AGREEMENT OF LEASE

between

BATTERY PARK CITY AUTHORITY,

Landlord

and

BATTERY PLACE ASSOCIATES,
a New York general partnership

Tenant

Premises
Site 4

Battery Park City -- Battery Place Residential Area Phase III
New York, New York

Dated as of March 17, 1987

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EXHIBITS

AGREEMENT OF LEASE (this "Lease") made as of the day of , 1987, between BATTERY PARK CITY AUTHORITY ("Landlord"), a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, and BATTERY PLACE ASSOCIATES ("Tenant"), a New York general partnership having an office at c/o Milstein Properties, 1271 Avenue of the Americas, New York, New York 10020.

WITNESSETH:

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

## ARTICLE 1

## DEFINITIONS

The terms defined in this Article 1 and in Article 42 shall, for all purposes of this Lease, have the following meanings and the meanings set forth in Article 42.

"Actual Total Project Cost" shall have the meaning provided in Section 3.09(a).

"Adjusted Tax Equivalent" shall have the meaning provided in Section 3.02(b).

"Affiliate" shall mean (i) (a) any Person (hereinafter defined) that has, directly or indirectly, an ownership interest in Tenant or (b) any Person in which Tenant or an Affiliate of Tenant by virtue of clause (a) of this definition, has an ownership interest, and (ii) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse; a brother or sister of the whole or half blood of such individual or his spouse; a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing.

"Annual Cash Flow Payment Statement" shall have the meaning provided in Section 3.11(d).

"Apartment Corporation" shall have the meaning set forth in the Cooperative Plan (hereinafter defined).

"Approved Remedies" shall have the meaning provided in Section 26.04(a).

"Architect" shall mean , or any successor approved by Landlord, which approval shall not be unreasonably withheld.

"Assumed Conditions" shall have the meaning provided in Section 3.14(a).

"Base Rent" shall have the meaning provided in Section 3.01(a).

"Buildings" shall mean the buildings, including footings and foundations, Equipment (hereinafter defined) and other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon the Land (hereinafter defined) including, without limitation, Capital Improvements (hereinafter defined), and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"Business Days" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

"Capital Improvement" shall have the meaning provided in Section 13.01.

"Cash Flow Payment" or "Cash Flow Payments" shall have the meanings provided in Section 3.11(a).

"Certificate of Occupancy" shall mean a certificate of occupancy issued by the Department of Buildings of New York City pursuant to Section 645 of the New York City Charter or other similar certificate issued by a department or agency of New York City.

"Civic Facilities" shall have the meaning provided in Section 26.01(a).

"Civic Facilities Budget" shall have the meaning provided in Section 26.05(b).

"Civic Facilities Payment" shall have the meaning provided in Section 26.05(a).

"Commencement Date" shall mean the date of this Lease.

"Commencement of Construction" shall mean the later to occur of the (a) date upon which on-site construction of the Buildings shall commence, including, any excavation or pile driving but not including test borings, test pilings, surveys and similar pre-construction activities and (b) the date upon which a building permit for the Buildings shall be issued by the Department of Buildings of The City of New York.

"Comparable Buildings" shall have the meaning provided in Section 3.14(j).

"Completion of the Buildings" shall mean the issuance of a permanent Certificate or Certificates of Occupancy for the Buildings and (i) if Tenant's estate in the Premises shall have been submitted to a cooperative form of ownership (x) satisfaction by Tenant of the provisions of Section 10.01(e)(i), (y) the assignment by Tenant of its interest in this Lease to the Apartment Corporation and (z) consummation of the sale by Tenant (or any holder of unsold shares) of thirty-five percent (35%) of the Cooperative Apartments (hereinafter defined) to bona fide purchasers pursuant to purchase or subscription agreements theretofore delivered to Landlord or (ii) if Tenant's estate in the Premises shall have been submitted to a condominium form of ownership, consummation of the Initial Unit Transfers (hereinafter defined).

"Cooperative Apartment" shall mean each apartment in the Buildings identified in the Cooperative Plan.

"Cooperative Plan" shall mean the plan to submit Tenant's leasehold estate in the Premises to cooperative ownership, together with all amendments, modifications and supplements thereto.

"Construction Agreements" shall mean agreements for construction, Restoration (hereinafter defined), Capital Improvement, rehabilitation, alteration, repair or demolition performed pursuant to this Lease.

"Construction Commencement Date" shall mean the earlier of (i) the date which is thirty (30) days after the issuance to Tenant of a building permit by New York City or (ii) June 15, 1988.

"Construction Documents" shall have the meaning provided in Section 11.02(c).

"Construction Period Letter of Credit" shall have the meaning provided in Section 11.12.

"Consumer Price Index" or "CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y. - Northeastern N.J. Area, All Items (1967 =100), or any successor or substitute index thereto, appropriately adjusted; provided that if there shall be no successor index and the parties shall fail to agree upon a substitute index within thirty (30) days, or if the parties shall fail to agree upon the appropriate adjustment of such successor or substitute index within thirty (30) days, a substitute index or the appropriate adjustment of such successor or substitute index, as the case may be, shall be determined by arbitration pursuant to Article 36. The parties agree that as of the two months prior to the Commencement Date, the CPI was 333.1, as of one month prior to the Commencement Date, the CPI was 333.1, and as of the Commencement Date, the CPI is 333.1.

"C.P.A." shall have the meaning provided in Section 3.12(b).

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

"Deficiency" shall have the meaning provided in Section 24.04(c).

"Depository" shall mean a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender (hereinafter defined), designated by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to serve as Depository pursuant to this Lease, provided all funds held by such Depository pursuant to this Lease shall be held in New York City. In the event Tenant shall have failed to designate a Depository within ten (10) days after request of Landlord, Landlord shall have the right to designate such Depository.

"Design Development Plans" shall have the meaning provided in Section 11.02(b).

"Design Guidelines" shall mean the Design Guidelines for Battery Place Residential Area, prepared by Cooper, Eckstut

Associates, dated May, 1985, as the same may hereafter be amended, modified or supplemented.

"Development Period" shall have the meaning provided in Section 3.05(d).

"Development Period Cost" shall have the meaning provided in Section 3.05(d).

"DHCR" shall mean the New York State Division of Housing and Community Renewal, or such other state or local agency responsible for administering the Rent Regulations (hereinafter defined).

"Due Date" shall mean, with respect to an Imposition (hereinafter defined), the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof.

"Enclosure of Buildings" shall mean that all masonry, perimeter walls and window frames with glazing have been substantially completed from the third floor to the top floor of the Buildings, except temporary exterior elevator and/or hoist cut-outs and renting office access stairs and entrance.

"Equipment" shall mean all fixtures incorporated in the Premises, including, without limitation (i) all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas, computers, sensors and (ii) laundry equipment and refrigerators, stoves, dishwashers and other major kitchen appliances, except to the extent any of the foregoing shall be owned by Subtenants (hereinafter defined), Tenant-Stockholders (hereinafter defined), Unit Owners (hereinafter defined), concessionaires or contractors engaged in maintaining the same. "Equipment" shall not include any fixture or utilities owned by any utility company.

"ERS" shall have the meaning provided in Section 26.01(a).

"Esplanade" shall have the meaning provided in Section 26.01(a).

"Esplanade Budget" shall have the meaning provided in Section 26.05(b).

"Event of Default" shall have the meaning provided in Section 24.01.

"Expiration Date" shall have the meaning provided in Article 2.

"First Appraisal Date" shall have the meaning provided in Section 3.01(c).

"Governmental Authority (Authorities)" shall mean the United States of America, the State of New York, New York City and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

"Gross Proceeds" shall have the meaning provided in Section 3.05(d).

"Gross Revenue" shall mean, for the applicable period, all revenues to Tenant or an Affiliate of Tenant (determined in accordance with generally accepted accounting principles consistently applied) from, in connection with or arising out of the use and occupancy of the residential portion of the Premises, including, without limitation, base rent, fixed rent, percentage rent, additional rent and all other income, sums and charges, whether payable under a Sublease or otherwise.

"Guaranteed Total Project Cost" shall have the meaning provided in Section 3.09(a).

"Impositions" shall have the meaning provided in Section 4.01.

"Improvement Approvals" shall have the meaning provided in Section 13.01(a).

"Indemnitees" shall have the meaning provided in Section 19.01.

"Individual" shall have the meaning provided in Section 10.01(a).

"Initial Occupancy Date" shall have the meaning provided in Section 26.05(a).

"Institutional Lender" shall mean a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, a recognized credit corporation such as General Electric Credit Corporation, or corporation or other entity which is wholly owned by any other Institutional Lender or any combination of Institutional Lenders; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to (i) the jurisdiction of the courts of the State of New York in any actions and (ii) the supervision of (A) the Comptroller of the Currency of the United States or the Insurance Department or the Banking Department or the Comptroller of the State of New York, or the Board of Regents of the University of the State of New York, or the Comptroller of New York City or (B) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of improvements, and (b) each such entity, or combination of such entities, should have individual or combined assets, as the case may be, of not less that $500,000,000.

"Involuntary Rate" shall mean the Prime Rate (hereinafter defined) plus 2% per annum but, in no event, in excess of the maximum permissible interest rate then in effect in the State of New York.

"Issuer" shall mean the issuer of a Letter of Credit (hereinafter defined).

"Land" shall mean the land described in Exhibit A hereto.

"Land Tax Equivalent" shall mean for any Tax Year (hereinafter defined), the product obtained by multiplying (i) the total assessed value of the Land in effect for the Tax Year preceding the Commencement of Construction (without regard to any exemption or abatement from real property taxation in effect prior to such Commencement of Construction) times (ii) the tax rate applicable to comparable real property situated in the Borough of Manhattan in effect for the Tax Year in which the payment is made. Notwithstanding the foregoing, Landlord and Tenant agree that the total assessed value of the Land in effect for the Tax Year preceding the

Commencement of Construction, as provided in clause (i) above, is $4,346,488.

"Landlord", on the date as of which this Lease is made, shall mean Battery Park City Authority, but thereafter "Landlord" shall mean only the landlord at the time in question under this Lease.

"Landlord's Civic Facilities" shall have the meaning provided in Section 26.01(c).

"Landlord's Construction Obligations" shall have the meaning provided in Section 26.04(a).

"Landlord's Project Manager" shall have the meaning provided in Section 11.02(e).

"Lease" shall mean this Agreement of Lease and all amendments, modifications and supplements thereof.

"Letter of Credit" shall have the meaning provided in Section 43.01(a).

"Lease Year" shall mean the twelve-month period beginning on the Commencement Date and each succeeding twelve-month period during the Term (hereinafter defined).

"Maintenance Obligations" shall have the meaning provided in Section 26.03(a).

"Marketing Period" shall have the meaning provided in Section 3.09(a).

"Marketing Period Carrying Costs" shall have the meaning provided in Section 3.09(a).

"Master Development Plan" shall mean the 1979 Master Plan for Battery Park City Authority, prepared by Alexander Cooper Associates, dated October, 1979, as amended by the Second Amendment to Restated Amended Lease dated June 15, 1983 and recorded on June 20, 1983 in the Office of the City Register, New York County in Reel 696 at Page 432, as the same may be hereafter amended, modified or supplemented.

"Master Landlord", on the date as of which this Lease is made, shall mean Battery Park City Authority, but thereafter, "Master Landlord" shall mean only the lessor at the time in question under the Master Lease (hereinafter defined).

"Master Lease" shall mean the Restated Amended Agreement of Lease, made as of June 10, 1980, between BPC Development Corporation, as landlord, and Battery Park City Authority, as tenant, a Memorandum of which was recorded on June 11, 1980 in the Office of the City Register, New York County in Reel 527 at page 163, as amended by First Amendment to Restated Amended Lease dated as of June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 424, Second Amendment to Restated Amended Lease dated June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 432, and Third Amendment to Restated Amended Lease dated as of August 15, 1986 and recorded on October 22, 1986 in said Register's Office in Reel 1133 at page 569, as the same may be hereafter amended, modified or supplemented.

"Mortgage" shall mean any mortgage which constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby, provided such mortgage is held by (i) an Institutional Lender or (ii) a Person formerly constituting Tenant, or such Person's assignee, if such mortgage is made to such Person in connection with an assignment by Tenant of its interest in this Lease other than an assignment by Tenant of its interest in this Lease to an Affiliate. The term "Mortgage" shall not include a Unit Mortgage or Recognized Unit Mortgage (each as hereinafter defined).

"Mortgagee" shall mean the holder of a Mortgage. The term "Mortgagee" shall not include a Unit Mortgagee or Recognized Unit Mortgagee (each as hereinafter defined).

"Net Cash Flow" shall mean the excess of Gross Revenue for any period over the Operating Expenses (hereinafter defined) for such period.

"Net Sales Proceeds" shall have the meaning provided in Section 3.05(d).

"New York City" shall mean The City of New York, a municipal corporation of the State of New York.

"Non-disturbance and Attornment Agreement" shall have the meaning provided in Section 10.09.

"Operating Costs" shall have the meaning provided in Section 26.05(a).

"Operating Expenses" shall mean, for the applicable period, as determined in accordance with generally accepted accounting principles consistently applied (A) the following

reasonable costs and expenses paid by, or on behalf of, Tenant properly allocable to and in connection with the use, maintenance or operation of the residential portion of the Premises during such Lease Year: (1) Impositions; (2) insurance premiums and the deductible amount of any claim that Tenant may have during such Lease Year pursuant to an insurance policy required pursuant to the provisions of Article 7 hereof (provided such deductible amount is not more that the maximum deductible amount then permitted pursuant to the provisions of Article 7 hereof); (3) wages, salaries and fringe benefits; (4) fuel, gas, electricity, steam and other utilities; (5) management fees, but only to the extent such fees do not exceed those customarily and reasonably paid in arms-length transactions for management fees for improvements situated in New York City of a size and nature comparable to the size and nature of the Buildings; (6) brokerage commissions, advertising expenses and other costs incurred in connection with the entering into of any Sublease, amortized over the term of the Sublease with respect to which the same have been paid or incurred, but, with respect to leasing commissions, only to the extent such commissions do not exceed those customarily and reasonably paid in arms-length transactions for leasing commissions for improvements situated in New York City of a size and nature comparable to the size and nature of the Buildings; (7) fees, costs and expenses for accounting and legal services which are intended to benefit the revenue producing capabilities of the Premises or to minimize the expenses thereof or otherwise required to be performed by the provisions of this Lease; (8) fees for the services of Depository, which services are required pursuant to the provisions of this Lease or any Mortgage; (9) reasonable administration and overhead expenses which are properly allocable to the Premises; (10) debt service on any Mortgage, but only to the extent the proceeds of such Mortgage were expended exclusively in connection with the payment by Tenant of or reimbursement to Tenant for the construction, use, maintenance or operation of the Premises or to refinance any Mortgage, the proceeds of which were expended for any of the foregoing, (11) subsequent to the payment of the Substitute Transaction Payment, interest thereon at an annual rate equal to the Prime Rate and (12) costs paid under any elevator maintenance or service contract; and (B) Base Rent, PILOT and Civic Facilities Payments for such Lease Year; but excluding (C)(1) depreciation and amortization of previously capitalized expenditures or expenditures which, under generally accepted accounting principles, consistently applied, should have been capitalized, (2) the cost of any items for which Tenant is reimbursed by insurance proceeds or condemnation awards, and (3) any amount paid to any Affiliate for, or with respect to, items or services that would

otherwise constitute Operating Expenses, to the extent that such amount exceeds that which is customarily and reasonably paid to unaffiliated third persons in arms-length transactions for comparable items or services in a business operation of a size and nature as that being operated on the Premises by Tenant.

"Payment Period" shall have the meaning provided in Section 26.05(b).

"Payments in Lieu of Taxes" and "PILOT" shall have the meaning provided in Section 3.02.

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

"Phase III" shall mean the Battery Place Residential Area of the Project Area (hereinafter defined), as delineated in the Design Guidelines.

"Premises" shall mean the Land and Buildings.

"Prime Rate" shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 360-day year with twelve months of 30 days each.

"Proceeds Payment" shall have the meaning provided in Section 3.09(a).

"Project Area" shall mean the premises demised pursuant to the Master Lease.

"Qualifying Sublease" shall have the meaning provided in Section 10.09.

"Quarterly Cash Flow Payment Statement" shall have the meaning provided in Section 3.11(c).

"Reappraisal Date" shall have the meaning provided in Section 3.01(c).

"Release Date" shall have the meaning provided in Section 3.14(b).

"Rent Control Sanction" shall have the meaning provided in Section 3.14(d).

"Rent Insurance" shall have the meaning provided in Section 7.01(a)(iv).

"Rent Officer" shall have the meaning provided in Section 3.14(c).

"Rent Program" shall have the meaning provided in Section 3.14(c).

"Rent Regulations" shall have the meaning provided in Section 3.14(a).

"Rental" shall have the meaning provided in Section 3.13.

"Replacement Letter of Credit" shall have the meaning provided in Section 43.01(e).

"Requirements" shall have the meaning provided in Section 14.01.

"Residential Esplanade" shall have the meaning provided in Section 26.05(b).

"Residential Parks" shall have the meaning provided in Section 26.05(b).

"Residential TCO" shall have the meaning provided in Section 3.02(b).

"Restoration" shall have the meaning provided in Section 8.01.

"Restoration Funds" shall have the meaning provided in Section 8.02(a).

"Restore" shall have the meaning provided in Section 8.01.

"Scheduled Completion Date" shall have the meaning provided in Section 11.04.

"Schematics" shall have the meaning provided in Section 11.02(a).

"Section 421-a" shall have the meaning provided in Section 3.14(a).

"Self-Help" shall have the meaning provided in Section 26.04(b).

"Settlement Agreement" shall mean the Settlement Agreement, dated as of June 6, 1980, between New York City and the Urban Development Corporation, as supplemented by Letter, dated June 9, 1980, from Richard A. Kahan to Edward I. Koch, and amended by Amendment to Settlement Agreement dated as of August 15, 1986 between New York City and Landlord, and as the same may be hereafter amended, modified or supplemented.

"South Park" shall have the meaning provided in Section 26.01(a).

"South Park Budget" shall have the meaning provided in Section 26.05(b).

"Stabilization Authority" shall have the meaning provided in Section 3.14(b).

"Subleases" shall have the meaning provided in Section 10.04.

"Substantial Completion of the Buildings" or "Substantially Complete(d)" shall have the meanings provided in Section 11.04.

"Substitute Transaction Payment" shall have the meaning provided in Section 3.08(a).

"Substitute Transaction Payment Date" shall have the meaning provided in Section 3.08(a).

"Subtenants" shall have the meaning provided in Section 10.04.

"Tax Equivalent" shall mean the product obtained by multiplying (a) the total assessed value of the Premises for the Tax Year by (b) the tax rate applicable to comparable real property situated in the Borough of Manhattan for such Tax Year, provided that for the ten (10) Tax Years commencing with the Tax Year next succeeding the Tax Year in which the Residential TCO is issued, but not later than the last day of the third complete Tax Year following the date of Commencement of Construction, the total assessed value of the Premises for purposes of this calculation shall be reduced by the total assessed value of the Land in effect for the Tax Year preceding the Commencement of Construction (without regard to any exemption or abatement from real property taxa-

tion in effect prior to such Commencement of Construction). As used herein, the term "total assessed value of the Premises" shall mean the assessed value of the Premises upon which real estate taxes would be payable in any given Tax Year if the Premises were not exempt from such taxes.

"Tax Year" shall mean each tax fiscal year of New York City.

"Taxes" shall mean the real property taxes assessed and levied against the Premises or any part thereof pursuant to the provisions of Chapter 58 of the Charter of New York City and Chapter 17, Title E, of the Administrative Code of The City of New York, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part and which would otherwise be payable if the Premises or any part thereof or the owner thereof were not exempt therefrom.

"Tenant" shall mean Battery Place Associates and, if Battery Place Associates or any successor to its interest hereunder shall assign or transfer its interest hereunder in accordance with the terms of this Lease, the term "Tenant" shall mean such assignee or transferee.

"Tenant's Civic Facilities" shall have the meaning provided in Section 26.01(b).

"Tenant's Expenses" shall have the meaning provided in Section 3.05(d).

"Tenant's Profit" shall have the meaning provided in Section 3.09(a).

"Tenant-Stockholder" shall mean any Person acquiring shares in the Apartment Corporation and the interest of lessee under the proprietary lease appurtenant to such shares.

"Term" shall mean the term of this Lease as set forth in Article 2 hereof.

"Threshold Amount" shall have the meaning provided in Section 3.09(a).

"Title Matters" shall mean those matters affecting title to the Land set forth in Exhibit B hereto.

"Total Gross Proceeds" shall have the meaning provided in Section 3.09(a).

"Total Tenant's Expenses" shall have the meaning provided in Section 3.09(a).

"Transaction Payment" shall have the meaning provided in Section 3.05(a).

"Transaction Payment Letter of Credit" shall have the meaning provided in Section 3.06(a).

"Transfer" shall have the meaning provided in Section 10.01(a).

"Unavoidable Delays" shall mean (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Tenant is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, casualty or other similar causes beyond the control of Tenant (but not including Tenant's insolvency or financial condition), Landlord's failure to complete Landlord's Civic Facilities in accordance with Section 26.02, a work stoppage or slow-down requested by Landlord in order not to unreasonably interfere with the work of other developers within the Project Area, which for purposes hereof shall include the construction activities of Landlord under this Lease or the wrongful failure of Landlord (as determined by arbitration pursuant to this Lease) to grant any consent or approval to Tenant, and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Landlord is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, casualty or other similar causes beyond the control of Landlord (but not including Landlord's insolvency or financial condition); in each case provided such party shall have notified the other party not later than fourteen (14) days after such party knows or should have known of the occurrence of same and the effects of which a prudent Person in the position of the party asserting such delay could not have reasonably prevented.

"Unreimbursed Development Period Cost" shall have the meaning provided in Section 3.09(a).

"Unrecouped Threshold Amount" shall have the meaning provided in Section 3.09(a).

## ARTICLE 2

## PREMISES AND TERM OF LEASE

Landlord does hereby demise and sublease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Title Matters.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") commencing on the Commencement Date and expiring on the 17th day of June, 2069 or on such earlier date upon which this Lease may be terminated as hereinafter provided (the "Expiration Date").

## ARTICLE 3

## RENT

Section 3.01.

(a) For the period beginning on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to Landlord, without notice or demand, the annual sums referred to below (collectively, the "Base Rent"):

(i) For each Lease Year (or portion thereof) commencing on the Commencement Date up to but not including the First Appraisal Date, the annual amounts determined as hereinafter set forth for each such Lease Year (or portion thereof):

(A) For the Lease Year commencing on the Commencement Date and expiring on the first anniversary of the Commencement Date, the Base Rent shall be $1,039,500; and

(B) For each Lease Year thereafter, the Base Rent shall be the greater of (x) one hundred and three percent (103%) of the Base Rent payable for the preceding Lease Year or (y) the product derived by multiplying the Base Rent for the preceding Lease Year times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect for the month immediately preceding the month in which such Lease Year commences and the denominator of which shall be the CPI in effect for the

corresponding month in the preceding Lease Year, or (ii) one hundred and seven percent (107%).

(ii) For the Lease Year commencing on the First Appraisal Date and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Base Rent payable for the Lease Year immediately prior to the First Appraisal Date.

(iii) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(ii) and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Base Rent payable in the last Lease Year of the preceding period.

(iv) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(iii) and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Base Rent payable in the last Lease Year of the preceding period.

(v) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(iv) and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by

Landlord or (y) one hundred and twenty-five percent (125%) of the Base Rent payable in the last Lease Year of the preceding period.

(vi) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(v) and continuing until the expiration of the Term, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Base Rent payable in the last Lease Year of the preceding period.

(b) The Base Rent shall be payable in equal monthly installments in advance commencing on the Commencement Date and on the first day of each month thereafter during the Term. The Base Rent shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. The Base Rent due for any period of less than a full Lease Year, and any installment of the Base Rent due for any period of less than a full month, shall be appropriately apportioned.

(c) For the purposes of calculating Base Rent pursuant to Section 3.01(a)(ii)-(vi), the fair market value of the Land shall be determined as of the first day of the month next succeeding the twentieth anniversary of the date on which a temporary certificate of occupancy shall be issued for any portion of the Buildings and as of each subsequent fifteenth anniversary thereafter (such twentieth anniversary being referred to herein as the "First Appraisal Date", and each subsequent fifteenth anniversary being referred to herein as a "Reappraisal Date"). Such determination of fair market value shall be by appraisal in the manner provided in Section 3.15 hereof, unless at least twelve months prior to the First Appraisal Date or any Reappraisal Date, Landlord and Tenant shall have agreed upon such fair market value.

Section 3.02.

(a) For each Tax Year or portion thereof within the Term, Tenant shall pay to Landlord, without notice or demand, an annual sum (each such sum being hereinafter re-

ferred to as a "Payment in Lieu of Taxes" or "PILOT") equal to the Adjusted Tax Equivalent for such Tax Year, payable in equal semi-annual installments during such Tax Year, in advance on the first day of each January and July. PILOT due for any period of less than six months shall be appropriately apportioned.

(b) For the purposes of this Section 3.02, the "Adjusted Tax Equivalent" shall mean, subject to Tenant's compliance with the provisions of Section 3.14, (i) for each Tax Year or portion thereof within the period commencing on the Commencement Date and ending on the last day of the Tax Year in which a temporary Certificate of Occupancy is duly issued by the New York City Department of Buildings for all residential space in the Buildings (the "Residential TCO"), but not later than the last day of the third complete Tax Year following the date of Commencement of Construction, an amount equal to the Land Tax Equivalent or a pro rata portion thereof, as the case may be; (ii) for the succeeding ten (10) Tax Years, an amount equal to the sum of the Land Tax Equivalent plus the Tax Equivalent less the following amounts: (A) for the two Tax Years immediately following the Tax Year in which the Residential TCO is issued, but not later than the last day of the third complete Tax Year following the date of Commencement of Construction, an amount equal to one hundred percent (100%) of the Tax Equivalent; (B) for the succeeding two Tax Years, an amount equal to eighty percent (80%) of the Tax Equivalent; (C) for the succeeding two Tax Years, an amount equal to sixty percent (60%) of the Tax Equivalent; (D) for the succeeding two Tax Years, an amount equal to forty percent (40%) of the Tax Equivalent; and (E) for the succeeding two Tax Years, an amount equal to twenty percent (20%) of the Tax Equivalent; and (iii) for each Tax Year or portion of a Tax Year thereafter, an amount equal to the Tax Equivalent or pro rata portion thereof. If the aggregate floor area of commercial, community facility and accessory use space exceeds twelve percent (12%) of the aggregate floor area of the Buildings, the deductions from PILOT in (A)-(E) above will be reduced as set forth in Section 421-a and the regulations promulgated thereunder.

(c) Tenant shall be entitled to the amount of exemptions or abatements, if any, that would be available to Tenant under any law, rule, regulation or code which now or hereafter grants abatements of or exemptions or relief from Taxes to an owner of comparable real property in the Borough of Manhattan that received a partial real estate tax exemption under Section 421-a if Tenant were the fee owner of the Premises and would otherwise be entitled to such exemptions or abatements and if the Premises were not exempt from such

Taxes, provided that Tenant shall otherwise comply with all requirements of such law, rule, regulation or code.

Section 3.03. Tenant shall continue to pay the full amount of PILOT required under Section 3.02, notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 4.06 hereof to reduce the assessed valuation of the Premises or any portion thereof. If any such tax reduction or other action or proceeding shall result in a final determination in Tenant's favor (i) Tenant shall be entitled to a credit against future PILOT to the extent, if any, that the PILOT previously paid for the Tax Year for which such final determination was made exceeds the PILOT as so determined, and (ii) if such final determination is made for the then current Tax Year, future payments of PILOT for said Tax Year shall be based on the PILOT as so determined. If at the time Tenant is entitled to receive such a credit the City of New York is paying interest on refunds of Taxes, Tenant's credit shall include interest at the rate and for the period then being paid by the City of New York on such refunds of Taxes. In no event, however, shall Tenant be entitled to any refund of any such excess from Landlord.

Section 3.04. Tenant shall pay to Landlord the Civic Facilities Payment in accordance with the provisions of Section 26.05, subject to the provisions of Section 26.04(c).

Section 3.05.

(a) In the event Tenant shall have submitted Tenant's leasehold estate in the Premises to either a cooperative or condominium form of ownership, Tenant shall pay to Landlord a transaction payment (the "Transaction Payment"), in the amount, at the time and in the manner hereinafter provided.

(b) Except as hereinafter provided, the Transaction Payment shall be paid in full on the fourth anniversary of the Commencement Date. Except as hereafter provided, until the Transaction Payment shall have been paid in full, the Net Sales Proceeds from the sales of Units or Cooperative Apartments, as the case may be, shall be distributed in the following order of priority:

(i) All Net Sales Proceeds received during the Development Period shall be distributed by check subject to collection immediately upon receipt by Tenant as follows:

(A) First, Tenant shall retain one hundred percent (100%) of all Net Sales Proceeds until Tenant shall have received an amount equal to the Development Period Cost; and

(B) Thereafter, Tenant shall pay to Landlord on account of the Transaction Payment one hundred percent (100%) of the Net Sales Proceeds until Landlord shall have received an amount equal to the Transaction Payment then due.

(ii) All Net Sales Proceeds received during the Marketing Period shall be distributed by check subject to collection immediately upon receipt by Tenant as follows:

(A) First, to the extent Tenant shall not have received an amount equal to the Development Period Cost, Tenant shall retain one hundred percent (100%) of all Net Sales Proceeds until Tenant shall have received an amount equal to the Development Period Cost;

(B) Next, Tenant shall retain one hundred percent (100%) of all Net Sales Proceeds until Tenant shall have received an amount equal to the Marketing Period Carrying Costs through the calendar month immediately preceding the date of receipt of such Net Sales Proceeds;

(C) Next, Tenant shall pay to Landlord on account of the Transaction Payment one hundred percent (100%) of the Net Sales Proceeds until Landlord shall have received an amount equal to the Transaction Payment then due; and

(D) Thereafter, the Net Sales Proceeds shall be distributed in accordance with the provisions of Section 3.09 hereof.

