriate, shall require each contractor or consultant to agree, as follows:

(i) If Landlord initiates any action against Tenant in Federal Court or in New York State Court, service of process may be made on Tenant either in person, wherever Tenant may be found, or by registered mail (return receipt requested) addressed to Tenant at its address as set forth in this Agreement, or to such other address as Tenant may provide to Landlord in writing.

(ii) With respect to any action between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court outside New York City, and (iii) to move for a change of venue to New York State Court outside New York City.

(iii) With respect to any action between Landlord and Tenant in Federal Court located in New York City, Tenant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

(iv) If Tenant commences any action against Landlord in a court located other than in the City and State of New York, then, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, then Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 41.16. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 41.17. Effect of Other Transactions. No Sublease, mortgage or Capital Transaction, whether executed simultaneously with this Lease or otherwise, and whether or not consented to by Landlord, shall be deemed to modify this Lease in any respect.

Section 41.18. City as Landlord. The obligations of the City in its governmental capacity are not to be construed as obligations of the City in its capacity as Landlord under this Lease.

Section 41.19. Waivers. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim for injury or damages. In the event Landlord commences any proceeding for nonpayment of Rental or any other sums required to be paid by Tenant under the terms of this Lease, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings.

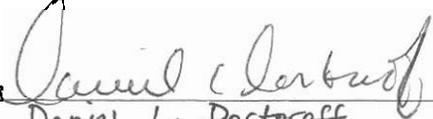
Section 41.20. Designee. References to Landlord in this Lease shall be deemed to refer also to any designee named by Landlord to act in its behalf with respect to this Lease.

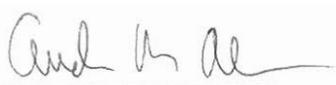
Actions to be taken by the Administrator hereunder may instead, at Landlord's option, be taken by Landlord or Landlord's designee.

Section 41.21. Lease Administrator. Tenant understands that, until Tenant is notified to the contrary by Landlord or EDC, EDC will administer this Lease on behalf of Landlord, and unless and until such notice is received, Tenant agrees to accept from EDC any notices of default, notices of termination, bills, invoices and any other notices and demands executed and/or delivered by EDC (or any entity designated by EDC to act on its behalf) as having been fully authorized by Landlord and having the same force, effect and validity as if executed and/or delivered by Landlord.

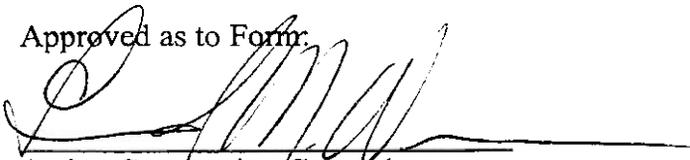
IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

THE CITY OF NEW YORK

By: 
Daniel L. Doctoroff
Deputy Mayor
NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

By: 
Andrew M. Alper
President

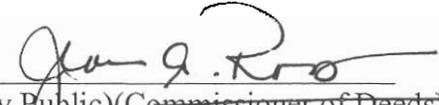
Approved as to Form:


Acting Corporation Counsel

ACKNOWLEDGMENT OF THE CITY OF NEW YORK

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

On the 18th day of December in the year 2003 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared Daniel Dotseloff, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


(Notary Public)(Commissioner of Deeds)
JEAN A. ROSS
Notary Public, State of New York
No. 31-5007029
Qualified in New York County
Commission Expires May 10, 2007

ACKNOWLEDGMENT OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

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

On the 17th day of December in the year 2003 before me, the undersigned, a ~~Notary Public~~/Commissioner of Deeds in and for ~~said State~~/the City of New York, personally appeared Andrew M. Alper, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

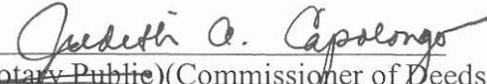

(Notary Public)(Commissioner of Deeds)
JUDITH A. CAPOLONGO
Commissioner of Deeds, City of New York
No. 5-1425
Cert. Filed in New York County
Commission Expires October 23, 1, 2005

EXHIBIT A

PREMISES

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Queens, County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at the easterly end of the southerly line of Duane Road, the coordinates of said point being North 713652.730 and East 691998.734 in the New York East-Zone 3101 Coordinate System:

