

BATTERY PARK CITY AUTHORITY.

Landlord.

AND

HUDSON TOWERS HOUSING CO., INC.

Tenant.

INDENTURE OF LEASE

Dated as of June 3, 1980

Table of Contents
Battery Park City Authority

Article		Page
Article 1	Land Rent-Other Rent.....	1
Article 2	Certain Definitions	3
Article 3	Tax Equivalency Payments and Assessments.....	4
Article 4	Insurance	6
Article 5	Non-Discrimination	9
Article 6	Covenants against Waste and to Repair and Maintain the Demised Premises	11
Article 7	Compliance with Orders, Ordinances, Etc.; Electricity System	12
Article 8	Damage to or Destruction of Improvements.....	13
Article 9	Condemnation	13
Article 10	Initial Construction and Changes by Tenant.....	16
Article 11	Disbursement of Deposited Moneys.....	19
Article 12	Mechanic's Liens.....	21
Article 13	Lawful Use; Surrender of the Demised Premises; Inspection of the Demised Premises; Records	22
Article 14	Assignment, Subletting and Mortgaging.....	23
Article 15	Default Provisions; Conditional Limitations.....	24
Article 16	Indemnification of Landlord.....	28
Article 17	Renewal Privileges-Rent During Renewal Terms.....	29
Article 18	Quiet Enjoyment.....	29
Article 19	Certificates of Landlord and Tenant.....	30
Article 20	Notices and Certain Rights of Holders of Leasehold Mortgages.....	30
Article 21	Arbitration and Appraisal	31
Article 22	Miscellaneous.....	32
Article 23	Master Lease.....	34
Article 24	Landlord's Rights to Perform Tenant's Covenants	34
Article 25	Invalidity of Particular Provisions.....	35
Article 26	Limitation of Landlord's Liability	35
Article 27	No Personal Liability.....	35
Article 28	Covenants to Bind and Benefit the Respective Parties	35

INDENTURE OF LEASE, dated as of June 3, 1980, between BATTERY PARK CITY AUTHORITY, a public benefit corporation of the State of New York, having an office at 40 Rector Street, New York, New York 10006 ("Landlord"), and HUDSON TOWERS HOLDING CO., INC., a New York corporation, organized under Article 2 of the Private Housing Finance Law of the State of New York, having an office at Olnick, Boxer, Blumberg, Lane and Troy, 909 Third Avenue, New York, New York 10022 ("Tenant").

WITNESSETH:

WHEREAS, pursuant to a lease, dated as of November 24, 1969, as amended by agreements dated October 19, 1971, June 18, 1974, October 24, 1974, October 24, 1974 and September 10, 1979 between The City of New York (the "City"), as lessor, and Landlord, as lessee, there was demised to Landlord certain real property more particularly described therein; and

WHEREAS, pursuant to the Eminent Domain Proceedings Law, New York State Urban Development Corporation ("UDC"), per order of the Supreme Court, New York County, acquired in condemnation all of the right, title and interest of the City in and to said real property, subject to said lease; and

WHEREAS, by deed, UDC conveyed a portion of said real property to BPC Development Corporation (said Corporation and its successors and assigns being hereinafter referred to as "BPCDC"); and

WHEREAS, by Sixth Amendment of Lease, BPCDC and Landlord further amended said lease; and

WHEREAS, Tenant desires to lease and develop a portion of the real property so demised to Landlord.

NOW, THEREFORE, Landlord hereby demises and leases to Tenant and Tenant hereby hires and takes from Landlord the real property (the "Land") situate, lying and being in the Borough of Manhattan, City and State of New York, as more particularly described in *Exhibit A* annexed hereto, together with any structures or improvements now situate or hereafter erected on the Land (herein individually the "Improvement" and collectively the "Improvements" and the Land and Improvements being collectively called the "demised premises").

TOGETHER WITH AND SUBJECT TO the matters specified in *Exhibit A*.

TO HAVE AND TO HOLD the demised premises unto Tenant, its successors and assigns, for an initial term commencing on June 3, 1980 (the "term commencement date") and expiring on June 30, 2040 unless this lease is sooner terminated as hereinafter provided.

AND Landlord and Tenant hereby covenant and agree as follows.

ARTICLE I

Land Rent — Other Rent

Section 1.1. A. Tenant shall pay to Landlord during the term of this lease in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, or by check subject to collection, drawn on a bank which is a member of the New York Clearing House Association, at the address of Landlord above set forth or at such other place as Landlord may from time to time designate, a net annual ground rental (the "Land Rent"), over and above the other and additional payments to be paid by Tenant as hereinafter provided, of \$197,040, to commence on the date a certificate of occupancy, temporary or permanent, shall have been issued for all of the 1642 dwelling units to be built on or September 1, 1982 (as such date may be extended pursuant to *Section 10.5* hereof, but in no event later than December 1, 1984) whichever shall be the earlier date; provided that, until such date, Tenant shall pay a net annual ground rental as follows: commencing as of the first day of the month which is 3 months after the

month in which the term commencement date occurs \$65,680, which amount shall be adjusted and increased as of the first day of each month thereafter by multiplying the number of dwelling units as to which a certificate of occupancy, temporary or permanent, shall be outstanding in the month preceding such adjustment by \$80. Except as above provided, the Land Rent shall be paid to Landlord in equal monthly installments in advance on the first day of each and every month of said term without notice or demand and without abatement, deduction or set-off of any amount whatsoever, except as otherwise specifically provided herein.

B. Tenant shall pay \$2,000,000 as additional rent as follows:

(a) \$1,000,000 on the second anniversary of the term commencement date; and

(b) \$1,000,000 in 24 equal monthly payments of \$41,666.60 each on the first day of each month commencing on September 1, 1982; provided that upon the second anniversary of the date of final endorsements of the HUD Mortgage by the Federal Housing Commissioner (the "*Final Endorsement Date*") any unpaid installments, including any unpaid portion of the \$1,000,000 referred to in clause (a) above, shall be due and payable.

Such additional rent shall be paid out of surplus cash (as that term is defined in the Regulatory Agreement, dated of even date herewith, between Tenant and the Secretary), provided that if surplus cash is not sufficient to make any such payment when due, any deficit shall be paid from available surplus cash on the next succeeding payment dates, provided further that the fact that surplus cash is not sufficient to pay the additional rent on the relevant payment dates (including the final payment date) shall not constitute a default under this lease. If Tenant shall fail to make any of the foregoing payments when the same are due and payable from surplus cash actually received by Tenant, and Landlord has not theretofore taken control of Tenant in accordance with Article II of the Private Housing Finance Law or Article XIII of the Certificate of Incorporation of Tenant, then, unless paid within 15 days after notice of such failure given by Landlord, Landlord may exercise any and all rights it may have at law or in equity, except that Landlord shall not terminate this lease and the leasehold estate created hereby by reason of such failure to pay such additional rent and in no event shall the Secretary, or any subsequent assignee of the Secretary, be liable for the payment of such additional rent. Anything contained herein to the contrary notwithstanding, to the extent any payments are made to Landlord in satisfaction of Tenant's obligations hereunder pursuant to the Payment Agreement, dated June 3, 1980, delivered by Richard Lefrak, Samuel Lefrak, Lester Fisher, and Robert Olnick to Landlord, such payments shall be deemed to satisfy Tenant's obligations hereunder.

Section 1.2. In no event shall the aggregate amount of Land Rent and Tax Equivalency Payments (as defined in Section 3.1 hereof) payable hereunder for any period from July 1 to June 30 be less than the amount otherwise required to be paid by Tenant to Landlord pursuant to paragraph (a) of Section 4.02 of the Master Lease for such period for the demised premises.

Section 1.3. A. Tenant shall pay, simultaneously with any refinancing, to Landlord, as additional rent, 10% of any net proceeds realized after the following deductions (the "*Net Proceeds*") from any Leasehold Mortgage (other than a Leasehold Mortgage (a) obtained and used to finance construction of Improvements on the Land, or (b) which is the HUD Mortgage) after deducting therefrom (i) reasonable expenses incurred in connection therewith, including but not limited to prepayment premiums or penalties on the then outstanding mortgage, attorneys' fees, recording costs, title insurance premiums and survey costs, (ii) any amounts expended with a view toward obtaining a refinancing reasonably prior to obtaining the same or to be expended reasonably soon after the refinancing, for improvement or repair of the demised premises, and (iii) principal and interest paid on any mortgage being prepaid therefrom; Tenant to make a reasonable estimate in writing of the amounts to be expended after the refinancing for improvements or repair and upon completion thereof appropriate adjustment shall be made between the parties according to whether such expenditures were less than or in excess of said estimate. Landlord shall pay to the holder of a Leasehold Mortgage, simultaneously with payment of the balance thereof by Tenant, 10% of the principal amount to be paid by Tenant upon the maturity (other than by default) of any Leasehold Mortgage (the "*balloon amount*") as to

which Landlord has received 10% of any Net Proceeds as aforesaid, not to exceed the amount of the Net Proceeds received by Landlord, and if Tenant has paid such full principal amount and furnished proof of such payment, then Landlord shall pay 10% of such balloon amount to Tenant.

B. In addition to the amount payable by Tenant to Landlord pursuant to paragraph A of this Section, commencing on the fortieth anniversary of the term commencement date Tenant shall pay to Landlord 40% of the Net Proceeds received thereafter until the aggregate amount paid to Landlord pursuant to this paragraph B shall equal the amount determined as follows:

(i) compute the Tax Equivalency Payments which should have been paid during the period (the "Applicable Period") from the Final Endorsement Date to the day preceding the fortieth anniversary of the term commencement date if the HUD Mortgage had not been insured or reinsured or held by the Department of Housing and Urban Development or given to the Federal Housing Commissioner in connection with a resale of the demised premises;

(ii) compute the Tax Equivalency Payments paid by Tenant to Landlord during the Applicable Period;

(iii) subtract the amount determined pursuant to clause (ii) from the amount determined pursuant to clause (i); and

(iv) multiply the remainder by a fraction having as its numerator the income received by Tenant during the Applicable Period from the commercial and retail space included in the Improvements and as its denominator the total income received by Tenant from the Improvements during the Applicable Period.

Section 1.4. Upon (a) the date of payment of the HUD Mortgage, whether by prepayment or upon maturity of the same, or (b) on such date as the HUD Mortgage is no longer insured by the Department of Housing and Urban Development, whichever of (a) or (b) occurs earlier, and (c) as of the twenty-fifth, fortieth and fifty-fifth anniversaries of the first day of the calendar month next succeeding the date of issuance of a temporary certificate or certificates of occupancy for any portion of the rentable area in the Improvements if, prior to the occurrence of the relevant anniversary, either of the events described in clause (a) and (b) of this sentence shall have theretofore occurred, a new Land Rent shall become payable, which new Land Rent shall be determined by agreement of the parties or failing such agreement the new Land Rent shall be an amount equal to 8% of the fair market value of the Land determined by appraisal in accordance with the provisions of Section 21.2 hereof but such new Land Rent, together with the Tax Equivalency Payments, shall not be less than the amounts otherwise required to be paid by Tenant to Landlord pursuant to paragraph (a) of Section 4.02 of the Master Lease for such periods for the demised premises.

Section 1.5. This lease shall be deemed and construed to be a "net lease" and Tenant shall pay to Landlord, absolutely net throughout the term of this lease, the Land Rent, Tax Equivalency Payments, additional rent and other payments hereunder, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off except as otherwise expressly provided herein, and under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder except as herein expressly set forth.

ARTICLE 2

Certain Definitions

Section 2.1. For all purposes of this lease, unless the context otherwise requires, the following words and phrases have the following meanings:

(a) "additional rent" means any amount payable by Tenant to Landlord pursuant to the terms of this lease, other than Land Rent, including without limitation any sum disbursed by Landlord to make payments on behalf of Tenant pursuant to the terms of this lease or to remedy a default by Tenant;

- (b) "Appraisal" means the procedure to be followed as provided in *Section 21.2* hereof;
- (c) "Arbitration" means a proceeding to be conducted in accordance with the provisions of *Section 21.1* hereof;
- (d) "chief financial officer" shall mean in the case of a corporation the treasurer or controller and in the case of a partnership a general partner;
- (e) "Event of Default or 'Default'" has the meaning set forth in *Article 15* hereof;
- (f) "HUD Mortgage" means a loan in the amount of \$87,374,700 (or such other amount as is acceptable to Landlord and Tenant) insured by the United States Department of Housing and Urban Development and secured by a mortgage on this lease and the leasehold estate hereby created, including amounts being advanced thereunder from time to time.
- (g) "Institution" means an organization designated as such in the Master Lease and, except for Landlord or any wholly owned subsidiary of Landlord, such organization must have assets of at least \$250,000,000 unless otherwise approved by Landlord, which approval shall not be unreasonably withheld or delayed.
- (h) "Institutional Leasehold Mortgage" and "Institutional Leasehold Mortgagee" mean, respectively, a Leasehold Mortgage made by an Institution and an Institution which is the holder of an Institutional Leasehold Mortgage;
- (i) "Leasehold Mortgage" means any mortgage constituting a lien upon this lease and the leasehold estate hereby created;
- (j) "lease year" means the period beginning on the term commencement date and ending on the day preceding the first anniversary of the term commencement date and each succeeding 12 month period thereafter.
- (k) "Master Development Plan for Battery Park City" means the Master Development Plan as that term is defined in the Master Lease, provided that Landlord shall not amend the same so as to limit the development of the demised premises in accordance with the final plans and specifications referred to in the first sentence of *Section 10.1 A* hereof without the consent of Tenant, which consent shall not be unreasonably withheld or delayed.
- (l) "mortgage" includes an indenture of mortgage and deed of trust and "Institutional Leasehold Mortgagee" shall include a bank or trust company acting as trustee under such indenture of mortgage and deed of trust;
- (m) "Secretary" shall mean the Secretary of Housing and Urban Development and, when used in this lease, shall be applicable only if at the time a Leasehold Mortgage is insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said Mortgage. Whenever used herein, the term Department of Housing and Urban Development shall include the Federal Housing Administration.
- (n) "termination of this lease" means the expiration of the term of this lease and any sooner termination of the term of this lease pursuant to any of the provisions hereof.

ARTICLE 3

Tax Equivalency Payments and Assessments

Section 3.1. Tenant shall pay to Landlord on the first day of August in each year an amount equal to one sixth, and on the first day of each month from September through June in each year an amount equal to one

twelfth. of Tax Equivalency Payments (hereinafter defined). As long as the HUD Mortgage is insured, reinsured or held by the Department of Housing and Urban Development, or given to the Federal Housing Commissioner in connection with a resale of the demised premises, then, *Tax Equivalency Payments* shall mean an amount equal to 10% of the total rents from the Improvements less the cost of providing electricity, gas, heat and other utilities to dwelling units therein, and, thereafter, *Tax Equivalency Payments* shall mean the amount calculated by multiplying the assessed value of the demised premises for the then current fiscal year of the City by the tax rate in the Borough of Manhattan in such year. During the first 24 months after a temporary certificate of occupancy is issued for any portion of a building, total rents shall be based on the rent collected from the dwelling units in the building plus other income collected therefrom and thereafter shall be based on the greater of the rent collected from the dwelling units in the building plus other income collected therefrom or 95% of the rent roll for the dwelling units in the building for which temporary certificates of occupancy shall have been issued plus other income collected therefrom; the term "other income collected" to include, without limitation, moneys from vending or washing machine concessions, rents from professional suites, retail stores, garage and storage space. Tax Equivalency Payments shall be appropriately prorated if the lease term commences or expires during a fiscal year and as certificates of occupancy, temporary or permanent, are issued for portions of the Improvements. Reductions in Tax Equivalency Payments shall be phased in at the time and in proportion to the number of units for which certificates of occupancy are issued compared to the aggregate number of units to be built.

A. Tenant shall have the right, so long as no Event of Default shall have occurred and be continuing, to contest the amount or validity, in whole or in part, of any assessment or tax rate by appropriate proceedings and Landlord shall not unreasonably oppose any such application nor shall Landlord oppose any agreement reached between Tenant and the City with respect to an assessment in a year. Tenant shall not however withhold or defer payment of any Tax Equivalency Payments by reason of any such contest. Landlord shall join in any such proceedings or permit the same to be brought in its name if required and Landlord shall have at least 10 days prior notice of the bringing of such proceeding and shall be furnished with copies of all papers and documents filed by Tenant therein. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceeding and Tenant shall indemnify and save harmless Landlord from any such costs or expenses. Nothing contained herein shall limit Landlord's right, at Landlord's expense, to independently seek a reduction in the amount, or to contest the validity, in whole or in part, of any assessment or tax rate, provided Landlord does not seek a lesser reduction than applied for by Tenant. Landlord shall not seek any increase in the assessment of the demised premises.