(c) The amount of the Transaction Payment shall be determined as follows:

(i) If made during the period commencing on the Commencement Date and ending on the day immediately preceding the first anniversary of the Commencement Date, the Transaction Payment shall be $11,137,500;

(ii) If made during the period commencing on the first anniversary of the Commencement Date and ending on the day immediately preceding the second anniversary of the Commencement Date, the Transaction Payment shall be the greater of (A) one hundred and three percent (103%) of the amount by which $11,137,500 exceeds any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c)(i) above or (B) the product derived by multiplying $11,137,500 less any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c)(i) above times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the first anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the Commencement Date or (ii) one hundred and seven percent (107%);

(iii) If made during the period commencing on the second anniversary of the Commencement Date and ending on the day immediately preceding the third anniversary of the Commencement Date, the Transaction Payment shall be the greater of (A) one hundred and three percent (103%) of the amount by which the Transaction Payment as determined pursuant to Section 3.05(c)(ii) above exceeds any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c) (ii) above or (B) the product derived by multiplying the Transaction Payment as determined pursuant to Section 3.05(c)(ii) above less any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c) (ii) above times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the second anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the first anniversary of the Commencement Date or (ii) one hundred and seven percent (107%);

(iv) If made during the period commencing on the third anniversary of the Commencement Date and ending on the day immediately preceding the fourth

anniversary of the Commencement Date, the Transaction Payment shall be the greater of (A) one hundred and three percent (103%) of the amount by which the Transaction Payment as determined pursuant to Section 3.05(c)(iii) above exceeds any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c)(iii) above or (B) the product derived by multiplying the Transaction Payment as determined pursuant to Section 3.05(c)(iii) above less any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c)(iii) above times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the third anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the second anniversary of the Commencement Date or (ii) one hundred and seven percent (107%); and

(v) If made on the fourth anniversary of the Commencement Date, the Transaction Payment shall be the greater of (A) one hundred and three percent (103%) of the amount by which the Transaction Payment as determined pursuant to Section 3.05(c)(iv) above exceeds any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c)(iv) above or (B) the product derived by multiplying the Transaction Payment as determined pursuant to Section 3.05(c)(iv) above less any payments made to Landlord on account of the Transaction Payment during the period referred to in Section 3.05(c)(iv) above times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the fourth anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the third anniversary of the Commencement Date or (ii) one hundred and seven percent (107%).

(d) As used in this Article 3:

(i) "Development Period Cost" shall mean the product of (A) the sum of (i) $32,125,000 and (ii) the Base Rent and PILOT paid by Tenant during the Development Period, times (B) 1.212.

(ii) "Development Period" shall mean the period commencing on the Commencement Date and ending on the earlier of (A) two years after the date of Commencement of Construction or (B) the third anniversary of the Commencement Date.

(iii) "Gross Proceeds" shall mean, with respect to each Cooperative Apartment or Unit, as the case may be, (A) the actual purchase price paid by the purchaser of such Cooperative Apartment or Unit in an arm's length, bonafide transaction, or (B) in the event such sale shall not be an arm's length, bona fide transaction, the greater of (i) the purchase price paid by such purchaser, (ii) the purchase price allocable to such Cooperative Apartment or Unit, as the case may be, in the Cooperative Plan or Condominium Plan, as the case may be, or (iii) the fair market value of such Cooperative Apartment or Unit, as determined by agreement of Landlord and Tenant, or in the event the parties shall be unable to so agree, determined by appraisal in accordance with the provisions of Article 36 hereof.

(iv) "Tenant's Expenses" shall mean an amount equal to the sum of (A) four (4%) percent of the Gross Proceeds, (B) any transfer taxes paid by Tenant with respect to each Cooperative Apartment or Unit, as the case may be, and (C) any real property transfer gains taxes paid by Tenant with respect to each Cooperative Apartment or Unit, as the case may be.

(v) "Net Sales Proceeds" shall mean, with respect to each Cooperative Apartment or Unit, as the case may be, the Gross Proceeds less Tenant's Expenses.

(e) Tenant shall deliver to Landlord at least two (2) Business Days prior to each closing of a Cooperative Apartment or Unit, as the case may be, a statement showing in reasonable detail, the estimated Net Sales Proceeds from such proposed sale and the components thereof and concurrently with the closing of such sale, a statement showing in reasonable detail, the Net Sales Proceeds from such sale and the components thereof and the aggregate Net Sales Proceeds received by Tenant to the date of such statement, certified by the chief operating officer, managing general partner of Tenant or Tenant's authorized representative at such closing. Not less frequently than once every three (3) months during each Lease Year, a statement of aggregate Net Sales Proceeds received by Tenant, certified by the chief operating officer

or managing general partner of Tenant, shall be delivered to Landlord.

Section 3.06.

(a) Tenant shall secure its obligation for the payment of the Transaction Payment by depositing with Landlord upon the execution of this Lease a clean irrevocable letter of credit (the "Transaction Payment Letter of Credit") drawn in favor of Landlord, in form and content acceptable to Landlord, and, having a term of not less than one (1) year, payable in United States dollars upon presentation of a sight draft, issued by and drawn on a recognized commercial bank which is a member of the New York Clearing House Association. The initial amount of the Transaction Payment Letter of Credit shall be $11,137,500. Except as hereinafter provided, the Transaction Payment Letter of Credit shall be increased thirty (30) days prior to the first anniversary of the Commencement Date to the amount as specified in Section 3.05(c)(ii) hereof, thirty (30) days prior to the second anniversary of the Commencement Date to the amount as specified in Section 3.05(c)(iii) hereof, and thirty (30) days prior to the third anniversary of the Commencement Date to the amount as specified in Section 3.05(c)(iv) hereof and thirty (30) days prior to the fourth anniversary of the Commencement Date to the amount as specified in Section 3.05(c)(v) hereof. In determining the amount from time to time of the Letter of Credit, any deduction for payments on account of the Transaction Payment made during the immediately preceding period shall only include payments made during the first eleven (11) months of such preceding period. The Transaction Payment Letter of Credit, as adjusted as hereinabove provided, shall be renewed each and every year as provided herein. Each Replacement Letter of Credit, as adjusted as hereinabove provided, shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the Transaction Payment Letter of Credit or then current Replacement Letter of Credit. The failure of Tenant to adjust and/or renew the Transaction Payment Letter of Credit or any Replacement Letter of Credit in accordance with the provisions of this Section 3.06(a) and Article 43 hereof shall entitle Landlord to present the Transaction Payment Letter of Credit or Replacement Letter of Credit for payment, in which event Landlord shall hold and apply the proceeds thereof (together with any interest earned thereon) as provided in Sections 3.07 and 3.08 hereof.

(b) Provided Landlord shall not have presented the Transaction Payment Letter of Credit or Replacement Letter of Credit for payment as in Section 3.06(a), Section 3.07 or

Section 3.08 provided, Tenant shall have the right, from time to time, but not more frequently than once in every three (3) months in any Lease Year, to reduce the Transaction Payment Letter of Credit or Replacement Letter of Credit by an amount equal to the sum of all payments on account of the Transaction Payment received by Landlord since the date of the last reduction.

Section 3.07.

(a) In the event Tenant shall fail to (i) pay the Transaction Payment or any payment on account thereof in accordance with the provisions of Section 3.05 hereof or (ii) deliver a Replacement Letter of Credit in accordance with the provisions of Section 3.06(a) hereof, Landlord is hereby authorized to present the Transaction Payment Letter of Credit or Replacement Letter of Credit for payment and to apply the proceeds thereof to the payment of the Transaction Payment or any portion thereof then due or thereafter becoming due.

(b) In the event (i) Tenant shall fail to increase the Transaction Payment Letter of Credit or Replacement Letter of Credit in accordance with the provisions of Section 3.06(a) hereof to the extent such increase is therein required, or (ii) this Lease shall be terminated as a result of an Event of Default by Tenant hereunder prior to the payment in full of the Transaction Payment, the unpaid portion of the Transaction Payment shall, without notice or demand, become immediately due and payable. Landlord is hereby authorized to present the Transaction Payment Letter of Credit or Replacement Letter of Credit for payment and to apply the proceeds thereof to the payment of the unpaid portion of the Transaction Payment. Landlord shall have no right to retain any proceeds of the Transaction Payment Letter of Credit or Replacement Letter of Credit, as the case may be, in excess of the unpaid portion of the Transaction Payment.

Section 3.08.

(a) In the event (i) this Lease shall be terminated by Landlord as a result of an Event of Default by Tenant hereunder prior to the submission by Tenant of its leasehold estate in the Premises to either cooperative or condominium ownership or (ii) Tenant shall not have submitted its leasehold estate in the Premises to cooperative or condominium ownership by the fourth anniversary of the Commencement Date (the date referred to in (i) or (ii) being hereinafter called the "Substitute Transaction Payment

Date"), Tenant shall pay to Landlord on the Substitute Transaction Payment Date a payment (the "Substitute Transaction Payment") determined as follows:

(i) In the event the Substitute Transaction Payment Date shall occur prior to the first anniversary of the Commencement Date, the Substitute Transaction Payment shall be $11,137,500;

(ii) In the event the Substitute Transaction Payment Date shall occur subsequent to the first anniversary of the Commencement Date and prior to the second anniversary of the Commencement Date, the Substitute Transaction Payment shall be the greater of (A) $11,471,625 or (B) the product derived by multiplying $11,137,500 times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the first anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the Commencement Date or (ii) one hundred and seven percent (107%);

(iii) In the event the Substitute Transaction Payment Date shall occur subsequent to the second anniversary of the Commencement Date and prior to the third anniversary of the Commencement Date, the Substitute Transaction Payment shall be the greater of (A) one hundred and three percent (103%) of the amount specified in Section 3.08(a)(ii) above or (B) the product derived by multiplying the amount as specified in Section 3.08(a)(ii) above times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the second anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the first anniversary of the Commencement Date or (ii) one hundred and seven percent (107%);

(iv) In the event the Substitute Transaction Payment Date shall occur subsequent to the third anniversary of the Commencement Date and prior to the fourth anniversary of the Commencement Date, the Substitute Transaction Payment shall be the greater of (A) one hundred and three percent (103%) of the amount specified in Section 3.08(a)(iii)

above or (B) the product derived by multiplying the amount as specified in Section 3.08(a)(iii) above times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the third anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the second anniversary of the Commencement Date or (ii) one hundred and seven percent (107%); and

(v) In the event the Substitute Transaction Payment Date shall occur on the fourth anniversary of the Commencement Date, the Substitute Transaction Payment shall be the greater of (A) one hundred and three percent (103%) of the amount specified in Section 3.08(a)(iv) above or (B) the product derived by multiplying the amount as specified in Section 3.08(a)(iv) above times the lesser of (i) a fraction, the numerator of which shall be the CPI in effect on the date which is sixty (60) days prior to the fourth anniversary of the Commencement Date and the denominator of which shall be the CPI in effect on the date which is sixty (60) days prior to the third anniversary of the Commencement Date or (ii) one hundred and seven percent (107%).

(b) The Substitute Transaction Payment shall be secured by the Transaction Payment Letter of Credit or Replacement Letter of Credit. In the event Tenant shall fail to pay the Substitute Transaction Payment on the Substitute Transaction Payment Date, Landlord is hereby authorized to present the Transaction Payment Letter of Credit or Replacement Letter of Credit, as the case may be, for payment and to apply the proceeds thereof to the Substitute Transaction Payment.

(c) In the event Tenant shall submit its leasehold estate in the Premises to cooperative or condominium ownership subsequent to the payment by Tenant to Landlord of the Substitute Transaction Payment, Tenant shall have no obligation to make the Transaction Payment and the provisions of Sections 3.05, 3.06 and 3.07 hereof shall be of no further force or effect.

Section 3.09.

(a) If at any time during the Term Tenant shall submit its leasehold estate in the Premises to either a

cooperative or condominium form of ownership, Tenant shall pay to Landlord twenty-five percent (25%) of Tenant's Profit (the "Proceeds Payment"), in the manner hereinafter provided.

As used in this Article 3:

(i) "Tenant's Profit" shall mean the amount if any, by which (A) the Total Gross Proceeds less the Total Tenant's Expenses exceeds (B) the Threshold Amount.

(ii) "Total Gross Proceeds" shall mean the total Gross Proceeds from the sale of all of the Cooperative Apartments or Units, as the case may be.

(iii) "Total Tenant's Expenses" shall mean the total Tenant's Expenses incurred in connection with the sale of all of the Cooperative Apartments or Units, as the case may be.

(iv) "Threshold Amount" shall mean the lesser of (A) the Actual Total Project Cost or (B) the Guaranteed Total Project Cost.

(v) "Marketing Period" shall mean the period commencing on the day immediately succeeding the last day of the Development Period and ending on the earlier of (A) the first anniversary of such commencement date or (B) the date that the Transaction Payment shall have been paid in full.

(vi) "Actual Total Project Cost" shall mean the sum of (A) the Development Period Cost, (B) an amount equal to the product of the Transaction Payment or Substitute Transaction Payment, whichever shall have been paid by Tenant, times two, (C) Common Area Charges (in the case of Units) or maintenance (in the case of Cooperative Apartments) on the unsold Units or Cooperative Apartments, as the case may be, paid by Tenant during the Marketing Period, (D) PILOT on the unsold Units paid by Tenant during the Marketing Period, and (E) one percent (1%) per month on the Unreimbursed Development Period Cost, as reduced by any Net Sales Proceeds received by Tenant, calculated on a monthly basis during the Marketing Period.

(vii) "Guaranteed Total Project Cost" shall mean the sum of (A) the Development Period Cost, (B) an amount equal to the product of the Transaction Payment or Substitute Transaction Payment, whichever shall have been paid by Tenant, times two, and (C) one-half of the sum of (i) the product derived by multiplying the Unreimbursed Development Period Cost by twelve (12%) per cent, (ii) PILOT during the Marketing Period on those Units which were unsold as of the last day of the Development Period, and (iii) Common Area Charges (in the case of Units) or maintenance (in the case of Cooperative Apartments) with respect to those Units or Cooperative Apartments, as the case may be, which were unsold as of the last day of the Development Period.

(viii) "Unreimbursed Development Period Cost" shall mean the amount by which the Development Period Cost exceeds any Net Sales Proceeds retained by Tenant pursuant to Section 3.05(b)(i)(A), such amount to be determined as of the last day of the Development Period.

(ix) "Marketing Period Carrying Costs" shall mean the sum of the costs described in Section 3.09(a)(vi)(C), (D) and (E) calculated as of the last day of the prior month.

(x) "Unrecouped Threshold Amount" shall mean, from time to time, the amount by which the Threshold Amount exceeds the Net Sales Proceeds received by Tenant.

(b) Tenant shall have no obligation to make any payments on account of the Proceeds Payment from the sale of Cooperative Apartments or Units, as the case may be, until there shall have been paid to Tenant from Gross Proceeds an amount equal to the Threshold Amount. Thereafter, payments on account of the Proceeds Payment shall be paid to Landlord from the sale of Cooperative Apartments or Units, as the case may be, in an amount equal to twenty-five percent (25%) of the amount by which the Gross Proceeds from such Cooperative Apartment or Unit, as the case may be, exceeds Tenant's Expenses allocable to such Cooperative Apartment or Unit, as the case may be, such payment to be made concurrently with the closing of such sale.

(c) Tenant shall deliver to Landlord at least two (2) Business Days prior to each closing, a statement showing

in reasonable detail, the estimated Gross Proceeds and Tenant's Expenses from such proposed sale and the components thereof and concurrently with each payment referred to in Section 3.09(b) hereof, a statement showing in reasonable detail, the Gross Proceeds and Tenant's Expenses from such sale and the components thereof, and the aggregate Gross Proceeds and Tenant's Expenses to the date of such statement, certified by the chief operating officer or managing general partner of Tenant.

(d) (i) As security for Tenant's obligation to pay the Proceeds Payment for Cooperative Apartments, Tenant shall deliver to Landlord, prior to the assignment of this Lease to the Apartment Corporation, security reasonably satisfactory to Landlord securing such obligation. Tenant's failure to deliver such security shall constitute a Default hereunder and any assignment of this Lease to the Apartment Corporation shall be void.

(ii) As security for Tenant's obligation to pay the Proceeds Payment for Units, Tenant shall deliver to Landlord, prior to Tenant's recording of the Declaration, security reasonably satisfactory to Landlord securing such obligation. Tenant's failure to deliver such security shall constitute a Default hereunder.

(iii) For the purposes of Section 3.09(d)(i) and (ii), security reasonably satisfactory to Landlord shall include an unconditional guaranty of payment of the Proceeds Payment in accordance with this Lease, in form and substance satisfactory to Landlord and executed by Paul Milstein and any one of Howard Milstein, Philip Milstein or Edward Milstein; provided that at the time of the execution and delivery of such guaranty, Paul Milstein and such other signatory of such guaranty shall have a combined net worth of not less than One Hundred Million Dollars ($100,000,000) as evidenced by net worth statements executed by Paul Milstein and such other signatory and certified by the C.P.A.

(e) If Sponsor or an Affiliate of Sponsor shall receive any revenue (which, for the purposes of this Section 3.09(e) shall include all base rents, fixed rents, percentage rents, additional rents and other income, sums and charges so received) from the leasing by Sponsor or an Affiliate of Sponsor, of any residential Cooperative Apartments or

residential Units, as the case may be, such revenue shall be applied, on a monthly basis, in the following order of priority:

(i) First, (A) in the event the portion of the Buildings leased shall be residential Units, to the payment for such month of PILOT on such leased residential Units and the Common Area Charges paid to the Board of Managers for all such leased residential Units, and, (B) in the event the portion of the Buildings leased shall be residential Cooperative Apartments, to the payment for such month of all maintenance (including assessments) paid to the Apartment Corporation for such leased residential Cooperative Apartments;

(ii) Second, to the extent the Transaction Payment shall not have been paid in full, in reduction of the Transaction Payment;

(iii) Third, to the payment for such month of Common Area Charges and PILOT on unsold and unleased residential Units or maintenance on unsold and unleased residential Cooperative Apartments, as the case may be, payable from and after the day immediately succeeding the last day of the Marketing Period; and

(iv) Fourth, to the payment to Tenant of interest for such month at an annual rate equal to the Involuntary Rate on the Unrecouped Threshold Amount, which interest shall commence on the date immediately succeeding the last day of the Marketing Period;

(v) Fifth, the balance shall be divided between Landlord and Tenant such that Landlord shall receive twenty-five percent (25%) of such balance and Tenant shall receive seventy-five percent (75%) of such balance, and such payments shall be made at the time, in the manner and subject to the provisions of, Sections 3.11 and 3.12 governing the distribution of Net Cash Flow.

Notwithstanding the foregoing, any revenue received by Sponsor or an Affiliate of Sponsor from the leasing of non-residential Cooperative Apartments or Units, as the case may be, shall be retained by Sponsor or such Affiliate and Landlord shall not be entitled to any portion thereof.

Section 3.10. In connection with the payment by Tenant of the Proceeds Payment, and any payments under Section 3.09(e) the following provisions shall apply:

(a) Tenant shall at all times keep and maintain at an office located in New York City books and records showing in reasonable detail the amount of Tenant's Profit and the components thereof and, with respect Section 3.09(e), all revenues received by Tenant and the Common Area Charges and PILOT or maintenance (including assessments), as the case may be, paid by Tenant. Landlord and its representatives shall have the right during regular business hours, on not less than two (2) days notice to Tenant, to examine, audit and/or photocopy all such books and records.

(b) Subject to the provisions of Section 3.10(c), if Landlord shall elect to conduct an audit of Tenant's books and records and such audit discloses an underpayment of the Proceeds Payment, or a payment required to be made under Section 3.09(e), Tenant shall pay to Landlord within ten (10) days after demand, the amount of such deficiency, plus interest thereon at the Involuntary Rate from the date upon which such sum was due to the date of actual payment. In addition, if such deficiency shall be in excess of three and one-half percent (3.5%) of the amount alleged by Tenant to be payable, Tenant shall pay to Landlord within ten (10) days after demand all reasonable costs incurred by Landlord in connection with such audit.

(c) If at any time and for any reason there shall be a dispute as to the determination of Tenant's Profit or the components thereof, or such revenue or expenses provided in Section 3.09(e) such dispute shall be determined by arbitration pursuant to Article 36 hereof. Pending resolution of the dispute, Tenant's determination shall prevail and Tenant shall pay the Proceeds Payment and the payments pursuant to Section 3.09(e), based upon such determination. Any deficiency, interest and expenses which may be payable by Tenant to Landlord pursuant to Section 3.10(b) shall not be payable if disputed by Tenant unless and until determined by such arbitration. If such arbitration determines an underpayment by Tenant, Tenant shall pay the amount of such underpayment, plus interest thereon at the Involuntary Rate, within ten (10) days after demand.

(d) Within thirty (30) days after the expiration of the Marketing Period, Tenant shall deliver to Landlord a statement in reasonable detail setting forth the Actual Total Project Cost and the Guaranteed Total Project Cost and the components thereof, which statement shall be certified by the

chief operating officer or managing general partner of Tenant.

Section 3.11. (a) Except as otherwise provided in Section 3.11(e) hereof, commencing in the Lease Year in which Tenant shall first receive any Gross Revenue and for each Lease Year thereafter during the Term, Tenant shall pay to Landlord, an amount (individually, a "Cash Flow Payment" and collectively, the "Cash Flow Payments") equal to twenty-five percent (25%) of the Net Cash Flow during each such Lease Year. The Cash Flow Payment shall be computed quarterly (subject to adjustment as provided in Section 3.11(d)) and paid in the manner hereinafter set forth.

(b) For the purposes of this Section 3.11, if the date Tenant shall first receive any Gross Revenue shall occur on a day other than the first day of a Lease Year, the first Lease Year shall be the period from the date Tenant shall first receive any Gross Revenue through the last day of the Lease Year in which such date occurs.

(c) Tenant shall deliver to Landlord as soon as practicable after the end of each fiscal quarter in each Lease Year, but in no event later than fifteen (15) days thereafter, a statement (the "Quarterly Cash Flow Payment Statement") showing in reasonable detail Gross Revenue and Operating Expenses from the prior fiscal quarter. Based upon the Quarterly Cash Flow Payment Statement submitted by Tenant to Landlord, Tenant shall pay to Landlord twenty-five percent (25%) of the Net Cash Flow for such fiscal quarter. Such payment of the Cash Flow Payment shall be made by Tenant simultaneously with the submission to Landlord of the Quarterly Cash Flow Payment Statement.

(d) Tenant shall deliver to Landlord as soon as practicable after the end of each Lease Year, but in no event later than one hundred twenty (120) days thereafter, a separate statement (the "Annual Cash Flow Payment Statement") for such Lease Year. If the Annual Cash Flow Payment Statement shall show that the sums paid by Tenant as Cash Flow Payments for such Lease Year for which such Annual Cash Flow Payment Statement is given were less than the Cash Flow Payments payable by Tenant for such Lease Year, then Tenant shall pay to Landlord, together with the delivery to Landlord of the Annual Cash Flow Payment Statement, the amount of such deficiency, and if the Annual Cash Flow Payment Statement shall show that the sums paid by Tenant as Cash Flow Payments for such Lease Year exceeded the Cash Flow Payment payable by Tenant for such Lease Year, Landlord shall permit Tenant to

offset the amount of such excess, without interest, against subsequent payments of Cash Flow Payments.

(e) Tenant's obligation to pay Cash Flow Payments shall cease, expire and be of no further force or effect on the date Tenant shall have submitted its leasehold estate in the Premises to either a cooperative or condominium form of ownership in accordance with the provisions of this Lease. In such event, the Cash Flow Payments for such Lease Year in which such submission occurs shall be appropriately apportioned.

Section 3.12. In connection with the payment by Tenant of Cash Flow Payments and during the period that Tenant shall be obligated to pay Cash Flow Payments, the following provisions shall apply:

(a) Tenant shall at all times keep and maintain at an office located in New York City books and records prepared on the basis required under Section 3.12(b), showing in reasonable detail the amount of Gross Revenue, Operating Expenses and Net Cash Flow. Unless consented to by Landlord, such books and records relating to any Lease Year shall not be destroyed or disposed of for a period of four (4) years after the end of such Lease Year. Landlord and its representatives shall have the right during regular business hours, on not less than ten (10) days' notice to Tenant, to examine, audit and/or photocopy all such books and records. If an audit by Landlord with respect to a Lease Year is not commenced within the aforesaid four (4) year period, the computation of the Cash Flow Payment paid by Tenant for such Lease Year shall not thereafter be subject to Landlord's audit and shall conclusively be deemed correct.

(b) Each Annual Cash Flow Payment Statement and Quarterly Cash Flow Payment Statement required under this Lease shall be (i) prepared in accordance with generally accepted accounting principles consistently applied and (ii) verified by the chief financial officer or managing general partner of Tenant, or if the managing partner of Tenant is not an individual, by the chief financial officer of such managing general partner, as being true and correct to the best of his knowledge. Each Annual Cash Flow Payment Statement shall be certified by an independent public accounting firm (the "C.P.A.") which is either (x) an accounting firm having at least ten (10) partners, or (y) a firm approved by Landlord, which approval shall not be unreasonably withheld. Such certification shall include, without limitation, a statement by the C.P.A. that an examination of Tenant's books and records has been conducted

by the C.P.A. in accordance with generally accepted auditing standards consistently applied and that the Annual Cash Flow Payment Statement has been prepared in accordance with generally accepted accounting principles consistently applied.

(c) If Landlord shall elect to conduct an audit of Tenant's books and records and such audit discloses an underpayment of Cash Flow Payments, subject to Section 3.12(e), Tenant shall pay to Landlord within ten (10) days after demand the amount of such deficiency, plus interest thereon at the Involuntary Rate from the date upon which such sum was due to the date of actual payment. In addition, if such deficiency shall be in excess of three and one-half percent (3.5%) of the amount alleged by Tenant to be payable, Tenant shall pay to Landlord within ten (10) days after demand all reasonable costs incurred by Landlord in connection with such audit.

(d) If Tenant or an Affiliate of Tenant shall themselves use or occupy any portion of the space within the Buildings, there shall be imputed as income the fair market rental value of the portion of the space within the Buildings, so occupied by Tenant or such Affiliate, as the case may be. Fair market rental value as used in this Lease shall mean the rental which would be paid under a sublease (commencing at the same time as Tenant's or such Affiliate's use or occupancy) with a non-related Person leasing a similar amount of space within the Buildings, for the same term, for a similar purpose and in a similar location in the Buildings, and shall include, inter alia, all fixed, percentage and escalation rents which would be included under such sublease.

(e) If at any time and for any reason there shall be a dispute as to the determination of Gross Revenue, Operating Expenses, Net Cash Flow or fair market rental value, such dispute shall be determined by arbitration pursuant to Article 36 hereof. Pending resolution of the dispute, Tenant's determination of Gross Revenue, Operating Expenses, Net Cash Flow or fair market rental value shall prevail and Tenant shall pay Cash Flow Payments based upon such determination. Any deficiency, interest and expenses which may be payable by Tenant to Landlord pursuant to Section 3.12(c) shall not be payable if disputed by Tenant unless and until determined by such arbitration. If such arbitration determines an underpayment by Tenant, Tenant shall pay the amount of such underpayment, plus interest thereon at the Involuntary Rate, within ten (10) days after demand.

Section 3.13. All amounts required to be paid by Tenant pursuant to this Lease, including, without limitation, Base Rent, PILOT, Impositions, payments pursuant to Section 11.05(c) hereof, Civic Facilities Payments, Cash Flow Payments, the Transaction Payment and the Substitute Transaction Payment (collectively, "Rental"), shall constitute rent under this Lease and shall be payable in the same manner as Base Rent; provided, however, that Transaction Payments and Substitute Transaction Payments shall cease to constitute Rental upon the date upon which Tenant shall have submitted its leasehold estate in the Premises or any portion thereof to a cooperative or condominium form of ownership in accordance with the provisions of this Lease. Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this Lease, so that this Lease shall yield, net, to Landlord, Rental in each year during the Term and that Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises (except Taxes, if any) which may arise or become due or payable during or after (but attributable to a period falling within) the Term.

Section 3.14. Tenant, on a voluntary basis and solely as a condition precedent to receiving benefits (as set forth in Section 3.02 hereof) equivalent to benefits available under Section 421-a of the Real Property Tax Law ("Section 421-a"), shall, until the Release Date, comply with the following provisions of this Section 3.14:

(a) Tenant shall enjoy such rights and observe such requirements pertaining to the rental of dwelling units in the Buildings (including rent increases authorized by virtue of section 4.2 of the rules and regulations governing the Section 421-a partial tax exemption program and all other rent increases permitted by applicable laws or regulations), as would be available or applicable to the owner of the Buildings pursuant to the Emergency Tenant Protection Act of 1974 and Title YY of Chapter 51 of the Administrative Code of the City of New York, as well as the stabilization code and regulations promulgated pursuant thereto, all as heretofore and hereafter amended (collectively, the "Rent Regulations"), had the construction of the Buildings commenced on the Commencement Date and had the Buildings received a partial tax exemption under Section 421-a and consequently been subject to the Rent Regulations (collectively, the "Assumed Conditions"). Tenant shall be entitled to receipt of benefits (as set forth in Section 3.02(b) hereof) which are equivalent to the benefits available under Section 421-a under the Assumed Conditions on the Commencement Date not-

withstanding any later modification, amendment, supplement or termination of Section 421-a.

(b) Tenant shall apply for membership in, and/or submit itself to the jurisdiction of, the real estate industry stabilization association registered with the New York City Department of Housing Preservation and Development, pursuant to Section YY51-6.0 of the Administrative Code or any successor association administered by the State of New York or City of New York, or the appropriate State or City housing agency having jurisdiction over rent stabilized buildings (the "Stabilization Authority"). Upon joining or submitting to the jurisdiction of the Stabilization Authority, Tenant shall comply with all of the applicable requirements thereof, including those regarding the registration of rents, and shall remain a member in good standing thereof, and/or subject to the jurisdiction thereof, or of any successor association or agency, until such date (the "Release Date") as the owner of the Buildings under the Assumed Conditions would no longer be required to so comply and to remain such a member and/or subject to such jurisdiction. Tenant acknowledges that DHCR will administer the Rent Regulations for the Buildings. Tenant hereby agrees to pay DHCR, upon demand by DHCR, for DHCR's actual costs of administration similar to the fees payable by owners pursuant to Section 8(c) of the Emergency Tenant Protection Act of 1974, as amended by Chapter 403 of the Laws of 1983, as well as for costs of printing all necessary or appropriate forms in connection with such administration.