1. Thence S 19°-33'-28" W along the prolongation of the easterly line of Duane Road, a distance of 157.00 feet to a point;
2. Thence N 71°-50'-15" W, a distance of 182.40 feet to a point;
3. Thence N 50°-50'-40" W, a distance of 172.35 feet to a point;
4. Thence N 24°-15'-45" E, a distance of 41.07 feet to a point;
5. Thence N 65°-44'-15" W, a distance of 62.66 feet to a point;
6. Thence S 24°-15'-45" W, a distance of 38.32 feet to a point;
7. Thence N 63°-13'-21" W, a distance of 123.64 feet to a point;
8. Thence N 29°-34'-10" E, a distance of 90.34 feet to a point on a curve;
9. Thence easterly along the line of Duane Road, along a curve to the left, with a central angle of 05°-36'-17" and a radius of 1100.000 feet, whose tangent line forms an interior angle of 94°-01'-02" with the preceding course, a distance of 107.60 feet to a point of tangency;
10. Thence S 70°-03'-09" E along the line of Duane Road, a distance of 406.50 feet to the point or place of BEGINNING;

Containing a total parcel area of 65,585 square feet or 1.506 acres, more or less.

EXHIBIT B

TITLE MATTERS

The Premises are leased subject to the following:

Any state of facts that an accurate survey may show;

Building restrictions and regulations now or hereafter in force and present and future zoning laws, ordinances, resolutions and regulations of all boards, bureaus, commissions and bodies of any municipal, county, state or federal sovereigns now having or hereafter acquiring jurisdiction of the Premises and the use and improvement thereof;

Rights, easements, licenses or privileges to use vaults, areas, tunnels, ramps or structures under highways, roads, streets, avenues or sidewalks on which the Premises abut, and consents or grants prior to the date of this Lease for the erection of any structures on, under or above said highways, roads, streets, avenues or sidewalks and any grants, easements, licenses or consents with respect to present or future sewers, public utility lines, pipes, conduits and equipment;

Violations of law, ordinances, regulations, orders or requirements, if any, whether or not of record and whether or not the same might be disclosed by an examination and inspection or search of the Premises, noted or issued by any federal, state, municipal or other governmental department or authority having jurisdiction, as the same may exist on the Commencement Date of this Lease;

The condition and state of repair of the Premises on the Commencement Date of this Lease.

Dedications, restrictions, encumbrances, reservations, conditions, covenants, consents, easements and agreements, if any, made or given by any prior owner of the Premises whether or not the same appear on record.

Any encroachments existing on the Commencement Date of this Lease;

An easement reserved for Landlord, its tenants and designees to repair, maintain or perform work on any utility lines on the Premises, including, without limitation, electrical lines; and

An easement for the City, its agents and representatives, to construct, install or repair any sewer, water line or any other public utility or improvement.

EXHIBIT C
EMPLOYMENT REPORT FORM

OFFICE OF LABOR SERVICES
INSTRUCTIONS FOR COMPLETING
CONSTRUCTION DIVISION EMPLOYMENT REPORT
APRIL 11, 1991

A. WHO MUST FILE AN EMPLOYMENT REPORT

An Employment Report (ER) must be filed with the Office of Labor Services if you are:

- a general contractor or construction manager selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of \$1,000,000 or more; or
- a general contractor or construction manager selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of \$10,000 or over; or
- a general contractor or construction manager selected to perform work on a construction project benefiting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of \$1,000,000 or more; or
- a subcontractor selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of \$1,000,000 or over; or
- a subcontractor selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of \$1,000,000 or over; or
- a subcontractor selected to perform work on a construction project benefiting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of \$1,000,000.
- non construction trade contractors who are contracting with a developer to perform work on a construction project benefiting from any City operated real estate tax abatement program.

B. WHERE TO FILE

If you are a contractor or subcontractor on a City funded construction project, the ER must be filed with the contracting agency which will award the contract to the prime contractor.

If you are a contractor or subcontractor who will be working for a private developer in receipt of funding or assistance from the City, the ER must be filed with the City agency with jurisdiction over the developer's project.