B. If, within 30 days after the date of the final determination of a reduction in the assessed value of the demised premises, Tenant shall not have been paid or received a credit for any refund of Tax Equivalency Payments to which it is entitled by reason of such reduction, it shall be entitled to deduct the amount of such refund, without interest, from the Land Rent, Tax Equivalency Payments and other payments referred to in this Article next becoming due under this lease, provided that, unless Landlord approves deduction of the full amount thereof, there shall not be deducted in any one calendar year from Land Rent and Tax Equivalency Payments an amount in excess of the amount determined by multiplying the refund by the fraction having as its numerator one and as its denominator the number of years as to which deductions are granted. From and after certificates of occupancy, temporary or permanent, shall have been issued for all of the 1642 dwelling units to be built by Tenant, Tenant shall also be entitled to offset against Land Rent, Tax Equivalency Payments and other payments referred to in this Article an amount equal to the interest accrued on all refunds owing to Tenant from the date interest would have been payable thereon by the City if Tenant had been the fee owner of the Land to the date Tenant shall have been paid or received a credit therefor pursuant to this Subsection at the rate the City is then paying on refunds. Notwithstanding the foregoing, any unpaid balance of any such refunds and interest thereon shall be payable in a lump sum upon the expiration of the term of this lease.

C. Except as otherwise provided in this lease, Tenant may not apply for or take advantage of any real estate tax exemption or abatement, except to obtain substantially equivalent exemption or abatement under

laws modifying or replacing those pursuant to which Tenant is granted or permitted to seek exemption or abatement hereunder.

D. In the event that, at any time during the term of this lease, the method of taxing real property in the City is changed by law so that the intention of the parties with respect to the amount of the Tax Equivalency Payments shall be frustrated in whole or in part, the parties shall mutually agree on such modifications to this lease as shall be necessary to produce Tax Equivalency Payments which shall, as nearly as possible, carry out the aforesaid intention of the parties. If the parties are unable to arrive at a mutual agreement of such modification, such dispute shall be resolved by Arbitration.

Section 3.2. Tenant shall pay (subject as hereinafter provided), before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all assessments, water and sewer rates and charges (other than real estate taxes), vault charges, license and permit fees and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever (said assessments, water and sewer rates or charges, vault charges, license and permit fees and other governmental levies and charges being herein called an "imposition"), which are assessed, levied, confirmed, imposed or become a lien upon the demised premises or upon the demised premises and the sidewalks or streets in front of or adjoining the demised premises, or become payable, during the term of this lease; provided, however, that if, by law, any such imposition is payable or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such imposition), Tenant may pay the same (and any accrued interest on the unpaid balance of such imposition) in installments and shall pay only such installments and the interest payable in connection therewith as may become due during the term of this lease as the same respectively become due and before any fine, penalty, interest or cost may be added thereto for the non-payment of any such installment and interest; and provided further, that any imposition shall be appropriately pro-rated if the lease term commences or expires during a fiscal period of the taxing authority or the imposition relates to other property as well as the demised premises.

Section 3.3. Notwithstanding the provisions of Section 3.2 hereof with respect to assessments, but subject, however, to the provisions of Section 5.01 of the Master Lease, Tenant shall not be obligated to pay for any assessments levied by the City or by Landlord for the construction of any facilities specified in this lease or in the Master Development Plan for Battery Park City; as the same may be amended from time to time, to be constructed by Landlord.

Section 3.4. Tenant shall, upon request of Landlord, furnish to Landlord for inspection within 60 days after the date when any imposition is payable without penalty, official receipts of the appropriate authority, or other evidence satisfactory to Landlord, evidencing the payment thereof.

Section 3.5. Tenant shall have the right to contest the amount or validity, in whole or in part, of any imposition by appropriate proceedings. Tenant shall not, however, withhold or defer payment of any imposition by reason of any such contest. Landlord shall not oppose any application by Tenant and shall join in any such proceedings or permit the same to be brought in its name if required. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceeding and Tenant shall indemnify and save harmless Landlord from any such costs or expenses, unless voluntarily incurred by Landlord.

Section 3.6. Nothing in this lease shall require Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Landlord, or any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon Landlord in connection with the rent payable by Tenant under this lease.

ARTICLE 4

Insurance

Section 4.1. Tenant shall keep the Improvements insured for the mutual benefit of BPCDC, Landlord, the holder of any Leasehold Mortgage and Tenant against:

(a) loss or damage by fire, and such other risks as may be included in the standard form of extended coverage endorsement from time to time available, and war risks, when requested by the holder of any Leasehold Mortgage, and to the extent such war risk insurance is generally obtainable from the United States Government or an agency thereof, in amounts sufficient in each case to prevent any insured thereunder from becoming a co-insurer within the terms of the applicable policies, and, in any event, in an amount not less than 80% of the full insurable value of the Improvements;

(b) loss or damage by leakage of sprinkler systems, if any, or by explosion of high pressure steam boiler or pressure vessels, air-conditioning equipment or similar apparatus, if any, installed in the Improvements in such respective amounts as are customarily carried by prudent owners of like improvements;

(c) loss or damage by such other hazards and in such amounts as are customarily carried by prudent owners of like improvements, having regard to the character of the Improvements and the use thereof;

(d) loss of rental under a rental value insurance policy covering risk of loss due to the occurrence of any of the hazards described in *clause (a)* of this Section in an amount not less than the aggregate requirements, for a period of twelve (12) months following the occurrence of the insured casualty, of Land Rent, premiums for insurance to be maintained and Tax Equivalency Payments.

The term "full insurable value" shall mean the actual replacement cost of the Improvements (excluding foundation and excavation costs) and said "full insurable value" shall be determined at the request of Landlord by an architect, appraiser, appraisal company or one of the insurers under the fire insurance policies approved in writing by Landlord, at the expense of Tenant, but such determination shall not be required to be made more frequently than once every 36 months, each such determination to continue until the next determination, provided, however, that, notwithstanding the foregoing, any determination requested by BPCDC under the Master Lease shall be binding on the parties hereto.

In the event of a dispute between Landlord and Tenant as to the limits of the insurance to be carried pursuant to *clause (c)* or *(d)* of this Section or pursuant to *Section 4.2* hereof, such dispute shall be determined by Arbitration, except that Landlord's requirement shall be deemed reasonable if the limits required do not exceed the limits generally maintained by prudent operators of comparable improvements in the Borough of Manhattan. In the event of a dispute between Landlord and Tenant as to the character of any hazards which Landlord may require Tenant to insure against as provided in *clause (c)* of this Section, such dispute shall be determined by Arbitration.

Section 4.2. Tenant shall maintain for the mutual benefit of BPCDC, Landlord, Tenant and The Port Authority of New York and New Jersey comprehensive general liability insurance against claims for personal injury or death and damage to property occurring in or about the demised premises with such limits as may reasonably be required by Landlord from time to time, but not less than \$10,000,000.00 in respect of personal injury or death to any one person and \$10,000,000.00 in respect of personal injury or death to any number of persons in any one occurrence and not less than \$10,000,000.00 for damage to property. Such insurance may be maintained in such proportions as Tenant shall determine in primary coverage and excess ("umbrella") liability policies.

Section 4.3. All insurance provided for under this lease shall be effected under valid and enforceable policies issued by insurers of recognized responsibility, licensed to do business in the State of New York and to be approved by Landlord and the Institutional Leasehold Mortgagee. The original policies provided for under *Section 4.1* hereof shall be delivered to the Institutional Leasehold Mortgagee or, if there be none, to Landlord and certificates and copies of such insurance shall be delivered to BPCDC and, if it has not received the original policies, to Landlord with evidence of the payment of the premiums for each such policy. At least 20

days prior to the expiration date of each policy the original renewal policy for such insurance or other satisfactory evidence thereof shall be delivered by Tenant to the holder of the expiring original policy, and a certificate thereof or other satisfactory evidence thereof shall be delivered as aforesaid, with evidence of payment of the premium for such policy. To the extent obtainable, all such policies shall contain agreements by the insurers that (i) any loss shall be payable to BPCDC, any holder of a Leasehold Mortgage and Landlord notwithstanding any act or negligence of any other named insured therein which might otherwise result in forfeiture said of insurance, (ii) such policies shall not be cancelled or any material change made except upon 30 days' prior written notice to each named insured and loss payee by registered or certified mail, return receipt requested, (iii) the coverage afforded thereby shall not be affected by the performance of any work in or about the Improvements, and (iv) the insurers shall waive any right of subrogation to recover the amount of any loss resulting from the negligence of BPCDC, Landlord, Tenant and their agents, employees and licensees.

Section 4.4. All policies of insurance required herein shall name BPCDC, Landlord and Tenant as the insureds as their respective interests may appear, and all policies of the character referred to in *Section 4.1* hereof (other than the policy identified in *clause (d)* of said Section) may also provide for any holder of a Leasehold Mortgage to be an insured, as the respective interests of such parties may appear, pursuant to a standard mortgagee clause or endorsement. The loss, if any, under said policies referred to in *Section 4.1* hereof shall be adjusted with the insurance companies by Landlord and Tenant, except that in case an Institutional Leasehold Mortgagee shall require that it participate in, or approve of, such adjustment, then no adjustment shall be made with the insurance companies without such participation or prior approval of such Institutional Leasehold Mortgagee.

Section 4.5. The loss, if any, under all policies of the character referred to in *Section 4.1* hereof shall be payable to the Institutional Leasehold Mortgagee or, if there be none, to Landlord or, to the extent Landlord and any Institutional Leasehold Mortgagee shall determine, to Tenant to be held by Tenant in trust and applied toward the cost of restoring, repairing, replacing or rebuilding the Improvements damaged or destroyed. All policies of the character aforesaid shall expressly provide that the loss thereunder shall be adjusted and paid as provided in *Section 4.4* hereof and this *Section 4.5*.

Section 4.6. Any loss paid under the rental policy referred to in *clause (d)* of *Section 4.1* hereof shall be applied by Landlord, to the extent necessary, to the payment, from time to time as the same become due, of the Land Rent, insurance premiums and Tax Equivalency Payments; any excess amount received by Landlord to be paid to Tenant in trust to be applied to payment of installments on mortgage debt and to normal operating expenses. Any loss paid under any insurance policy of the character referred to in *clauses (a), (b) or (c)* of *Section 4.1* hereof shall be disbursed in accordance with the provisions of *Article 11* hereof toward the cost of restoring, repairing, replacing or rebuilding the Improvements so damaged or destroyed. Notwithstanding the foregoing, in the event the demised premises are subject to a mortgage held by Landlord, the loss proceeds paid under any policies of the character referred to in *clauses (a), (b) or (c)* of *Section 4.1* hereof shall be disbursed in accordance with the provisions of the applicable mortgage instruments.

Section 4.7. From and after the date a Leasehold Mortgage is not insured, reinsured or held by the United States Department of Housing and Urban Development or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said Mortgage, Tenant shall be permitted to take out insurance of the kind and in the amounts provided for under *Sections 4.1* or *4.2* under a blanket insurance policy or policies which can cover other properties owned or operated by Tenant as well as the demised premises; provided, however, that any such policy of insurance to be provided for by *Section 4.1* (a) shall specify therein, or Tenant shall furnish Landlord, BPCDC and the holder of any Fee Mortgage or Leasehold Mortgage with a written statement from the insurers under such policies specifying, the amount of the total insurance allocated to the Improvements, which amount shall be not less than the amount required by said *Section 4.1* to be carried, and (b) shall not contain any clause which would result in the insured thereunder being required to carry insurance with respect to the property covered thereby in an amount equal

to a minimum specific percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss with the insurer under such policy. Tenant shall furnish to Landlord and to the holder of any Fee Mortgage or any Leasehold Mortgage, within 30 days after the filing thereof with any insurance rate-making body, copies of the schedule or makeup of all property covered by every such policy of blanket insurance.

Section 4.8. Notwithstanding anything to the contrary contained in this *Article 4*, during such periods of time as the Department of Housing and Urban Development, or any agency thereof, shall be the tenant hereunder, the failure to comply with any of the provisions of this Article shall not constitute an Event of Default under this lease, provided, however, in such event Landlord shall cause such provisions to be complied with.

Section 4.9. If Tenant shall not take out, pay for or maintain insurance as required in this Article, Landlord may do so on Tenant's behalf and, except as provided in *Section 4.7* hereof, any sums paid by Landlord in connection therewith, with interest thereon from the date of any such payment until the date of repayment at the greater of 9% per annum or the prime rate of Citibank N.A., shall be repaid by Tenant to Landlord on demand.

Section 4.10. Notwithstanding anything hereinbefore contained to the contrary, so long as any Leasehold Mortgage shall be insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said Mortgage, in no event shall the insurance maintained by Tenant under this lease be in an amount less than that required to be maintained by the Secretary and all policies of insurance shall be issued by such company or companies and shall be in such form as shall be approved by the Secretary and shall insure against such risks and hazards as shall be approved by the Secretary.

Section 4.11. Except as provided in *Section 4.9* above, Landlord shall not take out insurance concurrent in form or contributing in the event of loss with that specifically required pursuant to this *Article 4*, excepting, however, inflation or other insurance which shall not affect the payments to be made under the insurance specifically required to be carried pursuant to this *Article 4*.

ARTICLE 5

Non-Discrimination

Section 5.1. Tenant covenants and agrees that it shall neither commit nor permit discrimination or segregation by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status in connection with the construction of any Improvements or in the sale, transfer or assignment of its interest in the lease or in the subleasing, use or occupancy of the premises or any part thereof and that it shall comply with all Federal, State and local laws, ordinances, rules and regulations from time to time in effect prohibiting any such discrimination or segregation.

Section 5.2. All activities to be carried out hereunder shall be subject to and shall be performed in compliance with Presidential Executive Order 11625, dated October 13, 1971, entitled "Prescribing Additional Arrangements for Developing and Co-ordinating a National Program for Minority Business Enterprise"; Presidential Executive Order 11246, dated September 24, 1965, as amended by Executive Order 11375, dated October 17, 1967, and Executive Order 11478, dated August 12, 1969, relating to equal opportunity in employment; and Presidential Executive Order 11063, dated November 20, 1962, relating to equal opportunity in housing; and, in each case, to all regulations and procedures relating to such Executive Orders.

Section 5.3. Tenant shall be bound by and shall include the following paragraphs (a) through (f) of this Section 5.3 in all construction agreements, in such manner that said paragraphs and contract provisions shall be binding upon the parties with whom such construction agreements are made:

(a) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and shall undertake programs of affirmative action to insure that such employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) If contractor is directed by Hudson Towers Housing Co., Inc. or the Federal Housing Administration, contractor shall request each employment agency, labor union and authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish it with a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of contractor's obligations hereunder.

(c) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of contractor that all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status.

(d) Contractor shall comply with all of the provisions of Article 5 of the Agreement of Lease, dated as of June 3, 1980, made between Battery Park City Authority, as landlord, and Hudson Towers Housing Co., Inc., as tenant, and shall furnish all information and reports required by Hudson Towers Housing Co., Inc. and the Federal Housing Administration, and shall permit access to its books, records and accounts by the aforesaid parties for the purpose of ascertaining compliance with the provisions hereof.

(e) If contractor does not comply with the affirmative action provisions of this contract, this contract or any portion hereof may be cancelled, terminated or suspended by Hudson Towers Housing Co., Inc. or the Federal Housing Administration or payments hereon may be withheld and such other sanctions may be imposed and remedies invoked in accordance with the procedures established by the Federal Housing Administration or as otherwise provided by law.

(f) Contractor shall include the foregoing provisions of paragraphs (a) through (g) in every subcontract, in such manner that said provisions shall be binding upon the subcontractor. Contractor shall take such action in enforcing the foregoing provisions as Hudson Towers Housing Co., Inc. may direct, including sanctions and remedies for non-compliance. If contractor becomes involved in or is threatened with litigation with any party to any construction agreement as a result of such direction, contractor shall promptly notify Hudson Towers Housing Co., Inc. and the Federal Housing Administration of such fact and, thereafter, such parties may intervene in such action.