(c) In the event that Tenant fails to become a member or to subject itself to the jurisdiction of the Stabilization Authority prior to the issuance of a temporary or permanent Certificate of Occupancy for any dwelling unit in the Buildings in accordance with the provisions of the preceding paragraph (b), Tenant shall nevertheless comply with all of the requirements of the Rent Regulations as if Tenant had become a member or had submitted to the jurisdiction of such Stabilization Authority, and in such case a Person (the "Rent Officer") appointed by Landlord shall administer a program of rent regulations which shall be the same as the Rent Regulations administered by the Stabilization Authority (the "Rent Program"). The authority of the Rent Officer shall be limited to implementing and administering the Rent Program. In such event, Tenant shall reimburse Landlord for Landlord's fees and expenses in administering the Rent Program, such fees and expenses to constitute Rental hereunder and be paid by Tenant from time to time within ten (10) days after demand. Tenant in no manner waives, limits or otherwise compromises its right to resort

to any and all facets of the judicial system for the resolution of disputes pertaining to the Rent Program or the administration thereof.

(d) Non-compliance by Tenant with the Rent Regulations or with the Rent Program, as the case may be, shall cause Tenant to be subjected to such sanctions and penalties as would be imposed by the Stabilization Authority on the owner of the Buildings under the Assumed Conditions had the owner failed to comply with the Rent Regulations, regardless of whether Tenant is actually a member, or is actually subject to the jurisdiction, of the Stabilization Authority or whether the Rent Program is being implemented and administered by the Rent Officer. In the event Tenant fails to remain a member in good standing, or subject to the jurisdiction, of the Stabilization Authority or Rent Program, because its membership or participation in, or registration with, or the jurisdiction of, the Stabilization Authority or the Rent Program, as the case may be, has terminated or been revoked prior to the Release Date, Tenant shall become subject to such sanctions and penalties as would then be applicable to the owner of the Buildings under the Assumed Conditions upon such termination or revocation, including, if applicable, submitting to the jurisdiction of the agency implementing and administering the rent control program pursuant to Title "Y" of Chapter 51 of the New York City Administrative Code, as heretofore and hereafter amended (the "Rent Control Sanction"). In the event Tenant is required to comply with the Rent Program in accordance with the provisions of Section 3.14(c) and Tenant's membership or participation in such Rent Program is terminated or revoked by reason of Tenant's non-compliance with the Rent Program prior to the Release Date, Tenant shall be subject to the Rent Control Sanction (if applicable, in accordance with the preceding sentence) as the same shall be administered by the Rent Officer. If the Rent Control Sanction becomes applicable, until the Release Date all increases in rents and other matters pertaining to the rental of residential units in the Buildings shall be regulated in accordance with the rent control laws and regulations by the governmental agency having jurisdiction or by the Rent Officer, as the case may be. Failure by Tenant to submit to the Rent Control Sanction where required hereunder, or to comply with the rent control laws and regulations as administered by the governmental agency having jurisdiction, or their equivalent as administered by the Rent Officer, shall, at Landlord's option, constitute an Event of Default hereunder.

(e) Tenant shall comply with all of the requirements of Section 421-a and the rules and regulations promul-

gated thereunder. In the event that Tenant shall either commit an act or fail to commit an act, which act or failure would result in revocation or discontinuance of tax benefits under Section 421-a under the Assumed Conditions, then the PILOT payable under Section 3.02 hereof shall be increased to an amount equal to the Taxes which would be payable by the owner of the Premises under the Assumed Conditions in the case of such revocation or discontinuance. Prior to payment of any such increase, Tenant shall have the right to contest or challenge the same in the same manner as is provided for contest or challenge of the revocation or discontinuance of partial tax exemption benefits under Section 421-a and the rules and regulations promulgated thereunder.

(f) Whether subject to the Rent Regulations or the Rent Program, the initial rents permitted to be charged by Tenant to Subtenants of dwelling units in the Buildings shall be no greater than the maximum allowable rents as determined by DHCR and or successor agency, for the Buildings under the Assumed Conditions. To the extent, if any, permissible under the Rent Regulations, Tenant shall be entitled to charge Subtenants of dwelling units in the Buildings an allocable share of any filing fees paid by Tenant under Section 421-a.

(g) Notwithstanding anything to the contrary contained in paragraphs (a) through (f) of this Section 3.14, Tenant, in addition to any rents permitted to be charged and collected pursuant to the Rent Regulations or Rent Program, may, if permitted by applicable law and regulations for the Buildings under the Assumed Conditions, charge and collect, in the manner and amount so permitted, from all Subtenants in the aggregate an amount equal to the Civic Facilities Payment. If so permitted by such applicable laws and regulations, such charge shall be based on each residential Subtenant's pro rata share of the Civic Facilities Payment, apportioned according to the size of the unit. In determining the Civic Facilities Payment to be paid by residential Subtenants, there shall be excluded therefrom such portion of the Civic Facilities Payment which is based on the non-residential portion of the Buildings.

(h) Tenant's obligations under this Section 3.14 shall cease upon the Release Date.

(i) Subject to the provisions of paragraphs (j) and (k) of this Section 3.14, each Sublease for a dwelling unit in the Buildings shall contain a provision advising the Subtenant that rents for the unit are regulated pursuant to the terms of this Lease, under the Rent Regulations or the Rent Program, as the case may be, and include a notice in at

least twelve point type informing such Subtenant that the unit will become subject to decontrol of rents upon the expiration of the ten year period specified in Section 3.02(b)(ii) and stating the date on which such ten year period is scheduled to expire. Each Sublease shall contain the following provision: "The Landlord and Tenant hereunder each hereby submits the apartment to the jurisdiction of the New York State Division of Housing and Community Renewal [or other applicable agency] ('DHCR') and each hereby acknowledges that, accordingly, the apartment shall be subject to the regulation of DHCR for all rent regulation or other rent stabilization matters, such matters to include, without limitation, the maintenance of apartment registration data, the receiving of tenant and owner complaints, the processing, determination and resolution thereof, the issuance of administrative or other orders in connection therewith, the determination of rent increases for the addition of major capital improvements, new services, or so-called hardship matters and the determination of rent decreases for decreases in required services. Nothing herein shall be deemed to limit the rights of either tenant or owner to appeal any order of DHCR, as provided by law." Upon request by any Subtenant, Tenant shall promptly make available to such Subtenant a copy of the Rent Regulations or the Rent Program.

(j) In the event Tenant submits its estate in the Premises to either a cooperative or condominium form of ownership, Tenant shall be obligated to apply for membership in and/or submit itself to the jurisdiction of the Stabilization Authority, comply with the applicable requirements thereof and subject itself to the Rent Program or the Rent Regulations only if, and to the extent that, any of the foregoing would be applicable to a building (w) which had received a partial tax exemption under Section 421-a, (x) whose submission to cooperative or condominium ownership occurred at the same time as Tenant's, (y) which had the same proportion of its residential units subject to tenancies at the time of such submission as had the Buildings at the time of submission and (z) whose construction commenced on the Commencement Date (all such buildings with characteristics w, x, y, and z, being hereinafter called "Comparable Buildings").

(k) Unit Owners or Tenant-Stockholders shall be subject to the rules, regulations and provisions of the Stabilization Authority, Rent Regulations or the Rent Program only if, and to the extent that, the foregoing would have been applicable to owners of condominium or cooperative units in Comparable Buildings.

Section 3.15.

(a) Each determination of fair market value of the Land referred to in Section 3.01(a)(ii)-(vi) shall be made in accordance with the procedures set forth in Article XVII of the Master Lease, which Article XVII is attached as Exhibit F hereto. Landlord shall and shall cause Master Landlord to permit Tenant and Tenant's representatives (including its Mortgagee or Mortgagees, if any) and witnesses, at Tenant's cost and expense, to participate in such procedures. Landlord, as tenant under the Master Lease, shall appoint as its appraiser under the Master Lease an appraiser designated by Tenant provided that the appraiser so designated is qualified to act as such pursuant to the terms of the Master Lease, and Tenant shall pay the fees and expenses payable by Landlord as such tenant in respect of the Premises pursuant to Section 17.02 of the Master Lease.

(b) In the event that New York City shall, for any reason, fail to determine the assessed value of the Premises for any Tax Year during the Term, such assessed value shall be determined in accordance with the procedures set forth in Article XVII of the Master Lease, provided that, in making such determination, the appraisers shall take into consideration the equalization rates then applicable to comparable properties situated in the Borough of Manhattan, as well as any limitations on increases in assessed value for such comparable properties prescribed by applicable law. Tenant shall have the same right to participate in such procedures, and to appoint an appraiser, as set forth in Section 3.15(a).

## ARTICLE 4

## IMPOSITIONS

Section 4.01. Tenant shall pay, as hereinafter provided, all of the following items (collectively, "Impositions") imposed by any Governmental Authority (other than a Governmental Authority acting solely in its capacity as Landlord and not as a Governmental Authority): (a) real property assessments (not including Taxes), (b) personal property taxes, (c) occupancy and rent taxes, (d) water, water meter and sewer rents, rates and charges, (e) excises, (f) levies, (g) license and permit fees, (h) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (i) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (j)

except for Taxes, any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time during the Term are, or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises (excluding any capital gains taxes imposed in connection with the execution of this Lease), or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault (other than a vault in respect of which a utility company is obligated to pay any charge specified above or which is exempt from any such charge by reason of use thereof by any such utility company), passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises, or (v) any personal property (except personal property which is not owned by or leased to Tenant), Equipment or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder, each such Imposition, or installment thereof, during the Term to be paid not later than thirty (30) days prior to the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant, after notice to Landlord, may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, provided that all such installment payments together with applicable interest, if any, relating to periods prior to the date definitely fixed in Article 2 hereof for the expiration of the Term shall be made prior to the Expiration Date.

Section 4.02. Tenant, from time to time upon request of Landlord, shall promptly furnish to Landlord official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 4.03.

(a) If the Premises shall at any time become subject to Taxes, Landlord shall pay the Taxes on or before the due date thereof. In no event shall Tenant be obligated to

pay Taxes. Landlord shall have the right to contest the imposition of Taxes, and pending such contest, if permitted by applicable law, Landlord shall not be required to pay the Taxes being so contested, unless failure to pay same shall result in the imminent loss or forfeiture of the Premises or the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability. If Landlord shall exercise its right to contest the imposition of Taxes, Landlord shall promptly notify Tenant of such contest, and, at Tenant's request, shall deliver to Tenant copies of all applications, protest and other documents submitted by Landlord to any Governmental Authority. Landlord shall not, without Tenant's consent, enter into a settlement of any such contest if such settlement would increase the amount of PILOT payable by Tenant under this Lease. If Landlord shall have failed to pay the Taxes as required hereunder and shall not have timely commenced a proceeding to contest same, or shall have timely commenced a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises or the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next installment of PILOT (and, to the extent, if any, that such payment shall exceed the next installment of PILOT, from the next installment(s) of Base Rent) together with interest thereon at the Involuntary Rate.

(b) Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, capital or transfer gains tax, transfer or gift taxes of Landlord, or any corporate franchise tax imposed upon Landlord.

Section 4.04. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the date definitely fixed in Article 2 hereof for the expiration of the Term (whether or not such Imposition shall he assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or such date definitely fixed for the expiration of the Term, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the Commencement Date or before such

date definitely fixed in Article 2 for the expiration of the Term bears to such fiscal period, and Landlord shall pay the remainder thereof. Other than in respect of Impositions relating, in part, to a period of time before the Commencement Date, no such apportionment of Impositions shall be made if this Lease is terminated prior to the Expiration Date as the result of an Event of Default.

Section 4.05. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition shall be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, or interest therein or any income therefrom (except to the extent covered by security deposited in accordance with this Section 4.05) or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability; and

(b) Tenant shall have deposited with Depository, cash or other security satisfactory to Landlord in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in such proceedings.

Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including attorney's fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depository shall return, with interest, if any, any amount deposited with it as aforesaid, provided, however, that Depository at Tenant's request or upon Tenant's failure to do so in a timely manner, at Landlord's request, shall disburse said moneys on deposit with it directly to the Governmental Authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If, at any time during the continuance of such proceedings, Landlord shall, in its reasonable opinion, deem insufficient the amount deposited as

aforesaid, Tenant, within fifteen (15) days after demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord may request, and upon failure of Tenant to do so, the amount theretofore deposited may be applied at the request of Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including attorney's fees and disbursements) or other liability accruing in any such proceedings, and the balance, if any, with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 4.06. Tenant shall have the right to seek a reduction in the valuation of the Premises assessed for Taxes and to prosecute any action or proceeding in connection therewith, provided that no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05 hereof. Except to the extent provided in Section 3.03 hereof, no such action or proceeding shall affect Tenant's obligation to pay any installment of PILOT.

Section 4.07. Landlord shall not be required to join in any proceedings referred to in Sections 4.05 or 4.06 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. If the provisions of such law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Master Landlord, Landlord shall use its best efforts to cause Master Landlord to join and cooperate in such proceedings or permit the same to be brought in the name of Master Landlord, provided Master Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Master Landlord for any and all costs and expenses which Master Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. In the event Tenant shall institute a proceeding referred to in Sections 4.05 or 4.06 hereof and no law, rule or regulation in effect at the time requires that such proceeding be brought by and/or in the name of Landlord,

Landlord, nevertheless, shall, at Tenant's cost and subject to the reimbursement provisions hereinabove set forth, co-operate with Tenant in such proceeding.

Section 4.08. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

## ARTICLE 5

## DEPOSITS FOR IMPOSITIONS

Section 5.01.

(a) In order to assure the payment of all Impositions, Tenant, upon the demand of Landlord at any time after the occurrence of an Event of Default hereunder, shall deposit with Depository on the first day of each month during the Term, an amount equal to one-twelfth (1/12th) of the annual Impositions then in effect.

(b) If at any time the monies so deposited by Tenant shall be insufficient to pay in full the next installment of Impositions then due, Tenant shall deposit the amount of the insufficiency with Depository to enable Depository to pay each installment of Impositions at least thirty (30) days prior to the Due Date thereof.

(c) Depository shall hold the deposited monies in a special account for the purpose of paying the charges for which such amounts have been deposited as they become due, and Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges.

(d) If at any time the amount of any Imposition is increased or Landlord receives information from the entity or entities imposing such Imposition that an Imposition will be increased and the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition thirty (30) days prior to the Due Date thereof, the monthly deposits shall thereupon be increased and Tenant shall deposit immediately with Depository sufficient monies for the payment of the increased Imposition. Thereafter, the monthly payments shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay each Imposition

at least thirty (30) days prior to the Due Date of such Imposition.

(e) For the purpose of determining whether Depository has on hand sufficient monies to pay any particular Imposition at least thirty (30) days prior to the Due Date thereof, deposits for each category of Imposition shall be treated separately. Depository shall not be obligated to use monies deposited for the payment of an Imposition not yet due and payable for the payment of an Imposition that is due and payable.

(f) Notwithstanding the foregoing, (i) deposited monies may be held by Depository in a single bank account, and (ii) Depository shall, at Landlord's option and direction and if Tenant shall fail to make any payment or perform any obligation required under this Lease, use any monies deposited pursuant to Articles 4 or 5 for the payment of any Rental.

(g) If this Lease shall be terminated by reason of any Event of Default or if dispossession occurs pursuant to Section 24.03(b), all deposited monies under this Article 5 then held by Depository shall be paid to and applied by Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency.

(h) Any interest paid on monies deposited pursuant to this Article 5 shall be applied pursuant to the foregoing provisions against amounts thereafter becoming due and payable by Tenant.

(i) Anything in this Article 5 to the contrary notwithstanding, if the Event of Default which gave rise to Landlord having demanded that Tenant make deposits under this Section 5.01 shall have been cured by Tenant and for a period of six (6) consecutive months following such cure no Default shall have occurred under this Lease, then, at any time after the expiration of such six (6) month period, upon the demand of Tenant, provided that Tenant is not then in Default under this Lease, all monies deposited under this Article 5 then held by Depository, with the interest, if any, accrued thereon, shall be returned to Tenant and Tenant shall not be required to make further deposits under this Article 5 unless and until there shall occur a subsequent Event of Default and Landlord shall make demand upon Tenant to make deposits for Impositions.

(j) In the event that a Mortgagee (provided such Mortgagee be an Institutional Lender) shall require Tenant to

deposit funds to insure payment of Impositions, any amount so deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Article 5.

Section 5.02. If Landlord ceases to have any interest in the Premises, Landlord shall transfer to the Person who acquires such interest in the Premises, all of Landlord's rights with respect to the deposits made pursuant to Section 5.01. Upon such transfer and notice thereof to Tenant, the transferor shall be released from all liability with respect thereto, such transferee shall be deemed to have assumed from and after the date of such transfer all of Landlord's obligations with respect to such deposits and Tenant shall look solely to the transferee with respect thereto. The provisions hereof shall apply to each successive transfer of the deposits.

## ARTICLE 6

## LATE CHARGES

In the event that any payment of Rental shall become overdue for ten (10) days beyond the due date thereof (or if no such date is set forth in this Lease, then such due date for purposes of this Article 6 shall be deemed to be the date upon which demand therefor is made), a late charge on the sums so overdue equal to the Involuntary Rate, for the period from the due date to the date of actual payment, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. The late charges shall be payable by Tenant within ten (10) days after demand. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24.

ARTICLE 7

INSURANCE

Section 7.01.

(a) Tenant shall, at all times after Substantial Completion of the Buildings and thereafter throughout the Term:

(i) keep the Buildings insured under an "All Risk of Physical Loss" form of policy, including, without limitation, coverage for loss or damage by water, flood, subsidence and earthquake (excluding, at Tenant's option, from such coverage normal settling only) and, when and to the extent obtainable from the United States government or any agency thereof, war risks; such insurance to be written on an "Agreed Amount" basis, with full replacement cost, with the replacement value of the Buildings to be determined from time to time, but not less frequently than required by the insurer and in any event at least once every three (3) years, provided, however, in the event Tenant's leasehold estate in the Premises shall be submitted to condominium ownership in accordance with Article 42, such determination shall be made on an annual basis, it being agreed that no omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation to determine the replacement value thereof (in the absence of such valuation, the FM (Factory Mutual) or IRI (Industrial Risk Insurers) Indices will be applied);

(ii) provide and keep in force comprehensive general liability insurance against liability for bodily injury, death and property damage, it being agreed that such insurance shall (A) be in an amount as may from time to time be reasonably required by Landlord, but not less than Twenty-Five Million Dollars ($25,000,000) combined single limit inclusive of primary, umbrella and following form excess policies for liability for bodily injury, death and property damage, (provided, however, that subsequent to the submission by Tenant of the Premises to a condominium or cooperative form of ownership in accordance with the terms of this Lease such coverage shall be reduced from Twenty-Five Million Dollars ($25,000,000) to Twenty

Million Dollars ($20,000,000)), (B) include the Premises and all streets, alleys and sidewalks adjoining or appurtenant to the Premises, (C) be of a blanket contractual nature and shall contain an agreement by the insurer to indemnify and hold Landlord and Master Landlord harmless from and against all cost, expense and/or liability (including, without limitation, attorneys' fees and disbursements) arising out of or based upon any and all claims, accidents, injuries and damages mentioned in Article 19 and required to be insured against hereunder, and (D) also provide the following protection:

(1) completed operations;

(2) the broad form comprehensive general liability endorsement voiding all exclusions relating to restrictive contractual and employee coverage; and

(3) water damage legal liability;

(iii) provide and keep in force workers' compensation insurance providing statutory New York State benefits for all persons employed by Tenant at or in connection with the Premises;

(iv) provide and keep in force on an "Agreed Amount" basis rent insurance on an "All Risk of Physical Loss" basis in an amount not less than one (1) year's current Base Rent, PILOT, Civic Facilities Payment and, if applicable, the Cash Flow Payment ("Rent Insurance");

(v) if a sprinkler system shall be located in any portion of the Buildings, provide and keep in force sprinkler leakage insurance in amounts approved by Landlord, which approval shall not be unreasonably withheld (the foregoing to be required only if same is excluded from the insurance required to be provided and kept in force pursuant to Section 7.01(a)(i));

(vi) provide and keep in force boiler and machinery insurance in an amount as may from time to time be reasonably determined by Landlord but not less than Ten Million Dollars ($10,000,000) per accident on a combined basis covering direct property loss and loss of income and covering all

steam, mechanical and electrical equipment, including without limitation, all boilers, unfired pressure vessels, air conditioning equipment, elevators, piping and wiring;

(vii) provide and keep in force automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles insuring against liability for bodily injury and death and for property damage in an amount as may from time to time be reasonably determined by Landlord but not less than Five Million Dollars ($5,000,000) combined single limit; and

(viii) provide and keep in force such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly insured against by prudent owners of like buildings and improvements.

(b) All insurance provided by Tenant as required by Section 7.01(a) (except the insurance under Section 7.01(a)(iii)) shall name Tenant as named insured and Landlord and Master Landlord as additional insureds to the extent, where applicable, of their respective insurable interests in the Premises. The coverage provided by Tenant as required by Sections 7.01(a)(i), (ii), (v), (vi) and (vii) also shall name each Mortgagee as an insured under a standard mortgagee clause, provided, however, any loss payable thereunder shall be payable as provided in this Lease.

(c) Whenever Tenant shall be required to carry insurance under this Section 7.01, Tenant shall not be required to carry insurance in any greater amounts or against any additional hazards than at the time are commonly carried by prudent owners of like buildings and improvements, provided that the types or amounts of such coverage shall never be different from or less than, as the case may be, the types or amounts specifically required hereunder. Any dispute as to the amounts of additional insurance to be carried, or the additional kinds of hazards to be insured against, shall be resolved by arbitration pursuant to Article 36.

Section 7.02.

(a) The loss under all policies required by any provision of this Lease insuring against damage to the Buildings by fire or other casualty shall be payable to Depository, except that amounts of less than Two Hundred and Fifty

Thousand Dollars ($250,000) shall be payable in trust directly to Tenant for application to the cost of Restoration in accordance with Article 8 hereof. Such amount shall be adjusted on the fifth (5th) anniversary of the Commencement Date and on each fifth (5th) anniversary of the date on which an adjustment is made pursuant to this Section 7.02(a) by adding to $250,000 an amount equal to the product of (x) $250,000 and (y) the percent of increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Commencement Date occurs. Any dispute as to the calculation of such adjustment shall be determined by arbitration pursuant to Article 36. Rent Insurance shall be carried in favor of Landlord, but the proceeds thereof to the extent required hereunder shall be paid to Depository and shall be applied to the Rental payable by Tenant under this Lease until completion of such Restoration by Tenant. All insurance required by any provision of this Lease shall be in such form and shall be issued by such responsible companies authorized to do business in the State of New York as are reasonably acceptable to Landlord. All policies referred to in this Lease shall be procured, or caused to be procured, by Tenant, at no expense to Landlord, and for periods of not less than one (1) year. The originals of such policies shall be delivered to Landlord immediately upon receipt from the insurance company or companies unless such originals are required to be held by any Mortgagee, in which event, duplicate originals thereof shall be so delivered to Landlord, together with proof satisfactory to Landlord that the full premiums thereon have been paid, provided, that Landlord shall not, by reason of custody of such policies, be deemed to have knowledge of the contents thereof. New or renewal policies replacing any policies expiring during the Term or duplicate originals thereof, shall be delivered as aforesaid at least thirty (30) days before the date of expiration, together with proof satisfactory to Landlord that the full premiums thereon have been paid. Premiums on policies shall not be financed in any manner whereby the lender, on default or otherwise, shall have the right or privilege of surrendering or cancelling the policies or reducing the amount of loss payable thereunder, provided, however, that premiums may be paid in installments.

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

Landlord for any and all reasonable costs or expenses which Landlord may sustain or incur in connection therewith.

(c) Tenant shall not carry separate insurance (other than personal injury liability insurance) concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and Master Landlord are included therein as named insureds and each Mortgagee as an additional insured with loss payable as provided in this Lease. Tenant immediately shall notify Landlord of the carrying of any such separate insurance and shall cause the policies therefor or duplicate originals thereof to be delivered as required in this Lease.

(d) All property insurance policies as required by this Lease shall provide in substance that all adjustments for claims with the insurers in excess of Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) shall be made with Landlord, Tenant and any Mortgagee named as additional insured. Any adjustments for claims with the insurers involving sums of less than Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) shall be made with Tenant.

(e) All Rent Insurance shall provide in substance that all adjustments for claims with the insurers shall be made with Landlord and Tenant.

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

(g) Each policy of insurance required to be obtained by Tenant as herein provided shall contain to the extent obtainable and whether or not an additional premium shall be payable in connection therewith (i) a provision that no act or omission or negligence of Tenant or any other named insured or violation of warranties, declarations or conditions by Tenant or any other named insured shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (ii) an agreement by the insurer that such policy shall not be cancelled or modified without at least thirty (30) days prior written notice to Landlord and each Mortgagee, (iii) an agreement that the

coverage afforded by the insurance policy shall not be affected by the performance of any work in or about the Buildings or the occupation or use of the Premises by Tenant or any Subtenant for purposes more hazardous than those permitted by the terms of such policy, (iv) a waiver by the insurer of any claim for insurance premiums against Landlord or any named insured other than Tenant, and (v) a waiver of subrogation by the insurers of any right to recover the amount of any loss resulting from the negligence of Tenant, Landlord, their agents, employees or licensees.

(h) All liability insurance required to be provided and kept in force by Tenant under this Lease shall be written on an "Occurrence" basis, provided, however, that if (i) a basis other than such "Occurrence" basis shall be adopted throughout the insurance industry and (ii) such other basis shall be accepted by most prudent owners of like buildings and improvements, then Tenant may provide and keep in force liability insurance written on such other basis satisfactory to Landlord.

Section 7.03.

(a) Tenant, on the demand of Landlord after the occurrence of an Event of Default hereunder, shall deposit with Depository on the first day of each month during the Term, an amount equal to one-twelfth (1/12th) of the annual insurance premiums required to be carried by Tenant hereunder, as estimated by Landlord, unless such insurance premiums are deposited with a Mortgagee (provided such Mortgagee be an Institutional Lender). If at any time the insurance premiums shall be increased or Landlord receives information that the insurance premiums will be increased, and the monthly deposits being paid by Tenant under this Section 7.03(a) would be insufficient to pay such insurance premiums thirty (30) days prior to the due date, the monthly deposits shall thereupon be increased and Tenant shall, within thirty (30) days prior to the due date thereof, deposit immediately with Depository sufficient monies for the payment of the increased insurance premiums. Thereafter, the monthly deposits shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay the insurance premiums at least thirty (30) days before the insurance premiums become due and payable.

(b) Anything in Section 7.03(a) to the contrary notwithstanding, if the Event of Default which gave rise to Landlord having demanded that Tenant make deposits under Section 7.03(a) shall have been cured by Tenant and for a period of six (6) consecutive months following such cure no

Default shall have occurred under this Lease, then, at any time after the expiration of such six (6) month period, upon the demand of Tenant, provided that Tenant is not then in Default under this Lease, all monies deposited under Section 7.03(a) then held by Depository, together with the interest, if any, accrued thereon, shall be returned to Tenant and Tenant shall not be required to make further deposits under Section 7.03(a) unless and until there shall occur a subsequent Event of Default and Landlord shall make demand upon Tenant to make deposits under Section 7.03(a).

Section 7.04. The insurance required by this Lease, at the option of Tenant, may be effected by blanket or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant, provided that the policies otherwise comply with the provisions of this Lease and specifically allocate to the Premises the coverages required hereby, without possibility of reduction of coinsurance by reason of, or damage to, any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord and to each Mortgagee certified copies or duplicate originals of such policies in place of the originals, with schedules thereto attached showing the amount of insurance afforded by such policies applicable to the Premises, and in addition, within thirty (30) days after the filing thereof with any insurance ratemaking body, copies of the schedule of all improvements affected by any such blanket or umbrella policy of insurance.

Section 7.05. Notwithstanding anything herein contained to the contrary, in addition to the insurance required to be maintained by Tenant under this Article 7, Tenant shall provide and keep in force insurance of the type and at least in the amounts required under the Master Lease.

## ARTICLE 8

## USE OF INSURANCE PROCEEDS

Section 8.01. If all or any part of any of the Buildings shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord immediate notice thereof, except that no notice shall be required if the estimated cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration") shall be less than

$10,000 (as such amount shall be increased as provided in Section 7.02(a)), and Tenant shall, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration, with reasonable diligence (subject to Unavoidable Delays) repair, alter, restore, replace and rebuild (collectively, "Restore") the same, at least to the extent of the value and as nearly as possible to the condition, quality and class of the Buildings existing immediately prior to such occurrence, with such changes or alterations as Tenant, with the consent of Landlord, which consent shall not be unreasonably withheld, shall elect to make, provided that, after the Restoration, the Buildings are in substantial conformity with the Master Development Plan, the Design Guidelines and, in the event such Restoration is commenced within ten (10) years after the date the Buildings have been Substantially Completed, the Construction Documents. Landlord in no event shall be obligated to Restore any Buildings or any portion thereof or to pay any of the costs or expenses thereof. If Tenant shall fail or neglect to Restore with reasonable diligence (subject to Unavoidable Delays) the Buildings or the portion thereof so damaged or destroyed, or having so commenced such Restoration, shall fail to complete the same with reasonable diligence (subject to Unavoidable Delays) in accordance with the terms of this Lease, or if prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated for any reason, Landlord may, but shall not be required to, complete such Restoration at Tenant's expense. Each such Restoration shall be done in accordance with the provisions of this Lease. In any case where this Lease shall expire or be terminated prior to the completion of Restoration, Tenant shall account to Landlord for all amounts spent in connection with any Restoration which was undertaken and shall pay over to Landlord, within ten (10) days after demand, the remainder, if any, of the Restoration Funds previously received by it. Tenant's obligations under this Section 8.01 shall survive the expiration or termination of this Lease.

Section 8.02.

(a) Subject to the provisions of Sections 8.03, 8.04 and, if applicable, 8.05, Depository shall pay over to Tenant from time to time, upon the following terms, any monies which may be received by Depository from insurance provided by Tenant (other than Rent Insurance) or cash or the proceeds of any security deposited with Depository pursuant to Section 8.05 (collectively, the "Restoration Funds"); provided, however, that Depository, before paying such moneys over to Tenant, shall be entitled to reimburse itself and

Landlord therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including reasonable attorney's fees) paid or incurred by Depository and Landlord in the collection of such monies. Depository shall pay to Tenant, as hereinafter provided, the Restoration Funds, for the purpose of the Restoration.