If you are a contractor or subcontractor who will be working for an applicant pursuant to the Industrial and Commercial Development Incentive Program, the ER must be filed with:

The Department of Finance
Real Property Assessment Bureau
Room 946
Municipal Building
New York, N.Y. 10007

C. REQUIRED ATTACHMENTS

- Employment Application
- Most Current EEO-1 and EEO-3 reports filed with EEOC
- Employee manual/handbook
- Collective Bargaining Agreement (s)
- Equal Opportunity Policy Statement

D. PART I - CONTRACT INFORMATION

This part must be completed by all contractors and subcontractors and developers specified in Section A above.

E. PART II - EMPLOYMENT POLICIES AND PRACTICES

This part must be completed by all contractors and subcontractors specified in Section A above unless:

- You have an aggregate workforce of less than 50 employees; or
- You have completed a revised employment report within the last 12 months and have received notification of unconditional approval and have attached a copy of such approval letter to the Employment Report.

RACE/ETHNIC IDENTIFICATION

You may acquire the race/ethnic information necessary for this report either by visual surveys of the work force, or from post-employment records as to the identity of employees. Eliciting information on the race/ethnic identity of an employee by direct inquiry is not

Where records are maintained, it is recommended that they be kept separately from the employee's basic personal file or other records available to those responsible for personnel decisions.

Since visual surveys are permitted, the fact that race/ethnic identification are not present on employment records is not an excuse for failure to provide the required data.

Please note that conducting a visual survey and keeping post-employment records of the race/ethnic identity of employees is legal in all jurisdictions and under all federal and state laws.

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group.

Moreover, the fact that employees may be located at different addresses does not provide an acceptable reason for failure to comply with the reporting requirements. In such cases, it is recommended that visual surveys be conducted for the employer by persons such as supervisors who are responsible for the work of the employees or to whom the employees report for instructions or otherwise.

AMERICAN INDIAN OR ALASKAN NATIVES

A person with origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

ASIAN OR PACIFIC ISLANDERS

A person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including for example, China, Japan, Korea, the Philippines, and Samoa.

BLACK, NOT OF HISPANIC ORIGIN

A person with origins in any of the Black racial groups of Africa who is also not of Hispanic origin.

HISPANIC

A person of Mexican, Puerto Rican, Cuban, South American or other non-European Spanish Culture regardless of race.

WHITE, NOT OF HISPANIC ORIGIN

A person with origins in any of the original peoples of Europe, North Africa, or the Middle East who is not of Hispanic origin or Black racial group origin.

F. PART III

The next part of the Employment Report (ER) provides information pertinent to the review of the proposed contract. Your company must provide the following information:

PART III - A: USE OF SUBCONTRACTORS:

Your projections for the utilization of subcontractors on the proposed contract are to be provided in this section. Information is to be provided to the extent known at the time the ER is filed for review by the Bureau.

A chart has been provided for the identification of subcontractors. Under "subcontractor's name," if this is unknown, so state. Under "ownership," if the contractor is to be utilized under the City's Locally Based Enterprise program, enter the appropriate code. If the contract is federally funded or assisted and the subcontractor is being utilized in accordance with applicable federal requirements with respect to minority business enterprise or woman business enterprise requirements, enter the appropriate code. This will also apply to state funded contracts with similar requirements for minority and female owned businesses.

PART III - B: ALL WORK PERFORMED BY THE CONTRACTOR IN NEW YORK CITY:

This section requires a listing of all work currently being performed in the New York City area, within the last four (4) payroll weeks of the time the ER is filed. List all work being performed for: The City of New York, The State of New York, federal agencies, and private developers (private for profit and private not for profit).

PART III - C : CURRENT WORKFORCE FOR ALL WORK PERFORMED IN NEW YORK CITY:

This part requires a report of all workers in the construction trades employed by your company within the last four (4), full payroll, pay weeks of the time the ER is filed. The report must reflect work on all contracts listed in Part III-B.

Note: In order to assist in the determination of your company's compliance with equal employment opportunity requirements, you must provide information concerning your company's current workforce on all contracts currently held by the company within the (5) boroughs of the City. The current Workforce data must reflect all workers on any active contracts regardless of whether or not they are City funded or assisted. These include contracts that may be privately funded or funded by other government entities.