Section 5.4. Prior to entering into any construction agreements, Tenant shall require the contractors thereunder to submit to the Federal Housing Administration a program of affirmative action providing for equal employment opportunities in accordance with the intent and purpose of this Article 5. The construction agreements shall provide that the contractors thereunder may not enter into subcontracts with subcontractors unless such subcontractors also submit a program of affirmative action as aforesaid. The construction agreements may not be executed unless and until the program of affirmative action is approved by the Federal Housing Administration.

Section 5.5. Tenant agrees (a) to assist and cooperate actively with the Federal Housing Administration in obtaining the compliance by contractors and subcontractors with the applicable provisions of this *Article 5*, (b) to obtain and to furnish to the Federal Housing Administration such information as they may require from time to time for the supervision of such compliance, (c) to carry out sanctions for violation of the provisions of *Section 5.3* of this *Article 5* which may be imposed upon contractors and subcontractors by Tenant and the Federal Housing Administration pursuant thereto, and (d) to refrain from entering into any construction agreements with contractors barred from New York State contracts.

Section 5.6. If Tenant fails or refuses to comply with its obligations under *Sections 5.3* and *5.4* of this lease, Landlord, after giving Tenant notice and an opportunity to be heard before Landlord and the Federal Housing Administration, may take any or all of the following actions:

(a) refer the matter to the Attorney General of the State of New York for appropriate legal proceedings; and or

(b) require Tenant to pay Landlord, as liquidated damages, an amount equal to Seven Thousand Five Hundred Dollars (\$7,500) for each such failure or refusal by Tenant, provided, however, that in no event shall Tenant's liability hereunder for all such failures or refusals exceed Seventy-Five Thousand Dollars (\$75,000) in the aggregate.

If Tenant shall fail to comply with *Sections 5.3, 5.4* or *5.5* of this lease, Landlord shall not terminate this lease in accordance with *Article 15* hereof, but may exercise only such rights and remedies as are granted under this *Section 5.6*.

Section 5.7. In the event of a final judgment of the unconstitutionality of the provisions of this *Article 5*, in whole or in part, and the elapse of the time necessary to file and appeal thereof or to obtain the issuance of a stay thereof without such an appeal having been filed, or a stay of judgment having been issued, then, in either case, Tenant agrees that, to the extent permitted by law, it shall undertake a program of affirmative action as directed by Landlord and substantially in accordance with Federal Executive Order 11246 and such provisions of this *Article 5* which shall not have been deemed unconstitutional.

Section 5.8. Anything contained in the foregoing provisions of this *Article 5* to the contrary notwithstanding, during such periods of time as the United States Department of Housing and Urban Development, or any agency thereof, shall be the Tenant hereunder, the failure to comply with any of the provisions of this *Article 5* shall not constitute an Event of Default under this lease.

ARTICLE 6

Covenants against Waste and to Repair and Maintain the Demised Premises

Section 6.1. Tenant shall not cause or suffer or permit any waste, damage or injury to the demised premises.

Section 6.2. Tenant shall at all times keep the demised premises and the appurtenances clean and in good condition free of accumulations of dirt, rubbish, snow and ice, and shall make all repairs (including structural repairs) and replacements, ordinary or extraordinary, foreseen or unforeseen, necessary to maintain the Improvements in a condition appropriate for buildings of similar construction, use and class in the Borough of Manhattan and as may be appropriate to avoid any structural damage or injury to the Improvements and shall also maintain the exterior landscaping and planting. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations to the demised premises and Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, maintenance and management of the demised premises.

ARTICLE 7

Compliance with Orders, Ordinances, Etc.; Electricity System

Section 7.1. Tenant shall promptly comply with all present and future laws and ordinances and the orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, and of Battery Park City Authority, as supervising agency under Article II of the Private Housing Finance Law, and the orders, rules and regulations of the New York Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the demised premises or to the use or manner of use of the demised premises. Tenant shall likewise observe and comply with the requirements of all general liability and fire policies and all other policies of insurance at any time in force with respect to the demised premises as required under Sections 4.1 and 4.2 hereof.

Section 7.2. Tenant shall have the right, provided an Event of Default does not then exist, to contest by appropriate legal proceedings, in the name of BPCDC, Tenant and Landlord or any one or more of them, without cost or expense to BPCDC or Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 7.1 hereof (other than (i) the validity or the application, as reflected in the plans and specifications for the Improvements as of the date hereof, of the present Zoning Resolution of The City of New York and the present Master Development Plan for Battery Park City, or (ii) the validity or application of any future amendment of the Zoning Resolution of The City of New York or the Master Development Plan for Battery Park City except Tenant may contest such future amendment in its own name only if the future amendment limits the development of the demised premises in accordance with the final plans and specifications referred to in the first sentence of Section 10.1A hereof or has a significant adverse effect on the demised premises or on the operation thereof), and if compliance therewith pending the prosecution of any such proceeding is legally held in abeyance by the court or agency reviewing the matter without the incurrence of a lien, charge or liability of any kind against the demised premises or Tenant's leasehold interest therein and without subjecting Tenant or Landlord to any criminal liability of whatsoever nature for failure so to comply therewith, Tenant may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings shall be prosecuted with due diligence and dispatch, and Tenant furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such non-compliance or delay therein and prosecutes the contest aforesaid with due diligence. Notwithstanding the foregoing provisions of this Section, if an Institutional Leasehold Mortgagee or the Department of Housing and Urban Development shall be the tenant hereunder, such Institutional Leasehold Mortgagee or the Department of Housing and Urban Development shall not be required to furnish the security required under this Section. Landlord shall execute and deliver any papers which may be necessary to permit Tenant to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement, but such action shall not be deemed to be an acquiescence to any violation thereof or create or impose any obligation or condition which would result in or constitute a violation by Landlord as lessee under the Master Lease. Notwithstanding any such contest by Tenant, Tenant shall at all times continue to make all payments of Land Rent, Tax Equivalency Payments, additional rent and other payments to be paid by Tenant under this lease.

Section 7.3. A. Tenant shall comply with the regulations adopted by Landlord and approved by the New York State Public Service Commission ("PSC") in connection with the submetering of electricity to occupants of the demised premises, as the same may be in effect from time to time, and all moneys paid to Tenant for electricity by occupants shall be deemed to be trust funds to be held and applied to payment of the costs of electricity and the administrative and other allowable costs of Tenant in connection therewith, it being the intent of Landlord to submit to PSC regulations permitting Tenant to recoup all reasonable costs incurred by it in connection with such submetering, subject to PSC requirements.

B. Tenant must obtain the prior approval of Landlord as to the design, components, installation and operational specifications of all equipment comprising the electrical energy submetering system (the "energy

system"). The energy system must meet all requirements of existing laws, the Master Development Plan for Battery Park City, the findings of the City's interdepartmental committee on public utilities and rulings of the PSC applicable to the demised premises. Such approval shall be based upon review of all plans, shop drawings, operational manuals and guides, and the actual operation of installed equipment.

C. Landlord shall also have the right to (i) inspect the installation of the completed energy system prior to the issuance of a certificate of occupancy, temporary or permanent, for any of the dwelling units to be constructed by Tenant pursuant to *Article 10* of this lease; and (ii) inspect and monitor the operation and administration of the energy system after the issuance of a certificate of occupancy, temporary or permanent, for any part or all of the dwelling units to be built by Tenant pursuant to *Article 10* of this lease. Landlord shall at all times have access to all information and records relating to the operation and administration of the energy system and Tenant shall provide Landlord with copies of all reports, studies and analyses reasonably requested by Landlord or required by the PSC or BPCDC in connection therewith.

ARTICLE 8

Damage to or Destruction of Improvements

Section 8.1. In case of damage to or destruction of the Improvements, or any part thereof, by fire or any other cause, similar or dissimilar, insured or uninsured, and regardless of the availability or sufficiency of insurance proceeds, Tenant shall (subject to the provisions of *Section 4.5* hereof and to reimbursement to the extent provided in *Article 11* hereof) restore, repair, replace or rebuild the Improvements as nearly as possible to the condition, quality and class they were in immediately prior to such damage or destruction, or with such changes or alterations as Tenant shall elect to make in conformity with *Article 10* hereof. Such restoration, repairs, replacement or rebuilding shall be commenced promptly and prosecuted with due diligence, subject to force majeure as defined in *Section 10.5* hereof.

Section 8.2. The Land Rent and Tax Equivalency Payments payable during the period from the date of the casualty until the completion of the restoration, repairs, replacement or rebuilding, shall be abated only to the extent of the net amount actually received by Landlord under the rental value insurance referred to in *clause (d)* of *Section 4.1* hereof for application to the Land Rent and Tax Equivalency Payments becoming due and payable during said period.

Section 8.3. Except as provided in *Section 8.2* hereof, Tenant's obligation to make payments of the Land Rent, Tax Equivalency Payments, additional rent and all other payments and charges on the part of Tenant to be paid and to perform all other covenants and agreements on the part of Tenant to be performed shall not be affected by any such damage to or destruction of the Improvements. Tenant hereby waives the provisions of *Section 227* of the Real Property Law and of any other statute or law now or hereafter in effect contrary to such obligations of Tenant as herein set forth, or which relieve Tenant therefrom.

ARTICLE 9

Condemnation

Section 9.1. If there shall be a total taking or a constructive total taking of the fee title to the demised premises and a taking of the leasehold estate created hereby in condemnation proceedings or by any right of eminent domain, this lease shall terminate on the date of such taking and the Land Rent and other charges payable by Tenant hereunder shall be apportioned and paid to the date of such taking. For the purposes of this lease, the term "*constructive total taking*" shall mean a taking of such scope that the untaken portion of the demised premises is insufficient to permit the restoration of the Improvements thereon so as to constitute a complete, rentable building or buildings, capable of producing a proportionately fair and reasonable net annual income. The average net annual income produced by the demised premises during the 5-year period immediately preceding such taking shall be deemed to constitute a fair and reasonable net annual income for the purpose of determining what is a proportionately fair and reasonable net annual income.

Section 9.2. In the event of a total taking or constructive total taking, the award or awards for said taking (herein called the "Condemnation Proceeds"), shall be paid as follows:

(a) Landlord shall be entitled to receive such portion of the Condemnation Proceeds with interest thereon as shall equal the total value of the Land so taken and the award therefor.

(b) Landlord shall be entitled to receive such portion of the Condemnation Proceeds with interest thereon as shall equal the total value of any Civic Facilities (as defined in the Master Lease) so taken and the award therefor.

(c) Tenant shall be entitled to receive such portion of the Condemnation Proceeds with interest thereon, to be paid over to the Institutional Leasehold Mortgagee, as shall equal the unpaid principal indebtedness secured by the Institutional Leasehold Mortgage with interest thereon at the rate specified therein.

(d) Tenant shall be entitled to receive such portion of the balance of the Condemnation Proceeds with interest thereon as shall equal the undepreciated cost, if any (computed as hereinafter set forth), of the Improvements as of the date of such taking, after deducting from such undepreciated cost the amount paid to the Institutional Leasehold Mortgagee pursuant to clause (c) above.

(e) Landlord and Tenant shall share the balance of the Condemnation Proceeds as follows:

Tenant shall be entitled to receive the portion thereof equal to the fraction having as its numerator the number of full calendar years of the term of this lease remaining during the period from the day of the taking to June 30, 2050 and as its denominator the number 70 and Landlord shall be entitled to receive any remainder thereof.

The undepreciated cost of the Improvements shall be the amount equal to the cost of the Improvements, as certified by Tenant and the architect or engineer referred to in Section 10.1B(c) hereof upon completion thereof, less the aggregate amount of the depreciation thereof as determined by deducting therefrom 1.428% of such cost for each 12-month period from the date of issuance of a temporary or permanent certificate of occupancy for the Improvements to the date of vesting of title in the condemnation proceeding or a pro rata share for a period less than 12 months. Tenant shall maintain, and shall make available to Landlord and to any person or persons designated by Landlord, at any time and from time to time, all books, records, accounts and reports relating to construction of the Improvements (including, without limitation, Tenant's mortgage application and income tax returns) and if Landlord, within one year after receipt thereof, disputes the amount of the certification received from Tenant, the matter shall be determined by Arbitration.

Section 9.3. In the event of a taking which is less than a constructive total taking, this lease shall not terminate or be affected in any way, except as provided in Section 9.5 hereof, and the Condemnation Proceeds shall be paid as follows:—

(a) Landlord shall be entitled to receive such portion of the Condemnation Proceeds with interest thereon as shall equal the award for the total value of the part of the Land so taken plus the award for the consequential damages, if any, to the part of the Land not so taken.

(b) Landlord shall be entitled to receive such portion of the Condemnation Proceeds with interest thereon as shall equal the award for the total value of the portion or portions of any Civic Facilities so taken plus the award for the consequential damages, if any, to the portion or portions of any Civic Facilities not so taken.

(c) Tenant shall be entitled to receive such portion of the Condemnation Proceeds with interest thereon as shall be awarded for restoration of the Improvements plus so much thereof as shall equal the award for the value of the portion of the Improvements taken plus the award for the consequential damages, if any, to the portion of the Improvements not so taken and the aggregate amount of such portion of the Condemnation Proceeds shall be payable to the Institutional Leasehold Mortgagee or, if there be none, to Landlord, to be disbursed in accordance with the provisions of Article 11 hereof.

(d) BPCDC. Landlord and Tenant shall share equally in any balance of the Condemnation Proceeds.

Section 9.4. In the event of a taking less than a constructive total taking, Tenant, but subject to reimbursement as provided in *Article 11* hereof, and whether or not there are Condemnation Proceeds or the Condemnation Proceeds shall be sufficient for the purpose (except that if the award referred to in *Section 9.3(c)* shall not be sufficient, the balance referred to in *Section 9.3(d)* shall be made available therefor), shall proceed with due diligence to restore, repair, replace or rebuild the remaining part of the Improvements to substantially their former condition or with such changes or alterations as Tenant may elect to make in conformity with *Article 10* hereof so as to constitute a complete, rentable building or buildings.

Section 9.5. In the event of a taking of the character referred to in *Section 9.3* hereof, this lease shall terminate as to the portion of the demised premises so taken, and from and after the date of such taking, a just proportion of the Land Rent, Tax Equivalency Payments and other charges, according to the extent and nature of such taking, shall abate for the remainder of the term of this lease. If Landlord and Tenant cannot agree on the amount of such abatement, such dispute shall be determined by Arbitration.

Section 9.6. If the whole or any part of the demised premises, or of Tenant's leasehold estate under this lease, shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, the foregoing provisions of this Article shall not apply and Tenant shall continue to pay, in the manner and at the times herein specified, the full amount of the Land Rent, Tax Equivalency Payments and other charges payable by Tenant hereunder, and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking had not occurred. In the event of any such taking of the character in this Section referred to, Tenant shall be entitled to receive the entire amount of the Condemnation Proceeds paid for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend beyond the termination of this lease, in which case the Condemnation Proceeds shall be apportioned between Landlord and Tenant as of the date of termination of this lease. Tenant shall, upon the expiration of any such period of temporary use or occupancy during the term of this lease, restore the Improvements, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such taking. Any portion of the Condemnation Proceeds received by Tenant as compensation for the cost of restoration of the Improvements shall be deposited with the Institutional Leasehold Mortgagee or, if there be none, with Landlord to be disbursed in accordance with the provisions of *Article 11* hereof and, if such period of temporary use or occupancy shall extend beyond the term of this lease, shall be paid to Landlord on the date of termination of this lease to the extent not theretofore disbursed by Tenant in connection with restoration of the Improvements.

Section 9.7. If the order or decree in any condemnation or similar proceeding shall fail separately to state the amount to be awarded to Landlord and the amount to be awarded to Tenant under the provisions of *Sections 9.2* or *9.3* hereof, or the amount of the compensation for the restoration of the Improvements under *Sections 9.3* or *9.6* hereof, and if Landlord and Tenant do not agree thereon within 30 days after the final award or awards shall have been fixed and determined, any such failure to agree shall be determined by Arbitration.

Section 9.8. If Tenant shall assign to any Leasehold Mortgagee any Condemnation Proceeds to which it shall be entitled under the provisions of *clause (c)* of *Section 9.2* hereof or *clause (c)* of *Section 9.3* hereof, Landlord shall recognize such assignment and shall consent to the payment of said Condemnation Proceeds to said assignee as its interest may appear.

Section 9.9. Tenant and the holder of any Leasehold Mortgage shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights hereunder, and in this connection, specifically and without limitation, to introduce evidence independently of Landlord to establish the value of or damage to the Improvements.