(b) Prior to commencing any Restoration, Tenant shall furnish Landlord with an estimate of the cost of such Restoration, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld. Landlord, at Tenant's expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Restoration. If there is any dispute as to the estimated cost of the Restoration, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36.

(c) Subject to the provisions of Sections 8.03, 8.04 and, if applicable, 8.05, the Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant. If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration of the Premises is created or permitted to be created by Tenant and is filed against Landlord, or any assets of, or funds appropriated to, Landlord, Tenant shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise). Notwithstanding the foregoing, subject to the provisions of Section 8.02(d), the existence of any such lien shall not preclude Tenant from receiving any installment of Restoration Funds, provided such lien will be discharged with funds from such installment.

(d) The amount of any installment to be paid to Tenant shall be (i) the product of (x) the total Restoration Funds and (y) a fraction, the numerator of which is the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration and the denominator of which is the total estimated cost of the Restoration, such estimated cost determined in accordance with Section 8.02(b), less (ii) (A) all payments theretofore made to Tenant out of the Restoration Funds and (B) ten percent (10%) of the amount so

determined until completion of fifty percent (50%) of the Restoration and five percent (5%) of the amount so determined thereafter until completion of the Restoration.

(e) Upon completion of and payment for the Restoration by Tenant, the balance of the Restoration Funds shall be paid to Tenant.

(f) Notwithstanding the foregoing, if Landlord makes the Restoration at Tenant's expense, as provided in Section 8.01, then Depository shall pay over the Restoration Funds to Landlord, upon request, to the extent not previously paid to Tenant pursuant to this Section 8.02, and Tenant shall pay to Landlord, within ten (10) days after demand, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the Restoration. Upon completion of the Restoration, Landlord shall deliver to Tenant a certificate, in reasonable detail, setting forth the expenditures made by Landlord for such Restoration.

Section 8.03. The following shall be conditions precedent to each payment made to Tenant as provided in Section 8.02 above:

(a) there shall be submitted to Depository and Landlord the certificate of the aforesaid engineer or architect approved by Landlord pursuant to Section 8.02(b) stating that (i) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate, (ii) no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds received by Tenant, (iii) the sum then requested does not exceed the value of the services and materials described in the certificate, and (iv) the balance of the Restoration Funds held by Depository will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion;

(b) there shall be furnished to Landlord an official search, or a certificate of a title insurance company

reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien with respect to the Premises or the Restoration created or permitted to be created by Tenant affecting Landlord, or the assets of, or funds appropriated to, Landlord, which had not been discharged of record (by bonding or otherwise); and

(c) at the time of making such payment, there is no existing and unremedied Event of Default on the part of Tenant.

Section 8.04.

(a) If any loss, damage or destruction occurs, the cost of Restoration of which equals or exceeds Two Hundred and Fifty Thousand Dollars ($250,000) in the aggregate, determined as provided in Section 8.02(b) (as such amount shall be increased as provided in Section 7.02(a)), Tenant shall furnish to Landlord the following:

(i) at least thirty (30) Business Days prior to commencement of such Restoration, complete plans and specifications for the Restoration, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld, together with the approval thereof and any required permits issued by any Governmental Authority with respect to the Restoration and such plans and specifications, and, at the request of Landlord, any other drawings, information or samples to which Landlord is entitled under Article 11, all of the foregoing to be subject to Landlord's review and approval for substantial conformity with the Master Development Plan, the Design Guidelines and, if such Restoration is commenced within ten (10) years from the date the Buildings shall have been Substantially Completed, the Construction Documents; all such plans and specifications and other materials for the Restoration shall become the sole and absolute property of Landlord if for any reason this Lease shall be terminated;

(ii) at least ten (10) Business Days prior to commencement of such Restoration, (x) a contract reasonably satisfactory to Landlord in form assignable to Landlord (subject to any prior assignment

to any Mortgagee), made with a reputable and responsible contractor approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Restoration in accordance with said plans and specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements relating thereto, and (y) payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor as obligor and Landlord and Tenant and Mortgagee, if applicable, as obligees, each in a penal sum equal to the difference between the estimated cost of the Restoration and the amount of the insurance proceeds available for the Restoration or, in lieu thereof, such other security as shall be reasonably satisfactory to Landlord;

(iii) at least ten (10) Business Days prior to commencement of such Restoration, an assignment to Landlord (subject to any prior assignment to any Mortgagee) of the contract so furnished and the bonds, if any, provided thereunder, such assignment to be duly executed and acknowledged by Tenant and by its terms to be effective only upon any termination of this Lease or upon Landlord's re-entry upon the Premises following an Event of Default prior to the complete performance of such contract, such assignment also to include the benefit of all payments made on account of said contract including payments made prior to the effective date of such assignment; and

(iv) At least ten (10) Business Days prior to commencement of such Restoration, insurance policies issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Section 11.03.

(b) Notwithstanding that the cost of Restoration is less than Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), such cost to be determined as provided in Section 8.02(b), to the extent that any portion of the Restoration involves work on the exterior of the Buildings or a change in the height, bulk or setback of the Buildings from the height, bulk or setback existing immediately prior to the damage or destruction, or in any other matter relating to or

affected by the Master Development Plan or the Design Guidelines, then Tenant shall furnish to Landlord at least fifteen (15) Business Days prior to commencement of the Restoration a complete set of plans and specifications for the Restoration, involving such work or such change, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld, and, at Landlord's request, such other items designated in Section 8.04(a)(i), all of the foregoing to be subject to Landlord's review and approval as provided therein.

(c) In the event Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Sections 8.04(a)(i) or 8.04(b) with respect to, or which will in any way affect, any aspect of the exterior of the Buildings or the height, bulk or setback of the Buildings or which will affect compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect the interior of the Buildings. Landlord shall review the proposed changes (other than changes to the interior of the Buildings) to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines and (ii) provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications, and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes are not satisfactory in light of the above criteria, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines or do not provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within ten (10) Business Days of the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such ten (10) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 8.05. If the cost of any Restoration, determined as provided in Section 8.02(b), exceeds both (i) Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) and (ii) the net insurance proceeds, then, prior to the commencement of such Restoration, unless Landlord has given its approval of the payment and performance bonds provided for in Section 8.04(a)(ii)(y) and the amounts thereof cover such excess, Tenant shall deposit with Depository, as security for completion of the Restoration, a bond, cash or other security satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 8.02.

Section 8.06. This Lease shall not terminate or be forfeited or be affected in any manner, and there shall be no reduction or abatement of the Rental payable hereunder, by reason of damage to or total, substantial or partial destruction of any of the Buildings or any part thereof or by reason of the untenantability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Buildings had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

Section 8.07. If for any completed Restoration Tenant has not theretofore delivered same to Landlord, Tenant shall deliver to Landlord, within thirty (30) days of the completion of such Restoration, a complete set of "as built" plans thereof certified to be complete and correct by a registered architect.

## ARTICLE 9

## CONDEMNATION

Section 9.01.

(a) If the whole or substantially all of the Premises shall be taken (excluding a taking of the fee interest in the Premises, or any leasehold interest superior to that of the Tenant's, if after such taking, Tenant's rights under

this Lease are not affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking.

(b) The term "substantially all of the Premises" shall mean such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws, building regulations then existing or prevailing or the Master Development Plan, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed or performed by Tenant, (i) if the Premises shall then be used for rental purposes, permit the Restoration of the Buildings so as to constitute a complete, rentable building or buildings capable of producing a fair and reasonable net annual income proportional to the number of square feet not so taken or (ii) if Tenant's estate in the Premises shall have been previously submitted to either a cooperative or condominium form of ownership, permit the Restoration of the Buildings so as to constitute an economically viable cooperative or condominium, as the case may be. If the Premises shall be used for rental purposes, the average net annual income produced by the Buildings during (i) the period commencing on the date of Completion of the Buildings and ending on the last anniversary of that date which preceded the taking, or (ii) the five (5) year period immediately preceding such taking, whichever is shorter, shall be deemed to constitute a fair and reasonable net annual income for the purpose of determining what is a fair and reasonable net annual income. If there be any dispute as to whether or not "substantially all of the Premises" has been taken, such dispute shall be resolved by arbitration with the provisions of Article 36.

(c) If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 9.01(a), the award, awards or damages in respect thereof shall be apportioned as follows: (i) there shall first be paid to Landlord so much of the award which is for or attributable to the value of (A) the Land, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord, and (B) Landlord's Civic Facilities taken in any proceeding with respect to such taking; (ii) there shall next

be paid to the Mortgagee which holds a first lien on Tenant's interest in this Lease, or to Recognized Unit Mortgagees, if applicable, so much of the balance of such award as shall equal the unpaid principal indebtedness secured by such Mortgage or such Recognized Unit Mortgages with interest thereon at the rate specified therein to the date of payment; (iii) there shall next be paid to Landlord so much of the award which is for or attributable to the value of Landlord's reversionary interest in that part of the Buildings taken in such proceeding (it being agreed between Landlord and Tenant that, notwithstanding anything herein contained to the contrary, for a period of forty (40) years from the Scheduled Completion Date, the value of Landlord's reversionary interest in the Buildings shall be deemed to be zero); and (iv) subject to rights of any Mortgagees or Recognized Unit Mortgagees, if applicable, Tenant shall receive the balance, if any, of the award. If there be any dispute as to which portion of the award is attributable to the Land and Landlord's Civic Facilities and which portion is attributable to the Buildings, or as to the value of Landlord's reversionary interest in the Buildings, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36.

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

Section 9.02. For purposes of this Article 9, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (ii) the date in which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 9.03. If less than substantially all of the Premises shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining without abatement of the Base Rent or diminution of any of Tenant's obligations hereunder. Tenant, whether or not the award or awards, if any, shall be sufficient for the purpose shall (subject to Unavoidable Delays) proceed diligently to Restore any remaining part of the Buildings not so taken so that the latter shall be complete, operable, self-contained architectural units in good condition and repair in conformity with the Master Development Plan, the Design Guidelines and, to the extent reasonably practicable, in the event such Res-

toration is commenced within ten (10) years from the date the Buildings are Substantially Completed, the Construction Documents. In the event of any taking pursuant to this Section 9.03, the entire award for or attributable to the Land, considered as unimproved and unencumbered by this Lease, and the fair market value of Landlord's Civic Facilities in any proceeding with respect to such taking, shall be first paid to Landlord, and the balance of the award, if any, shall be paid to Depository, except that if such balance shall be less than Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), such balance shall be payable, in trust, to Tenant (provided that if the Master Lease requires payment in trust to Landlord or a Mortgagee, such balance shall be paid as provided therein) for application to the cost of Restoration of the part of the Buildings not so taken. Subject to the provisions and limitations in this Article 9, Depository shall make available to Tenant as much of that portion of the award actually received and held by Depository, if any, less all necessary and proper expenses paid or incurred by Depository, the Mortgagee most senior in lien and Landlord in the condemnation proceedings, as may be necessary to pay the cost of Restoration of the part of the Buildings remaining. Such Restoration shall be done in accordance with and subject to the provisions of Article 8. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 8. Any balance of the award held by Depository and any cash and the proceeds of any security deposited with Depository pursuant to Section 9.04 remaining after completion of the Restoration shall be paid to Tenant. Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 9.04. With respect to any Restoration required by the terms of Section 9.03, the cost of which, as determined in the manner set forth in Section 8.02(b), exceeds both (i) Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) and (ii) the balance of the condemnation award after payment of the expenses set forth in Section 9.03, then, prior to the commencement of such Restoration, Tenant shall deposit with Depository a bond, cash or other security satisfactory to Landlord in the amount of such excess, to be held and applied by Depository in accordance with the provisions of Section 9.03, as security for the completion of the Restoration.

Section 9.05. If the temporary use of the whole or any part of the Premises shall be taken for any public or

quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if such award or payment is made less frequently than in monthly installments, the same shall be paid to and held by Depository as a fund which Depository shall apply from time to time to the payment of Rental, except that, if such taking results in changes or alterations in any of the Buildings which would necessitate an expenditure to Restore such Buildings to their former condition, then, a portion of such award or payment considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of the Restoration shall be retained by Depository, without application as aforesaid, and applied and paid over toward the Restoration of such Buildings to their former condition, substantially in the same manner and subject to the same conditions as provided in Section 9.03; and any portion of such award or payment which shall not be required pursuant to this Section 9.05(a) to be applied to the Restoration of the Buildings or to the payment of Rental until the end of the Term (or, if the taking is for a period terminating prior to the end of the Term, until the end of such period), shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to Depository and applied in accordance with the provisions of Section 9.05(a), provided, however, that the amount of any award or payment allowed or retained for the Restoration of the Buildings and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to such Restoration.

Section 9.06. In case of any governmental action, not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, this Lease shall continue in full force and effect without reduction or abatement of Rental and the

award shall be paid to Landlord to the extent of the amount, if any, necessary to restore any portion of Landlord's Civic Facilities to their former condition and any balance remaining shall be paid to Tenant.

Section 9.07. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.08. Landlord, Tenant and any Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 9.09. Notwithstanding anything to the contrary contained in this Article 9, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant and its Subtenants shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its Subtenants (but not including any Equipment) and for relocation expenses of Tenant or its Subtenants, and all awards and damages in respect thereof shall belong to Tenant and its Subtenants, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant and its Subtenants, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 9.

## ARTICLE 10

## ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 10.01.

(a) Except as otherwise specifically provided in this Section 10.01, prior to Substantial Completion of the Buildings, neither this Lease nor any interest of Tenant in this Lease, shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise, nor shall any of the issued or outstanding capital stock of any corporation which, directly or indirectly, is Tenant be (voluntarily or involuntarily) sold, assigned, transferred, pledged or encumbered, whether by operation of law or otherwise, nor shall any voting trust or similar agreement be entered into with respect to such stock, nor any reclassification or modification of the terms of such stock take place, nor shall

there be any merger or consolidation of such corporation into or with another corporation nor shall additional stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) in any such corporation be issued if the issuance of such additional stock (or such other securities, when exercised or converted into stock) will result in a change of the controlling stock ownership of such corporation as held by the shareholders thereof as of the Commencement Date, nor shall any general partner's interest in a partnership which is Tenant be (voluntarily or involuntarily) sold, assigned or transferred (each of the foregoing transactions with respect to stock or other securities of a corporation or a general partner's interest in a partnership being herein referred to as a "Transfer"), nor shall Tenant sublet the Premises as an entirety or substantially as an entirety, without the consent of Landlord in each case and the delivery to Landlord of the documents and information specified in Section 10.01(d) hereof. Notwithstanding anything to the contrary contained in this Lease, no consent of Landlord shall be required under this Lease with respect to any sale, assignment or other transfer of this Lease or any interest of Tenant herein (including, without limitation, a transfer of stock of a corporation, or a transfer of a partnership, joint venture, syndicate or other group interest, as the case may be) among any parties owning a legal or equitable interest in Tenant as of the date hereof (any of the foregoing being an "Individual"), any spouses, issue, siblings and direct lineal descendants and ancestors of any Individual and any person or entity which would, with respect to Tenant or any Individual, be a "related person" for the purposes of Section 168(e)(4)(D) of the Internal Revenue Code of 1954 (as in effect before the amendments made to such section by the Tax Reform Act of 1986) provided that at least two of the Individuals be Paul and Seymour Milstein. Notwithstanding anything to the contrary contained herein, "Transfer" shall not be deemed to include a sale, assignment or transfer by reason of the death or incapacity of one or more of any of the Individuals, but shall be deemed to include such event occurring by reason of the death or incapacity of all of the Individuals.

(b) From and after Substantial Completion of the Buildings, Landlord shall not withhold its consent to a Transfer, an assignment by Tenant of its interest hereunder or a subletting of the Premises as an entirety or substantially as an entirety provided no Default shall have occurred and be continuing hereunder and Tenant shall have complied with the provisions of this Article 10. This Section 10.01(b), Section 10.01(c) (except as otherwise provided

therein) and Section 10.01(d) shall not apply to an assignment or partial assignments in connection with a Cooperative Plan or Condominium Plan which shall be governed by the provisions of Section 10.01(e)(i) and (e)(ii), respectively.

(c) In no event, whether before or after Substantial Completion of the Buildings, shall Tenant make a Transfer, assign this Lease or any portion of its interest hereunder or sublet the Premises as an entirety or substantially as an entirety to any Person in which, an ownership interest, in the aggregate, of five percent (5%) or greater is held, directly or indirectly, by any individual (i) who has ever been convicted of a felony, (ii) against whom any action or proceeding is pending to enforce rights of the State of New York or any agency, department, public authority or public benefit corporation thereof arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation, or (iii) with respect to whom any notice of substantial monetary default which remains uncured has been given by the State of New York or any agency, department, public authority or any public benefit corporation thereof arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation. The provisions of this Section 10.01(c) shall apply to any Person (x) purchasing from Tenant or any other Person more than fifteen percent (15%) of the Cooperative Apartments or Units or (y) subletting from Tenant or any other Person more than fifteen percent (15%) of the residential apartments, but shall not otherwise apply to any Tenant-Stockholder or Unit Owner.

(d) In each instance wherein Tenant desires to effect, and as a condition to the effectiveness thereof, an assignment, a sublease of the Premises as an entirety or substantially as an entirety, or a Transfer, Tenant shall, prior to the effective date of such transaction, notify Landlord of the proposed transaction and submit to Landlord the following documents and information (which documents may be unexecuted but shall, in all other respects, be in substantially final form) and such other information and documents it may wish if the proposed transaction is subject to the consent of Landlord:

(i) in the case of an assignment, (A) a copy of the proposed instrument(s) of assignment, containing, inter alia, the name, address and telephone number of the assignee, (B) a copy of the proposed instrument(s) of assumption of Tenant's obligations under this Lease by said assignee, and

(C) an affidavit of the assignee or an authorized officer or general partner thereof, setting forth (x) in the case of a partnership, the names and addresses of all general partners thereof and all other partners of the assignee having a five percent (5%) or greater ownership interest in the assignee, (y) in the case of a corporation (other than a corporation whose common stock is traded over the New York Stock Exchange or the American Stock Exchange or which is an Institutional Lender), the names and addresses of all persons having five percent (5%) or greater record ownership of stock in, and all directors and officers of, the assignee;

(ii) in the case of a subletting of the Premises as an entirety or substantially as an entirety, (A) a copy of the proposed sublease, containing, inter alia, the name, address, and telephone number of the subtenant, and (B) an affidavit of the subtenant or an authorized officer or general partner thereof, setting forth the same information with respect to the partners, shareholders, officers and directors of the subtenant as is required with respect to assignees under Section 10.01(d)(i);

(iii) in the case of a Transfer, (A) a copy of each proposed document by which such Transfer is to be accomplished, and (B) an affidavit of an authorized officer or general partner of Tenant, setting forth the same information with respect to the partners, shareholders, officers and directors of Tenant as is required with respect to assignees under Section 10.01(d)(i); and

(iv) in all such cases, such other documents and information as Landlord may reasonably request to permit the evaluation of such assignment, sublease or Transfer.

Landlord shall within twenty (20) days after receipt of all requisite information and documentation, notify Tenant whether it grants its consent if such consent is required hereunder, and in those instances wherein the consent of Landlord is not so required or is granted, whether the form and substance of each such document and the information submitted establishes compliance with the provisions of Section 10.01(c) and Section 10.01(d), specifying, in the event that Landlord denies its consent to such transaction or

determines that any such documentation or any such information does not establish such compliance, the reason for such denial or determination. If Landlord shall not have notified Tenant of such denial or determination within such period, it shall be deemed to have consented to the proposed transaction if such consent is required and to have determined that the documents and the information submitted establish compliance with the provisions of Section 10.0(c) and Section 10.01(d). Even if Landlord has consented to the proposed transaction if such consent is required and/or has determined that the documents and information establish compliance with the provisions of Section 10.01(c) and Section 10.01(d), such consent and/or determination shall be conditioned upon the delivery to Landlord of executed documents substantially the same as those previously delivered to Landlord for review.

(e) (i) From and after Substantial Completion of the Buildings, Landlord shall not withhold its consent to an assignment by Tenant of its interest in this Lease to the Apartment Corporation pursuant to a Cooperative Plan, provided no Default shall have occurred and be continuing hereunder, Tenant shall have complied with the provisions of Sections 3.05, 3.06 and 3.09 and delivered to Landlord (w) a true and correct copy of such Cooperative Plan and any amendments, modifications and supplements thereto, (x) a true and correct copy of the letter of acceptance of the Cooperative Plan issued by the New York State Department of Law, (y) a true and correct copy of the letter accepting the amendment declaring the Cooperative Plan effective issued by the New York State Department of Law and (z) such other documents in connection therewith as may be reasonably requested by Landlord.

(ii) From and after Substantial Completion of the Buildings, Landlord shall not withhold its consent to any assignment or partial assignment(s) by Tenant of its interest in this Lease pursuant to a Condominium Plan provided Tenant shall have complied with the provisions of Sections 3.05, 3.06, 3.09 and Article 42 hereof.

(f) Subject to compliance by a Mortgagee with the provisions of Sections 10.10 and 10.11 hereof, the foregoing requirement of consent by Landlord shall not apply to the acquisition of the Premises by such Mortgagee, through the foreclosure of its Mortgage or through a deed or instrument of transfer delivered in lieu of such foreclosure, so long as

such Mortgagee shall, in the instrument transferring to such Mortgagee the interest of Tenant hereunder, assume and agree to perform all of the terms, covenants and conditions of this Lease thereafter to be observed or performed by Tenant, subject to the provisions of Section 41.08 hereof. Each reference in this Section 10.01(f) to "Mortgagee" shall be deemed to include a wholly owned subsidiary (direct or indirect) of such Mortgagee, provided such Mortgagee has delivered to Landlord a written notice advising that such a subsidiary should be so deemed and certifying (i) that such subsidiary is wholly owned (direct or indirect) by such Mortgagee and (ii) that such subsidiary is authorized to act in the place and stead of such Mortgagee.

Section 10.02. No assignment of this Lease, subletting of the Premises as an entirety or substantially as an entirety or Transfer shall have any validity except upon compliance with the provisions of this Article 10 and, with respect to an assignment or partial assignment(s) pursuant to a Condominium Plan, the provisions of Article 42.

Section 10.03. Any consent by Landlord under Section 10.01 above shall apply only to the specific transaction thereby authorized and shall not relieve Tenant from any requirement hereunder of obtaining the consent of Landlord to any further sale or assignment of this Lease or Transfer or subletting of the Premises as an entirety or substantially as an entirety.

Section 10.04. Tenant may, without Landlord's consent, but subject to the provisions of the last sentence of Section 10.01(c) and this Section 10.04, enter into agreements for the rental of residential and non-residential space in the Buildings, or the occupancy of such space pursuant to licenses or concessions for periods shorter than the remainder of the Term at the time of such agreements (all of such agreements being herein referred to collectively as "Subleases", and the occupants pursuant to Subleases as "Subtenants"). Each Sublease shall obligate the Subtenant pursuant thereto to occupy and use the premises included therein for purposes consistent with the Requirements, the Master Lease, the Certificate of Occupancy and the Master Development Plan. Tenant shall promptly and diligently enforce all of its rights as the landlord under all Subleases in accordance with the terms thereof.

Section 10.05. The fact that a violation or breach of any of the terms, provisions or conditions of this Lease or of the Master Lease results from or is caused by an act or omission by any Subtenant, Tenant-Stockholder, Unit Owner or

subtenant of a Subtenant, Tenant-Stockholder or Unit Owner or any other occupant of the Buildings shall not relieve Tenant of Tenant's obligation to cure the same. Tenant shall take any and all reasonable steps necessary to prevent any such violation or breach.

Section 10.06. Landlord, after an Event of Default by Tenant, may, subject to the rights of any Mortgagee, collect subrent and all other sums due under Subleases, and apply the net amount collected to Rental, but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any Subtenant as tenant hereunder, or a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 10.07. To secure the prompt and full payment by Tenant of the Rental and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents made in connection with any Mortgage (provided the Mortgagee thereunder is an Institutional Lender), all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Subleases. The exercise of the right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) an Event of Default shall occur and remain uncured, or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof, or (c) there occurs repossession under a dispossess warrant or other re-entry or repossession by Landlord under the provisions hereof or applicable law, and then only as to such of the Subleases that Landlord has agreed to take over and assume.

Section 10.08. At any time and from time to time, upon Landlord's demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants. Upon the reasonable request of Landlord,

Tenant shall permit Landlord and its agents and representatives to inspect all Subleases and, at Tenant's expense, to make copies thereof.

Section 10.09. All Subleases shall provide that (a) they are subject to this Lease and to the Master Lease, (b) the Subtenants will not pay rent or other sums under the Subleases for more than one (1) month in advance (excluding security and other deposits required under such Sublease), and (c) at Landlord's option, on the termination of this Lease pursuant to Article 24, the Subtenants will attorn to, or enter into a direct sublease on identical terms with, Landlord. With respect to any non-residential Sublease of more than 5000 square feet (a) made to an unrelated third party at a rental substantially equivalent to then prevailing market rental, (b) which is in accordance with all of the requirements of this Lease and (c) which confers no greater rights upon such Subtenant than are conferred upon Tenant under this Lease nor, except with respect to provision of basic services customarily provided to commercial tenants in such circumstances, imposes more onerous obligations upon Landlord, as successor landlord under the Sublease, than are imposed on Landlord in this Lease ("Qualifying Sublease"), at the request of Tenant, Landlord and such Subtenant shall execute an agreement (the "Non-disturbance and Attornment Agreement") wherein Landlord recognizes such Subtenant as the direct tenant of Landlord under its Sublease upon the termination of this Lease pursuant to Article 24, provided that at the time of such termination no default exists under such Subtenant's Sublease which at such time would permit the Landlord thereunder to terminate the Sublease or to exercise any remedy for dispossession provided for therein and such Subtenant agrees to attorn to Landlord and to recognize Landlord as such Subtenant's landlord under its Sublease. The Non-disturbance and Attornment Agreement shall provide that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

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

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

(c) bound by any payment that such Subtenant might have paid to any prior landlord (including, without limitation, the then defaulting landlord), or any other

Person of (i) rent or any other charge payable under such Subtenant's sublease for more than the current month or (ii) any security deposit which shall not have been delivered to Landlord,

(d) bound by any covenant to undertake or complete any construction of the Buildings or any portion thereof demised by the Sublease,

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

(f) bound by any Sublease or amendment thereto or modification thereof which reduced the basic rent, additional rent, supplemental rent or other charges payable under the Sublease (except to the extent equitably reflecting a reduction in the space covered by the Sublease), or shortens the term thereof, or otherwise increases the obligations of Landlord thereunder, made without the written consent of Landlord.

Within fifteen (15) days after Tenant submits to Landlord a copy of a Sublease (which may be unexecuted but which shall, in all other respects be in final form), Landlord shall notify Tenant whether same is a Qualifying Sublease. If Landlord shall determine that such Sublease is a Qualifying Sublease, then, promptly after notice to Tenant of such determination, Landlord and such Subtenant each shall duly execute, acknowledge and deliver to one another the Non-disturbance and Attornment Agreement. If Landlord shall determine that same is not a Qualifying Sublease, Landlord shall specify the reason for such determination. If there be any dispute as to whether any Sublease is a Qualifying Sublease, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36.

Section 10.10.

(a) If Tenant shall mortgage Tenant's interest in this Lease to a Mortgagee, Tenant shall give Landlord prompt notice of such Mortgage and furnish Landlord with a complete and correct copy of each such Mortgage, certified as such by such Mortgagee, together with the name and address of such Mortgagee. After receipt of the foregoing, Landlord shall give to such Mortgagee, at the address of such Mortgagee set forth in such notice, and otherwise in the manner provided by Article 25, a copy of each notice of Default at the same time as, and whenever, any such notice of Default shall thereafter be given by Landlord to Tenant, and no such notice of Default

by Landlord shall be deemed to have been duly given to Tenant unless and until a copy thereof shall have been so given to each Mortgagee. Each Mortgagee (i) shall thereupon have a period of ten (10) days more in the case of a Default in the payment of Rental and thirty (30) days more in the case of any other Default, after such notice is given to it, for remedying the Default, or causing the same to be remedied, or causing action to remedy a Default mentioned in Section 24.01(b) or (c) to be commenced, than is given Tenant after such notice is given to it, and (ii) shall, within such periods and otherwise as herein provided, have the right to remedy such Default, cause the same to be remedied or cause action to remedy a Default mentioned in Section 24.01(b) or (c) to be commenced. Landlord shall accept performance by a Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(b) Notwithstanding the provisions of Section 10.10(a) hereof, no Default by Tenant shall be deemed to exist as long as a Mortgagee within three (3) Business Days after the expiration of the time given to Tenant pursuant to the provisions of this Lease to remedy the event or condition which would otherwise constitute a Default hereunder, delivered to Landlord its written agreement to take the action described in clause (i) or (ii) herein and thereafter, in good faith, shall have commenced promptly either (i) to cure the Default and to prosecute the same to completion, or (ii) if possession of the Premises is required in order to cure the Default, to institute foreclosure proceedings and obtain possession directly or through a receiver, and to prosecute such proceedings with diligence and continuity and, upon obtaining such possession, commence promptly to cure the Default and to prosecute the same to completion with diligence and continuity, provided that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Tenant under this Lease, to the extent they are reasonably susceptible to being performed by the Mortgagee, are being performed. However, at any time after the delivery of the aforementioned agreement, the Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord (except for any obligations accruing prior to the date it delivers such notice), and, thereupon, Landlord shall have the unrestricted right to terminate this Lease and to take any other action it

deems appropriate by reason of any Default, and upon any such termination the provisions of Section 10.11 shall apply. Notwithstanding anything herein contained to the contrary, provided such Mortgagee shall have otherwise complied with the provisions of this Section 10.10, such Mortgagee shall have no obligation to cure any Defaults which are not susceptible to being cured by such Mortgagee.

(c) Except as provided in Section 10.10(b), no Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate created hereby. In the event that a Mortgagee shall become the owner of such leasehold estate, such Mortgagee shall not be bound by any modification or amendment of this Lease made subsequent to the date of the Mortgage and delivery to Landlord of the notice provided in Section 10.10(a) hereof and prior to its acquisition of such interest unless the Mortgagee shall have consented to such modification or amendment at the time it was made or at the time of such acquisition. In the event Landlord shall have collected any rents from Subtenants for periods subsequent to the date such Mortgagee shall have acquired Tenant's interest in this Lease, such Mortgagee shall receive a credit against subsequent installment(s) of Base Rent in such amount.