CONSTRUCTION EMPLOYMENT REPORT

The City of New York
Office of the Mayor
Office of Labor Services

Construction Division
66 Leonard Street - 4th Floor
New York, New York 10013

CONSTRUCTION EMPLOYMENT REPORT

PART I CONTRACTOR IDENTIFYING INFORMATION

Contract Information: Contractor Subcontractor

1. _____
Contractor Name

2. _____
Address and Zip Code

3. _____
Chief Operating Officer and Business Telephone

4. This company is _____ Independently Owned and Operated
_____ An Affiliate, Subsidiary, or Division of:

Parent Company	Address	Tel. No.
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5. _____
Name and Business Telephone of Designated Equal Opportunity Compliance Officer
(If same as Item #3, write "same")

7. (a) _____ (b) _____
Contracting Agency or Agency Administering Project Contract Amount

(c) _____ (d) _____
Project Developer (If applicable) Project/Contract Number

(e) _____
Lot and Block Number

8. Description and Location of Proposed Contract.

PART II EMPLOYMENT PRACTICES

You must submit the following documents with your Employment Report (ER): All Collective Bargaining Agreements, Employment Application, EEO Policy Statement and your most recent EEO-1 Report. Failure to submit these documents will result in an "incomplete" submission of the ER, and approval will not be granted until the documents are received. In your response to inquiries, you may add additional pages if there is insufficient space to reply adequately.

1. Has your company been desk audited by the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), in the past twelve (12) months?

Yes No If yes,

- (a) Provide the name and address of the OFCCP office.

- (b) Were any deficiencies with respect to equal employment found? Yes No
(Attach a copy of such findings)

- (c) Were any Corrective Actions required or agreed to?

Yes No (ATTACH A COPY OF SUCH REQUIREMENTS OR AGREEMENTS)

- (d) Was a Certificate of Equal Employment Compliance issued?

Yes No (ATTACH A COPY OF SUCH CERTIFICATE)

2. Has your company been named as a defendant (or respondent) in any administrative or judicial action where the complainant (plaintiff) alleged violation of any anti-discrimination or affirmative action laws within the past three years?

Yes No

3. If the answer to question 2 is "YES" please attach a full explanation, including names (s) of the complainant, the administrative agency or court in which the action was filed, the current status and if no longer pending, the disposition. ATTACH A COPY (IES) OF ANY ORDER, CONSENT DECREE OR DECISION RESULTING FROM ANY ACTION EXPLAINED IN THIS RESPONSE. If the same documentation has been provided to this office within the last eleven (11) months, please provide the submission date, only.

4. Are you or your affiliate members of an employers trade association which is responsible for negotiating collective bargaining agreements (CBA) which affect construction site hiring? Yes No

CONTRACT BID INFORMATION

A. USE OF SUBCONTRACTORS

1. Do you plan to subcontract work on this contract? Yes ____ No ____

2. If yes, complete the chart below.

NOTE: ALL PROPOSED SUBCONTRACTORS WITH A SUBCONTRACT IN EXCESS OF \$1,000,000 MUST COMPLETE AN EMPLOYMENT REPORT FOR REVIEW AND APPROVAL BEFORE THE CONTRACT MAY BE AWARDED AND WORK COMMENCES.

SUBCONTRACTOR'S NAME	OWNERSHIP (ENTER APPROPRIATE CODE LETTERS BELOW)	WORK TO BE PERFORMED BY SUBCONTRACTOR	TRADE PROJECTED FOR USE BY SUBCONTRACTOR	PROJECTED DOLLAR VALUE OF SUBCONTRACT

ership Codes

ALL WORK PERFORMED BY THE CONTRACTOR IN NEW YORK CITY

List all work being performed within the 5 boroughs of New York City, regardless of contract funding source:

TRACT NUMBER	CONTRACTING AGENCY OR PRIVATE DEVELOPER	FUNDING SOURCE F (FEDERAL), S (STATE) P (PRIVATE), C (CITY)	LOCATION OF JOB	% OF WORK COMPLETED

USE ADDITIONAL SHEETS IF REQUIRED

CURRENT WORKFORCE FOR ALL WORK PERFORMED IN NEW YORK CITY

TRADE CLASSIFICATION CODES

J) JOURNEY LEVEL WORKERS (A) APPRENTICE
 (H) HELPER (TRN) TRAINEE
 (TOT) TOTAL BY COLUMN

FOR EACH TRADE CURRENTLY ENGAGED
 BY YOUR COMPANY, ENTER THE CURRENT
 WORKFORCE FOR MALES AND FEMALES
 BY TRADE CLASSIFICATION ON THE
 CHARTS BELOW.