Section 9.10. Notwithstanding anything contained to the contrary in this Article 9, in the event of a negotiated sale of all or a portion of the demised premises in lieu of a taking thereof, the distribution of the proceeds from such sale and the amount of the reduction in the Land Rent, Tax Equivalency Payments and other charges to be made by reason thereof shall be subject to the approval of the Secretary, if at the time of such sale a Leasehold Mortgage is insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said Mortgage.

ARTICLE 10

Initial Construction and Changes by Tenant

Section 10.1. A. Tenant (a) shall commence construction of six buildings to contain 1,642 dwelling units as more fully described in plans and specifications which have been initialled by representatives of the parties simultaneously herewith, such dwelling units and other Improvements to be located in accordance with the site plan annexed hereto as Exhibit "B" and otherwise to be constructed substantially in accordance with the budget estimates and final plans and specifications (which include a construction progress schedule), dated July 3, 1979, prepared by Jack Brown and Irving Gershon, copies of which have been initialled by representatives of the parties simultaneously with the execution of this lease (as the same may be amended in accordance with the provisions of the Building Loan Agreement, dated of even date herewith, between Tenant and Landlord). (b) shall perform such construction diligently and in good faith (provided, however, Tenant shall not be deemed to be in default hereunder in commencing or proceeding with construction if the failure of Tenant to commence or proceed with construction arises by reason of Battery Park City Authority's, its successors' or assigns' wrongful failure to advance funds to Tenant in accordance with the Building Loan Agreement between Landlord and Tenant of even date herewith), and (c) shall obtain a certificate of occupancy, temporary or permanent (in the alternative, the "Certificate of Occupancy"), for all the dwelling units on or prior to April 1, 1983 (as such date may be extended pursuant to Section 10.5 hereof, but in no event later than November 30, 1984 as to which date time shall be of the essence unless the failure to obtain such certificate of occupancy arises by reason of Battery Park City Authority's, its successors' and assigns' wrongful failure to advance funds to Tenant in accordance with the Building Loan Agreement between Landlord and Tenant of even date herewith). Tenant shall cause the Final Endorsement Date to occur on or prior to November 30, 1984. If the Certificate of Occupancy shall have been issued on or before April 1, 1983 but the Final Endorsement Date has not occurred, then on or before May 17, 1983, (i) Tenant shall deliver to Landlord an affidavit of an officer of Tenant, in form and substance reasonably satisfactory to Landlord, stating that Tenant has complied with all Federal Housing Administration document filing requirements in order to obtain final endorsement of the HUD Mortgage by the Federal Housing Commissioner, together with copies of all documents filed in connection therewith and (ii) Landlord shall concur that such filing requirements shall have been complied with, such concurrence not to be unreasonably withheld.

B. After the Certificate of Occupancy shall have been issued, Tenant shall have the right, at any time and from time to time, to make such demolition of, or changes and alterations (structural or otherwise), to any Improvements as Tenant shall deem necessary or desirable, such changes and alterations and the original construction of Improvements on the Land (each of which is herein called "construction") to be made in all cases subject to the following conditions:

(a) Tenant must obtain the prior approval of Landlord as to (i) the location and bulk of all structures and improvements on the Land, (ii) the design and exterior materials (and texture thereof) and exterior colors of all Improvements, (iii) the design and placement of exterior signs, graphics and lighting, (iv) the design of exterior pedestrian, auto and trade traffic patterns, (v) landscaping, (vi) all connections outside of the building lines of Improvements, including sewers and utilities, (vii) the design of feature lighting installations, and (viii) the design of the amenities required by the Special Battery Park City District zoning regulations and of facilities for community use. Tenant must also submit to Landlord the

shop drawings, material and product samples, construction site mock-ups and plants, trees and other planting materials listed on *Exhibit "C"* annexed hereto, such submission to be made prior to any fabrication, delivery to the Land or installation of said items; and shall consult and cooperate with Landlord in connection with construction operations, methods and scheduling, dewatering, shoring and bracing, insofar as they affect access to, protection of, or coordination with, other work in the Battery Park City Project Area.

(b) No construction shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required, from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction.

(c) All construction undertaken which involves structural alterations or changes shall be conducted under the supervision of an architect or engineer licensed as such in the State of New York (who may be an employee of Tenant) selected by Tenant who shall be reasonably satisfactory to Landlord, and no such construction after completion of the initial Improvements shall be undertaken until preliminary plans and outline specifications and budget estimates therefor, prepared and approved in writing by such architect or engineer, shall have been submitted to and approved by Landlord, which approval shall not be unreasonably withheld or delayed.

(d) All work done in connection with any construction shall be done in a good and workmanlike manner and in compliance with the building and zoning laws of the City, with all laws, ordinances, orders and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof and with the Master Development Plan for Battery Park City; the cost of any such construction shall be paid in cash or its equivalent, so that the demised premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied; and any construction shall be prosecuted with all due dispatch.

(e) Workmen's compensation insurance and disability benefits insurance covering all persons employed in connection therewith and with respect to whom death or bodily injury claims could be asserted against BPCDC, Landlord, Tenant or the demised premises and general liability and property damage insurance (which may be effected by endorsement, if obtainable, on the insurance required to be carried pursuant to *Section 4.2* hereof) for the mutual benefit of the BPCDC, Tenant and Landlord with limits of not less than those required to be carried pursuant to said *Section 4.2* shall be maintained by Tenant at all times when any work is in process in connection with any construction.

(f) Tenant must satisfy all requirements of the Secretary with respect to payment or performance bonds in connection with the initial construction of Improvements on the Land. After initial construction of the Improvements referred to in this *Section 10.1*, no construction undertaken as a single project and involving an estimated cost aggregating more than \$250,000, shall be undertaken until (i) Landlord shall have been furnished by Tenant with a bond running in favor of Landlord on which Tenant shall be principal and either a surety company of recognized responsibility authorized to do business in the State of New York, or a person, firm or corporation whose financial responsibility shall be satisfactory to Landlord shall be surety, conditioned upon payment in full for such construction, or (ii) Tenant shall have deposited with Landlord a sum sufficient to pay the entire cost of such construction as estimated by the architect or engineer referred to in *clause (c) of paragraph B* of this Section, which sum shall be disbursed in accordance with the provisions of *Article 11* hereof, or (iii) Tenant shall have obtained a written assignable commitment from an Institution in favor of Tenant which commitment shall have been conditionally assigned to Landlord, whereby such Institution shall have agreed to loan Tenant a sum sufficient to pay substantially the entire cost of such construction as estimated as aforesaid, upon terms, conditions and security then generally prevailing in the Borough of Manhattan for loans for like purposes or (iv) other security or indemnity reasonably satisfactory to Landlord shall have been furnished to Landlord.

(g) Legal title to each Improvement shall vest in Landlord immediately upon installation of each portion thereof without the payment of any compensation therefor.

(h) If a Leasehold Mortgage shall then be insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said Mortgage, all requirements of the Secretary in connection with such construction shall be complied with.

Section 10.2. In performing any work or repairs to, or restoration, replacement or rebuilding of, the Improvements required to be performed by Tenant pursuant to the provisions of *Articles 6, 7, 8 or 9* hereof, Tenant shall observe and perform, in so far as the nature of such repairs, restoration, replacement or rebuilding make such observation and performance appropriate, the conditions relating to construction set forth in *clauses b through h* of *Section 10.1B* hereof.

Section 10.3. In the event that any construction involving an estimated cost aggregating more than \$250,000 shall be made in conjunction with the restoration, repair, replacement or rebuilding required to be made by Lessee under *Article 8* or *Article 9*, the amount of the bond to be furnished or the deposit, if any, to be made under *clause (f)* of *Section 10.1B* hereof or the amount of the commitment referred to in said *clause (f)* shall be not less than the aggregate cost of the work under both this Article and *Article 8* or *Article 9*, as the case may be (as estimated by the architect or engineer referred to in *clause (c)* of *Section 10.1B* hereof), less the proceeds of any insurance and Condemnation Proceeds which are applicable to work to be done by Tenant under *Article 8* or *Article 9*, as the case may be. Any moneys deposited pursuant to said *clause (f)*, or any moneys to be disbursed pursuant to any commitment referred to in said *clause (f)* shall not be disbursed pursuant to *Article 11* hereof until such proceeds of any insurance and Condemnation Proceeds shall have been fully disbursed pursuant to said Article for the purposes specified in *Article 8* or *Article 9*.

Section 10.4. Within 10 days after receipt of request from Tenant, Landlord will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work done by Tenant under this lease, and will also grant or join in any grants for easements or licenses for electricity, gas, water, sewer and such other public utilities or facilities as may be reasonably necessary in the operation of the Land or of any Improvements that may be erected thereon and if, at the expiration of such 10-day period, Landlord shall not have joined in any such application or such grants for easements, Tenant shall have the right to execute such application or such grants in the name of Landlord, and, for that purpose, Landlord hereby irrevocably appoints Tenant as its attorney-in-fact to execute the same on behalf of Landlord. Landlord shall construct the facilities specified in *Exhibit "D"* hereto within the time periods specified therein and, if not completed in said periods (as extended by force majeure), Tenant shall have the right to seek specific performance of the foregoing obligations of Landlord or to undertake to complete the same itself. Notwithstanding such action by Tenant, Landlord shall continue to make payments required for completion of such work ("*Landlord's Work Payments*"). If by reason of the failure of Landlord to complete the public facilities referred to in Part I of *Exhibit "D"*, when required, (other than by reason of any default or delay of Tenant or the City or any department, board or agency thereof), Tenant is unable to deliver occupancy of fully habitable buildings, Tenant's obligation to make any payments to Landlord pursuant to *Sections 1.1, 1.2 and 3.1* hereof shall be abated for the period commencing on the date Tenant reasonably shows it could have had a Certificate of Occupancy, temporary or permanent, issued for a building but for Landlord's failure and continuing until the same is cured. In addition, Tenant shall be entitled to reimbursement from Landlord for any interest payable under the HUD Mortgage during such period of time for out-of-pocket expenses reasonably and necessarily incurred for preservation of the Improvements and for any Landlord's Work Payments made by Tenant on behalf of Landlord ("*Out-of-Pocket Damages*"). If Landlord shall fail to reimburse such Out-of-Pocket Damages from time to time within 10 days after demand therefor, Tenant shall be entitled to an offset for the amounts so due from Landlord against the amounts payable by Tenant to Landlord pursuant to the terms of *Section 22.5* hereof. If Landlord

does not complete the work specified in Part 2 of Exhibit "D" not less than 60 days prior to the anticipated date of final endorsement of the HUD Mortgage. Tenant shall have the right to undertake to complete the same itself at Landlord's expense. Tenant shall not be entitled to claim damages or to assert any legal or equitable remedy except as specified in this Section.

Section 10.5. The obligations of Landlord and Tenant under this Article shall be subject to delays beyond the reasonable control or without the fault or negligence of the respective parties, including, but not limited to, acts of God or the public enemy, acts or omissions of the other party, or the other party's architects, engineers or other professional consultants, officers, agents or employees, acts or omissions of the City, State or Federal Governments or any of the departments, boards or agencies of such governments, fires, floods, epidemics, restrictions, strikes, weather of unusual severity such as hurricanes, blizzards and cyclones or delays of subcontractors due to such causes ("*force majeure*"). Either party shall advise the other of any delay within 20 days of the commencement thereof; provided that inability to obtain financing (other than Battery Park City Authority's, its successors' or assigns' wrongful failure to advance funds to Tenant in accordance with the Building Loan Agreement between Landlord and Tenant of even date herewith) shall in no event be deemed proper cause for a delay. Failure to give notice as aforesaid shall not be deemed material in the event extrinsic evidence of the validity of such delay is thereafter made available to the other party. Should Landlord and Tenant disagree as to the validity of any claimed delay, such dispute shall be submitted to Arbitration; in such event, the time to cure shall commence subsequent to the determination in the proceeding. Neither party shall be liable or responsible or answerable in any way for damages caused by such delays.

Section 10.6. Tenant shall furnish such reasonable amount of space in the Improvements as may be required by the New York City Board of Education, on such reasonable terms as shall be agreed upon by Tenant and such Board, until adequate facilities are made available elsewhere. Notwithstanding any obligation which Landlord may have under the Master Lease to furnish such facilities, under no circumstances shall it have any liability to Tenant for failure so to do.

ARTICLE 11

Disbursement of Deposited Moneys

Section 11.1. All sums of the character referred to in Sections 4.5, 9.3 or 9.6 hereof (hereinafter collectively called "*Deposited Sums*") paid to or deposited with the Institutional Leasehold Mortgagee or Landlord, as the case may be (the "*Depository*"), shall be held as trust funds and disbursed in the manner hereinafter provided. To the extent reasonably possible, Deposited Sums will be deposited in an interest bearing account or short term government securities and any interest so earned shall be deemed to be part of the Deposited Sums.

Section 11.2. From time to time as the restoration, repair, replacement or rebuilding of any Improvements or any portion thereof damaged or destroyed by fire or any other cause or not taken in a proceeding of the character described in Sections 9.3 or 9.6 hereof progresses (herein collectively called the "*Work*"), disbursement of any Deposited Sums shall be made upon receipt by Depository of the following:

(a) A certificate, signed by an architect or engineer licensed as such in the State of New York (who may be an employee of Tenant) selected by Tenant who shall be reasonably satisfactory to Landlord, and also signed by Tenant, dated not more than 30 days prior to the application for such disbursement, setting forth in substance the following:

(1) That the sum then requested to be disbursed either has been paid by Tenant and or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons

(whose names and addresses shall be stated) who have rendered and furnished certain labor and materials for the Work and giving a brief and accurate description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said persons in respect thereof, and stating the progress of the Work up to the date of said certificate.

(2) That the sum then requested to be disbursed, plus all sums previously disbursed, does not exceed the cost of the Work in so far as actually accomplished up to the date of such certificate, and that the balance of the Deposited Sums will be sufficient to pay in full for the completion of the Work, or Landlord shall have received other assurances reasonably satisfactory to it of payment in full for completion thereof.

(3) That no part of the cost of the services and materials described in the foregoing *paragraph (1)* of this *clause (a)*, in any previous or then pending application, has been or is being made the basis for the disbursement of any part of the Deposited Sums or has been paid out of insurance moneys not required to be paid to the Depositary.

(4) That, except for the amounts, if any, stated in said certificate pursuant to the foregoing *paragraph (1)* of this *clause (a)* to be due for services or materials, there is no outstanding indebtedness known to the person signing the certificate, after due inquiry, which is then justly due and payable for work, labor, services and materials in connection with the Work, which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or similar lien upon Tenant's leasehold estate or Tenant's interest in the Improvements or Landlord's estate in, or the fee interest to, the demised premises or any part thereof.

(5) That the part of the Work to which the application applies has been completed in accordance with the requirements of *clause (d)* of *Section 10.1B* hereof.

(b) A certificate signed by Tenant, dated not more than 30 days prior to the application for such disbursement, setting forth in substance that, to the best knowledge of the signer, after due inquiry:

(1) All materials and all property described in the certificate furnished pursuant to *paragraph (1)* of the foregoing *clause (a)* and every part thereof, are free and clear of all mortgages, liens, charges or encumbrances, except encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate pursuant to *paragraph (1)* of said *clause (a)*, which encumbrances will be discharged upon payment of such indebtedness, and except the leasehold estate created by this lease, any Institutional Leasehold Mortgage, encumbrances created by Landlord and impositions not due and delinquent, and encumbrances to which this lease is subject.

(2) That no Event of Default has occurred which has not been remedied.

(c) An official search or a certificate of a title company reasonably satisfactory to Landlord showing that there has not been filed with respect to Tenant's leasehold estate or Tenant's interest in the Improvements or Landlord's interest in, or the fee title to, the demised premises or any part thereof any vendor's, mechanic's, laborer's or materialman's statutory or similar lien which has not been discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed.

Upon compliance with the foregoing provisions of this Section, the Depositary shall, out of the Deposited Sums, disburse to the persons named in the certificate pursuant to the foregoing *paragraph (1)* of *clause (a)* of this Section the respective amounts stated in said certificate to be due to them and or shall disburse to Tenant the amount stated in said certificate to have been paid by Tenant.