Section 10.11.

(a) In the case of termination of this Lease by reason of any Event of Default, Landlord shall give prompt notice thereof to each Mortgagee whose name and address Landlord has received pursuant to notice made in compliance with the provisions of Section 10.10(a), at the address of such Mortgagee set forth in such notice, and otherwise in the manner provided by Article 25. Landlord, on written request of such Mortgagee made any time within thirty (30) days after the giving of such notice by Landlord, shall execute and deliver a new lease of the Premises to such Mortgagee for the remainder of the Term upon all the covenants, conditions, limitations and agreements herein contained, provided that such Mortgagee (i) shall pay to Landlord, simultaneously with the delivery of such new lease, all unpaid Rental due under this Lease up to and including the date of the commencement of the term of such new lease and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Landlord in connection with the Default by Tenant, the termination of this Lease and the preparation of the new lease, and (ii) shall cure all Defaults existing under this Lease which are susceptible to being cured by such Mortgagee.

(b) Any such new lease and the leasehold estate thereby created shall, subject to the same conditions contained in this Lease, continue to maintain the same priority as this Lease with regard to any mortgage, including any fee mortgage, on the Premises or any part thereof or any other lien, charge or encumbrance thereon whether or not the same shall then be in existence. Concurrently with the execution and delivery of such new lease, Landlord shall assign to the tenant named therein all of its right, title and interest in and to moneys (including insurance and condemnation proceeds), if any, then held by or payable to Landlord or Depository which Tenant would have been entitled to receive but for termination of this Lease, and any sums then held by or payable to Depository shall be deemed to be held by or payable to it as Depository under the new lease.

(c) Upon the execution and delivery of a new lease under this Section 10.11, all Subleases which theretofore have been assigned to, or made by, Landlord shall be assigned and transferred, without recourse, by Landlord to the tenant named in such new lease. Between the date of termination of this Lease and the date of execution of the new lease, if a Mortgagee shall have requested such new lease as provided in Section 10.11(a), Landlord shall not cancel any Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the consent of the Mortgagee, except for a default as permitted in the Subleases or for the purpose of permitting Landlord to enter into Subleases with other subtenants who will occupy not less than the same amount of space demised by the cancelled Subleases at a rental rate per square foot and for a term not less than the rental rate per square foot and the unexpired term, respectively, of the cancelled Subleases.

(d) If there is more than one Mortgage, Landlord shall only recognize the Mortgagee whose Mortgage is senior in lien and which has requested a new lease of the Premises within the time period set forth in Section 10.11(a) as the Mortgagee entitled to the rights afforded by this Section 10.11, provided that such Mortgagee shall have given Landlord notice of such Mortgage in compliance with the provisions of Section 10.10(a).

Section 10.12. In any circumstances where arbitration is provided for under this Lease, Landlord shall give any Mortgagee who shall have given Landlord a notice as provided in Section 10.10(a) notice of any demand by Landlord for any arbitration, and Landlord shall recognize the Mort-

gagee whose Mortgage is senior in lien as a proper party to participate in such arbitration.

## ARTICLE 11

## CONSTRUCTION OF BUILDINGS

Section 11.01. Tenant, using a reputable and responsible contractor or construction manager approved by Landlord, which approval shall not be unreasonably withheld, shall promptly commence (subject to Unavoidable Delays) on or before the Construction Commencement Date and (subject to Unavoidable Delays) diligently construct the Buildings in accordance with the Requirements, Master Development Plan, the Design Guidelines, the Construction Documents, and the applicable provisions of this Lease. Tenant shall as soon as practicable obtain from New York City and all other Governmental Authorities all permits, consents, certificates and approvals required to commence construction of the Buildings. At the request of Tenant, Landlord, at no cost or expense to it, shall within ten (10) days of Tenant's request, execute and deliver any documents or instruments reasonably required to obtain such permits, consents, certificates and approvals, provided such documents or instruments do not impose any liability or obligation on Landlord. Tenant shall not undertake Commencement of Construction unless and until (i) Tenant shall have obtained as aforesaid, and delivered to Landlord copies of all necessary permits, consents, certificates and approvals for such construction from all Governmental Authorities which are required to have been obtained prior to Commencement of Construction, (ii) Landlord shall have reviewed the Construction Documents in the manner provided herein and shall have determined that they conform to the Master Development Plan, the Design Guidelines, the Schematics and the Design Development Plans, (iii) Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals thereof, in accordance with Section 11.03(b), and (iv) either (x) a building loan Mortgage in an amount sufficient, in Landlord's judgment, to assure completion of construction of the Buildings shall have been made for the financing of such construction or (y) Landlord shall have approved a plan submitted by Tenant for financing the construction of the Buildings. Tenant shall obtain such other permits, consents, certificates and approvals as may be required from time to time to continue and complete the construction of the Buildings. Tenant shall deliver to Landlord within fifteen (15) Business Days after Commencement of Construction its certification setting forth the date of Commencement of Construction. In the event Landlord shall not

have objected to such date within fifteen (15) Business Days after Tenant shall have submitted its certification to Landlord, such date shall be deemed to be the date of Commencement of Construction. In the event Landlord shall have delivered its objection within such fifteen (15) Business Day period and the parties shall be unable to agree on such date, such dispute shall be resolved by arbitration pursuant to Article 36.

Section 11.02.

(a) As soon as practicable, but in no event later than one hundred and fifty (150) days after the Commencement Date, Tenant shall submit to Landlord scaled schematic drawings (the "Schematics") prepared by the Architect and in accordance with Landlord's submission requirements for schematics, such requirements being more particularly described in the Design Guidelines. If Landlord determines that the Schematics conform to the Master Development Plan and the Design Guidelines, Landlord shall notify Tenant to that effect. If Landlord determines that the Schematics do not conform to the Master Development Plan and the Design Guidelines, Landlord shall so notify Tenant, specifying those respects in which the Schematics do not so conform, and Tenant shall revise the Schematics to so conform and shall resubmit the same to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that the Schematics do not so conform. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of submission of the Schematics or revised Schematics, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the Schematics do conform to the Master Development Plan and the Design Guidelines).

(b) As soon as practicable but in no event later than ninety (90) days after Landlord shall have notified Tenant that the Schematics conform to the Master Development Plan and the Design Guidelines, Tenant shall submit to Landlord for its review, design development plans and outline specifications for the Buildings (the "Design Development Plans"), prepared by the Architect and in accordance with Landlord's submission requirements for design development, such requirements being more particularly described in the Design Guidelines. Any changes in the Design Development Plans from the Schematics shall be identified in reasonable detail. If Landlord determines that the Design Development Plans conform to the Master Development Plan, the Design Guidelines and the Schematics, Landlord shall notify Tenant

to that effect. If Landlord determines that the Design Development Plans do not conform to the Master Development Plan, the Design Guidelines and the Schematics, Landlord shall so notify Tenant, specifying those respects in which the Design Development Plans do not so conform, and Tenant shall revise the same to so conform and shall resubmit the Design Development Plans to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that the Design Development Plans do not so conform. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of submission of the Design Development Plans or revised Design Development Plans, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the Design Development Plans do conform to the Master Development Plan, the Design Guidelines and the Schematics).

(c) As soon as practicable but in no event later than sixty (60) days after Landlord shall have notified Tenant that the Design Development Plans conform to the Master Development Plan, the Design Guidelines and the Schematics, Tenant shall submit to Landlord final contract plans and specifications for the Buildings prepared by the Architect and in accordance with Landlord's requirements for final contract plans and specifications, such requirements being more particularly described in the Design Guidelines. Any changes in such final contract plans and specifications from the Design Development Plans shall be identified in reasonable detail. The final contract plans and specifications shall be reviewed by Landlord to determine whether or not they conform to the Master Development Plan, the Design Guidelines and the Design Development Plans. If Landlord determines that they do so conform, Landlord shall notify Tenant to that effect. If Landlord determines that the final contract plans and specifications do not conform to the Master Development Plan, the Design Guidelines and the Design Development Plans, Landlord shall so notify Tenant, specifying those respects in which the final contract plans and specifications do not so conform, and Tenant shall revise the same to so conform and shall resubmit the final contract plans and specifications to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that the final contract plans and specifications do not so conform. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of submission of the final contract plans and specifications or revised final contract plans and specifications, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination

within such fifteen (15) Business Day period, it shall be deemed to have determined that the final contract plans and specifications do conform to the Master Development Plan, the Design Guidelines and the Design Development Plans). The contract plans and specifications that have been determined to conform to the Master Development Plan, the Design Guidelines and the Design Development Plans, as the same may be changed from time to time by Tenant, to the extent such changes are approved by Landlord as hereinafter provided, are hereinafter referred to as the "Construction Documents".

(d) In the event that Tenant shall desire to modify the Construction Documents with respect to, or which will in any way affect, any aspect of the exterior of the Buildings or a change in the height, bulk or setback of the Buildings or in any other matter relating to or affected by the Master Development Plan or the Design Guidelines, Tenant shall submit the proposed modifications to Landlord for approval prior to making or implementing any such modification. All modifications shall be identified in reasonable detail. Tenant shall not be required to submit to Landlord proposed modifications of the Construction Documents which affect solely the interior of the Buildings. Landlord shall review the proposed changes to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines, and (ii) provide for design, finishes and materials with respect to the exterior of the Buildings which are comparable in quality to those provided for in the Construction Documents. If Landlord determines that they do so conform and provide, Landlord shall notify Tenant to that effect. If Landlord determines that the Construction Documents, as so revised, do not conform to the Master Development Plan and the Design Guidelines or provide for such design, finishes and materials, Landlord shall so notify Tenant, specifying those respects in which they do not so conform or provide, and Tenant shall revise the same to meet Landlord's objections and shall resubmit them to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that they do not so conform or provide. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of submission of the Construction Documents, as so revised, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory).

(e) Notwithstanding the provisions of Section 11.02(d), if, after the Commencement of Construction, Tenant makes a good faith determination that any proposed modifica-

tion which requires Landlord's approval under Section 11.02(d) is of a minor or insubstantial nature, Tenant may so advise an employee designated by Landlord ("Landlord's Project Manager") (delivering to him or her a written statement setting forth the proposed modification and the basis for Tenant's determination and simultaneously delivering copies of said statement to Landlord's President and Chief Executive Officer and Vice President for Planning and Design). Landlord's Project Manager shall, in writing, before the expiration of the fifth full Business Day after the receipt of said advice, either (i) notify Tenant of approval of said proposed modification or (ii) notify Tenant that Tenant is required to submit the proposed modification to Landlord as provided in Section 11.02(d). In the event Landlord's Project Manager acts in accordance with (ii) above, Landlord, after receipt from Tenant of the proposed modification, shall endeavor to expedite its review thereof and notification to Tenant of its determination. Nothing set forth in this Section 11.02(e) shall require Landlord to notify Tenant of Landlord's determination earlier than the expiration of the fifteen (15) Business Day period set forth in Section 11.02(d) with respect to such modification, provided, however, that if Landlord's Project Manager shall not have notified Tenant of either (i) or (ii) above within the five (5) Business Day period set forth above, Landlord shall be deemed to have approved the proposed modification.

(f) The Construction Documents shall comply with the Requirements, including but not limited to the Building Code of New York City. The responsibility to assure such compliance shall be Tenant's; Landlord's determination that the Construction Documents conform to the Master Development Plan and the Design Guidelines shall not be, nor shall it be construed to be or relied upon as, a determination that the Construction Documents comply with the Requirements. In the event that there shall be a conflict between the Requirements and the Master Development Plan or the Design Guidelines, the Requirements shall prevail.

(g) In addition to the documents referred to in Section 11.01 and this Section 11.02, Tenant shall, at least twenty (20) Business Days prior to ordering the same for incorporation into the Buildings, submit to Landlord samples of all materials to be used on the exterior of the Buildings, including windows, and the same shall be subject to Landlord's approval for conformity to the Design Guidelines, the Master Development Plan and the Construction Documents. If Landlord shall have failed to object to any of such materials within fifteen (15) Business Days after its receipt of such materials, it shall be deemed to have approved such materi-

als. Landlord reserves the right to maintain its field personnel at the Premises to observe Tenant's construction methods and techniques and Landlord shall be entitled to have its field personnel or other designees attend Tenant's job and/or safety meetings. No such observation or attendance by Landlord's personnel or designees shall impose upon Landlord any responsibility for any failure by Tenant to observe applicable Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the Requirements and the provisions of this Lease.

(h) Tenant acknowledges and agrees that the maximum permissible "floor area," as such term is defined in the Zoning Resolution of the City of New York, for the Land shall be 280,900 square feet, as computed in accordance with Section 12-10 of the Zoning Resolution.

(i) Tenant shall not construct or permit to exist any Buildings on the Land unless the Buildings are in compliance with the Master Development Plan and the Design Guidelines.

(j) Landlord acknowledges and agrees that in order to meet Tenant's construction schedule, Tenant may be required to "fast track" certain aspects of the final detailed plans and specifications and of the excavation and foundation stage of the construction process. Landlord agrees, within the limitations of sound construction practice, to cooperate with Tenant, as reasonably requested from time to time by Tenant, in "fast tracking" the construction of the Buildings. Such cooperation may include, and may only include (i) shortening the review periods provided for herein, (ii) reviewing certain aspects of the Design Development Plans and Construction Documents prior to completion and submission to Landlord of every aspect thereof, and (iii) permitting Tenant to begin excavation and foundation work prior to completion and approval by Landlord of the Construction Documents.

Section 11.03.

(a) Commencing on the Commencement Date, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect with respect to the Premises, until Commencement of Construction, insurance coverage of the types and in the minimum limits set forth in subsections (i) and (ii) of this Section 11.03(a). Prior to the Commencement of Construction, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause

to be kept in full force and effect with respect to the Premises, until Substantial Completion of the Buildings, the following:

(i) comprehensive general liability insurance, naming contractor or construction manager as named insured and, as additional insureds, Tenant, Landlord, Master Landlord and each Mortgagee under a standard mortgagee clause, such insurance to insure against liability for bodily injury and death and for property damage in such amount as may from time to time be reasonably required by Landlord (which shall be not less than Twenty-Five Million Dollars ($25,000,000) combined single limit nor more than such amount as, at the time in question, is customarily carried by prudent owners of like buildings and improvements, but, in no event, less than Twenty-Five Million Dollars ($25,000,000), such insurance to include operations-premises liability, contractor's protective liability on the operations of all subcontractors, completed operations (to be kept in force for not less than three (3) years after Substantial Completion of the Buildings), broad form contractual liability (designating the indemnity provisions of the Construction Agreements and this Lease), a broad form comprehensive general liability endorsement deleting all exclusions pertaining to contractual and employee coverage and, if the contractor is undertaking foundation, excavation or demolition work, an endorsement that such operations are covered and that the "XCU Exclusions" have been deleted;

(ii) automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles insuring against liability for bodily injury and death and for property damage in an amount not less than Ten Million Dollars ($10,000,000) combined single limit, with such coverage to be included in the underlying schedule of any umbrella or following form excess policy for a total limit of Twenty-Five Million Dollars ($25,000,000), such insurance to name Tenant (contractor if carried by contractor) as named insured and, as additional insureds, Landlord, Master Landlord, any general contractor or construction manager engaged by Tenant (Tenant if contractor carries such insurance) and each Mortgagee under a standard mortgage clause;

(iii) workers' compensation insurance providing statutory New York State benefits for all persons employed in connection with the construction at the Premises including, as a minimum, Employer's Liability limits of $100,000/$100,000/$500,000, with coverage to be included in the underlying schedule of any umbrella or following form excess policy; and

(iv) all-risk builder's risk insurance written on a one hundred percent (100%) of Completed Value (non-reporting) basis with limits as provided in Section 7.01(a)(i), naming, to the extent of their respective insurable interests in the Premises, Tenant as named insured, and, as additional insureds, Landlord, Master Landlord, any contractor or construction manager engaged by Tenant and each Mortgagee under a standard mortgagee clause. In addition, such insurance (A) shall contain an acknowledgment by the insurance company that its rights of subrogation have been waived with respect to all of the insureds named in the policy and an endorsement stating that "permission is granted to complete and occupy", and (B) if any storage location situated off the Premises is used, shall include coverage for the full insurable value, all materials and equipment on or about any such storage location intended for use with respect to the Premises.

In the event the proceeds received pursuant to the insurance coverage required under Section 11.03(a)(iv) hereof shall exceed Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), such proceeds shall be paid to Depository and disbursed in accordance with the provisions of Sections 8.02 and 8.03 hereof. In the event such proceeds shall be Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) or less, such proceeds shall be payable, in trust, to Tenant for application to the cost of completion of construction of the Buildings.

(b) No construction shall be commenced until Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals thereof, as required by this Section 11.03.

(c) To the extent applicable, Tenant shall comply with the provisions of Section 7.02 hereof with respect to the policies required by this Section 11.03.

(d) To the extent that the insurance coverages required pursuant to this Section 11.03 duplicate those required by Article 7, hereof, Tenant shall not be required to maintain such coverages in duplicate, but in each instance the more extensive coverage shall be maintained.

(e) In addition to the insurance required pursuant to this Section 11.03, Tenant shall, prior to Commencement of Construction, obtain, or cause to be obtained, and furnish to Landlord, (i) payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor as obligor and Landlord, Tenant and each Mortgagee as co-obligees, each in a penal sum equal to the amount of the construction contract for the Buildings (or if there shall be no construction contractor, Landlord may require payment and performance bonds from each subcontractor designated by Landlord, each in a penal sum equal to the amount of such subcontract) or (ii) other security satisfactory to Landlord in its sole discretion, including, without limitation, a letter of credit, provided the amount, form and issuer shall have been approved by Landlord.

Section 11.04. Construction of the Buildings shall be (a) commenced on or prior to the Construction Commencement Date and prosecuted by Tenant with all reasonable diligence and without interruption, subject to Unavoidable Delays, and (b) Substantially Completed by Tenant in a good and workmanlike manner in accordance with the approved Construction Documents, the Master Development Plan and the Design Guidelines, no later than twenty-four (24) months after the Construction Commencement Date, as such date may be extended for Unavoidable Delays (the "Scheduled Completion Date"). Upon Substantial Completion of the Buildings, Tenant shall furnish Landlord with (i) true copies of the Residential TCO and temporary Certificate(s) of Occupancy for the non-residential space in the Buildings, (ii) a complete set of "as built" plans prepared and certified to be complete and correct by the Architect, and (iii) a survey prepared and sealed by a registered surveyor showing all Buildings and all easements and other matters of record relating to the Premises, certified by such surveyor to Tenant, Landlord, each Mortgagee, and to any title company which shall have insured or committed to insure the Premises, and bearing the certification of such surveyor that all of the Buildings are within the property lines of the Land and do not encroach upon any easement or violate any restriction of record.

"Substantial Completion of the Buildings" or "Substantially Completed" shall mean (i) substantial completion of all construction work on the Buildings, including, with respect to the non-residential space in the Building, a fully enclosed shell with all electrical conduit, plumbing and HVAC brought to the interior walls, (ii) the delivery to Landlord of true copies of the Residential TCO, and (iii) the delivery to Landlord of a certificate from the Architect certifying that the construction has been completed substantially in accordance with the approved Construction Documents, the Master Development Plan, and the Design Guidelines. Notwithstanding anything herein contained to the contrary, if Tenant shall have failed to deliver the Residential TCO on or before the Scheduled Completion Date as a result of the failure of the Department of Buildings of New York City, or successor body of similar function, to issue the same, such failure shall not constitute a Default hereunder provided the Architect certifies in writing to Landlord that Tenant has completed all work necessary to obtain such Residential TCO. In such event, Tenant shall deliver a true copy of the Residential TCO and temporary Certificate(s) of Occupancy for the non-residential space in the Buildings, to Landlord promptly upon their issuance. Within twelve (12) months after the date of Substantial Completion of the Buildings, Tenant shall furnish Landlord with permanent Certificate(s) of Occupancy for all space in the Buildings duly issued by the New York City Department of Buildings, provided, however, Tenant's failure to obtain such permanent Certificate(s) of Occupancy within such twelve (12) month period shall not be a Default hereunder if Tenant shall be diligently and in good faith attempting to obtain same (which attempt (i) shall include, but not be limited to, the reasonable expenditure of monies, but (ii) shall not obligate Tenant to complete construction of any interior portion of the non-residential space in the Buildings until such portion has been made subject to one or more Subleases). In any event, Tenant shall promptly furnish Landlord with such permanent Certificate(s) of Occupancy after same has been duly issued.

Section 11.05.

(a) The materials to be incorporated in the Buildings at any time during the Term shall, upon purchase of same and at all times thereafter, constitute the property of Landlord, and upon construction of the Buildings or the incorporation of such materials therein, title thereto shall vest in Landlord, provided, however, that (i) Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials or other Person in connection with the purchase of any such

materials, (ii) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to such materials and Buildings, (iii) Landlord shall have no obligation with respect to the storage or care of such materials or the Buildings and (iv) that any refunds, credits or other proceeds which may be obtained in respect of such materials shall be the property of Tenant.

(b) All Construction Agreements shall include the following provision: "[contractor] [subcontractor] [materialman] hereby agrees that immediately upon the purchase by [contractor] [subcontractor] [materialman] of any building materials to be incorporated in the Buildings (as said term is defined in the lease pursuant to which the owner acquired a leasehold interest in the property), or of any building materials to be incorporated in improvements made thereto, such materials shall become the sole property of Battery Park City Authority, a public benefit corporation, notwithstanding that such materials have not been incorporated in, or made a part of, such Buildings at the time of such purchase; provided, however, that Battery Park City Authority shall not be liable in any manner for payment or otherwise to [contractor] [subcontractor] [materialman] in connection with the purchase of any such materials and Battery Park City Authority shall have no obligation to pay any compensation to [contractor] [subcontractor] [materialman] by reason of such materials becoming the sole property of Battery Park City Authority."

(c) Tenant acknowledges that by reason of the ownership of the Buildings by Landlord, certain sales and compensating use taxes will not be incurred in connection with the construction of the Buildings. Tenant shall pay to Landlord, as payments in lieu of such sales and compensating use taxes, Seven Hundred Two Thousand Two Hundred and Fifty Dollars ($702,250), payable in eight (8) equal quarterly payments, each in the amount of Eighty Seven Thousand Seven Hundred and Eighty-One and 25/100 Dollars ($87,781.25), the first such payment to be made on the first day of the month following the date on which the Commencement of Construction shall occur (unless such date shall be the first day of a month in which case such payment shall be made on such date) and the succeeding payments to be made on the first day of each third month thereafter until paid in full. In the event Tenant is compelled by any Governmental Authority to pay any sales or compensating use tax in respect of materials incorporated (or to be incorporated) in the Buildings and as to which Tenant previously has made to Landlord payments in lieu of such taxes, Tenant shall receive a credit against the next installment(s) of Base Rent and PILOT in an amount equal

to the amount of such taxes (including interest and penalties) which Tenant has been compelled to pay, provided that (i) each Construction Agreement contains the provision set forth in Section 11.05(b), (ii) Tenant has notified Landlord prior to payment of such taxes and promptly upon receipt of notice of claim that a claim has been made therefor, (iii) if permitted by applicable law, Landlord has the opportunity to contest the imposition of same provided that neither Tenant's interest in the Premises nor any income derived by Tenant therefrom would, by reason of such contest, be forfeited or lost, or subject to any lien, encumbrance or charge, and Tenant would not by reason thereof be subject to any civil or criminal liability, and (iv) in no event shall the credit allowed to Tenant hereunder exceed the amount of monies paid to Landlord in lieu of such taxes pursuant to this Section 11.05(c).

Section 11.06. Tenant may furnish and install a project sign, designed, of a size and with such text as shall be reasonably satisfactory to Landlord, at a location on the Premises reasonably satisfactory to Landlord and Tenant. Tenant also shall extend to Landlord and any of its designee(s), the privilege of being featured participants in ground-breaking and opening ceremonies to be held at such time and in such manner as Landlord and Tenant shall agree.

Section 11.07. Tenant shall remove from the Project Area all fill excavated from the Land and shall dispose of such fill in accordance with all applicable Requirements.

Section 11.08. Tenant acknowledges that it is aware that construction activities of other developers and of Landlord are in progress or contemplated within the Project Area. Tenant shall coordinate its construction activities at the Premises with other construction activities taking place in the Project Area, including, without limitation, those carried on pursuant to four Agreements of Severance Lease between Landlord and Olympia & York Battery Park Company, dated as of June 15, 1983, and those incident to the construction of Landlord's Civic Facilities and civic facilities in other portions of the Project Area. In no event shall Landlord or Master Landlord be liable for any delays in Tenant's construction of the Buildings attributable to other construction activity in the Project Area. In addition, Tenant shall (i) cause any and all work which Tenant is required to or does perform on, under or adjacent to any portion of any street situated in whole or in part in the Project Area to be performed in accordance with all applicable Requirements and in a manner which does not wrongfully obstruct or hinder ingress

to or egress from any portion of the Project Area, (ii) not cause, permit or suffer the storage of construction materials or the placement of vehicles not then being operated in connection with construction activities on any portion of any such street, except as may be permitted by applicable Requirements, (iii) undertake its construction activities in accordance with normal New York City construction rules and (iv) promptly repair or, if required by Landlord, replace any portion of Landlord's Civic Facilities damaged by the act or omission of Tenant or any agent, contractor or employee of Tenant, any such repair or replacement, as the case may be, to be performed (A) by using materials identical to those used by Landlord, or, if Tenant, despite its best efforts, is unable to procure such materials, using materials in quality and appearance similar to those used by Landlord and approved by Landlord, and (B) in accordance with the Civic Facilities Drawings and Specifications. In the event Tenant shall have failed to promptly repair or replace such portion of Landlord's Civic Facilities as hereinabove provided, Landlord shall have the right to do so at Tenant's expense and Tenant shall, within ten (10) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord. In the event Tenant shall fail to promptly comply with the provisions of subparagraph (ii) of this Section 11.08, Landlord shall have the right after notice to Tenant to remove such construction materials or vehicles at Tenant's expense and Tenant shall, within ten (10) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord. Landlord shall have the right, but shall not be obligated, to erect a perimeter fence enclosing the Premises and any other of the parcels within Phase III, provided such fence shall have entrances so as to permit construction access to the Premises. In the event Landlord erects such a fence, Tenant shall not interfere with same and, if the fence shall be damaged by the act or omission of Tenant or any agent, contractor or employee of Tenant, Tenant shall promptly repair or, if required by Landlord, replace same in the manner provided in the immediately preceding clause (iv)(A). At the request of Landlord, Tenant shall promptly enclose the Land with an 8-foot high chain-mesh fence so as to separate the Premises from the remainder of the Project Area. During construction, Tenant shall maintain Tenant's fence in good condition. Upon Substantial Completion of the Buildings, Tenant shall remove Tenant's fence and, if constructed, Landlord shall remove its fence from around the Premises. Subject to applicable Requirements, Tenant shall have the right to remove Tenant's fence at an earlier date and, if constructed, Landlord, at the request of Tenant, shall remove its fence from around the Premises, if Tenant

has commenced its program to lease space in the Buildings or sell Cooperative Apartments or Units.

Section 11.09. Tenant shall cause its contractors and all other workers at the Premises connected with Tenant's construction to work harmoniously with each other, and with the other contractors and workers in the Project Area, and Tenant shall not engage in, permit or suffer, any conduct which may disrupt such harmonious relationship.

Section 11.10. Tenant shall construct the Buildings in a manner which does not interfere with, delay or impede the activities of Landlord, its contractors, and other contractors and developers within the Project Area. If, in Landlord's reasonable judgment, Tenant shall fail to comply with its obligations under this Section 11.10, Landlord may, in addition to any other remedies it may have hereunder, order Tenant (and Tenant's contractors and other Persons connected with Tenant's construction within the Project Area) to cease those activities which Landlord believes interfere with, delay or impede Landlord or such other contractors or developers. No delay or other loss or hindrance of Tenant arising from any such order by Landlord or from the actions or omissions of any other such contractor or developer shall form the basis for any claim by Tenant against Landlord or excuse Tenant from the full and timely performance of its obligations under this Lease except as otherwise expressly set forth in this Lease.

Section 11.11. All persons employed by Tenant with respect to construction of the Buildings shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 11.12. Tenant shall, at all times until Completion of the Buildings, secure its obligations under this Lease, including, without limitation, Tenant's obligation for the payment of Rental, by depositing with Landlord upon the execution of this Lease a clean irrevocable letter of credit (the "Construction Period Letter of Credit") drawn in favor of Landlord, in form and content acceptable to Landlord, and, having a term of not less than one (1) year, payable in United States dollars upon presentation of sight draft, issued by and drawn on a recognized commercial bank or trust company which is a member of the New York Clearing House Association. The initial amount of the Construction Period Letter of Credit shall be Two Million Nine Hundred Five Thousand Five Hundred Ninety-Two and 30/100 Dollars ($2,905,592.30). Except as hereinafter provided, the

Construction Period Letter of Credit shall be renewed without decrease in amount each and every year as provided herein. Each Replacement Letter of Credit shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the Construction Period Letter of Credit or then current Replacement Letter of Credit. The failure of Tenant to renew the Construction Period Letter of Credit or any Replacement Letter of Credit in accordance with this Section 11.12 and Article 43 hereof shall entitle Landlord to present the Construction Period Letter of Credit or Replacement Letter of Credit for payment, in which event Landlord shall hold and apply the proceeds thereof (together with any interest earned thereon) as provided in Section 11.13. Notwithstanding the foregoing, provided (i) Landlord shall not have presented the Construction Period Letter of Credit or any Replacement Letter of Credit for payment and (ii) no Default shall have occurred and be continuing hereunder, then at the expiration of one (1) year from the date of Commencement of Construction, Tenant shall have the right to reduce the Construction Period Letter of Credit to One Million Four Hundred Fifty-Two Thousand Seven Hundred Ninety-Six and 15/100 Dollars ($1,452,796.15).