		MALES					FEMALES				
Affiliation, If Applicable:		(1) White (Non- Hisp.)	(2) Black (Non- Hisp.)	(3) Hisp.	(4) Asian	(5) Native- Amer.	(6) White (Non- Hisp.)	(7) Black (Non- Hisp.)	(8) Hisp.	(9) Asian	(10) Native- Amer.
Col. # 1-10):	J						J				
	H						H				
Minority, Male & Female (Col. #3,4,5,7,8,9 & 10):	A						A				
	TRN						TRN				
Male (Col. #6-10):	TOT						TOT				

		MALES					FEMALES				
Affiliation, If Applicable:		(1) White (Non- Hisp.)	(2) Black (Non- Hisp.)	(3) Hisp.	(4) Asian	(5) Native- Amer.	(6) White (Non- Hisp.)	(7) Black (Non- Hisp.)	(8) Hisp.	(9) Asian	(10) Native- Amer.
Col. # 1-10):	J						J				
	H						H				
Minority, Male & Female (Col. #3,4,5,7,8,9 & 10):	A						A				
	TRN						TRN				
Male (Col. #6-10):	TOT						TOT				

D. SIGNATURE PAGE

The information submitted herewith is true and complete to the best of my knowledge and belief and submitted with the understanding that compliance with New York City's equal employment requirements, as contained in Charter Chapter 13-B and Executive Order No. 50 (1980) and the implementing rules and regulations, is a requirement of the contractors and subcontractors working on this construction project.

By my signature, I also agree on behalf of the company to submit a certified copy of payroll records to the Office of Labor Services, at least monthly where the contract is valued at or in excess of \$1 million or at any dollar value of federally assisted with Community Development (CD) or Urban Development Action Grant (UDAG) funds. Further, I agree to submit payroll records of all subcontractors employed on this contract regardless of contract value.

CONTRACTOR'S NAME

NAME OF PERSON WHO PREPARED THIS REPORT

TITLE

NAME OF OFFICIAL AUTHORIZED TO SIGN ON BEHALF OF THE CONTRACTOR

TITLE

BUSINESS TELEPHONE NUMBER

BY: _____
SIGNATURE OF AUTHORIZED OFFICIAL

DATE

ONLY ORIGINAL SIGNATURES ARE ACCEPTABLE

WILLFUL OR FRAUDULENT FALSIFICATIONS OF ANY DATA OR INFORMATION SUBMITTED HEREWITH MAY RESULT IN THE TERMINATION OF THE CONTRACT BETWEEN THE CITY AND THE BIDDER OR CONTRACTOR AND IN DISAPPROVAL OF FUTURE CONTRACTS. FURTHER, SUCH FALSIFICATIONS MAY RESULT IN CRIMINAL PROSECUTION.

CONFIDENTIALITY POLICY: To the extent permitted by law and consistent with proper charge of OLS' responsibilities under Charter Chapter 13-B and Executive Order No. 50 (1980), the implementing rules and regulations, all information provided by a contractor to the OLS shall be confidential.

APPROVAL STATUS

- | | | |
|---|---|--|
| <input type="checkbox"/> Approved
C.O. _____ | <input type="checkbox"/> Conditional
_____ | <input type="checkbox"/> Disapproved
Date _____ |
| <input type="checkbox"/> Approved
SR. C.O. _____ | <input type="checkbox"/> Conditional
_____ | <input type="checkbox"/> Disapproved
Date _____ |
| <input type="checkbox"/> Approved
A.D. _____ | <input type="checkbox"/> Conditional
_____ | <input type="checkbox"/> Disapproved
Date _____ |