At any time after the completion in full of the Work, the balance of the Deposited Sums not theretofore disbursed pursuant to the foregoing provisions of this Section shall be disbursed to Tenant upon receipt by the Depositary of (i) a certificate signed by Tenant, dated not more than 30 days prior to the application for such

disbursement, setting forth in substance the following: (w) that the Work has been completed in full, (x) that all amounts which Tenant is or may be entitled to have disbursed under the foregoing provisions of this Section on account of services rendered or materials furnished in connection with the Work have been disbursed under said provisions, (y) that all amounts for whose payment Tenant is or may become liable in respect of the Work have been paid in full, and (z) that no Event of Default has occurred which has not been remedied; and (ii) an official search or a certificate of a title company reasonably satisfactory to Landlord showing that there has not been filed with respect to Tenant's leasehold estate or Tenant's interest in the Improvements or Landlord's interest in, or the fee title to, the demised premises or any part thereof, any vendor's, mechanic's, laborer's or materialman's statutory or similar lien which has not been discharged of record. Notwithstanding the foregoing, if the Deposited Sums include sums of the character referred to in Sections 9.3(c) and 9.3(d), the balance of such sums shall be disbursed as provided in said Sections.

Section 11.3. If an Event of Default shall have occurred and be continuing prior to the disbursement of the Deposited Sums or any part thereof, the Depository shall have no further obligation to disburse any of the Deposited Sums to Tenant as herein provided so long as such Event of Default continues, but shall disburse the same to or for the account of an Institutional Leasehold Mortgagee who shall have delivered the instrument referred to in Section 15.3 hereof, or, in the event of the termination of this lease, who shall have obtained a new lease pursuant to Section 15.8 hereof, or, if any such Institutional Leasehold Mortgagee shall not have elected within the period specified in said Section 15.8 to obtain such new lease, the Deposited Sums shall be paid to Landlord.

Section 11.4. The Depository shall have the right to deduct from the Deposited Sums prior to any disbursement thereof pursuant to Section 11.2 hereof its reasonable actual expenses for acting hereunder. So long as the Depository holds Deposited Sums, the Depository shall invest that part of the Deposited Sums not immediately required for disbursement pursuant to the terms hereof as Tenant shall direct and any interest accruing as a result of such investment shall become a part of the Deposited Sums to be disbursed as provided in this Article 11.

ARTICLE 12

Mechanic's Liens

Section 12.1. Tenant shall not suffer or permit any mechanic's liens to be filed against the demised premises, nor against Landlord's or Tenant's leasehold interest therein, by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding any interest in the demised premises or any part thereof through or under Tenant. If any such mechanic's lien shall at any time be filed against the demised premises, Tenant shall, within 60 days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge such lien either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, or in any event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor and to pay the amount of any judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord for any of such purposes, with interest thereon from the date of any such payment until the date of repayment at the greater of 9% per annum or the prime rate of Citibank N.A., shall be repaid by Tenant to Landlord on demand.

Section 12.2. Nothing in this lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the demised premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens against Landlord's estate in, or the fee title to, the demised premises.

ARTICLE 13

Lawful Use; Surrender of the Demised Premises; Inspection of the Demised Premises; Records

Section 13.1. Tenant shall not use or suffer or permit the demised premises or any part thereof to be used or occupied for any unlawful purpose or for any dangerous or noxious trade or business, or in violation of any certificate of occupancy affecting the use of the demised premises or any part thereof or in violation of the building or zoning laws of the City or the Master Development Plan for Battery Park City.

Section 13.2. Upon the termination of this lease, Tenant shall surrender to Landlord the demised premises in good order, condition and repair, reasonable wear and tear excepted and also except as Tenant may have been prevented from maintaining the demised premises in good order and repair by occupation thereof by an entity having the power of eminent domain which shall have taken the temporary use thereof and shall then be in possession thereof. Upon such termination, Tenant shall also deliver to Landlord all leases, lease files, plans, records, registers and all other papers and documents in its possession which may be necessary or appropriate for the proper operation and management of the demised premises.

Section 13.3. Tenant shall permit the holder of any mortgage placing a lien on the lessee's interest under the Master Lease and its authorized representatives to enter the demised premises at all reasonable times by prior appointment during usual business hours for the purpose of inspecting the same and shall permit Landlord and the authorized representatives of Landlord to enter the demised premises at all reasonable times during usual business hours for the purpose of exhibiting the same to prospective purchasers, lessees or mortgagees thereof.

Section 13.4. So long as the mortgage affecting the demised premises is insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale, Tenant shall make available at Tenant's office to Landlord or to any person designated by Landlord all books, records, accounts and reports (including, but without limitation thereto, mortgage applications and all documents submitted in connection therewith and income tax returns) relating to construction of the Improvements and to the operation and management of the demised premises for examination and audit by Landlord at any time and from time to time (but during usual business hours) as Landlord may require. Such books, records, accounts and reports shall include those of any subsidiaries or affiliates of Tenant to the extent they are involved in the construction of the Improvements or in the operation and management of the demised premises. Landlord shall have the further right, in connection with such examination and audit, to make copies, summaries or statements based upon or relating to such books, records, accounts and reports as it may deem necessary or desirable and to make independent verification of entries therein with any of the contractors, subcontractors, agents, vendors or suppliers of Tenant, its subsidiaries or affiliates as aforesaid. Tenant shall not be required to maintain any such books, records, accounts or reports as to events occurring more than 6 years prior to the then current date.

Section 13.5. Unless Tenant shall be the Secretary, Tenant shall furnish to Landlord, from and after the date upon which any portion of the demised premises is leased or rents or other charges are received by Tenant for the use or occupancy thereof, the following:

(a) on or before the twentieth day of each month, a statement for the previous month setting forth all revenue collected and expenses incurred in connection with the operation of the demised premises;

(b) on or before the twentieth day of each month, vacancy, leasing and occupancy status reports as of the first day of each said month, respectively;

(c) as soon as practicable after the end of each of the first three quarterly fiscal periods in each fiscal year of Tenant (the "Fiscal Year"), and in any event within 60 days thereafter, a financial statement of operations of the demised premises for the period from the beginning of the current Fiscal Year to the end

of such quarterly period, setting forth in each case, in comparative form, the figures for the corresponding period of the previous Fiscal Year, all in reasonable detail and certified as complete and correct in all material respects (subject to changes resulting from year-end audit adjustments) by the principal financial officer of Tenant:

(d) as soon as practicable after the end of each Fiscal Year, and in any event within 120 days thereafter, financial statements of the operations of the demised premises, for such Year, including, but not limited to, a certified balance sheet and a certified profit and loss statement, setting forth in each case, in comparative form, the corresponding figures for the previous Fiscal Year, all in reasonable detail and accompanied by a report and opinion thereon of independent public accountants of recognized standing selected by Tenant and approved by Landlord, which report and opinion shall be prepared in accordance with generally accepted auditing standards relating to reporting as from time to time in effect:

(e) copies of Internal Revenue Service Form 1065 relating to Tenant's operation of the demised premises; and

(f) all other financial information as Landlord may reasonably require and as may be readily available to Tenant.

Section 13.6. Tenant shall furnish promptly to Landlord copies of all operating statements and financial reports from time to time furnished to any mortgagee and the Secretary.

Section 13.7. Tenant shall keep and maintain at all times full and correct records and books of account of the operations of the demised premises in accordance with generally accepted accounting principles as from time to time in effect throughout the periods involved and otherwise in accordance with any applicable provisions of any mortgage and shall accurately record and preserve for a period of 6 years the records of its operations of the demised premises. Upon reasonable notice from Landlord, Tenant shall from time to time make all records, books of account and any material information relating to the demised premises and maintained by Tenant or any other person available to Landlord and Landlord's designee during normal business hours.

ARTICLE 14

Assignment, Subletting and Mortgaging

Section 14.1. Without the prior consent of Landlord, an interest in Tenant (other than a limited partnership interest) may not be sold, transferred or assigned, provided, however, that if a Leasehold Mortgage shall then be insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said Mortgage, no such consent shall be required if the approval thereof by the Secretary shall have been obtained. Without the prior consent of Landlord, this lease may not be assigned nor may Tenant enter into any sublease of all or any portion of the demised premises other than in a case where the lessee is to occupy or is occupying the sublet space for living quarters. Landlord's consent to any other sublease not to be unreasonably withheld or delayed provided the proposed use under said sublease is consistent with the character and quality of the Improvements and adjoining buildings. Any concession or license agreement shall also be subject to the approval of Landlord, which approval shall not be unreasonably withheld or delayed. From and after the date of assignment, the assignor shall be released from the performance of all of the obligations on the part of Tenant to be performed hereunder, except any obligation to hold and apply insurance or other moneys held by Tenant at the date of the assignment and any unperformed obligations which shall have matured prior to such assignment, provided the assignee shall have executed and delivered to Landlord an instrument pursuant to which it assumes all obligations of Tenant under this lease arising after the date of such assignment.

Section 14.2. Subject to compliance with the provisions of Section 1.4 hereof, Tenant shall have the right to mortgage this lease and the leasehold estate hereby created to an Institutional Leasehold Mortgagee but

must obtain the consent of Landlord to any other mortgage, which consent shall not be unreasonably withheld or delayed if permitted under applicable law provided that, so long as a Leasehold Mortgage is insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said Mortgage, the demised premises shall not otherwise be mortgaged or pledged unless consented to by the Secretary. The execution and delivery of an Institutional Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this lease nor shall the holder of an Institutional Leasehold Mortgage, as such, be deemed an assignee or transferee of this lease so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder.

Section 14.3. Landlord agrees, for the benefit of any tenant under any sublease of a portion of the demised premises made by Tenant (such tenant being hereinafter in this Section called a "space tenant"), that if (i) an Institutional Leasehold Mortgagee shall have agreed in writing not to join the space tenant as a party defendant in any foreclosure action or proceeding which may be instituted or taken by the Institutional Leasehold Mortgagee, nor to evict the space tenant from the portion of the demised premises demised to it, nor to affect any of the space tenant's rights under its sublease by reason of any default under such Institutional Leasehold Mortgage, or (ii) (A) Tenant shall deliver to Landlord a certificate of an independent real estate appraiser who is a member of the American Institute of Real Estate Appraisers, or such other similar organization satisfactory to Landlord, stating in substance that the rent payable by the space tenant under its sublease, after taking into account any credits, offsets or deductions to which the tenant may be entitled thereunder, constitutes the then fair rental value of the space demised thereunder, and (B) the sublease shall contain no concessions except those customarily granted at that time to tenants of comparable space in comparable buildings in the vicinity of the Improvements, then upon the termination of this lease, Landlord will recognize the space tenant under such sublease for a term not extending beyond the term of such space tenant's lease as the direct tenant of Landlord provided that at the time of the termination of this lease (x) no default exists under the space tenant's sublease which at such time would then permit the landlord thereunder to terminate the same or to exercise any dispossession remedy provided for therein, and (y) the space tenant shall deliver to Landlord an instrument confirming the agreement of such space tenant to attorn to Landlord and to recognize Landlord as the space tenant's landlord under its sublease.

Section 14.4. So long as any Leasehold Mortgage shall remain outstanding, this lease shall not be cancelled, surrendered, modified or amended without the prior written consent of the holder thereof.

ARTICLE 15

Default Provisions; Conditional Limitations

Section 15.1. In case one or more of the following events shall have occurred and shall not have been remedied within the respective times specified in *clauses (a), (b) or (c)* below (herein, upon expiration of such respective times, called an "Event of Default or 'Default'"):

(a) default shall be made in the payment of the Land Rent or any Tax Equivalency Payments when due and such default shall continue for a period of 15 days after notice thereof, specifying such default, shall have been given to Tenant or default shall be made in the payment of any other item of additional rent and such latter default shall continue for a period of 15 days after notice of the amount thereof, specifying such default, shall have been given to Tenant:

(b) the failure to deliver the affidavit and other documents required by *Section 10.1 A* hereof within the time period set forth in such Section:

(c) default shall be made in the performance of any other covenant or agreement on the part of Tenant to be performed hereunder, and such default shall continue for a period of 30 days after notice

thereof, specifying such default, shall have been given to Tenant: provided, however, in the case of a default which cannot with due diligence be remedied by Tenant within a period of 30 days, if Tenant proceeds as promptly as may reasonably be possible after the service of such notice and with all due diligence to remedy the default and thereafter to prosecute the remedying of such default with all due diligence, the period of time after the giving of such notice within which to remedy the default shall be extended for such period as may be necessary to remedy the same with all due diligence and, provided further, that if Tenant, within 15 days after the giving of such notice of default, shall dispute the existence of a default (and such default shall not constitute a default under the Master Lease or subject Landlord to civil or criminal liability), the matter shall be determined by arbitration as provided in *Article 21* and if it shall be determined that Tenant is so in default, the time within which Tenant shall have to remedy the same shall be computed from the date of such determination:

(d) the Tenant shall (i) apply for or consent to the appointment of a receiver or trustee of itself or of all or a substantial part of its assets, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with its creditors or to take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or corporate action shall be taken by it for the purpose of effecting any of the foregoing:

(e) an order, judgment or decree shall be entered, without the application, approval or consent of Tenant, by any court of competent jurisdiction, approving a petition seeking reorganization of Tenant, or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days: or

(f) an event of default shall have been declared and not cured under any of the documents entered into between Landlord as supervising agency under Article II of the Private Housing Finance Law and Tenant by reason of the violation of a material term of a document:

then Landlord may, at Landlord's option, give to Tenant a notice of election to end the term of this lease at the expiration of not less than 7 days from the date of service of such notice, and, if said notice is given, then at the expiration of the period of time specified, the term of this lease and all right, title and interest of Tenant hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term of this lease, and Tenant will then quit and surrender the demised premises to Landlord, but Tenant shall remain liable as hereinafter provided. No Event of Default predicated on the giving of any notice to Tenant shall be complete unless like notice shall have been given contemporaneously therewith to each holder of a Leasehold Mortgage who shall have made a request for notice.

Section 15.2. If Landlord shall become entitled to give a notice of election to end the term of this lease upon the occurrence of an Event of Default, Landlord will, before giving such notice, give to the holder of any Leasehold Mortgage a further notice that a specified Event of Default remains unremedied and that Landlord is entitled to serve notice of election to end the term of this lease, and the holder of such Leasehold Mortgage shall have the right to remedy any default of the character specified in *Section 15.1(a)* hereof within a period of 15 days after the giving of such further notice and the right to remedy any other default within a period of 45 days after the giving of such further notice.

Section 15.3. In case of the occurrence of an Event of Default (other than an Event of Default of the character specified in *clauses (a) and (b) of Section 15.1* hereof), if, within 30 days after the further notice referred to in *Section 15.2* hereof is given by Landlord to the holder of a Leasehold Mortgage, such holder shall:

(a) notify Landlord of its election to proceed with due diligence promptly to acquire possession of the demised premises or to foreclose the Leasehold Mortgage or otherwise to extinguish Tenant's interest in this Lease: and

(b) deliver to Landlord an instrument in writing, duly executed and acknowledged, wherein the holder of the Leasehold Mortgage agrees that

(1) during the period that such holder shall be in possession of the demised premises and or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this lease shall terminate, as the case may be, it will pay or cause to be paid to Landlord all sums from time to time becoming due under this lease for Land Rent, Tax Equivalency Payments or any item of additional rent; and

(2) if delivery of possession of the demised premises shall be made to such holder, or, in the event such holder is an Institution, to its nominee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such holder shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, all the covenants and agreements herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreements which cannot with the exercise of due diligence be performed by such holder or such nominee; and

(c) if such holder is not an Institution or the Department of Housing and Urban Development, deliver to Landlord security sufficient in Landlord's opinion to secure the obligations undertaken pursuant to *clauses (a) and (b)* above; and

(d) deliver to Landlord the consent of the Director to the assignment of this lease to the holder of the Leasehold Mortgage or its designee or to a purchaser of this lease pursuant to any foreclosure proceedings.