Section 11.13. If prior to Completion of the Buildings an Event of Default shall occur, whether or not this Lease is thereby terminated, Landlord is hereby authorized by Tenant to present the Construction Period Letter of Credit or any Replacement Letter of Credit for payment. In the event this Lease is terminated in accordance with the provisions of Article 24 or Tenant is dispossessed by summary proceedings or otherwise as provided in Section 24.03(b), Landlord is hereby authorized by Tenant, to retain all of the proceeds thereof as liquidated damages. In the event this Lease is not terminated or Tenant is not dispossessed, Landlord is hereby authorized by Tenant to apply all or a portion of said proceeds to the payment of any sums then due or thereafter becoming due under this Lease and to the payment of any damages or costs to Landlord resulting from such Event of Default and to retain the balance thereof pending further application or payment to Tenant as hereinafter provided. Unless theretofore applied by Landlord, Landlord shall deliver to Tenant the Construction Period Letter of Credit or any Replacement Letter of Credit or proceeds thereof on the date of Completion of the Buildings provided no Default shall have occurred and be continuing hereunder.

Section 11.14. Landlord agrees that the leases to be entered into with other tenants of parcels within Phase III shall require such tenants to comply with requirements substantially similar to those required of Tenant pursuant to

Sections 11.02(i), 11.06, 11.07, 11.08, 11.09, 11.10 and 11.11. Landlord shall enforce compliance with such requirements on a non-discriminatory basis.

## ARTICLE 12

## REPAIRS

Section 12.01. Tenant shall take good care of the Premises, including, without limitation, the Buildings, roofs, foundations and appurtenances thereto, all sidewalks, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), sidewalk hoists, water, sewer and gas connections, pipes and mains which are located on or service the Premises (unless the City of New York or a public utility company is obligated to maintain or repair same) and all Equipment, and shall put, keep and maintain the Buildings in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, provided, however that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 8 and 9 hereof. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 12.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with (a) all Requirements of Governmental Authorities (including, but not limited to, Local Law No. 5, 1973, as amended), (b) the New York Board of Fire Underwriters or any successor thereto, and (c) the Building Code of New York City, as then in force.

Section 12.02. Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances, the sidewalks, grounds, chutes and sidewalk hoists comprising, in front of, or adjacent to, the Premises and any parking facilities and plazas on the Land.

Section 12.03. Except as otherwise specifically provided in Article 26 hereof, Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement, replace-

ment, Restoration or repair to, nor to demolish, any Buildings. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises. Tenant shall not clean nor require, permit, suffer nor allow any window in the Buildings to be cleaned from the outside in violation of Section 202 of the Labor Law or of the rules of the Industrial Board or other state, county or municipal department, board or body having jurisdiction.

## ARTICLE 13

## CHANGES, ALTERATIONS AND ADDITIONS

Section 13.01. From and after Substantial Completion of the Buildings, Tenant shall not demolish, replace or materially alter the Buildings, or any part thereof, or make any addition thereto, whether voluntarily or in connection with repairs required by this Lease (collectively, "Capital Improvement"), unless Tenant shall comply with the following requirements and, if applicable, with the additional requirements set forth in Section 13.02:

(a) No Capital Improvement shall be undertaken until Tenant shall have procured from all Governmental Authorities and paid for all permits, consents, certificates and approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement (collectively, "Improvement Approvals"). Landlord shall not unreasonably refuse to join or otherwise cooperate in the application for any such Improvement Approvals, provided such application is made without cost, expense or liability (contingent or otherwise) to Landlord. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of the proposed Capital Improvement.

(b) All Capital Improvements, when completed, shall be of such a character as not to reduce the value of the Premises below its value immediately before construction of such Capital Improvement.

(c) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Unavoidable Delays) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) the Master Development Plan, the Design Guidelines and, if required pursuant to Section 13.02(a) or (b), the plans and specifications for such Capital Improvement as approved by Landlord,

(iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, and (iv) all other Requirements.

(d) No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to Landlord insurance policies issued by responsible insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Section 11.03. If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 13.02.

(a) If the estimated cost of any proposed Capital Improvement shall exceed Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), either individually or in the aggregate with other Capital Improvements constructed in any twelve (12) month period during the Term, Tenant shall:

(i) pay to Landlord, within ten (10) days after demand, the reasonable fees and expenses (not to exceed in the aggregate $5,000.00) of any architect or engineer selected by Landlord to review the plans and specifications describing the proposed Capital Improvement and inspect the work on behalf of Landlord;

(ii) furnish to Landlord the following:

(w) at least thirty (30) Business Days prior to commencement of the proposed Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or a registered architect approved by Landlord, which approval shall not be unreasonably withheld, and, at the request of Landlord, any other drawings, information or samples to which

Landlord is entitled under Article 11, all of the foregoing to be subject to Landlord's review and approval for conformity with the Master Development Plan, the Design Guidelines and, in the event such Capital Improvement is commenced within ten (10) years from the date the Buildings shall have been Substantially Completed, the Construction Documents;

(x) at least ten (10) Business Days prior to commencement of the proposed Capital Improvement, (1) a contract reasonably satisfactory to Landlord in form assignable to Landlord (subject to any prior assignment to any Mortgagee), made with a reputable and responsible contractor approved by Landlord, which approval shall not be unreasonably withheld, providing for the completion of the Capital Improvement in accordance with the schedule included in the plans and specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements, and (2) payment and performance bonds or other security, in each case satisfying the requirements of Section 8.04(a)(ii) hereof; and

(y) at least ten (10) Business Days prior to commencement of the proposed Capital Improvement, an assignment to Landlord (subject to any prior assignment to any Mortgagee) of the contract so furnished and the bonds or other security provided thereunder, such assignment to be duly executed and acknowledged by Tenant and by its terms to be effective only upon any termination of this Lease or upon Landlord's re-entry upon the Premises or following any Event of Default prior to the complete performance of such contract, such assignment also to include the benefit of all payments made on account of such contract, including payments made prior to the effective date of such assignment.

(b) Notwithstanding that the cost of any Capital Improvement is less than Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), such cost to be determined as provided in Section 8.02(b), to the extent that any portion of the Capital Improvement involves structural work or work involving the exterior of the Buildings or a change in the height, bulk or setback of the Buildings from the height, bulk or setback existing immediately prior to the Capital Improvement or in any other matter relating to or affected by the Master Development Plan or the Design Guidelines, then Tenant shall furnish to Landlord at least thirty (30) Business Days prior to commencement of the Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld, and, at Landlord's request, such other items designated in Section 13.02(a)(ii)(w) hereof, all of the foregoing to be subject to Landlord's review and approval as provided therein. In addition, Tenant shall pay to Landlord the reasonable fees and expenses of any independent architect or engineer selected by Landlord to review the plans and specifications describing the proposed Capital Improvement and inspect the work on behalf of Landlord which reimbursement shall be subject to the limitation contained in Section 13.02(a)(i).

(c) Landlord shall notify Tenant of Landlord's determination with respect to any request for approval required under this Section 13.02 within fourteen (14) Business Days of the later of (i) Landlord's receipt of such request from Tenant or (ii) Landlord's receipt of the plans and specifications and the drawings, information or samples which Landlord shall have requested in accordance with Section 13.02(a)(ii)(w). Landlord's failure to so notify Tenant within said time period shall be deemed to constitute approval by Landlord of the proposed Capital Improvement.

(d) In the event that Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Section 13.02(a)(ii)(w) or 13.02(b) with respect to, or which will in any way affect, the exterior of the Buildings or the height, bulk or setback thereof or which will affect compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect solely the interior of the Buildings. Landlord shall review the proposed changes to determine whether or not they (i) conform to the Master

Development Plan and the Design Guidelines and (ii) provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes do not so conform or so provide, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines or do not provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications. Within ten (10) Business Days after Landlord shall have so advised Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within ten (10) Business Days of the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such period, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 13.03. All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Upon completion of any Capital Improvement Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement and, where applicable, a survey meeting the requirements of Section 11.04 hereof, together with a permanent Certificate of Occupancy therefor issued by the New York City Department of Buildings, to the extent a modification thereof was required.

Section 13.04. Title to all additions, alterations, improvements and replacements made to the Buildings, including, without limitation, the Capital Improvements, shall forthwith vest in Landlord as provided in Section 11.05, without any obligation by Landlord to pay any compensation therefor to Tenant.

## ARTICLE 14

## REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES; COMPLIANCE WITH MASTER LEASE

Section 14.01. Tenant promptly shall comply with any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders (collectively, "Requirements") without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable Fire Rating Bureau or other body exercising similar functions, affecting the Premises or any street, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same, or requiring the removal of any encroachment, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put and without regard to the fact that Tenant is not the fee owner of the Premises. Notwithstanding the foregoing, Tenant shall not be required to comply with Requirements of Landlord except (i) as otherwise expressly provided in this Lease or (ii) Requirements of New York City acting solely in its capacity as a Governmental Authority. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 14.02. Tenant shall have the right to contest the validity of any Requirements or the application thereof. During such contest, compliance with any such contested Requirements may be deferred by Tenant upon condition that, if Tenant is not an Institutional Lender, before instituting any such proceeding, Tenant shall furnish to Landlord a bond, cash or other security satisfactory to Landlord, securing compliance with the contested Requirements and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any such contested Requirements, or after notice (actual or constructive) to Tenant of the applicability of such matters to the Premises and shall be prosecuted to final adjudication with reasonable dispatch.

Notwithstanding the foregoing, Tenant promptly shall comply with any such Requirements and compliance shall not be deferred if such non-compliance shall result in the imminent loss or forfeiture of the Premises, or any part thereof or if Landlord shall be in danger of being subject to civil or criminal liability or penalty by reason of non-compliance therewith.

Section 14.03. Tenant shall not cause or create or permit to exist or occur any condition or event relating to the Premises which would, with or without notice or passage of time, result in an event of default under the Master Lease. Tenant shall perform all of Landlord's obligations as tenant under the Master Lease relating to the maintenance and operation of the Premises unless, in accordance with the terms of this Lease, Landlord is specifically obligated to perform any such obligation.

## ARTICLE 15

## EQUIPMENT

Section 15.01. All Equipment shall be and shall remain the property of Landlord. Tenant shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises without the consent of Landlord, which consent shall not be unreasonably withheld, provided, however, such consent shall not be required in connection with repairs, cleaning or other servicing, or if (subject to Unavoidable Delays) the same is promptly replaced by Equipment which is at least equal in utility and value to the Equipment being removed. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant shall be required to install such Equipment as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

Section 15.02. Tenant shall keep all Equipment in good order and repair and shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced.

## ARTICLE 16

## DISCHARGE OF LIENS; BONDS

Section 16.01. Subject to the provisions of Section 16.02 hereof, except as otherwise expressly provided herein, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, or the Project Area or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 16.02. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 16.01 against the Premises or any part thereof or the Project Area or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant, within forty-five (45) days after notice of the filing thereof, or such shorter period as may be required by any Mortgagee, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand. Notwithstanding the foregoing provisions of this Section 16.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such

security satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 16.03. 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 Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that Landlord shall not be liable for any work performed or to be performed at the Premises for Tenant, any Subtenant and, if applicable, any Tenant-Stockholder or Unit Owner, for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord.

Section 16.04. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

## ARTICLE 17

## REPRESENTATIONS; POSSESSION

Section 17.01. Tenant acknowledges that Tenant is fully familiar with the Land, the Project Area, the physical condition thereof (including, without limitation, the fact that the Land includes substantial portions of landfill which may present special difficulties in the design, construction and maintenance of the Buildings and Tenant's Civic Facilities), the Title Matters, the Master Lease, the Master Development Plan and the Design Guidelines. Tenant accepts the Land in its existing condition and state of repair, and, except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord in respect

of the Land, the Project Area, the status of title thereof, the physical condition thereof, including, without limitation, the landfill portions thereof, the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, or the use that may be made of the Land, that Tenant has relied on no such representations, statements or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Land.

Section 17.02. Notwithstanding anything herein contained to the contrary, Landlord represents that the Master Lease, Design Guidelines, Master Development Plan and Settlement Agreement have not been amended, modified or supplemented, except as specifically set forth in the definitions contained in Article 1.

Section 17.03. Landlord shall deliver possession of the Land on the Commencement Date vacant and free of occupants and tenancies, subject to the Title Matters.

Section 17.04. Tenant represents that, as of the date hereof, the sole partners of Tenant are Seymour Milstein, Paul Milstein, Howard Milstein, Philip Milstein, Edward Milstein, Barbara Milstein Zalaznick, Constance Milstein Lederman, and Roslyn Milstein Meyer.

## ARTICLE 18

## LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 18.01. Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Buildings (including, but not limited to, any of the common areas within the Buildings, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord, its officers, agents, employees or licensees; nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the Project Area other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 18.02. Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord, its officers, agents, employees or licensees.

Section 18.03. In addition to the provisions of Sections 18.01 and 18.02, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the Project Area, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto.

## ARTICLE 19

## INDEMNIFICATION OF LANDLORD AND OTHERS

Section 19.01. Tenant shall not do, or knowingly permit any Subtenant, Unit Owner, Tenant-Stockholder or sublessee of a Unit or Cooperative Apartment or any employee, agent or contractor of Tenant or of any Subtenant, Unit Owner, Tenant-Stockholder or sublessee of a Unit or Cooperative Apartment to do any act or thing upon the Premises or elsewhere in the Project Area which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Requirement, and shall use its best efforts to exercise such control over the Premises so as to fully protect Landlord against any such liability. Subject to the provisions of Section 41.08, Tenant, to the fullest extent permitted by law, shall indemnify and save Landlord, any former Landlord and the State of New York and their agents, directors, officers and employees (collectively, the "Indemnitees"), harmless from and against

any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or wrongful act of any of the Indemnitees:

(a) construction of the Buildings or any other work or thing done in or on the Premises or any part thereof;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part of the Premises or adjacent thereto, provided such indemnity with regard to streets, alleys, sidewalks, curbs, vaults, passageways and other space is limited to an alteration, repair, condition, or maintenance of any street, alley, sidewalk, curb, vault, passageway or other space done or performed by Tenant or any agent, contractor, servant or employee of Tenant or which Tenant is obligated to do or perform;

(c) any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Project Area on the part of Tenant or any agent, contractor, servant or employee of Tenant;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, or or about any sidewalk or vault;

(e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(f) any lien or claim which may have arisen out of any act of Tenant or any agent, contractor, servant or employee of Tenant against or on the Premises or any other portion of the Project Area, or any lien or claim created or permitted to be created by Tenant in respect of the Premises against any assets of, or funds appropriated to any of the Indemnitees under the laws of the State of New York or of any other Governmental Authority or any liability which may be asserted against any of the Indemnitees with respect thereto;

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

(h) any tax attributable to the execution, delivery or recording of this Lease other than any real property transfer gains tax or other transfer tax which may be imposed on Landlord; or

(i) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Articles 4, 14 and 28 hereof.

Section 19.02. The obligations of Tenant under this Article 19 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 19.03. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnities in Section 19.01, then, upon demand by Landlord, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and Landlord shall approve, which approval shall not be unreasonably withheld. In such event, Tenant shall control all decisions in respect of the litigation and settlement of such claims. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend it or to assist in its defense. Provided such claim, action or proceeding is not covered by insurance maintained by Tenant and the attorneys engaged by Landlord are experienced in matters of the type in question, Tenant shall pay the reasonable fees and disbursements of such attorneys. In the event such claim, action or proceeding is covered by insurance and Tenant's insurer refuses to pay all or any portion of the fees and disbursements of any attorneys separately retained by Landlord, Landlord shall pay such fees and disbursements or such portion as shall not be paid by Tenant's insurer. The indemnification obligations imposed upon Tenant under Section 19.01 shall not apply to any settlement separately agreed to by Landlord without Tenant's consent, nor if Landlord retains its own attorneys and such retention will materially impair or ma-

terially diminish Tenant's insurance coverage and Landlord has been so advised in writing by Tenant's insurer.

Section 19.04. Subject to the provisions of Section 41.08, the provisions of this Article 19 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

## ARTICLE 20

## RIGHT OF INSPECTION, ETC.

Section 20.01. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency) for the purpose of (a) inspecting the same, (b) determining whether or not Tenant is in compliance with its obligations hereunder, (c) constructing, maintaining and inspecting any Civic Facilities, and (d) making any necessary repairs to the Premises and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, except in any emergency, Landlord shall have given Tenant notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (30) days after the giving of such notice (subject to Unavoidable Delays), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Unavoidable Delays).

Section 20.02. Nothing in this Article 20 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Tenant, any Subtenant or other occupant of the Buildings by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workman-

like manner, in accordance with the Design Guidelines and Master Development Plan, if applicable, and with reasonable diligence, subject to Unavoidable Delays, and in such a manner as not to unreasonably interfere with the conduct of business in or use of such space.

## ARTICLE 21

## LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 21.01. If Tenant at any time shall be in Default, after notice thereof and after applicable grace periods, if any, provided under this Lease for Tenant or a Mortgagee, respectively, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf.

Section 21.02. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation pursuant to Section 21.01, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within twenty (20) days after demand. Any payment or performance by Landlord pursuant to Section 21.01 shall not be nor be deemed to be a waiver or release of breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the Premises.

## ARTICLE 22

## NO ABATEMENT OF RENTAL

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

## ARTICLE 23

## PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. Subject to the provisions of law and this Lease, Tenant shall occupy the Premises in accordance with the Certificate or Certificates of Occupancy for the Premises, the Master Development Plan and the Design Guidelines, and for no other use or purposes.

Section 23.02. Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal or extra hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that Landlord, in its reasonable judgment, deems offensive by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of the Certificates of Occupancy or of any governmental laws, ordinances, requirements, orders, directions, rules or regulations, or which may make void or voidable any insurance then in force on the Premises or, without Landlord's consent, for any use which requires a variance, waiver or special permit under the Zoning Resolution of New York City as then in effect. Tenant shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Tenant shall fail to take such actions, and such failure shall continue for thirty (30) days after notice from Landlord to Tenant, Landlord is hereby irrevocably authorized to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to the immediately preceding sentence (including, but not limited to, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or

incurring of each such cost, expense or charge until the date of receipt of repayment by Landlord, shall be paid by Tenant to Landlord within ten (10) days after demand and shall constitute Rental under this Lease.

Section 23.03. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

Section 23.04. Tenant shall take all such actions as Landlord is required to take in connection with the use and occupancy of the Premises under the terms of the Master Lease, and Tenant shall not (to the extent reasonably within Tenant's control) permit any action or condition in respect of the Premises which constitutes or would, with notice or lapse of time or both, constitute an event of default under the Master Lease.

Section 23.05. Landlord shall perform all obligations of tenant under the Master Lease other than those which are the obligation of Tenant under this Lease.

## ARTICLE 24

## EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to pay any installment of Rental, or any part thereof, when the same shall become due and payable and such failure shall continue for ten (10) days after notice from Landlord to Tenant;

(b) if (i) Commencement of Construction shall not have occurred on or before the Construction Commencement Date (subject to Unavoidable Delays) and such failure shall continue for thirty (30) days after notice from Landlord to Tenant or (ii) Substantial Completion of the Buildings shall not have occurred within thirty-six (36) months from the Construction Commencement Date (subject to Unavoidable Delays) and such failure shall continue for ten (10) days after notice from Landlord to Tenant;

(c) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease, including, without limitation, any of Tenant's obligations under the provisions of Article 11 of this Lease (other than the obligations referred to in the preceding Section 24.01(b)), and such failure shall continue for a period of thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion);

(d) to the extent permitted by law, if Tenant shall admit, in writing, that it is unable to pay its debts as such become due, provided, however, this provision shall be of no further force or effect upon the submission by Tenant of its estate in the Premises to either a cooperative or condominium form of ownership in accordance with the provisions of this Lease;

(e) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors, provided, however, this provision shall be of no further force or effect upon the submission by Tenant of its estate in the Premises to either a cooperative or condominium form of ownership in accordance with the provisions of this Lease;

(f) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any corporate action in furtherance of any action described in Sections 24.01(d), (e) or (f) hereof, provided, however, this provision shall be of no further force or effect upon the submission by Tenant of its estate in the

Premises to either a cooperative or condominium form of ownership in accordance with the provisions of this Lease;

(g) to the extent permitted by law, if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated, provided, however, this provision shall be of no further force or effect upon the submission by Tenant of its estate in the Premises to either a cooperative or condominium form of ownership in accordance with the provisions of this Lease;

(h) if Tenant shall abandon the Premises;

(i) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, without Landlord's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto and such transaction shall not be made to comply or voided ab initio within thirty (30) days after notice thereof from Landlord to Tenant;

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

(k) if Tenant is a corporation, if Tenant shall at any time fail to maintain its corporate existence in good standing, or to pay any corporate franchise tax when and as the same shall become due and payable and such failure shall continue for thirty (30) days after notice thereof from Landlord or any governmental agency to Tenant;

(l) if Tenant shall breach one or more of the terms, conditions, covenants or agreements contained in Section 43.01(c); or

(m) if Tenant shall fail to deliver the Condominium Letter of Credit in accordance with the applicable provisions of the Lease.

Section 24.02. If an Event of Default shall occur, Landlord may elect to declare due and payable a sum equal to the amount by which the Rental reserved in this Lease for the unexpired portion of the Term exceeds the fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of eight percent (8%) per annum, such sum shall be due and payable ten (10) days after notice by Landlord to Tenant of such election. However, the aforesaid remedy shall not be applicable to a Mortgagee which elects to cure the Default of Tenant pursuant to Section 10.10 or receives a new lease pursuant to Section 10.11. Landlord may also elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 24.03.

(a) If any Event of Default (i) described in Sections 24.01(d), (e), (f), or (g) hereof shall occur, or (ii) described in Sections 24.01(b), (c), (d), (h), (i), (j), (k), (l) or (m) shall occur and Landlord, at any time thereafter, at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than ten (10) days after the giving of such notice, and if, on the date specified in such notice, Tenant shall have failed to cure the Default which was the basis for the Event of Default, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as of the date on which the Event of Default described in clause (i) above occurred or the date specified in the notice given pursuant to clause (ii) above, as the case may be, were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Premises. Anything contained herein to the contrary notwithstanding, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Sections 24.01(f) or (g) hereof, or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such proceeding, Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if

said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.15 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or trustee shall immediately quit and surrender the Premises as aforesaid.

(b) Except as otherwise provided in Article 42 hereof, if an Event of Default described in Section 24.01(a) shall occur, or this Lease shall be terminated as provided in Section 24.03(a), Landlord, without notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

Section 24.04. If this Lease shall be terminated as provided in Section 24.03(a) or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 24.03(b) hereof:

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

(b) Landlord may complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by Depository pursuant to Articles 7, 8, or 9 or by Landlord under the letter of credit referred to in Section 11.12) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing con-

struction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing any new tenants and other occupants, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord; Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability;

(c) if Landlord shall not have declared all Rental due and payable pursuant to Section 24.02 hereof, Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as "Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 24.04(b) for any part of such period (first deducting from the rents collected under any such reletting all of the payments to Landlord described in Section 24.04(b) hereof); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) if Landlord shall not have declared all Rental due and payable pursuant to Section 24.02 hereof, and whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further Deficiencies, as and for liquidated and agreed final damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damage), a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have consti-

tuted the unexpired portion of the Term exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of eight percent (8%) per annum less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 24.04(c) for the same period; it being agreed that before presentation of proof of such liquidated damages to any court, commission or tribunal, if the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

Section 24.05. No termination of this Lease pursuant to Section 24.03(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 24.03(b) and 24.04(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 24.06. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 24. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 24.07. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or other sums payable by Tenant to Landlord pursuant to this Article 24, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Tenant and termination.

Section 24.08. Nothing contained in this Article 24 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the

amount of the damages referred to in any of the preceding Sections of this Article 24.

Section 24.09. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.10. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease are not restricted to their technical legal meaning.

Section 24.11. No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof,

and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other than existing or subsequent breach thereof.

Section 24.12. In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law Tenant waives any requirement for the posting of bonds or other security in any such action.

Section 24.13. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.14. Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, paid by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant also shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and paid in any action brought by Landlord against Tenant on account of the provisions hereof, provided Landlord shall prevail at least in part in any such action, and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by

Landlord against Tenant on or under this Lease. All of the sums paid or obligations paid by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

Section 24.15. If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, without limitation, the following requirements:

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

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

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

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

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

(f) that Tenant shall pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of

Tenant's obligations under this Lease, a security deposit as may be required by law or ordered by the court;

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

(h) that Landlord be granted a security interest acceptable to Landlord in property of Tenant, other than property of any of Tenant's officers, directors, shareholders, employees or partners, to secure the performance of Tenant's obligations under this Lease;

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. § 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. § 365(b)(3) (as the same may be amended), shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment of this Lease.

Section 24.16. Nothing contained in this Article 24 shall be deemed to modify the provisions of Sections 10.10, 10.11, 10.12 or 41.08 hereof.

## ARTICLE 25

## NOTICES

Section 25.01. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication shall or may be given to or served upon either of the parties by the other, or by Landlord upon any Mortgagee, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request, consent, approval, or other communication with respect hereto or the Premises, each such notice, demand, request, consent, approval, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) if by Landlord, by delivery or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at c/o Milstein Properties, 1271 Avenue of the Americas, 42nd floor, New York, New York, with copies to Edwin V. Petz, Esq. at such address, and Andrew Berkman, Esq., Brown & Wood, One World Trade Center, New York, New York, or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord as aforesaid and, in the case of any notice required to be given to any Mortgagee pursuant to this Lease, to each such Mortgagee at the address of such Mortgagee set forth in the notice mentioned in the first sentence of Section 10.10(a) hereof; and

(b) if by Tenant, by delivering or by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested, addressed to Landlord at One World Financial Center, New York, New York 10281, Att: President, or to such other address as Landlord may from time to time designate by notice given to Tenant as aforesaid (with a copy, given in the manner provided above, addressed to the attention of Landlord's General Counsel, at the address set forth above or at such other address as Landlord may from time to time designate by notice to Tenant as aforesaid).

Section 25.02. Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or

other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received).

## ARTICLE 26

## CONSTRUCTION AND MAINTENANCE OF THE CIVIC FACILITIES

Section 26.01.

(a) The term "Civic Facilities" shall mean the following improvements in Phase III of the Project Area:

(i) Electrical, gas and telephone mains;[1]

(ii) Water mains;[2]

(iii) Sanitary and storm sewers;[2]

(iv) Fire hydrants and Emergency Response Service ("ERS") conduits and boxes;[2]

(v) Street lighting (conduit, cable, poles, fixtures and connections);[2]

(vi) Streets;[2]

(vii) Curbs;[2]

(viii) Temporary concrete sidewalks;

(ix) Permanent sidewalk, including cobble strip and paving;

(x) Landscaped esplanade, including appurtenances located within the pierhead line of the Project Area and South Cove ("Esplanade");

(xi) Landscaped park ("South Park"); and

(xii) Street trees and public works of art.

Landlord and Tenant acknowledge that those improvements described in subparagraphs (i), (ii), (iii), (v), (vii) and (viii) have been completed, that those improvements described in subparagraph (iv) have been completed, except that the ERS has not been connected and that those improvements described in subparagraph (vi) have been completed except for final topping course.

(b) The term "Tenant's Civic Facilities" shall mean the following portions of the Civic Facilities as more particularly described, referenced or enumerated in Exhibit C hereto and such further specifications as Landlord may supply on or prior to completion of the Construction Documents:

(i) Permanent sidewalk on Battery Place, West Thames Street and 3rd Place adjacent to the Premises, including cobble strip and paving;

(ii) Street trees: Tenant to install fifteen (15) Platanus acerifolia (4"-4-1/2" caliper) trees on Battery Place, four (4) Zelkova serrata (Green Vase) (4"-4-1/2" caliper) trees on West Thames Street, four (4) Acer saccharum (Green Mountain) (4"-4-1/2" caliper) trees on 3rd Place and nine (9) Pyrus calleryana (Redspire) (4"-4-1/2" caliper) trees on West Street; and

(iii) Landscaping and sidewalk along Marginal Street frontage (with cobble strips) including paving and three (3) light poles.

(c) The term "Landlord's Civic Facilities" shall mean all of the Civic Facilities which are not included within the definition of Tenant's Civic Facilities.

Section 26.02. Subject to Unavoidable Delays, (i) Landlord shall commence and diligently complete, or cause to be commenced and substantially completed, in accordance with the development schedule set forth in Exhibit C, the construction or installation of the Esplanade and South Park and (ii) Tenant shall commence and diligently complete on or before the Scheduled Completion Date, in accordance with the Construction Documents and the specifications supplied by Landlord, the construction or installation of Tenant's Civic Facilities, in each case, in a good and workmanlike manner and in compliance with normal New York City construction rules and all applicable Requirements.

Section 26.03.

Landlord and Tenant each shall take good care of Landlord's Civic Facilities or Tenant's Civic Facilities, as the case may be, and shall keep and maintain the same in good and safe order and condition and free of accumulations of dirt, rubbish, snow and ice, and shall promptly and diligently make all repairs (including structural repairs), restorations and replacements necessary to maintain the same in first-class condition (collectively, "Maintenance

Obligations"), except that (i) if Tenant installs temporary concrete sidewalks adjacent to the Premises, then Tenant shall perform Maintenance Obligations in respect of same and (ii) provided that Tenant previously has caused the street trees referred to in Section 26.01(b)(ii) to be installed in accordance with the requirements of this Article 26, Landlord shall perform Maintenance Obligations in respect of said street trees. The obligation of Landlord to perform Maintenance Obligations is expressly conditioned upon Tenant's compliance with Tenant's obligations under Section 26.05. The parties contemplate that, after the completion of construction pursuant to Section 26.02, Maintenance Obligations for the portion of the Civic Facilities marked[1] shall be performed by the appropriate utility companies and for those portions of the Civic Facilities marked[2] shall be performed by New York City. Notwithstanding the initial sentence of this Section 26.03, Maintenance Obligations on the part of Landlord in respect of any portion of the Civic Facilities marked [1 and 2] shall terminate on the date that the appropriate utility company or New York City, as the case may be, shall commence performance of Maintenance Obligations in respect of same.

Section 26.04.