FOR OFFICIAL USE ONLY

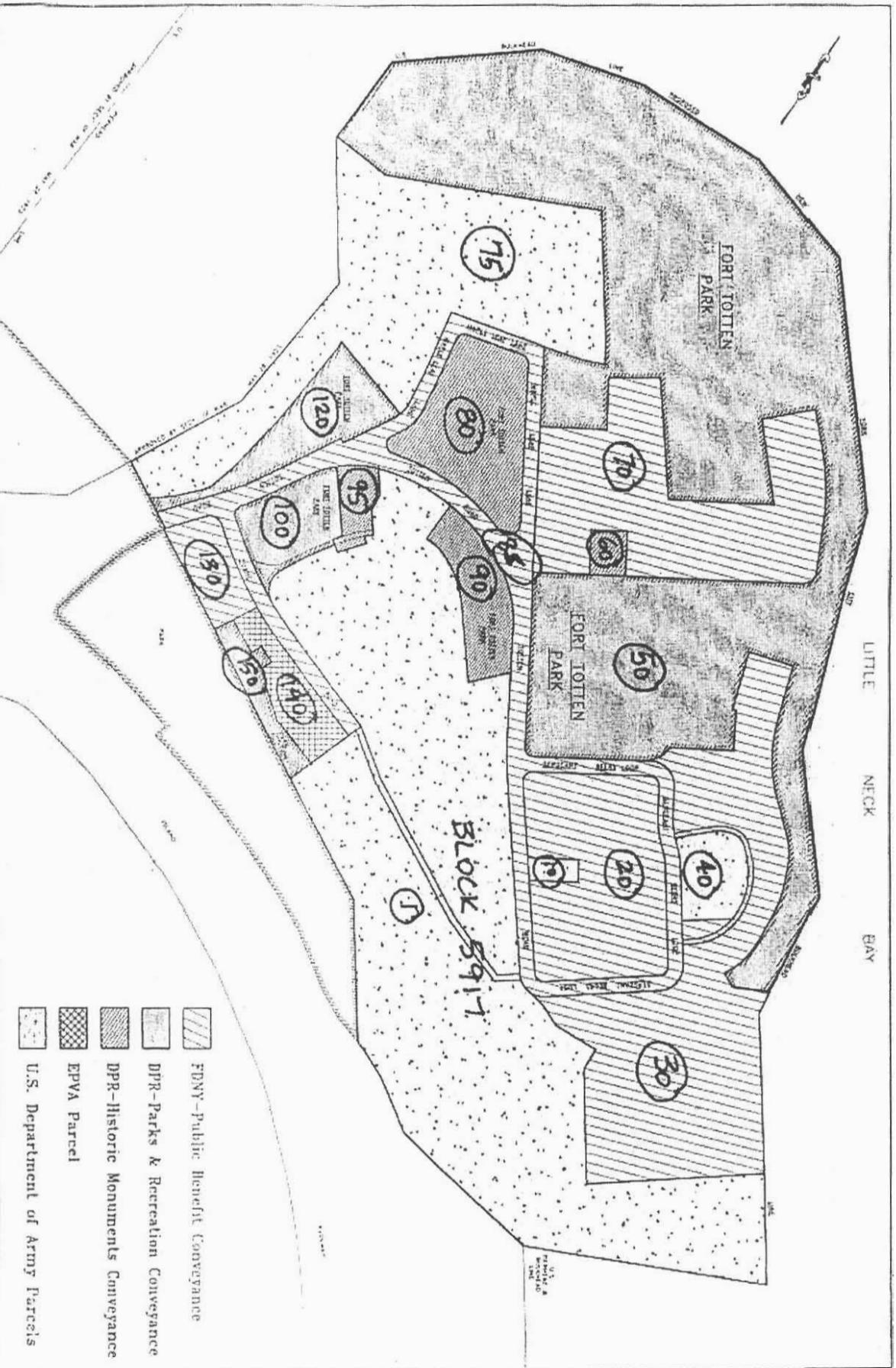
AGENCY _____
FILE # _____
REGISTER # _____
CONTRACT # _____
FUNDING SOURCE _____
BID DATE _____

SCHEDULE A
CITY'S EQUIPMENT

NONE

FORT TOTTEN

Total Parcels in Lot



Approx Scale : 1" = 450'