Landlord will postpone the service of notice of election to end the term of this lease as in *Section 15.1* hereof provided for such period or periods of time as may be necessary for such holder, with the exercise of due diligence, to extinguish Tenant's interest in this lease, as aforesaid, and to perform or cause to be performed all of the said covenants and agreements herein contained, as aforesaid. Upon such extinguishment of Tenant's interest in this lease and such performance by such holder or such designee, or by any purchaser of this lease pursuant to any foreclosure proceeding, Landlord's right to serve a notice of election to end the term of this lease as in *Section 15.1* hereof provided, based upon the occurrence of an Event of Default of the character referred to in *clauses (c) or (d)* of *Section 15.1* hereof, shall be, and be deemed to be, waived. Nothing herein contained shall be deemed to require the holder of a Leasehold Mortgage to continue with any foreclosure or other proceedings or, in the event such holder shall otherwise acquire possession of the demised premises, to continue such possession, if the Event of Default in respect of which Landlord shall have given the notice provided for in this Section or in *Section 15.2* hereof shall be remedied. If prior to any sale pursuant to any proceeding brought to foreclose any Leasehold Mortgage, or if prior to the date on which Tenant's interest in this lease shall otherwise be extinguished, the Event of Default in respect of which Landlord shall have given the notice provided for in *Section 15.2* hereof shall have been remedied and possession of the demised premises shall be restored to Tenant, the obligation of the holder of the Leasehold Mortgage pursuant to the instrument referred to in *clause (b)* of this Section shall be null and void and of no further effect. Nothing herein contained shall affect the right of Landlord, upon the subsequent occurrence of any Event of Default, to exercise any right or remedy herein reserved to Landlord.

Section 15.4, Upon the termination of this lease pursuant to any of the provisions of this Article, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the demised premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant therefrom without being liable for any damages therefor.

Section 15.5, Nothing in this Article shall limit the right of Landlord to recover possession of the demised premises for non-payment of the Land Rent or any item of additional rent pursuant to any summary

proceedings or other proceeding or remedy available to it by law or by statute at any time after the occurrence of an Event of Default of the character specified in *clause (a)* of *Section 15.1* hereof and the expiration of the period of time within which the holder of a Leasehold Mortgage shall be entitled to remedy such default.

Section 15.6. Upon the termination of this lease by reason of the happening of any Event of Default, or in the event of the termination of this lease by summary dispossession proceedings or under any provision of law now or at any time hereafter in force, by reason of or based upon or arising out of the occurrence of an Event of Default on the part of Tenant, or upon Landlord recovering possession of the demised premises in the manner or in any of the circumstances hereinbefore mentioned, or in any other manner or circumstances whatsoever pursuant to legal process, by reason of or based upon or arising out of the occurrence of an Event of Default on the part of Tenant, Landlord may, at Landlord's option, at any time, and from time to time, relet the demised premises or any part or parts thereof, and receive and collect the rents therefor, applying the same first to the payment of such expenses as Landlord may have incurred in recovering possession of the demised premises, and for putting the same into good order or condition or preparing or altering the same for re-rental, and expenses, commissions and charges paid by Landlord in and about the reletting thereof and then to the fulfillment of the covenants of Tenant hereunder. Any such reletting herein provided for may be for the remainder of the term of this lease or for a longer or shorter period. In any such case and whether or not the demised premises or any part thereof be relet, Tenant shall pay to Landlord the Land Rent, Tax Equivalency Payments, additional rent and all other charges required to be paid by Tenant up to the time of such termination of this lease, or of such recovery of possession of the demised premises by Landlord, as the case may be, and thereafter Tenant shall, if required by Landlord, pay to Landlord until the end of the term of this lease the equivalent of the amount of all the Land Rent reserved herein, Tax Equivalency Payments, additional rent and all other charges required to be paid by Tenant, less the net avails of reletting, if any, and the same shall be due and payable by Tenant to Landlord on the several rent days above specified, that is to say, upon each of such rent days, Tenant shall pay to Landlord the net amount of the deficiency then existing after crediting any surplus of the net avails of reletting, if any, over the amount of all Land Rent reserved herein, Tax Equivalency Payments, additional rent and all other charges required to be paid by Tenant which may have theretofore accrued. Under any of the circumstances hereinbefore mentioned in which Landlord shall have the right to hold Tenant liable upon the several rent days herein specified to pay to Landlord the equivalent of the amount of all the Land Rent, Tax Equivalency Payments, additional rent and all other charges required to be paid by Tenant less the net avails of reletting, if any, Landlord shall have the election, in place and in stead of holding Tenant so liable, forthwith to recover against Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this lease, or of such recovery of possession of the demised premises by Landlord, as the case may be, represents the then present worth of the excess, if any, of the aggregate of the Land Rent, Tax Equivalency Payments, additional rent and all other charges payable by Tenant hereunder that would have accrued for the balance of the term of this lease, over the aggregate rental value of the demised premises for the balance of such term. Nothing herein contained shall limit or prejudice Landlord's right to prove and obtain as liquidated damages arising out of any termination of this lease as a result of the happening of any of the contingencies referred to in *clause (c)* of *Section 15.1* hereof, the maximum amount allowed by any statute or rule of law, whether such amount be greater, equal to or less than the amount of the then present worth of the excess of the Land Rent, Tax Equivalency Payments, additional rent and all other charges payable by Tenant hereunder over the rental value referred to above.

Section 15.7. Tenant waives the service of notice of intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives any and all right of redemption in case Tenant shall be dispossessed, by a judgment or by warrant of any court or judge. To the extent not prohibited by law, Tenant and Landlord each waives and will waive any and all right to a trial by a jury in the event that summary proceedings shall be instituted by Landlord. The terms "enter", "re-enter", "entry" or "re-entry" as used in this lease are not restricted to their technical legal meaning.

Section 15.8. In case of the termination of this lease by reason of the happening of any Event of Default, Landlord shall give prompt notice thereof to the holder of any Leasehold Mortgage. Landlord shall, on written request of such holder, made at any time within 6 months after the giving of such notice by Landlord, enter into a new lease of the demised premises with such holder, or its designee, within 30 days after receipt of such request, which new lease shall be effective as of the date of such termination of this lease for the remainder of the term of this lease, at the same Land Rent and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such holder of such Leasehold Mortgage shall (i) contemporaneously with the delivery of such request pay to Landlord all the installments of Land Rent, Tax Equivalency Payments and all other items of additional rent which Landlord has specified as due (other than by acceleration) in any notice to such holder, (ii) pay to Landlord at the time of the execution and delivery of said new lease any and all sums for Land Rent, Tax Equivalency Payments and additional rent which would have been due hereunder from the date of termination of this lease (had this lease not been terminated) to and including the date of the execution and delivery of said new lease, together with all expenses, including reasonable attorneys' fees, incurred by Landlord in connection with the termination of this lease and with the execution and delivery of such new lease, less the net amount of all sums received by Landlord from any sublessees in occupancy of any part or parts of the demised premises up to the date of commencement of such new lease, and (iii) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, such holder or its designee will perform or cause to be performed all of the other covenants and agreements herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of such new lease except such covenants and agreements which cannot with the exercise of due diligence be performed by such holder or such designee. Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the demised premises to such holder of a Leasehold Mortgage unless Landlord at the time of the execution and delivery of such new lease shall have obtained physical possession thereof.

ARTICLE 16

Indemnification of Landlord

Section 16.1. Unless attributable to Landlord, Tenant shall indemnify and save harmless Landlord against and from any and all claims by or on behalf of any person arising from the conduct or management of, or from any work or thing whatsoever done in and on, the demised premises, and shall also indemnify and save Landlord harmless against and from any and all claims arising during the term of this lease from any condition of the demised premises or appurtenances thereto, or of any vaults, passageways or space therein, or arising from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to this lease, or arising from any act or negligence of Tenant, or any subtenant or occupant of the demised premises or any part thereof, or of its or their agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person or property occurring during the term of this lease in or about the demised premises, or upon or under the sidewalks adjacent thereto, and from and against all judgments, costs, expenses and liabilities incurred in or about any such claim or action or proceeding brought therein; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord, provided that this Section shall be of no force or effect during such time as the Department of Housing and Urban Development, or any agency thereof, shall be Tenant hereunder.

ARTICLE 17

Renewal Privileges — Rent During Renewal Terms

Section 17.1. Tenant shall have the following options to renew the term of this lease:

(a) Tenant shall have the option to renew the term of this lease, by giving notice as provided in Section 17.3 hereof, for a further period of 5 years to commence on the day next succeeding the day of expiration of the initial term and to expire on the day preceding the fifth anniversary of such commencement day (the "First Renewal Term"), upon all of the terms, covenants and conditions set forth in this lease except that the Land Rent reserved during the First Renewal Term and thereafter shall be such amount as shall be agreed to in writing by the parties or, in case of their failure to so agree 180 days prior to expiration of the initial term, the Land Rent shall be an amount equal to 8% of the fair market value of the Land determined as of the commencement date of the First Renewal Term in the manner provided in Section 21.2 hereof.

(b) Provided it has exercised the preceding renewal option, Tenant shall have the option to renew the term of this lease, by giving notice as provided in Section 17.3 hereof, for a further period of 5 years to commence on the day next succeeding the day of expiration of the First Renewal Term and to expire on the day preceding the fifth anniversary of such commencement day (the "Second Renewal Term"), upon all of the terms, covenants and conditions set forth in this lease and in clause (a) of this Section.

Section 17.2. If during the First or Second Renewal Term the amount otherwise required to be paid by Tenant to Landlord pursuant to paragraph (a) of Section 4.02 of the Master Lease is greater than the amount of the Land Rent and Tax Equivalency Payments then payable for the demised premises under this lease, then effective as of the date such excess shall have first existed, the Land Rent hereunder shall be increased so that the Land Rent and Tax Equivalency Payments shall be in an amount equal to the amount otherwise required to be paid by Tenant to Landlord pursuant to paragraph (a) of Section 4.02 of the Master Lease.

Section 17.3. Tenant shall exercise its rights to a First or Second Renewal Term by giving Landlord notice of its election so to do not less than 24 months prior to the commencement date of such Renewal Term and upon the giving of such notice of election, this lease, subject to the provisions of this Article, shall be deemed renewed and the term thereof extended for the period of the relevant Renewal Term without the execution of any further lease or instrument. Notices of election to renew the term of this lease for two or more successive renewal terms may be given simultaneously, provided that, in each such instance, notice to renew as to the preceding term or terms shall have theretofore been given.

Section 17.4. When the Land Rent for any Renewal Term shall be agreed to or determined as herein provided, the parties shall execute and deliver a supplemental indenture to this lease, in recordable form, setting forth the Land Rent payable during such Renewal Term.

ARTICLE 18

Quiet Enjoyment

Section 18.1. Landlord warrants that Tenant, upon paying the Land Rent, Tax Equivalency Payments, additional rent and all other charges herein provided for, and upon observing and keeping all of the covenants, agreements and provisions of this lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the demised premises during the term of this lease without hindrance or molestation, subject to all of the terms of this lease.

ARTICLE 19

Certificates of Landlord and Tenant

Section 19.1. Either party shall, at any time and from time to time, upon not less than 20 days' prior notice from the other party, execute, acknowledge and deliver to the other party a statement in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the lease is in full force and effect as modified and stating the modifications), and the dates to which the Land Rent and other charges have been paid in advance, and stating whether or not to the best knowledge of the signer of such statement the other party is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this lease and, if there be a default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by the other party or any prospective purchaser or mortgagee of its estate, but reliance on such statement may not extend to any default as to which the signer shall have had no actual knowledge.

ARTICLE 20

Notices and Certain Rights of Holders of Leasehold Mortgages

Section 20.1. Any notice, demand, direction, approval, consent or request (each, a "notice") which, under the terms of this lease or under any statute, must or may be given or made by the parties hereto, must be in writing, and must be given or made by mailing the same by registered or certified mail return receipt requested addressed to the respective parties at their addresses above set forth. Any notice given hereunder shall be deemed given or made on the third day after being so mailed. A copy of any notice given or made hereunder to Tenant shall also be given or made in the manner herein specified to Richard Lefrak, Esq., 97-77 Queens Boulevard, Rego Park, New York 11374. A copy of any notice given or made hereunder to Landlord shall also be given or made in the manner herein specified to Messrs. Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153; Attention: Lawrence J. Lipson, Esq. If requested in writing by the holder of any Leasehold Mortgage (which request shall be made in the manner hereinabove provided as between the parties hereto and shall specify an address to which a notice shall be given or made), any notice shall also be given or made in the manner herein specified and contemporaneously to such holder. Either party and the holder of any Leasehold Mortgage may by notice as aforesaid designate a different address or addresses for notices intended for it.

Section 20.2. The holder of a Leasehold Mortgage shall have and be subrogated to any and all rights of Tenant with respect to the remedying of any default hereunder by Tenant. Tenant irrevocably authorizes and directs Landlord to accept, and Landlord shall accept, performance by the holder of a Leasehold Mortgage of any of the terms, covenants or provisions on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant. So long as any Leasehold Mortgage shall be insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale, any notice given to the holder of the Leasehold Mortgage shall also be given to the Secretary in the manner prescribed above in this Section for the giving of notices and any rights granted to a holder of such Leasehold Mortgage under the terms of this lease shall be exercisable by and shall inure to the benefit of the Secretary.

Section 20.3. If at any time there shall be more than one Leasehold Mortgage constituting a lien on this Lease and the leasehold estate hereby created, the holder of the Leasehold Mortgage prior in lien shall be vested with the rights under Sections 15.3 and 15.8 hereof to the exclusion of the holder of any junior Leasehold Mortgage; provided, however, that if the holder of a Leasehold Mortgage prior in lien to any other Leasehold Mortgage shall fail or refuse to exercise the rights set forth in said Sections, each holder of a Leasehold Mortgage in the order of the priority of their respective liens shall have the right to exercise such rights and provided further, however, that with respect to the right of the holder of a Leasehold Mortgage under Section 15.8 hereof to request a new lease, such right may, notwithstanding the limitation of time set

forth in said Section, be exercised by the holder of any junior Leasehold Mortgage, in the event the holder of a prior Leasehold Mortgage shall not have exercised such right, more than 40 days but not more than 45 days after the giving of notice by Landlord of termination of this lease as in said Section provided.

ARTICLE 21

Arbitration and Appraisal

Section 21.1. In such cases where this lease provides for the determination of any matter by Arbitration, the party requesting Arbitration shall do so by giving notice to that effect to the other party, specifying in said notice the name and address of the person designated to act as an arbitrator on its behalf. Within 15 days after the service of such notice, the other party shall give notice to the first party specifying the name and address of the person designated to act as an arbitrator on its behalf. If the second party fails to notify the first party of the appointment of its arbitrator within the time above specified, then the appointment of the second arbitrator shall be made in the same manner as hereinafter provided for the appointment of a third arbitrator in a case where the 2 arbitrators appointed hereunder and the parties are unable to agree upon such appointment. The 2 arbitrators so chosen shall meet within 10 days after the second arbitrator is appointed and if, within 30 days after the second arbitrator is appointed, the 2 arbitrators shall not agree upon the question in dispute they shall, together, appoint a third arbitrator. In the event of their being unable to agree upon such appointment within 40 days after the appointment of the second arbitrator, the third arbitrator shall be selected by the parties themselves, if they can agree thereon, within a further period of 15 days. If the parties do not so agree, then either party, on behalf of both, and on notice to the other, may request such appointment by the American Arbitration Association (or any organization successor thereto) in accordance with its rules then prevailing; or if the American Arbitration Association (or such successor organization) shall fail to appoint said third arbitrator within 15 days after such request is made, then either party may apply, on notice to the other, to the Supreme Court in the County of New York (or any other court having jurisdiction and exercising functions similar to those now exercised by said court) for the appointment of such third arbitrator. Each arbitrator, chosen or appointed pursuant to this Section, shall be a person having at least 10 years experience in the County of New York, in a calling connected with the dispute. The Arbitration shall be conducted to the extent consistent with this Section in accordance with the then prevailing rules of the American Arbitration Association (or any organization successor thereto) in the City and county of New York. The arbitrators shall use reasonable efforts to render their award, upon the concurrence of at least two of their number, within 90 days after the appointment of the third arbitrator. Such award shall be in writing, counterpart copies thereof shall be delivered to each of the parties and the judgment upon the award may be entered by either party in any court having jurisdiction. In rendering such decision and award, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this lease. If, for any reason whatsoever, the written decision and award of the arbitrators shall not be rendered within 90 days after the appointment of the third arbitrator, then at any time thereafter, before such decision and award shall have been rendered, either party may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising similar functions to those now exercised by such court, by action, proceeding or otherwise (but not by a new arbitration proceeding) as may be proper to determine the question in dispute consistent with the provisions of this lease.