(a) Except as provided in Section 26.04(d), Tenant's sole remedies for a failure by Landlord to substantially complete Landlord's Civic Facilities as provided in Section 26.02 ("Landlord's Construction Obligations") shall be (i) an extension of the Scheduled Completion Date by an amount of time equal to the time, if any, by which Tenant's construction of the Buildings has been delayed as a result of such failure, which delay shall constitute an Unavoidable Delay, and (ii) the right to engage in Self-Help, as defined in Section 26.04(b), and to receive the offset against Base Rent and Civic Facilities Payment provided for in Section 26.04(c) (collectively, the "Approved Remedies"). Landlord's failure to perform Landlord's Construction Obligations shall not give rise to any right or remedy except the Approved Remedies or the remedy provided in Section 26.04(d), or entitle Tenant to any discount from or offset against any Rental except as set forth in Section 26.04(c) or to any other damages, and no delay, non-performance or part performance by Landlord under Section 26.02 shall release Tenant from or modify any of its obligations under this Lease except as provided herein. Tenant's sole remedies against Landlord for a failure by Landlord to perform its Maintenance Obligations in accordance with Section 26.03 shall be the right to engage in Self-Help and to receive the offset against Civic Facilities Payments provided for in Section 26.04(c), and no

such failure shall entitle Tenant to any other right, remedy or damages against Landlord. Notwithstanding the provisions of Section 26.04(b), Tenant shall not be entitled to exercise any of the Approved Remedies at any time that either a Default in the payment of money exists under this Lease or any Event of Default exists under this Lease. No delay, non-performance or part performance by Landlord under Section 26.03 shall release Tenant from any of its obligations under this Lease. The election by Tenant of any remedy specified in this Section 26.04(a) shall not preclude Tenant from pursuing any other available remedy specifically set forth herein.

(b) If (subject to Unavoidable Delays) Landlord fails to perform Landlord's Construction Obligations or thereafter to substantially complete Landlord's Civic Facilities as provided in Section 26.02 with reasonable diligence or if Landlord fails to perform any of Landlord's Maintenance Obligations, Tenant (in its own name and not as agent of Landlord) shall have the right (but shall not be obligated) to undertake Landlord's Construction Obligations or Landlord's Maintenance Obligations, as the case may be ("Self-Help"), in accordance with the provisions of this Section 26.04(b). Prior to engaging in Self-Help, Tenant shall give Landlord notice specifying the nature of Landlord's failure and advising of Tenant's intention to engage in Self-Help. If Landlord shall not have remedied the failure complained of prior to the thirtieth (30th) day after such notice, Tenant shall be entitled to engage in Self-Help, provided that, if such failure shall be of a nature that the same cannot be completely remedied within said thirty (30) day period, Tenant shall not be entitled to engage in Self-Help if Landlord commences to remedy such failure within such period and thereafter diligently and continuously proceeds to remedy same. A copy of any notice given to Landlord pursuant to this Section 26.04(b) shall be sent to all other tenants of Landlord in Phase III whose names and addresses Landlord shall have given Tenant notice, and, in the event Tenant engages in Self-Help, Tenant shall use its reasonable efforts to cooperate with such other tenants and to coordinate any actions taken in furtherance thereof with the actions of any tenant(s) that may elect to engage in Self-Help under the applicable provision(s) of any other lease(s) entered into by Landlord with respect to Phase III. In furtherance of Tenant's exercise of the right of Self-Help set forth in this Section 26.04(b), Landlord, upon reasonable notice, shall permit Tenant and its agents or representatives to inspect Landlord's Civic Facilities at all reasonable times for the purpose of determining whether or not Landlord is in compliance with Landlord's Construction Obligations and Landlord's

Maintenance Obligations. Landlord hereby grants Tenant a right to enter upon Landlord's Civic Facilities in order to perform Self-Help in accordance with this Section 26.04(b). Tenant shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Landlord by reason of Tenant's exercise of the right of Self-Help hereunder, provided Tenant shall use reasonable efforts to minimize damage caused by Tenant in the exercise of its right of Self-Help.

(c) In the event Tenant engages in Self-Help as provided in Section 26.04(b) with respect to Landlord's Construction Obligations, after submission to Landlord of a written statement of Tenant's expenses with supporting documentation, Tenant shall have the right to offset against the next installment(s) of Base Rent and Civic Facilities Payment an amount equal to the reasonable expenses thereby incurred and/or theretofore paid by Tenant together with interest thereon at the Involuntary Rate computed with respect to each payment made by Tenant under this Section 26.04(c) from the date notice is received by Landlord of such payment by Tenant until the date(s) Tenant effectuates the offset(s). In the event Tenant engages in Self-Help as provided in Section 26.04(b) with respect to Landlord's Maintenance Obligations, after submission to Landlord of a written statement of Tenant's expenses with supporting documentation, Tenant shall have the right to offset against the next installment(s) of Civic Facilities Payment an amount equal to the reasonable expenses thereby incurred and/or theretofore paid by Tenant together with interest thereon at the Invountary Rate computed with respect to each payment made by Tenant under this Section 26.04(c) from the date notice is received by Landlord of such payment by Tenant until the date(s) Tenant effectuates the offset(s).

(d) In the event Landlord shall fail to substantially complete Landlord's Civic Facilities by the date set forth in Exhibit C with respect to such portion and such failure shall result from Unavoidable Delay, then, notwithstanding that the Approved Remedies shall be unavailable to Tenant, Tenant shall have the right, at Tenant's sole cost and expense, and without receiving the offset against Base Rent or Civic Facilities Payment provided for in Section 26.04(c), to engage in Self-Help in accordance with Section 26.04(b).

(e) In the event Landlord shall fail to perform Landlord's Construction Obligations or Landlord's Maintenance Obligations, Landlord shall incur no penalty or liability and Tenant shall have no remedies or rights other than as ex-

pressly provided herein, it being agreed by the parties that Landlord's failure to perform Landlord's Construction Obligations or Landlord's Maintenance Obligations shall not be deemed a failure by Landlord to perform a substantial obligation on Landlord's part to be performed under this Lease.

Section 26.05.

(a) As its allocable share of the cost of operating, maintaining, repairing, restoring, replacing and upgrading South Park, the Esplanade, the curbs referred to in Section 26.01(a)(vii) and the street trees referred to in Section 26.01(b)(ii) and, in the event Landlord shall have elected to do so, insuring the Civic Facilities or any part thereof (including, at Landlord's election, the creation of a reasonable reserve fund) (such costs being hereinafter referred to as "Operating Costs"), Tenant, for each Lease Year or portion thereof commencing on the date on which a temporary Certificate of Occupancy shall be issued for any dwelling unit in the Buildings (the "Initial Occupancy Date") and ending on the last day of the Term, shall pay to Landlord an annual sum (the "Civic Facilities Payment") determined as follows:

(i) for the period commencing on the Initial Occupancy Date and ending on the last day of the Lease Year in which the Initial Occupancy Date occurs, an amount equal to the product obtained by multiplying the sum computed under the succeeding clause (ii) by a fraction the numerator of which shall be the number of days between the Initial Occupancy Date and the last day of the Lease Year in which the Initial Occupancy Date occurs and the denominator of which shall be three hundred sixty-five (365);

(ii) for each of the next two Lease Years an amount equal to (A) the product obtained by multiplying the number of residential units in the Buildings by One Hundred Fifty Dollars ($150) and (B) the product derived by multiplying $.20 by the gross square feet of non-residential floor area in the Buildings;

(iii) for each of the next three Lease Years, an amount equal to (A) the product obtained by multiplying the number of residential units in the Buildings by Two Hundred Dollars ($200) and (B) the product derived by multiplying $.25 by the gross

square feet of non-residential floor area in the Buildings;

(iv) for the next succeeding Lease Year and for each Lease Year thereafter, with respect to South Park, said curbs and said street trees, an amount equal to the product of (A) the South Park Budget multiplied by (B) .1015 (said figure being computed by dividing the number of square feet of floor area in the Buildings by the total number of square feet of floor area in all buildings in Phase III); and

(v) for the period referred to in the preceding clause (iv), with respect to the Esplanade an amount equal to the product of (A) the Esplanade Budget multiplied by (B) .1015 (said figure being computed as set forth in the preceding clause (iv)).

Notwithstanding the provisions of the foregoing clauses (iv) and (v), the amount of Tenant's Civic Facilities Payment for any Lease Year referred to therein shall not be greater than one hundred twenty-five percent (125%) of Tenant's Civic Facilities Payment for the prior Lease Year.

(b) For each Lease Year commencing with the Lease Year referred to in Section 26.05(a)(iv) (each such Lease Year or portion thereof being hereinafter referred to as a "Payment Period") Landlord shall submit to Tenant (i) an estimate of the Operating Costs for South Park, the curbs referred to in Section 26.01(a)(vii) and the street trees referred to in Section 26.01(b)(ii) for such Payment Period (the "South Park Budget") and (ii) an estimate of the Operating Costs for the Esplanade for such Payment Period (the "Esplanade Budget"; collectively, the "Civic Facilities Budget"). The South Park Budget shall be an amount computed by multiplying (A) the estimated Operating Costs of all parks (as such term is reasonably defined by Landlord) in the Project Area other than parks situated in the area described in the final sentence of this Section 26.05(b) ("Residential Parks") and all curbs and street trees installed in the Project Area except in the area described as aforesaid by (B) a fraction the numerator of which shall be the number of square feet in South Park and the denominator of which shall be the total number of square feet in all Residential Parks. The Esplanade Budget shall be an amount computed by multiplying (A) the estimated Operating Costs of the entire esplanade in the Project Area other than such portion of the esplanade as extends along the North Cove from (i) the point where the

northern line of Liberty Street as extended intersects the North Cove to (ii) the point where the extension of the western line of (proposed) North End Avenue intersects the North Cove (the "Residential Esplanade") by (B) a fraction the numerator of which is the number of linear feet of the Esplanade for Phase III and the denominator of which is the total number of linear feet of the Residential Esplanade. Tenant shall pay to Landlord the Civic Facilities Payment due in respect of each such Payment Period in equal monthly installments payable in advance on the first day of each month that occurs within such Payment Period. As soon as shall be practicable after the end of such Payment Period, Landlord shall submit to Tenant a statement setting forth the Operating Costs incurred by Landlord during such Payment Period, together with supporting documentation. Within ten (10) days of the date any such statement and documentation are submitted to Tenant, Tenant shall pay the amount, if any, by which Tenant's allocable share of Operating Costs for the applicable Payment Period exceeds the Civic Facilities Payment made by Tenant during such Payment Period. In the event the Civic Facilities Payment made by Tenant during any Payment Period exceeds Tenant's allocable share of Operating Costs, Tenant shall have the right to offset against the next monthly installments of Civic Facilities Payment the amount of such excess. The area referred to in the second sentence of this Section 26.05(b) is bounded on the south by the northern line of Liberty Street extended west to the North Cove, on the west by proceeding from said line as extended along North Cove to the extension of the western line of (proposed) North End Avenue and then along said western line as extended to the southern line of (proposed) Vesey Street, on the north by proceeding along said southern line to the western line of Marginal Street, Wharf or Place, and on the east by the western line of Marginal Street, Wharf or Place between the southern line of (proposed) Vesey Street and the northern line of Liberty Street, all as shown on survey L.B.-45-BZ by Benjamin D. Goldberg (Earl B. Lovell-S.P. Belcher, Inc.), prepared February 23, 1983, last amended May 27, 1983.

(c) Notwithstanding any other provision of this Article 26, in the event Landlord's Civic Facilities or any portion thereof shall be destroyed or damaged by fire or other casualty or shall have been taken by the exercise of the right of condemnation or eminent domain, if the reasonable cost of restoring or replacing any portion of Landlord's Civic Facilities (including, without limitation, construction costs, bidding costs, attorneys', architects', engineers' and other professional fees and disbursements, and supervisory fees and disbursements) shall exceed the aggregate of the

monies available to Landlord therefor from the reserve fund created pursuant to Section 26.05(a) and the net proceeds, if any, of insurance or condemnation available to Landlord for such purpose, Tenant shall pay to Landlord ten and fifteen one hundredths percent (10.15%) of such excess. Landlord shall submit to Tenant a statement setting forth (i) the cost of such restoration or replacement (together with supporting documentation) and (ii) on an itemized basis, the monies available to pay such cost. Within thirty (30) days of the date any such statement and documentation are submitted to Tenant, Tenant shall make the payment provided for above. Notwithstanding the foregoing, in the event Tenant's estate in the Premises shall be submitted to either a cooperative or condominium form of ownership, such payment shall be made within forty-five (45) days of the date any such statement and documentation are submitted to Tenant. All monies payable to Landlord under this Section 26.05(c) shall constitute Rental under this Lease.

(d) Subject to the applicable covenants of Landlord's General Bond Resolution and Series Resolution, both adopted May 5, 1972, Landlord shall have the right to transfer to a trust or other entity the responsibility of performing Landlord's Maintenance Obligations and the right to receive installments of the Civic Facilities Payment directly from Tenant, and if Landlord shall effect such a transfer, Tenant shall have the right to require such trust or other entity to perform the responsibilities and exercise the rights so transferred notwithstanding any transfer of Landlord's interest in the parcels, or in the leases of the parcels, within Phase III. Upon such a transfer by Landlord and provided such trust or other entity, in writing, assumes and agrees to perform Landlord's Maintenance Obligations for the benefit of all tenants of parcels within Phase III, from and after the date of such assumption Landlord shall have no further liability with respect hereto. Prior to effecting such transfer, Landlord shall (i) furnish Tenant with reasonable assurances of the transferee's ability to perform Landlord's Maintenance Obligations and to recover the cost of same and of Tenant's right to enforce the obligations of other tenants within Phase III to make payments in respect of Landlord's Maintenance Obligations in accordance with the provisions of their respective leases, and (ii) consult with Tenant with respect to the composition of such trust or other entity. Landlord shall give Tenant notice of the consummation of any such transfer. Notwithstanding such transfer, the Civic Facilities Payment shall, at all times, constitute Rental hereunder. Thereafter, for each Lease Year, such trust or other entity shall submit to Tenant the Civic Facilities Budget and other information required by

Section 26.05(b) and shall give notice thereof to Tenant in the same manner as would otherwise be required of Landlord. Notwithstanding any transfer of Landlord's Maintenance Obligations, Tenant shall retain the rights provided in this Article 26 with respect to Self-Help and offsets against Civic Facilities Payments.

(e) The leases of all parcels within Phase III shall require the tenants thereunder to pay their allocable share of the costs referred to in this Section 26.05, which shall be computed in the same manner as Tenant's share.

## ARTICLE 27

## STREETS

Landlord represents and warrants that Rector Place, South End Avenue, Albany Street, Liberty Street and West Thames Street have been dedicated to New York City.

## ARTICLE 28

## STREET WIDENING

If at any time during the Term any proceedings are instituted or orders made by any Governmental Authority (other than Landlord acting solely in its capacity as Landlord and not as a Governmental Authority) for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises, or in the sidewalks, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), gutters, curbs or appurtenances, Tenant, with reasonable diligence (subject to Unavoidable Delays) shall comply with such requirements, and on Tenant's failure to do so, Landlord may comply with the same in accordance with the provisions of Article 21. Tenant shall be permitted to contest in good faith any proceeding or order for street widening instituted or made by any Governmental Authority, provided that during the pendency of such contest Tenant deposits with Landlord security in amount and form reasonably satisfactory to Landlord for the performance of the work required in the event that Tenant's contest should fail. In no event shall Tenant permit Landlord to become liable for any civil or criminal liability or penalty as a result of Tenant's failure to comply with reasonable diligence (subject to Unavoidable Delays) with any of the fore-

going orders. Any widening or other enlargement of any such street and the award or damages in respect thereto shall be deemed a partial condemnation and be subject to the provisions of Article 9.

## ARTICLE 29

## SUBORDINATION; ATTORNMENT

Section 29.01. Except as otherwise provided in Article 42, Landlord's interest in this Lease, as this Lease may be modified, amended or supplemented, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

Section 29.02. If by reason of (a) a default under the Master Lease, or (b) a termination of the Master Lease pursuant to the terms of the Settlement Agreement, such Master Lease and the leasehold estate of Landlord in the Premises demised hereby are terminated, Tenant will attorn to the then holder of the reversionary interest in the Premises demised by this Lease 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 or of the Master Landlord any further instrument which may be reasonably necessary or appropriate to evidence such attornment. Tenant 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 Premises in the event any proceeding is brought by the Master Landlord to terminate the same, and agrees that this Lease shall not be affected in any way whatsoever by any such proceeding.

## ARTICLE 30

## EXCAVATIONS AND SHORING

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

(a) shall afford to Landlord or, at Landlord's option, to the person or persons causing or authorized to cause such excavation the right to enter upon the Premises in a reasonable manner for the purpose of doing such work as may

be necessary, without expense to Tenant, to preserve any of the walls or structures of the Buildings from injury or damage and to support the same by proper foundations, provided that (i) such work shall be done promptly, in a good and workmanlike manner and subject to the Master Development Plan, Design Guidelines and all applicable Requirements, (ii) Tenant shall have an opportunity to have its representatives present during all such work and (iii) Tenant shall be indemnified by Landlord in the event Landlord performs such excavation, or such other person performing such excavation, as the case may be, against any injury or damage to the Buildings or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder; or

(b) shall do or cause to be done all such work, at Landlord's or such other person's expense, as may be necessary to preserve any of the walls or structures of the Buildings from injury or damage and to support the same by proper foundations, provided that Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder.

## ARTICLE 31

## CERTIFICATES BY LANDLORD AND TENANT

Section 31.01. At any time and from time to time upon not less than ten (10) days notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge.

Section 31.02. At any time and from time to time upon not less than ten (10) days notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement certifying that this Lease is unmodified and in full force and effect (or if there

have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Default of which Landlord may have knowledge.

Section 31.03. At the request of Tenant, Landlord shall request a certificate in respect of the Master Lease from Master Landlord, in accordance with Section 20.01 of the Master Lease. If Master Landlord shall fail to deliver such a certificate, then, in lieu thereof, Landlord shall execute, acknowledge and deliver to Tenant a statement certifying that Landlord has not executed and delivered to Master Landlord any instrument modifying the Master Lease (or if Landlord has executed such an instrument, stating the modifications) and that, to the best of Landlord's knowledge, the Master Lease is then in full force and effect.

## ARTICLE 32

## CONSENTS AND APPROVALS

Section 32.01. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 32.02. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is required, then unless expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party within fifteen (15) Business Days or such other period as expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the

event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 32.03. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval shall, in addition, not be unreasonably delayed.

Section 32.04. Except as otherwise specifically provided in this Lease, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

## ARTICLE 33

## SURRENDER AT END OF TERM

Section 33.01. On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by or consented to by Landlord or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date, and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 33.02. On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for each of the

Buildings, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Buildings, together with a duly executed assignment thereof to Landlord, all financial reports, books and records required by Article 38 hereof and any and all other documents of every kind and nature whatsoever relating to the Premises.

Section 33.03. Any personal property of Tenant or of any Subtenant, Tenant-Stockholder, Unit Owner or subtenant of a Tenant-Stockholder or Unit Owner which shall remain on the Premises for ten (10) days after the termination of this Lease and after the removal of Tenant or such Subtenant, Tenant-Stockholder, Unit Owner or subtenant of a Tenant-Stockholder or Unit Owner from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant, Tenant-Stockholder, Unit Owner or subtenant of a Tenant-Stockholder or Unit Owner and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant, Tenant-Stockholder, Unit Owner or subtenant of a Tenant-Stockholder or Unit Owner.

Section 33.04. The provisions of this Article 33 shall survive any termination of this Lease.

## ARTICLE 34

## ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

## ARTICLE 35

## QUIET ENJOYMENT

Landlord covenants that Tenant shall and may (subject, however, to the exceptions, reservations, terms and

conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except those encumbrances, liens or defects of title, created or suffered by Tenant and the Title Matters.

## ARTICLE 36

## ARBITRATION AND APPRAISAL

Section 36.01. In such cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within fifteen (15) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of the; shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Section 36.01, shall be in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. The expenses of arbitration shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and to do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder

parties do not so agree, then either party, on behalf of both, may apply to the Presiding Justice of the highest court in the county in which the Premise are located, for the appointment of such third appraiser, and the other party shall not raise any question as to the court's full power and jurisdiction to entertain the application and make the appointment.

(d) Any appraiser selected or appointed pursuant to this Section shall be a member of the American Institute of Real Estate Appraisers (or a successor organization), shall be an appraiser, and shall have been doing business as such in the county in which the Premises are located for a period of at least fifteen (15) years before the date of this appointment. All appraisers chosen or appointed pursuant to this Section shall be sworn fairly and impartially to perform their duties as such appraiser. In the event of the failure, refusal or inability of any appraiser to act, his successor shall be appointed within ten (10) days by the party who originally appointed him or in the event such party shall fail so to appoint such successor, or in case of the third appraiser, his successor shall be appointed as hereinabove provided.

(e) Each party shall pay the fees and expenses of its respective appraiser and both shall share the fees and expenses of the third appraiser, if any. Each party shall be responsible for the fees and expense of its own attorney and other representatives.

## ARTICLE 37

## INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid 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 held 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 38

## FINANCIAL REPORTS

Section 38.01. Tenant, from and after the date upon which any portion of the Premises is subleased or occupied or rents or other charges are received by Tenant for the use or occupancy thereof, shall furnish to Landlord the following:

(a) if the Premises shall be used for rental purposes, as soon as practicable after the end of each fiscal year of Tenant, and in any event within one hundred and twenty (120) days thereafter, Tenant shall furnish to Landlord financial statements of operations of the Premises, for such year, 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 a Certified Public Accountant approved by Landlord, which approval shall not be unreasonably withheld, which report and opinion shall be prepared in accordance with generally accepted accounting principles consistently applied; and

(b) if Tenant's leasehold estate in the Premises shall have been submitted to either a cooperative or condominium form of ownership, as soon as practicable after the end of each fiscal year of such cooperative or condominium and, in any event, within one hundred and fifty (150) days after the end of such fiscal year, the annual report of the Apartment Corporation or condominium which is submitted by the Apartment Corporation or Board of Managers to Tenant-Stockholders or Unit Owners, as the case may be.

Section 38.02. If at any time Tenant shall furnish to any Mortgagee operating statements or financial reports in addition to those required to be furnished by Tenant to Landlord pursuant to Section 38.01, Tenant promptly shall furnish to Landlord copies of all such additional operating statements and financial reports. At the time at which Tenant furnishes any such operating statements or reports Tenant may inform Landlord of its belief that the public disclosure of information contained therein or any part thereof would cause substantial injury to the competitive position of Tenant's enterprise and request that to the extent permitted by law Landlord attempt to avoid such disclosure. In the event Tenant makes such request, Landlord shall use its best efforts to avoid such disclosure (but shall incur no liability to Tenant if Landlord reasonably believes it is complying

with any provision of applicable law requiring such disclosure).

Section 38.03. Tenant shall keep and maintain at all times full and correct records and books of account of the operations of the Premises in accordance with such generally accepted accounting standards and otherwise in accordance with any applicable provisions of each Mortgage and accurately shall record and preserve for a period of six (6) years the records of its operations upon the Premises. Within fifteen (15) days after request by Landlord, Tenant shall make said records and books of account available from time to time for inspection by Landlord and Landlord's designee during reasonable business hours at a location designated by Tenant in New York City. At any time at which Tenant shall make said records and books of account available for inspection, it may inform Landlord of its belief that the public disclosure of the information contained therein or any part thereof would cause substantial injury to the competitive position of Tenant's enterprise and request that to the extent permitted by law Landlord attempt to avoid such disclosure. In the event Tenant makes such request, Landlord shall use its best efforts to avoid such disclosure (but shall incur no liability to Tenant if Landlord reasonably believes it is complying with any provision of applicable law requiring such disclosure).

## ARTICLE 39

## RECORDING OF MEMORANDUM

Either Landlord or Tenant may record this Lease or any amendment or modification of this Lease. Each shall, upon the request of the other, join in the execution of a memorandum of this Lease or a memorandum of any amendment or modification of this Lease in proper form for recordation.

## ARTICLE 40

## NO DISCRIMINATION

Section 40.01. Tenant, in the sale, transfer or assignment of its interest under this Lease, or in it use, operation or occupancy of the Premises and employment and conditions of employment in connection therewith, or in the subletting of the Premises or any part thereof, or in connection with the erection, maintenance, repair, Restoration, alteration or replacement of, or addition to, any Buildings

or Tenant's Civic Facilities shall (a) not discriminate nor permit discrimination against any person by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and (b) comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect and the provisions of the Master Lease prohibiting such discrimination or pertaining to equal employment opportunities.

Section 40.02. Tenant shall be bound by and shall include the following paragraphs (a) through (e) of this Section 40.02 in all Construction Agreements, service and management agreements and agreements for the purchase of goods and services and any other agreements relating to the operation of the Premises, in such manner that these provisions shall be binding upon the parties with whom such agreements are entered into (any party being bound by such provisions shall be referred to in this Section as "Contractor"):

(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, shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect and the provisions of the Master Lease prohibiting such discrimination or pertaining to equal employment opportunities and shall undertake programs of affirmative action to ensure that employees and applicants for employment are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not 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) 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 will not discriminate because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and that such agency, union or representative will 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 the Civil Rights Law of the State of New York and Sections 291-299 of the Executive Law of the State of New York, shall upon reasonable notice furnish all information and reports deemed reasonably necessary by Landlord and shall permit access to its relevant books, records and accounts for the purpose of monitoring compliance with the Civil Rights Law and such sections of the Executive Law.

(e) Contractor shall include in all agreements with subcontractors the foregoing provisions of Sections (a) through (d) in such a manner that said provisions shall be binding upon the subcontractor and enforceable by Contractor, Tenant and Landlord. Contractor shall take such action as may be necessary to enforce the foregoing provisions. Contractor shall promptly notify Tenant and Landlord of any litigation commenced by or against it arising out of the application or enforcement of these provisions, and Tenant and Landlord may intervene in any such litigation.

Section 40.03. Tenant has reviewed and participated in the development of the Affirmative Action Program, a copy of which is annexed hereto as Exhibit D. Tenant shall, and shall cause each of its agents, contractors and subcontractors to, promptly and diligently carry out its obligations under such Program in accordance with the terms thereof. If Tenant fails to comply with its obligations under this Section 40.03 or under Exhibit D, Landlord's sole remedies shall be as provided in Exhibit D, provided that any amounts payable by Tenant to Landlord under Section 9 of Exhibit D shall constitute Rental hereunder.

Section 40.04. Tenant has reviewed and participated in the development of the Affirmative Fair Marketing Program, a copy of which is annexed hereto as Exhibit E, and Tenant shall, and shall cause each of its agents to, comply with all of the terms and provisions of such Program. If Tenant fails to comply with its obligations under this

Section 40.04 or under Exhibit E, Landlord's sole remedies shall be as provided in Exhibit E.

## ARTICLE 41

## MISCELLANEOUS

Section 41.01. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 41.02. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 41.03. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 41.04. Depository may pay to itself out of the monies held by Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay Depository any additional charges for such services.

Section 41.05. If more than one entity is named as or becomes Tenant hereunder, Landlord may require the signatures of all such entities in connection with any notice to be given or action to be taken by Tenant hereunder except to the extent that any such entity shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation. Subject to Section 41.08, each entity named as Tenant shall be fully liable for all of Tenant's obligations hereunder. Any notice by Landlord to any entity named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one entity to receive copies of all notices, Landlord agrees to send copies of all notices to that entity.

Section 41.06. The liability of Landlord or of any Person who has at any time acted as Landlord hereunder for

damages or otherwise shall be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, directors, officers, employees, agents or servants or either shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

Section 41.07. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 41.08. Notwithstanding anything contained in this Lease, including, without limitation, Article 24 to the contrary, the liability of Tenant hereunder for damages or otherwise shall be limited to Tenant's interest in the Premises, including, without limitation, any then present or future rents or profits, the Letters of Credit or proceeds thereof, any funds held by Depository pursuant to any of the provisions of this Lease, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof (it being agreed that, for purposes of this Section 41.08, the interest of Tenant in such insurance proceeds or condemnation awards shall pertain only to such portion or portions thereof as are paid to and retained by Tenant rather than any Mortgagee and as shall not theretofore have been expended by Tenant for Restoration), and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables arising out of this Lease or appurtenant to the Premises. Neither Tenant nor any of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any of the directors, officers,

partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies hereunder. The exculpation of personal liability set forth in this Section 41.08 is intended to be absolute, unconditional and without exception of any kind.

Section 41.09. Tenant shall store all refuse from the Premises off the streets in an enclosed area on the Premises, and in a manner reasonably satisfactory to Landlord and in accordance with the requirements of municipal and/or private sanitation services serving the Premises.

Section 41.10. Each of the parties represents to the other that it has not dealt with any broker, finder or like entity in connection with this lease transaction. If any claim is made by any Person who shall claim to have acted or dealt with Tenant or Landlord in connection with this transaction, Tenant or Landlord as the case may be, will pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party hereto against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses including, without limitation, reasonable attorneys' fees and disbursements, incurred by such other party in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 41.11. This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 41.12. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 41.13. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 41.14. All references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 41.15. All plans and drawings required to be furnished by Tenant to Landlord under this Lease, including, without limitation, the Schematics, the Design Development Plans and the Construction Documents, and any and all other plans, drawings, specifications or models prepared in connection with construction at the Premises, any Restoration or Capital Improvement, shall become the sole and absolute property of Landlord upon the Expiration Date or any earlier termination of this Lease. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 41.15 shall survive the Expiration Date.

Section 41.16. All references in this Lease to "licensed professional engineer", "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 41.17. If Battery Park City Authority or any successor to its interest hereunder ceases to have any interest in the Premises as lessee under the Master Lease or there is at any time or from time to time any sale or sales or disposition or dispositions or transfer or transfers of Landlord's interest in the Premises as lessee under the Master Lease, the seller or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such sale or transfer relative to the interest sold or transferred, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the lessee's interest in the Premises under the Master Lease, including, without limitation, the purchaser or transferee in any such sale, disposition or transfer, and any fee owner of the Premises upon termination of the Master Lease, that, subject to the provisions of Section 41.06, such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder accruing from and after the date of such acquisition, sale or transfer.

Section 41.18. If the Tenant named herein or any successor to its interest hereunder ceases to have any interest in the Premises under this Lease or there is at any time or from time to time any valid sale or sales or disposition or dispositions or transfer or transfers of the Tenant's or any successor's entire interest in the Premises in accordance with the provisions of Article 10, the Tenant named herein or

any such successor, as the case may be, shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed on or after the date of such sale or transfer, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Tenant's interest in the Premises under this Lease, including, without limitation, the purchaser or transferee in any such sale, disposition or transfer, that, subject to the provisions of Section 41.08, such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Tenant hereunder to be performed from and after the date of such acquisition, sale or transfer.