Section 21.2. In such cases where this lease provides for the Appraisal of the Land or any part thereof, the same shall be conducted as follows: each party shall appoint an appraiser who shall have appraised property as such in the vicinity of the demised premises for a period of at least 15 years before the date of his appointment. If either party shall fail to appoint an appraiser for a period of 30 days after notice from the other party to make such appointment, then the appointment of the second appraiser shall be made in the same manner as hereinafter provided for the appointment of a third appraiser in a case where the 2 appraisers appointed hereunder and the parties are unable to agree upon such appointment. In the case of the failure of the

appraisers so appointed to agree upon the fair market value of the Land or the part thereof constituting the subject matter of the Appraisal within 40 days after the appointment of the second appraiser, said appraisers shall appoint a third party who shall be an appraiser with similar experience. In the case of the failure of such appraisers to agree upon a third appraiser within 50 days after the appointment of the second appraiser, the third appraiser shall be selected by the parties themselves, if they can agree thereon, within a further period of 15 days. If the parties do not so agree, then such third appraiser shall be appointed by the Presiding Justice of the Appellate Division of the Supreme Court of the State of New York for the First Department. The appraisers so appointed shall proceed promptly to determine by majority vote the fair market value of the Land or the part thereof constituting the subject matter of the Appraisal and shall furnish each party with a signed copy thereof. In making such determination of fair market value, the appraisers shall take into consideration the size and use of the then existing Improvements on the Land rather than, if there be a difference, the size and use of any improvement permitted thereon under the then applicable zoning ordinances, but as if the Land were not subject to this lease.

Section 21.3. The fees of the arbitrators or appraisers and the expenses incident to the Arbitration or Appraisal proceedings shall be borne equally by the parties, except that the fees and expenses of counsel and accountants for the respective parties and of witnesses shall be paid by the party engaging such counsel and calling such witnesses.

Section 21.4. If Tenant shall fail diligently to proceed with any matter which is the subject of Arbitration or Appraisal hereunder, the holder of any Leasehold Mortgage shall have the right in the place and stead of Tenant to act upon the same as herein provided and any award or valuation made in said Arbitration or Appraisal proceeding shall be binding upon Tenant with the same force and effect as if Tenant had proceeded with the same.

ARTICLE 22

Miscellaneous

Section 22.1. Whenever in this lease the term "reasonable" or "reasonably" or "unreasonable" or "unreasonably" or "unreasonably withheld or delayed" appears and the parties are in dispute as to whether a party has met the required standard, the issue shall be submitted to Arbitration and if it is determined that a party has not met the required standard, the sole remedy of the other party shall be limited to obtaining the action requested; it being intended that neither party shall, in such circumstances, be liable for damages or a money judgment.

Section 22.2. Except as provided in *Section 10.4* hereof, the specified remedies to which either party may resort under the terms of this lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which a party may be lawfully entitled in case of any breach or threatened breach by the other party of any provision of this lease. The failure of a party to insist in any one or more cases upon the strict performance of any of the covenants of this lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or option. A receipt by Landlord of Land Rent, or Tax Equivalency Payments or other additional rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach. No waiver by a party of any provision of this lease shall be deemed to have been made unless expressed in writing and signed by such party. In addition to the other remedies in this lease provided, Landlord and Tenant shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this lease.

Section 22.3. This lease cannot be waived, changed or modified orally but only by an agreement in writing signed by the party to be charged.

Section 22.4. This document constitutes the entire agreement between the parties hereto. Tenant represents and warrants to Landlord that, in entering into this lease it has not been induced by, and has not relied upon, any statement, promise, condition, understanding, representation or warranty, oral or written, expressed or implied, which is not contained in this lease. Tenant has inspected the demised premises, is fully familiar with the portions of the Improvements included therein, and accepts the same "as is".

Section 22.5. Tenant shall pay to Landlord for the plans and the existing Improvements the sum of \$5,127,000 (the "Existing Improvements Cost"), as follows:

- (a) \$687,500 on the first anniversary of the Final Endorsement Date;
- (b) \$2,187,500 on the second anniversary of the Final Endorsement Date;
- (c) \$687,500 on the third anniversary of the Final Endorsement Date;
- (d) \$687,500 on the fourth anniversary of the Final Endorsement Date; and
- (e) \$877,000, together with interest thereon at the rate of 7½% per annum, in ten equal installments of \$126,311.94 to be applied first to interest as aforesaid and then to the reduction of principal, each payable annually on each anniversary of the Final Endorsement Date, commencing on the first anniversary thereof.

The Existing Improvements Cost shall be paid out of surplus cash (as that term is defined in the Regulatory Agreement, dated of even date herewith, between Tenant and the Secretary) received by Tenant during the applicable preceding calendar year, provided that if surplus cash is not sufficient to make any such payment when due, any deficit, together with interest, if any, as aforesaid on the principal portion of the deficit, shall be paid from available surplus cash on the next-succeeding payment dates, provided further that the fact that surplus cash is not sufficient to pay said obligation on the relevant payment dates (including the final payment date) shall not constitute a default under this lease. If Tenant shall fail to make any of the foregoing payments when the same are due and payable from surplus cash actually received by Tenant, and Landlord has not theretofore taken control of Tenant in accordance with Article II of the Private Housing Finance Law or Article XIII of the Certificate of Incorporation of Tenant, then, unless paid within 15 days after notice of such failure given by Landlord, Landlord may exercise any and all rights it may have at law or in equity, but Landlord shall not terminate this lease and the leasehold estate created hereby by reason of such failure to pay the Existing Improvements Cost and in no event shall the Secretary, or any subsequent assignee of the Secretary, be liable for the payment of the Existing Improvements Cost. Provided, however, that with respect to any failure to make any payment required by *clause (e)* from surplus cash actually received by Tenant, Landlord, in addition to the remedies contained in the preceding sentence, may declare the balance of the \$877,000, together with accrued interest, due and payable. Anything contained herein to the contrary notwithstanding, to the extent any payments are made to Landlord in satisfaction of Tenant's obligations hereunder pursuant to the Payment Agreement, dated June 3, 1980, delivered by Richard Lefrak, Samuel Lefrak, Lester Fisher, and Robert Olnick to Landlord, such payments shall be deemed to satisfy Tenant's obligations hereunder.

Section 22.6. In no circumstances shall the acquisition by Landlord of a mortgage or other lien upon or an interest in Tenant's estate under this lease result in a merger of Landlord's and Tenant's estates or of any of Landlord's rights or interests.

Section 22.7. Notwithstanding any other provisions of this lease, so long as any Leasehold Mortgage shall be insured, reinsured or held by the United States Department of Housing and Urban Development or given to the Department of Housing and Urban Development in connection with a resale or the demised premises are acquired by the Department of Housing and Urban Development because of a default under said

Mortgage, all provisions of this lease relating to plans, specifications, design, construction, reconstruction, restoration, repairs, replacement or rebuilding, operations and maintenance, kinds or amounts of insurance, project cost and cost certifications, apportionment of condemnation or other awards or insurance or other payments (which apportionments shall be subject to the Master Lease and the HUD Mortgage) shall be subject to the rules, regulations and administrative determinations of the Secretary, provided that nothing contained herein shall prevent Tenant from challenging the same.

Section 22.8. Notwithstanding anything contained herein to the contrary, in no circumstances shall Landlord and Tenant be deemed to be partners or joint venturers.

ARTICLE 23

Master Lease

Section 23.1. This lease constitutes a sublease and is subject to all of the terms and conditions of the Master Lease. Landlord recognizes that the provisions of Section 3.08 of the Master Lease are not applicable to this lease and shall consult with Tenant in connection with the designation of the appraiser referred to in Section 17.01 of the Master Lease. If the parties are unable to agree upon an appraiser, Landlord shall select the appraiser from a list of 3 names to be submitted to Landlord by Tenant, each of whom shall have had at least 15 years experience in appraising real property in the Borough of Manhattan and shall currently be a member of the American Institute of Real Estate Appraisers. Landlord shall give Tenant notice of any proposed amendment of the Master Lease and shall not amend the same to increase Tenant's financial obligations or accelerate the time of payment hereunder, or to reduce or deprive Tenant of any of its rights hereunder, nor voluntarily agree to the fair market value of the demised premises without the approval of Tenant.

Section 23.2. If by reason of a default under the Master Lease, the Master Lease and the leasehold estate of Landlord in the demised premises is terminated, Tenant will attorn to the then holder of the reversionary interest in the demised premises and will recognize such holder as Tenant's Landlord under this lease. Tenant shall execute and deliver, at any time and from time to time, upon the request of the landlord under the Master Lease, any instrument which may be necessary or appropriate to evidence such attornment and Tenant hereby appoints such landlord as the attorney-in-fact, irrevocable, of Tenant to execute and deliver for and on behalf of Tenant any such instrument. Tenant further waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this lease or to surrender possession of the demised premises in the event any proceeding is brought by the landlord under the Master Lease to terminate the same, and agrees that this lease shall not be affected in any way whatsoever by any such proceeding.

ARTICLE 24

Landlord's Right to Perform Tenant's Covenants

Section 24.1. If Tenant shall fail, within the time limited in *clause (b)* of *Section 15*, hereof after notice therein specified of any default has been given thereunder, to perform any act on its part to be performed, then Landlord may, but shall not be obligated so to do, and without further notice or demand upon Tenant and without waiving or releasing Tenant from any obligations of Tenant in this lease contained, perform any act on Tenant's part to be performed as in this lease provided; provided, however, that so long as an Institutional Leasehold Mortgage shall be outstanding, (i) Landlord shall not take any action of the character specified as aforesaid (except in the case of an emergency) until after the expiration of the time limited in *Section 15.2* after the notice therein specified has been given to the Institutional Leasehold Mortgagee, nor shall Landlord take any such action (except in the case of an emergency) if the holder of the Institutional Leasehold Mortgage.

prior to the expiration of the time limited in *Section 15.3* hereof, shall have given the notice provided for in *clause (a)* of said *Section 15.3* and shall have delivered the instrument provided for in *clause (b)* of said *Section 15.3*. All sums so paid by Landlord and all necessary incidental costs and expenses paid or incurred by Landlord in connection with the performance of any such act by Landlord, together with interest thereon at the greater of 9% per annum or the legal rate from the date of making of such expenditure of Landlord until the date of repayment, shall be payable to Landlord on demand.

ARTICLE 25

Invalidity of Particular Provisions

Section 25.1. If any term or provision of this lease or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 26

Limitation of Landlord's Liability

Section 26.1. In the event Landlord shall sublease the demised premises or in the event of any transfer of any such sublease or the tenant's interest under the Master Lease, the landlord under such sublease or such seller or transferor, as the case may be, shall be entirely freed and relieved of all covenants and conditions of Landlord under this lease and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the tenant under such sublease or such purchaser or transferee, as the case may be, that such tenant, purchaser or transferee, as the case may be, has assumed and has agreed to carry out any and all covenants and obligations of Landlord under this lease; provided, however, that nothing herein contained shall at any time release Landlord at the time of execution of this lease from Landlord's obligations pursuant to *Section 10.4* hereof nor from any obligation of Landlord to make refund or reimbursement to Tenant of Tax Equivalency Payments as provided in *Article 3* of this lease nor from any claim for damages Tenant may have against Landlord for breach by Landlord, as Landlord, of any of its obligations under the provisions of this lease at such time.

ARTICLE 27

No Personal Liability

Section 27.1. Notwithstanding anything to the contrary contained in this Lease, in no event shall any member, officer, employee, consultant or agent of Landlord nor any venturer, partner (general or limited), director, employee, agent, consultant, affiliate, associate, principal or stockholder of Tenant have or incur any personal liability hereunder or under or by virtue of any other agreement or instrument hereafter executed in connection with or affecting the demised premises.

ARTICLE 28

Covenants to Bind and Benefit the Respective Parties

Section 28.1. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

BATTERY PARK CITY AUTHORITY

By [Signature]
Landlord

HUDSON TOWERS HOUSING CO., INC.

By [Signature]
Tenant

State of New York |
| ss.:
County of New York |

On the 18 day of February 1980, before me personally came Barry Light to me known, who, being by me duly sworn, did depose and say that he resides at No. 231 East 34th Street, New York, New York; that he is the Vice President, ~~Finance and Treasurer~~ of Battery Park City Authority, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the members of said corporation, and that he signed his name thereto by like order.

Residential Dev.

Joan M. Reichenbach
Notary Public

JOAN M. REICHENBACH
Notary Public, State of New York
No. 4654169
Qualified in Nassau County
Term Expires March 30, 1981

State of New York |
| ss.:
County of New York |

On the 21st day of December 1980, before me personally came Stanley B. Blumberg to me known, who, being by me duly sworn, did depose and say that he resides at No. 55 Cambridge Road, Great Neck, New York; that he is the Assistant Vice President of Hudson Towers Housing Co., Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Susan Quinn Tutts
Notary Public

SUSAN QUINN TUTTS
Notary Public, State of New York
Qualified in Nassau County
Term Expires March 30, 1981

EXHIBIT "A"

LEGAL DESCRIPTIONS OF PARCELS IN POD 3

The bearings and coordinates used in the Parcels hereinafter described refer to the system used for the Borough Survey, Borough President's Office, Manhattan; and the elevations set forth therein refer to the datum used by the Topographical Bureau, Borough of Manhattan, which is 2.75 feet above the United States Coast and Geodetic Survey datum, mean sea level at Sandy Hook, New Jersey.

PARCEL 1

ALL that certain parcel of land lying and being in the City, County and State of New York described as follows:

BEGINNING at a point in the westerly line of a street running generally in a north-south direction designated on Map No. ACC 30043, dated December 3, 1975, prepared by the Topographical Bureau, Borough of Manhattan as "A New Street" (hereinafter referred to as "New North-South Street"), said point being located at the southeast corner of the parcel hereinafter described and having a coordinate of north 3777.636 west 10537.222; running thence

1. south 77°-31'-29" west, 105.95 feet; thence
2. south 12°-28'-31" east, 30.67 feet; thence
3. south 77°-31'-29" west, 114.26 feet; thence
4. north 12°-28'-31" west, 16.66 feet; thence
5. south 77°-31'-29" west, 29.00 feet; thence
6. north 12°-28'-31" west, 11.34 feet; thence
7. south 77°-31'-29" west, 32.75 feet; thence
8. north 12°-28'-31" west, 11.50 feet; thence
9. south 77°-31'-29" west, 88.17 feet; thence
10. south 12°-28'-31" east, 8.67 feet; thence
11. north 77°-31'-29" east, 3.00 feet; thence
12. south 12°-28'-31" east, 15.33 feet; thence
13. south 77°-31'-29" west, 29.74 feet; thence
14. north 57°-28'-31" west, 53.88 feet; thence
15. north 12°-28'-31" west, 69.00 feet; thence
16. north 57°-28'-31" west, 22.63 feet; thence
17. north 12°-28'-31" west, 55.82 feet; thence
18. south 77°-31'-29" west, 5.00 feet; thence
19. north 12°-28'-31" west, 13.10 feet; thence
20. north 57°-28'-31" west, 19.80 feet; thence
21. north 12°-28'-31" west, 23.90 feet; thence
22. south 77°-31'-29" west, 9.57 feet; thence

23. north $12^{\circ}-28'-31''$ west. 1.33 feet: thence
24. north $77^{\circ}-31'-29''$ east. 1.00 foot: thence
25. north $12^{\circ}-28'-31''$ west. 21.83 feet: thence
26. south $77^{\circ}-31'-29''$ west. 1.00 foot: thence
27. north $12^{\circ}-28'-31''$ west. 1.33 feet: thence
28. north $77^{\circ}-31'-29''$ east. 1.00 foot: thence
29. north $12^{\circ}-28'-31''$ west. 22.67 feet: thence
30. south $77^{\circ}-31'-29''$ west. 1.00 foot: thence
31. north $12^{\circ}-28'-31''$ west. 1.33 feet: thence
32. north $77^{\circ}-31'-29''$ east. 1.00 foot: thence
33. north $12^{\circ}-28'-31''$ west. 21.83 feet: thence
34. south $77^{\circ}-31'-29''$ west. 1.00 foot: thence
35. north $12^{\circ}-28'-31''$ west. 1.33 feet: thence
36. north $77^{\circ}-31'-29''$ east. 9.57 feet: thence
37. north $12^{\circ}-28'-31''$ west. 41.75 feet: thence
38. north $77^{\circ}-31'-29''$ east. 15.00 feet: thence
39. north $12^{\circ}-28'-31''$ west. 20.67 feet: thence
40. south $77^{\circ}-31'-29''$ west. 7.00 feet: thence
41. north $12^{\circ}-28'-31''$ west. 17.74 feet: thence
42. north $32^{\circ}-31'-29''$ east. 35.35 feet: thence
43. north $12^{\circ}-28'-31''$ west. 43.76 feet: thence
44. north $40^{\circ}-25'-14''$ east. 23.48 feet: thence
45. north $73^{\circ}-06'-08''$ east. 100.51 feet: thence
46. south $16^{\circ}-53'-52''$ east. 5.00 feet: thence
47. north $73^{\circ}-06'-08''$ east. 50.00 feet: thence
48. north $16^{\circ}-53'-52''$ west. 5.00 feet: thence
49. north $73^{\circ}-06'-08''$ east. 80.72 feet: thence
50. north $12^{\circ}-28'-31''$ west. 5.30 feet to a point of curvature: thence
51. northeasterly, curving to the right on the arc of a circle having a radius of 87.00 feet and a central angle of $50^{\circ}-48'-19''$. 77.14 feet to the northerly point of a line which forms the westerly terminus of a street running generally in an east-west direction designated on the aforementioned Map No. ACC 30043 as "A New Street" (hereinafter referred to as "New East-West Street"); thence southeasterly along said westerly terminus line the following two (2) courses and distances:
 52. south $49^{\circ}-00'-42''$ east. 55.10 feet: thence

53. south $38^{\circ}-56'-48''$ east, 23.21 feet to the point of intersection with the southerly line of said New East-West Street; thence along said southerly line the following sixteen (16) courses and distances:

54. north $77^{\circ}-31'-29''$ east, 1.00 foot; thence

55. north $12^{\circ}-28'-31''$ west, 1.96 feet; thence

56. north $77^{\circ}-31'-29''$ east, 2.17 feet; thence

57. south $12^{\circ}-28'-31''$ east, 1.96 feet; thence

58. north $77^{\circ}-31'-29''$ east, 33.83 feet; thence

59. north $12^{\circ}-28'-31''$ west, 1.96 feet; thence

60. north $77^{\circ}-31'-29''$ east, 2.17 feet; thence

61. south $12^{\circ}-28'-31''$ east, 1.96 feet; thence

62. north $77^{\circ}-31'-29''$ east, 33.83 feet; thence

63. north $12^{\circ}-28'-31''$ west, 1.96 feet; thence

64. north $77^{\circ}-31'-29''$ east, 2.17 feet; thence

65. south $12^{\circ}-28'-31''$ east, 1.96 feet; thence

66. north $77^{\circ}-31'-29''$ east, 1.00 foot; thence

67. north $12^{\circ}-28'-31''$ west, 15.14 feet; thence

68. due east, 17.69 feet to a point of curvature; thence

69. southeasterly, curving to the right on the arc of a circle having a radius of 7.00 feet and a central angle of $73^{\circ}-08'-57''$, a distance of 8.94 feet to a point of tangency with the westerly line of said New North-South Street; thence

70. south $16^{\circ}-51'-03''$ east, 27.43 feet; thence

71. south $77^{\circ}-31'-29''$ west, 1.42 feet; thence

72. south $12^{\circ}-28'-31''$ east, 85.50 feet; thence

73. north $77^{\circ}-31'-29''$ east, 7.93 feet; thence

74. southerly, curving to the right on the arc of a circle having a radius of 1973.00 feet whose radial line bears south $73^{\circ}-26'-17''$ west and having a central angle of $4^{\circ}-05'-12''$, 140.73 feet to a point of tangency; thence

75. south $12^{\circ}-28'-31''$ east, 226.56 feet to the point or place of beginning.

"TOGETHER with an easement of support for the Improvements from any columns, foundations, batter piles or other sub-surface structures located outside of Parcel 1 and an easement for facing material on the Improvements located outside Parcel 1, such easements to continue as to each such column, foundation, batter pile, other sub-surface structure and facing material for so long as the Improvement benefited thereby shall stand."

TOGETHER with such non-exclusive easements over property of and designated by Landlord for egress, maintenance or other purposes as is necessary for operation and maintenance of the Improvement constructed on Parcel 1.

TOGETHER with a non-exclusive easement and non-exclusive rights (i) for passage by pedestrians and vehicles over, upon and across the surface of the streets and roadways, parks and esplanade abutting and

serving the demised premises and (ii) for passage by pedestrians over, upon and across the surface of the walkways and pedestrian decks (whether covered or uncovered), ramps, stairways, and sidewalks abutting and serving the demised premises (which facilities are intended to provide access to and egress from the demised premises to Marginal Street), for the period commencing on the term commencement date of the foregoing lease and ending on the date when the City shall accept from Landlord a deed, grant or release of said abutting streets and sidewalks.

TOGETHER with the right to connect to and use the utility installations and facilities including pipes, conduits, cables and related equipment owned by Landlord and which connect to and serve the demised premises with electricity, gas, water, storm water drainage and sanitary sewer service (which installations and facilities are intended to provide the necessary connections for such service between the demised premises and the utility systems in Marginal Street) for the period commencing on the term commencement date of the foregoing lease and ending on the date when the City shall accept from Landlord a deed, grant or release of said utility installations and facilities.

TOGETHER with, until temporary or permanent certificates of occupancy have been issued for all 1.642 dwelling units and commercial space on the demised premises, the right to use 5 acres of adjoining premises designated by Landlord, as follows: up to 2 acres for parking for construction workers, up to 1 acre for construction offices and up to 2 acres for material storage, provided all fencing, securing and surface preparation shall be at the expense of Tenant, and the right to remove from the surcharge area to the demised premises the select granular fill without charge by Landlord but at the expense of Tenant for removal and haulage. As long as such adjoining premises shall be used by Tenant the same shall be deemed to be included in and to be a part of the demised premises for all purposes and all provisions of this lease shall be applicable thereto, including, without limitation, those relating to insurance, compliance with laws, maintenance and indemnification. Landlord shall have the right to designate such area and Tenant's use thereof shall not interfere with other operations of Landlord in the area.

PARCEL 2

ALL that portion of the parcel of land hereinafter described lying above a horizontal plane drawn at elevation 20'-0" and which is bounded and described as follows:

BEGINNING at a point in the westerly boundary of Parcel 1 heretofore described, said point being the southeast corner of the parcel hereby described and having a coordinate of north 3883.728 west 11051.822; running thence

1. south 77°-31'-29" west, 10.08 feet; thence
2. north 12°-28'-31" west, 23.25 feet; thence
3. south 77°-31'-29" west, 6.00 feet; thence
4. north 12°-28'-31" west, 25.17 feet; thence
5. north 77°-31'-29" east, 6.00 feet; thence
6. north 12°-28'-31" west, 23.25 feet; thence
7. north 77°-31'-29" east, 10.08 feet; thence
8. south 12°-28'-31" east, 1.33 feet; thence
9. north 77°-31'-29" east, 1.00 foot; thence
10. south 12°-28'-31" east, 21.83 feet; thence
11. south 77°-31'-29" west, 1.00 foot; thence

12. south $12^{\circ}-28'-31''$ east, 1.33 feet; thence
13. north $77^{\circ}-31'-29''$ east, 1.00 foot; thence
14. south $12^{\circ}-28'-31''$ east, 22.67 feet; thence
15. south $77^{\circ}-31'-29''$ west, 1.00 foot; thence
16. south $12^{\circ}-28'-31''$ east, 1.33 feet; thence
17. north $77^{\circ}-31'-29''$ east, 1.00 foot; thence
18. south $12^{\circ}-28'-31''$ east, 21.83 feet; thence
19. south $77^{\circ}-31'-29''$ west, 1.00 foot; thence
20. south $12^{\circ}-28'-31''$ east, 1.33 feet to the point or place of BEGINNING.

SUBJECT to the rights for pedestrian and vehicular passage by employees, licensees, permittees and business visitors of the Port Authority of New York and New Jersey over, upon and across the strip of land hereinafter described:

ALL that certain parcel of land lying and being in the City, County and State of New York described as follows:

BEGINNING at the southerly point of a line which forms the westerly terminus of a street running generally in an eastwest direction designated on the aforementioned map No. ACC-30043 as "A New Street" (hereinafter referred to as "New East West Street"), said point being located at the northeast corner of the parcel hereinafter described and having a coordinate of north 4271.300 west 10805.884; running thence

1. south $49^{\circ}-00'-42''$ east, 55.10 feet; thence.
2. southwesterly, curving to the left on the arc of a circle having a radius of 35.00 feet whose radial line bears south $51^{\circ}-26'-32''$ east and having a central angle of $46^{\circ}-28'-28''$, 28.39 feet; thence
3. south $73^{\circ}-06'-08''$ west, 52.10 feet; thence
4. north $12^{\circ}-28'-3''$ west, 5.29 feet; thence
5. northeasterly, curving to the right on the arc of a circle having a radius of 87.00 feet and a central angle of $50^{\circ}-48'-19''$, 77.14 feet to the point or place of BEGINNING.

SUBJECT to an easement in favor of Landlord, its successors and assigns, to install within the transformer vault located on the north face of the structure to be known as building 222, a 480 volt tap and its associated facilities to serve Public Open Spaces (as defined in the Master Lease) and thereafter to maintain, operate, inspect, repair and replace such tap and its associated facilities, all in such manner as shall not unreasonably interfere with Tenant's use of such area and provided Landlord shall indemnify and hold Tenant harmless from all loss, cost, expense and damage which Tenant may incur or suffer which arises from use of such easement by Landlord or its representative, successors or assigns.

SUBJECT to those matters set forth in Title Policy No. 4125046, dated of even date with the foregoing lease, of The Title Guarantee Company and Pioneer National Title Insurance Company, other than exception H.

EXHIBIT "B"

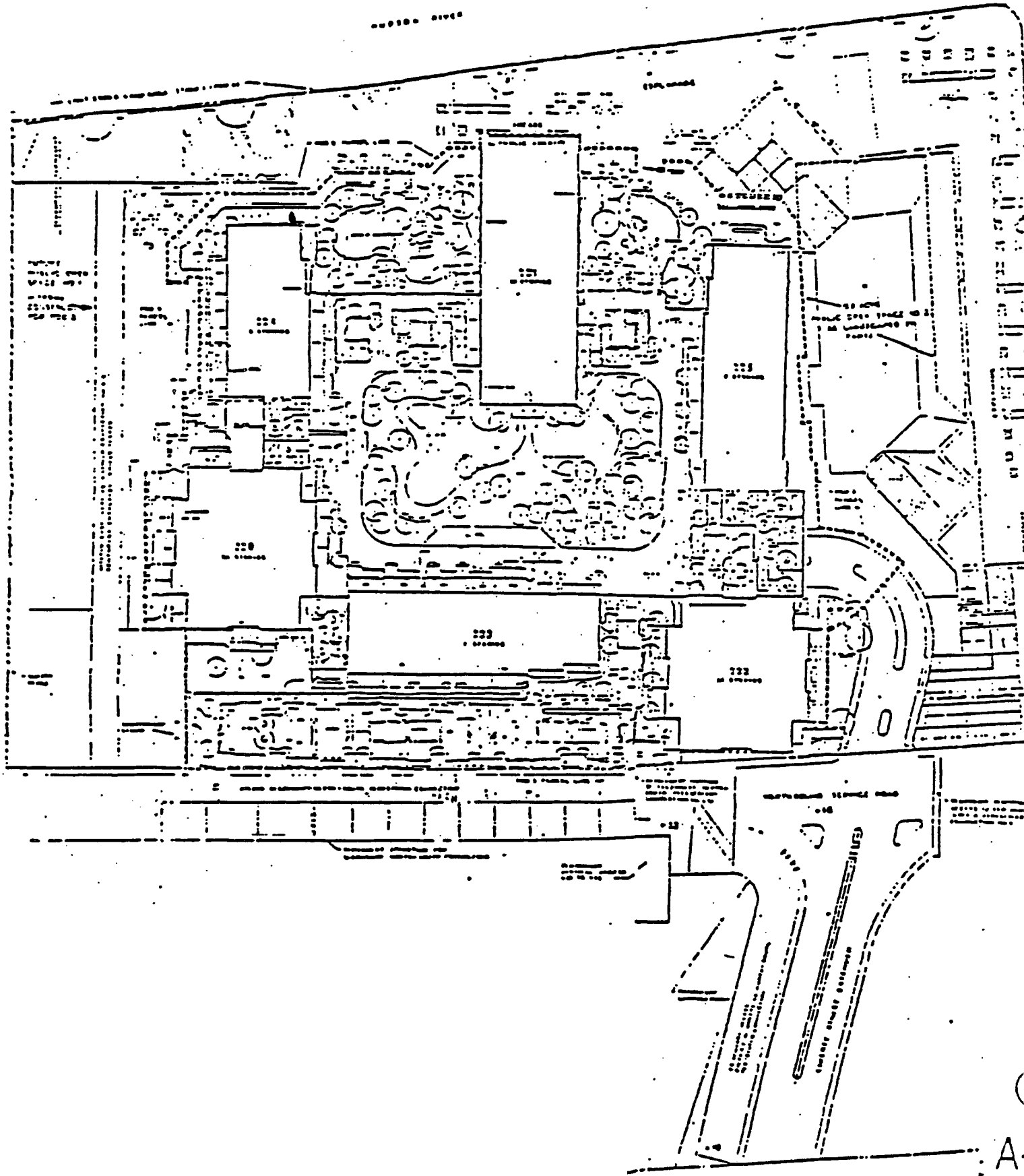


EXHIBIT - C

List of Shop Drawings and Materials to be Submitted to Landlord Pursuant to Section 10.1 B(a)

A. Shop Drawings and/or Cutouts:

- (1) Windows - frames and panels
- (2) Store Fronts
- (3) Exterior Doors - all sliding, revolving or swing type
- (4) Exterior Railings - balcony, terrace and roof
- (5) Incremental Units (packaged terminal air conditioning and heating units)
- (6) Paving layouts
- (7) Exterior lighting fixtures
- (8) Exterior furniture
- (9) Exterior hardware and miscellaneous exterior metal
- (10) Form work for concrete, joints and ties in building walls, planters and retaining walls.

B. Samples:

- (1) Glazed window - with panel below incorporating exterior louver for incremental unit
- (2) Store front - corner station, glazed
- (3) Exterior Doors - corner station, glazed
- (4) Railing - each type
- (5) Exterior masonry units
- (6) Exterior concrete form liner
- (7) Paving material - each type
- (8) Exterior caulking and sealants
- (9) Exterior furniture - corner section
- (10) Exterior hardware
- (11) Roofing and membrane materials.

Job Site - Full Mock-up:

- (1) Glazed window with panel below incorporating exterior louver for incremental unit, splitface block and caulking, all to be in one building bay. Concrete, masonry and mortar incorporated in mock up will constitute color submission of these materials.
- (2) Witness weather testing if performed of assembled window, panel below and wall
- (3) Textured concrete from approved form liner and rusticated joint

All materials incorporated in mock-up will constitute material sample submissions.

D. Planting Material (at source):

- (1) Trees (major and minor)
- (2) Shrubs
- (3) Ground covers

E. Certification:

- (1) All items listed above shall be certified in writing by the manufacturer or fabricator as being equal to or better than the requirements of the specifications referred in Section 10.1 A of the foregoing lease.

EXHIBIT "D"

Facilities To Be Constructed By Landlord Pursuant to Section 10.4

PART I

- A. *General Description:* Vehicular Roadways and Utility installations to service the demised premises to be based on the "1979 BPCA Master Plan".
- B. *Completion Dates:* The following facilities are to be constructed by Landlord and be in service at the following time:
- (a) Prior to initial endorsement
 - 1. Sanitary Sewer System
 - 2. Water Distribution System (for temporary service only)
 - 3. Electrical
 - i. Vaults (concrete structure only)
 - ii. Distribution System (to transformer vaults provided necessary work by tenant and others is completed within transformer vaults)
 - (b) Prior to temporary certification of occupancy, covering all or any portion of dwelling units and retail and commercial space on the Land but not more than 18 months after the term commencement date:
 - 1. Vehicular Roadways
 - 2. Gas Distribution System
 - 3. Telephone Distribution System
 - 4. Water Distribution System
 - 5. Electrical Distribution System

PART II

- A. Sodding and planting of vacant land areas abutting the demised premises on the north and south as required by Item 27 of the Mandatory Conditions set forth in the HUD Conditional Commitment, dated May 12, 1978, as amended.
- B. Provide tenant with:
- (a) Sand fill, no less than 30,000 cu. from stockpile (North Section) as required to bring Land up to grade.
 - (b) Parking, trailer and storage areas adjacent to the Land.
 - (c) Site security, specifically gates #4, #7 and #8.