Section 41.19. Landlord shall not enter into or cause there to be entered into any amendment or supplement to the Master Lease, Master Development Plan or Design Guidelines, which (a) increases or materially alters or otherwise materially affects Tenant's rights or obligations under this Lease, (b) limits the permitted uses of the Premises or the Civic Facilities, (c) limits Tenant's rights under this Lease to dispose of or assign its interest in, the Premises or (d) decreases or alters the rights of a Mortgagee, unless the same is consented to by Tenant (or, in the case of (d), by such Mortgagee) or is made subject and subordinate to this Lease and to the rights of such Mortgagee. In the event Landlord shall enter into or cause to be entered into an amendment or supplement to the Master Lease, Master Development Plan or Design Guidelines which is not in conformity with this Section 41.19, Tenant shall not be obligated to comply with the provisions of such amendment or supplement which do not so conform and the same shall have no force or effect with respect to Tenant or any Mortgagee. Notwithstanding anything herein contained to the contrary, Tenant shall have no right to approve any amendment, modification or supplement to the Master Lease, Master Development Plan or Design Guidelines which does not affect the Premises.

Section 41.20. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 41.21. To the extent permitted by law, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Buildings. Landlord, from time to time, shall execute and

deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 41.21, and Tenant shall pay Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 41.22. Whenever Landlord shall have the right to approve the architect, engineer or lawyer to be employed by Tenant, any architect, engineer or lawyer so approved by Landlord at any time during the Term shall be deemed to be acceptable to Landlord for employment by Tenant at any time thereafter, unless Landlord shall have good cause for refusing to allow the continued employment of such consultant. Whenever Tenant is required to obtain Landlord's approval of an architect, engineer or lawyer, Tenant shall notify Landlord if it intends to employ an architect, engineer or lawyer previously approved. In the event that Landlord shall refuse to approve the continued employment of such consultant, it shall so notify Tenant, specifying the reason therefor.

Section 41.23. Tenant shall have the right to use the name Battery Park City in any advertising and promotional materials in connection with the leasing of the Buildings or the sale of Cooperative Apartments or Units.

Section 41.24. In connection with any payment to be made to Landlord pursuant to Section 11.05(c), Landlord, upon request by Tenant and at no cost or expense to Landlord, shall cooperate with any effort by Tenant to establish that, by reason of ownership of the Buildings by Landlord, no sales or compensating use tax is payable in respect of materials incorporated (or to be incorporated) in the Buildings. Tenant shall promptly reimburse Landlord for all costs or expenses which Landlord may sustain or incur while acting pursuant to this Section 41.24.

Section 41.25. Tenant promptly shall apply to the appropriate authorities to obtain a separate tax lot designation for the Premises and the tax assessment for such tax lot shall be the basis for calculating PILOT payments under Section 3.02 hereof and Landlord shall cooperate with Tenant in connection therewith. If Tenant shall not be able to obtain a separate tax lot designation, Landlord and Tenant shall cooperate to obtain annually a separate, undivided tax assessment and such assessment shall be the basis for calculating PILOT payments under Section 3.02 hereof.

## ARTICLE 42

## CONDOMINIUM OWNERSHIP

Section 42.01. Definitions. As used in this Lease, the following terms shall have the following meanings:

"Approved Conversion" shall mean, if the Premises are then used for rental purposes, the submission by Tenant of its leasehold estate in the Premises to the Condominium Act (hereinafter defined) at any time subsequent to Completion of the Buildings.

"Board of Managers" shall mean the board of managers established pursuant to the By-Laws (hereinafter defined).

"Board of Managers Failure to Act" shall have the meaning provided in Section 42.10.

"By-Laws" shall mean the by-laws annexed to the Declaration (hereinafter defined) together with all amendments, modifications and supplements thereto.

"Commercial Unit" shall mean any Unit (hereinafter defined) not used for residential purposes.

"Common Charges" shall mean Rental and assessments payable to the Board of Managers by the Unit Owners (hereinafter defined) for the purpose of meeting the costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of and any alteration, addition or improvement to the common elements.

"Condominium Act" shall mean Article 9-B of the Real Property Law of the State of New York or any statute in lieu thereof.

"Condominium Depository" shall have the meaning provided in Section 42.05(c).

"Condominium Documents" shall mean the Condominium Plan (hereinafter defined), Declaration and By-Laws.

"Condominium Letter of Credit" shall have the meaning provided in Section 42.05(a).

"Condominium Plan" shall mean the plan to submit Tenant's leasehold estate in the Premises to condominium

ownership, together with all amendments, modifications and supplements thereto.

"Declaration" shall mean the instrument by which Tenant's and/or Landlord's respective leasehold estates in the Premises are submitted to the Condominium Act, together with all amendments, modifications and supplements thereto.

"Default Certificate" shall have the meaning provided in Section 42.07(b).

"Defaulting Unit Owner" shall have the meaning provided in Section 42.07(b).

"Deficiency Amount" shall have the meaning provided in Section 42.07(c).

"Initial Unit Transfer" shall mean the closing of the first transfer of a Unit to a Qualified Unit Purchaser (hereinafter defined) pursuant to the Condominium Plan and in accordance with this Article 42.

"Initial Unit Transfers" shall mean (i) other than if in connection with an Approved Conversion, the first closings of the transfers of thirty-five percent (35%) of the Units to Qualified Unit Purchasers pursuant to the Condominium Plan and in accordance with this Article 42 and (ii) if in connection with an Approved Conversion, the first closings of the transfers of fifteen percent (15%) of the Units to Qualified Unit Purchasers pursuant to the Condominium Plan and in accordance with this Article 42.

"Landlord's Lien" shall have the meaning provided in Section 42.09(c).

"Letter of Credit Amount" shall mean (i) if other than in connection with an Approved Conversion, $1,135,890, and (ii) if in connection with an Approved Conversion, the product derived by multiplying the Base Rent and PILOT for the month immediately preceding the date of the Initial Unit Transfer by twelve (12).

"Liabilities" shall have the meaning provided in Section 42.12(g).

"Maximum Fund Requirement" shall mean $378,630.

"Partial Rental Payment" shall have the meaning provided in Section 42.07(c).

"Permitted Reduction" shall have the meaning provided in Section 42.05(d).

"Proportionate Rent" shall mean each Unit's proportionate share of Rental under this Lease in accordance with each Unit's common interest as set forth in the Declaration.

"Purchase Option" shall mean that certain agreement dated as of June 6, 1980 by and between Urban Development Corporation, BPC Development Corporation, Landlord and New York City and recorded in the Office of the City Register, New York County on June 11, 1980 in Reel 527 at page 153, as amended by Amendment to Option to Purchase dated as of August 15, 1986 between Landlord and New York City and recorded on October 22, 1986 in said Register's Office in Reel 1133 at page 582.

"Qualified Purchase Agreement" shall mean (i) a purchase agreement for the purchase of a Unit made by any Person who is not a Related Entity (hereinafter defined) substantially in the form set forth in the Condominium Plan, providing for a purchase price determined in accordance with the terms of the Condominium Plan and under which such purchase agreement such Person made all down payments required thereunder, and (ii) with respect to any Person who is a Related Entity, a purchase agreement for the purchase of a Unit made by any Person who is a Related Entity substantially in the form set forth in the Condominium Plan, providing for a purchase price determined in accordance with the terms of the Condominium Plan, under which such purchase agreement such Person made all down payments required thereunder and provided further (x) such Related Entity shall not pay or have paid for any portion of the purchase price with funds advanced by or contributed or borrowed from Sponsor or any other Related Entity or (y) Sponsor or any other Related Entity shall not have guaranteed any portion of the purchase price for such Related Entity.

"Qualified Unit Purchaser" shall mean the purchaser under a Qualified Purchase Agreement.

"Recognized Unit Mortgage" shall have the meaning provided in Section 42.11(b).

"Recognized Unit Mortgagee" shall have the meaning provided in Section 42.11(b).

"Related Entity" shall mean (i) any Person that has, directly or indirectly, a five percent (5%) or greater ownership interest in Sponsor, or any Person in which Spon-

sor, or any general partner of Sponsor, or any limited partner of Sponsor with a five percent (5%) or greater interest in Sponsor, or any stockholder with a five percent (5%) or greater interest in any Person that is either (x) a general partner in Sponsor or (y) a limited partner of Sponsor with a five percent (5%) or greater interest in Sponsor, has an ownership interest which, in the aggregate, is greater than five percent (5%) of such Person, and (ii) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is a Related Entity, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood of such individual or his spouse, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing.

"Security Fund" shall have the meaning provided in Section 42.05(b).

"Sponsor" shall have the meaning set forth in the Condominium Plan.

"Unit" shall have the meaning set forth in the Condominium Plan.

"Unit Assignment Agreement" shall mean the instrument by which a Unit Owner acquires its interest in a Unit and a proportionate undivided interest in the common elements appertaining to such Unit by partial assignment from Sponsor.

"Unit Mortgage" shall have the meaning provided in Section 42.11(a).

"Unit Mortgagee" shall have the meaning provided in Section 42.11(a).

"Unit Mortgagee Representative" shall have the meaning provided in Section 42.11(e).

"Unit Owner(s)" shall have the meaning set forth in the Condominium Plan.

"Unit Owner Action" shall have the meaning provided in Section 42.10(b).

"Unit Owner Default" shall have the meaning provided in Section 42.07(b).

"Unit Owner Monetary Default" shall have the meaning provided in Section 42.07(b).

"Unit Owner Non-Monetary Default" shall have the meaning provided in Section 42.07(b).

Section 42.02. Approval of Condominium Documents by Landlord.

(a) Tenant shall submit the Condominium Documents to Landlord for Landlord's approval. Landlord's approval shall be limited solely to determining, in Landlord's reasonable opinion, whether or not the Condominium Documents conform to the provisions of this Lease. If Landlord shall determine that the Condominium Documents do so conform, Landlord shall notify Tenant to that effect within thirty (30) Business Days after Landlord's receipt of the Condominium Documents. If Landlord shall determine that the Condominium Documents do not so conform, Landlord shall so notify Tenant within such thirty (30) Business Day period, specifying, in reasonable detail, those respects in which the Condominium Documents do not so conform and Tenant shall revise the Condominium Documents to so conform and resubmit the Condominium Documents to Landlord. Each review by Landlord of Tenant's revisions to the Condominium Documents shall be carried out within ten (10) Business Days of the date of submission of the revised Condominium Documents. If Landlord shall not have notified Tenant of its determination within the periods herein set forth, Landlord shall be deemed to have determined that the Condominium Documents or revised Condominium Documents, as the case may be, do so conform.

(b) If Tenant shall desire to amend, modify or supplement any Condominium Document previously approved by Landlord, Tenant shall, except as otherwise provided herein, submit such proposed amendment, modification or supplement to Landlord for Landlord's approval, which approval shall be limited solely to determining whether or not such amendment, modification or supplement conforms to the provisions of this Lease. Each review by Landlord shall be performed in the manner provided in Section 42.02(a) within ten (10) Business Days after submission to Landlord. Notwithstanding the foregoing, Tenant shall have no obligation to submit to Landlord and Landlord shall have no right to approve, any proposed amendment, modification or supplement (i) to change the price (including without limitation the terms of sale and manner of payment of the purchase price) or layout of, or number of rooms in, any Unit, (ii) to change the size and/or number of Units by subdividing one or more Units into separate Units, combining separate Units into one or more Units, or other-

wise, (iii) to reapportion among the Units affected by any such change, subdivision, combination or alteration their appurtenant interests in the common elements and (iv) to any of the following provisions in the Condominium Plan: budget, composition and identity of the officers of the Board of Managers, closing costs, fees and procedures for purchasing a Unit, tax benefits, permitted occupancy of Units, policies relating to the offering, financing of Units, non-residential leases and agreements, description of Premises, location and area information, information set forth on price schedules, utility cost schedules, control by Sponsor and working capital and other funds (excluding the Security Fund).

(c) Landlord shall approve any reasonable amendment to this Article 42 as may be requested by the New York State Department of Law. In the event there is a dispute as to reasonableness of such request by the New York State Department of Law, Landlord shall appoint a representative to meet with Tenant's counsel and a representative of the New York State Department of Law to resolve the dispute. In no event however shall Landlord be obligated to approve any amendment modifying Section 42.02(d) or (e) hereof.

(d) The responsibility to assure that the Condominium Documents comply with all applicable Requirements of Governmental Authorities, including, without limitation, the rules and regulations of the New York State Department of Law, shall be Tenant's; Landlord's determination that the Condominium Documents conform to the provisions of this Lease shall not be, nor shall it be construed to be or relied upon by Tenant, any Unit Owner, any Unit Mortgagee or any other Person as a determination that the Condominium Documents comply with all applicable Requirements of Governmental Authorities, including without limitation, the rules and regulations of the New York State Department of Law.

(e) Landlord's determination that the Condominium Documents conform to the provisions of this Lease shall not be, nor shall it be construed to be or relied upon by Tenant, any Unit Owner, any Unit Mortgagee or any other Person as a determination that Landlord has approved the offering of Units pursuant to the Condominium Plan.

Section 42.03. Conditions to Recording Declaration and Closing of the Initial Unit Transfer.

(a) Subject to compliance with the provisions of this Section 42.03, Tenant may submit Tenant's leasehold estate in the Premises to the provisions of the Condominium

Act by recording the Declaration as required by the Condominium Act.

(b) Provided the conditions hereinafter set forth shall have been satisfied by Tenant (or waived by Landlord in accordance with Section 42.03(d)), Landlord shall (i) execute the Declaration for the purpose of evidencing its consent to the submission of Tenant's leasehold estate in the Premises to the Condominium Act, provided such consent be in form and substance reasonably satisfactory to Landlord or (ii) if required by applicable law or the New York State Department of Law, join in the execution of the Declaration for the sole purpose of submitting its leasehold estate in the Premises (but, in no event, its fee estate in the Premises) to the Condominium Act.

(c) Landlord shall have no obligation to consent to the recording of the Declaration or join in the execution of the Declaration, as the case may be, and Tenant shall not (x) record the Declaration or (y) consummate the Initial Unit Transfer unless the following conditions shall have been satisfied:

(i) The Condominium Documents shall have been approved, or deemed to have been approved, by Landlord in accordance with the provisions of Section 42.02(a).

(ii) The Condominium Plan shall have been accepted for filing by the New York State Department of Law and a true and correct copy of the letter issued by the New York State Department of Law evidencing such acceptance shall have been delivered to Landlord.

(iii) The Condominium Documents shall not have been amended, modified or supplemented unless Landlord shall have approved or shall be deemed to have approved such amendment, modification or supplement, if such approval was required, in accordance with the provisions of Section 42.02(b).

(iv) There shall be in full force and effect Qualified Purchase Agreements for the purchase of at least 35% of the Units (provided, however, that with respect to an Approved Conversion such percentage shall be 15%), true and correct copies of such purchase agreements shall have been delivered to Landlord and Tenant shall have delivered to Landlord Tenant's certification that (x) each such

purchase agreement is a Qualified Purchase Agreement, (y) all conditions contained in each such purchase agreement have been (or, to the reasonable expectation of Tenant, will at closing be) satisfied and (z) the closings of the transfers of such Units pursuant to such purchase agreements are scheduled to occur within sixty (60) days after the date of the Initial Unit Transfer. If Landlord shall not have notified Tenant of its objections as to the correctness of Tenant's certification within five (5) Business Days after delivery by Tenant of its certification to Landlord, Landlord shall be deemed to have determined that each such purchase agreement is a Qualified Purchase Agreement.

(v) The Condominium Plan shall have been declared effective in accordance with its terms and a true and correct copy of the letter issued by the New York State Department of Law evidencing acceptance of an amendment declaring the Condominium Plan effective shall have been delivered to Landlord.

(vi) No Event of Default shall have occurred and be continuing under this Lease.

(vii) Substantial completion of all construction work on the Buildings shall have occurred, there shall have been delivered to Landlord a certificate from the Architect certifying that such construction has been substantially completed in accordance with the approved Plans and Specifications, the Master Development Plan and the Design Guidelines and there shall have been issued a temporary or permanent Certificate of Occupancy for one or more Units (including the Unit which is the subject of the Initial Unit Transfer) and a true and correct copy of such Certificate(s) of Occupancy shall have been delivered to Landlord.

(viii) Tenant shall have complied with the provisions of Sections 3.05, 3.06 and 3.09 hereof.

Landlord shall cooperate with Tenant, at no expense to Landlord, in connection with the submission of any forms and information required pursuant to Article 31-B of the New York Tax Law, provided Landlord shall have no liability as a result thereof and no obligation to pay any tax pursuant thereto.

(d) In the event that, at any time prior to the recording of the Declaration, (i) Landlord makes payment of the Indebtedness (as defined in the Purchase Option), (ii) New York City shall exercise its right under the Purchase Option to repay the Indebtedness, or (iii) Landlord agrees to convey the Premises or assign its right, title and interest as tenant under the Master Lease or as Landlord under this Lease to New York City or any other Person, Landlord shall give Tenant notice thereof within ten (10) Business Days after the occurrence of such event. In such event, the provisions of subparagraphs (i) (as to approval of the Condominium Plan), (ii), (iii) (as to approval of amendments, modifications or supplements to the Condominium Plan), (iv), (v) and (vii) of Section 42.03(c) shall be waived by Landlord as conditions to recording the Declaration. At Tenant's request, Landlord shall (x) consent to or execute the Declaration, as the case may be, as provided in Section 42.03(b) and (y) cooperate with Tenant and, if requested by Tenant, cause Master Landlord to cooperate with Tenant, in causing the Declaration to be duly recorded prior to the acquisition of the Project Area by New York City or the consummation of any such conveyance or assignment.

(e) In no event shall Landlord convey its interest in the Premises or assign its right, title and interest as tenant under the Master Lease or as Landlord under this Lease to New York City or any other Person prior to the recording of the Declaration, unless Landlord shall have given Tenant at least sixty (60) days prior notice of such proposed conveyance or assignment.

(f) The Initial Unit Transfer shall not occur and Tenant shall have no right to assign, convey, mortgage or otherwise transfer a Unit, unless the conditions set forth in Section 42.03(c) shall have been satisfied at the time of the Initial Unit Transfer. In the event the Initial Unit Transfer shall occur on a date other than the date of recording of the Declaration, Sponsor shall deliver to Landlord, immediately prior to the Initial Unit Transfer, its certification that the conditions contained in Section 42.03(c) have been satisfied.

(g) At any time and from time to time, upon three (3) Business Days prior notice by Sponsor Landlord shall execute, acknowledge and deliver to Sponsor or any Person specified by Sponsor, a statement in writing certifying that all of the conditions in Section 42.03(c) have been satisfied (or if any such condition has not been satisfied, specifying those conditions not so satisfied) and each such statement delivered by Landlord shall contain the authorization to

Sponsor's attorney (provided such attorney be acceptable to Landlord in its sole discretion) or Sponsor's title insurance company insuring the Unit transfer in question to collect the Transaction Payment applicable to the Unit in question and to hold the same in escrow pending prompt delivery thereof to Landlord.

Section 42.04. Subsequent Transfers of Units.

(a) Subject to the last sentence of Section 10.01(c), any transfer of Units subsequent to the Initial Unit Transfers shall not require the consent or approval of Landlord.

(b) Subject to the last sentence of Section 10.01(c), any Unit Owner shall have the right to assign, sublet, mortgage or otherwise transfer its interest in a Unit without Landlord's consent or approval.

(c) Immediately following the Initial Unit Transfers, Landlord shall execute, acknowledge and deliver to Sponsor or any Person specified by Sponsor, a statement in writing certifying that 35% of the Units (or, with respect to an Approved Conversion, 15% of the Units) have been sold pursuant to Qualified Purchase Agreements.

(d) No Unit shall be transferred by Sponsor until a temporary or permanent Certificate of Occupancy shall have been issued for such Unit and a true and correct copy of such Certificate of Occupancy shall have been delivered to Landlord.

Section 42.05. Security Fund.

(a) To secure the obligations of Tenant and each Unit Owner under this Lease, Sponsor shall deliver or cause to be delivered to Landlord, immediately prior to the Initial Unit Transfer, a clean, irrevocable letter of credit (the "Condominium Letter of Credit") in the Letter of Credit Amount drawn in favor of Landlord and having a term of not less than one (1) year, payable upon presentation of sight draft in United States dollars, issued by and drawn on a commercial bank or trust company which is a member of the New York Clearing House Association satisfactory to Landlord and in form and substance satisfactory to Landlord.

(b) The Condominium Letter of Credit, the proceeds thereof and any interest or income earned thereon are hereinafter referred to as the "Security Fund". The Security Fund shall be retained by Landlord or the Condominium

Depository, as the case may be, and disbursed only in accordance with the provisions of this Article 42.

(c) In the event Landlord shall present the Condominium Letter of Credit for payment in accordance with the provisions of this Article 42, Landlord shall promptly deposit the Letter of Credit Amount with a commercial bank or trust company which is a member of the New York Clearing House Association designated by Landlord (the "Condominium Depository"). All monies deposited with the Condominium Depository shall be deposited in one or more insured interest-bearing accounts or invested by the Condominium Depository in bank certificates of deposit or United States treasury bills. Landlord shall promptly notify the Board of Managers of the designation of the Condominium Depository and shall cause the Condominium Depository to furnish the Board of Managers with any information reasonably requested by the Board of Managers with respect to such deposit. The fees of the Condominium Depository, if any, shall be paid from the Security Fund.

(d) Provided (i) Landlord shall not have applied the Letter of Credit Amount or any portion thereof in accordance with the provisions of Section 42.06, and (ii) Substantial Completion of the Buildings shall have occurred, Sponsor or any Person designated by Sponsor in the Condominium Plan shall have the right to reduce the Condominium Letter of Credit as follows: (x) upon the closings of sale of 45% of the Units, the Letter of Credit Amount shall be reduced by 10%, (y) upon the closings of sale of 60% of the Units, the Letter of Credit Amount shall be reduced by an additional 50% and (z) upon the closings of sale of 75% of the Units, the Letter of Credit Amount shall be reduced to $378,630 (each such reduction of the Letter of Credit Amount is hereinafter referred to as a "Permitted Reduction"). In the event Landlord shall have applied the Letter of Credit Amount or a portion thereof in accordance with the provisions of Section 42.06, Landlord shall have no obligation to accept a reduction of the Condominium Letter of Credit or cause the Condominium Depository to make a refund in accordance with this Section 42.05(d) unless and until all Deficiency Amounts shall have been paid in full to Landlord. Upon receipt of such Deficiency Amount(s), Landlord shall cause the Condominium Depository to promptly refund to Sponsor or any Person designated by Sponsor in the Condominium Plan an amount equal to such Permitted Reduction. In the event the Condominium Letter of Credit shall have been presented by Landlord pursuant to Section 42.05(e), upon the satisfaction by Tenant of the conditions set forth in this Section 42.05(d), Landlord shall cause the Condominium

Depository to promptly refund to Sponsor or any Person designated by Sponsor in the Condominium Plan an amount equal to each such Permitted Reduction.

(e) Subject to the provisions of Section 42.05(d), at the expiration of eleven and one-half (11-1/2) months from the date of the Initial Unit Transfer, if Landlord shall not have previously presented the Condominium Letter of Credit for payment, Landlord shall, prior to the expiration date of the Condominium Letter of Credit, present the Condominium Letter of Credit for payment, in which event, Landlord shall promptly deposit the proceeds thereof with the Condominium Depository as provided in Section 42.05(c). Notwithstanding the foregoing, Landlord shall return the Condominium Letter of Credit to Sponsor provided Sponsor shall have delivered to Landlord, at least fifteen (15) days prior to the expiration date of the Condominium Letter of Credit, cash in an amount equal to the then Letter of Credit Amount. In such event, Landlord shall promptly deposit such monies with the Condominium Depository as provided in Section 42.05(c).

(f) Commencing on the tenth (10th) anniversary of the date of the Initial Unit Transfer and on each succeeding anniversary of such date, Landlord shall cause the Condominium Depository to disburse to the Board of Managers the amount by which the Security Fund then exceeds the Maximum Fund Requirement.

(g) If not previously applied by Landlord in accordance with this Article 42, Landlord shall cause the Condominium Depository to disburse to the Board of Managers the Security Fund on the Expiration Date.

Section 42.06. Application of Security Fund.

(a) In the event any item of Rental shall not have been paid to Landlord in full when the same shall become due and payable and such failure shall continue for twenty (20) days after notice from Landlord to the Board of Managers, Landlord may, at its election and without further notice to the Board of Managers or any Unit Owner and without waiving any right or remedy granted to Landlord pursuant to any provision of this Lease, present the Condominium Letter of Credit for payment, if such Condominium Letter of Credit be outstanding and pay to itself from the proceeds of the Letter of Credit an amount equal to the Deficiency Amount or, if the Condominium Letter of Credit shall no longer be outstanding, cause the Condominium Depository to pay to Landlord an amount equal to the Deficiency Amount. In the event Landlord presents the Condominium Letter of Credit for payment, any

proceeds in excess of the Deficiency Amount shall be promptly deposited with the Condominium Depository and disbursed in accordance with Section 42.05(d). In either event, Landlord shall, within ten (10) days thereafter, so notify the Board of Managers, which notice shall set forth the amount disbursed to Landlord from the Security Fund. Such disbursement from the Security Fund shall not constitute a waiver by Landlord of any Unit Owner Default or Board of Managers Failure to Act or prohibit Landlord from exercising any right or remedy granted to Landlord pursuant to the provisions of this Lease against any Defaulting Unit Owner.

(b) Upon payment by (i) the Board of Managers to Landlord of the Deficiency Amount or any lesser amount collected by the Board of Managers, as the case may be, as provided in Section 42.07(c) or (ii) a Defaulting Unit Owner or such Defaulting Unit Owner's Recognized Unit Mortgagee of the Deficiency Amount as provided in Section 42.09(f) or (g), Landlord shall either (x) promptly deposit such amount with the Condominium Depository for deposit in the Security Fund if Landlord shall have withdrawn an amount equal to the Deficiency Amount from the Security Fund or (y) apply such amount to the unpaid item of Rental if Landlord shall not have withdrawn an amount equal to the Deficiency Amount from the Security Fund.

Section 42.07. The Board of Managers.

(a) Commencing on the date of the Initial Unit Transfer and continuing throughout the Term, all Unit Owners hereby constitute and appoint the Board of Managers their true and lawful attorney-in-fact coupled with an interest for the purposes of paying, performing and observing all of the terms, covenants and conditions of this Lease on Tenant's part to be paid, performed and observed.

(b) Commencing on the date of the Initial Unit Transfer and continuing throughout the Term, the Board of Managers, on behalf of all Unit Owners, shall, subject to the provisions of this Section 42.07, pay, perform and observe all of the terms, covenants and conditions of this Lease on Tenant's part to be paid, performed and observed. If the Board of Managers does not so pay, perform or observe any term, covenant or condition of this Lease because of a failure by a Unit Owner (hereinafter, a "Defaulting Unit Owner") to pay, perform or observe any term, covenant or condition under such Defaulting Unit Owner's Unit Assignment Agreement, the By-Laws or any other Condominium Document (a failure by a Unit Owner to pay Common Charges or any assessment adopted by the Unit Owners being hereinafter referred to as a "Unit

Owner Monetary Default" and any other failure by a Unit Owner being hereinafter referred to as a "Unit Owner Non-Monetary Default"; collectively, a "Unit Owner Default"), the Board of Managers shall deliver to Landlord, within forty-five (45) days after such Rental shall have become due and payable, a certificate, in reasonable detail, specifying (x) the name and Unit of such Defaulting Unit Owner, (y) the nature of such Unit Owner Default and, if such Unit Owner Default be a Unit Owner Monetary Default, the amount thereof and (z) the name and address of the Recognized Unit Mortgagee, if any (such certificate being hereinafter referred to as a "Default Certificate") and, except as otherwise provided in Section 42.09(a), within ninety (90) days after such Rental shall have become due and payable, commence and diligently and continuously prosecute all of the rights and remedies of the Board of Managers under the By-Laws, the Declaration and as provided in the Condominium Act against such Defaulting Unit Owner.

(c) If, because of a Unit Owner Monetary Default, the Board of Managers does not pay, at the time and in the manner provided in this Lease, any item of Rental, the Board of Managers shall pay, at the time and in the manner provided in this Lease, so much of such item allocable to Rental as shall have been collected by the Board of Managers from all other Unit Owners (such payment being hereinafter referred to as a "Partial Rental Payment"). In the event the Board of Managers shall thereafter obtain payment from the Defaulting Unit Owner or such Defaulting Unit Owner's Unit Mortgagee of such Unit Owner Monetary Default, the Board of Managers shall, within twenty (20) days thereafter, pay to Landlord the amount so obtained, but in no event, shall such amount be in excess of the Deficiency Amount. As used herein, "Deficiency Amount" shall mean an amount equal to the difference between such item of Rental and the Partial Rental Payment. The Deficiency Amount shall be applied by Landlord in accordance with Section 42.06(b).

(d) At the request of Landlord, the Board of Managers shall prepare and deliver to Landlord, within twenty (20) days after demand, a true and correct schedule of the names of all Unit Owners and the Units owned by such Unit Owners and copies of any other documents reasonably requested by Landlord. Landlord and Landlord's designee shall have the right to examine the records and books of account maintained by the Board of Managers and any managing agent appointed by the Board of Managers with respect to the Premises at a location designated by the Board of Managers in New York City.

(e) The Board of Managers may appoint a managing agent of the Premises for the management and operation thereof, maintenance and repair of the common elements and collection, custody and payment for Unit Owners of all Common Charges and other charges.

(f) No member of the Board of Managers shall have any personal liability under this Lease with respect to any act or omission of the Board of Managers or of any managing agent in connection with the terms, covenants and conditions on Tenant's part to be observed and performed under this Lease.

Section 42.08. Effect of Unit Owner Default on Lease; Obligations of Other Unit Owners.

(a) The failure of the Board of Managers to pay, in full, any item of Rental or part thereof when the same shall become due and payable because of a Unit Owner Monetary Default or to perform or observe any other term, covenant or condition of this Lease because of a Unit Owner Non-Monetary Default shall not constitute a Default under this Lease.

(b) Except as otherwise specifically provided herein, no Unit Owner, Tenant, Sponsor or the Board of Managers shall be obligated to pay to Landlord any sums to replenish the Security Fund in the event the Board of Managers does not recover the Deficiency Amount or any portion thereof from a Defaulting Unit Owner or such Defaulting Unit Owner's Unit Mortgagee as provided in Section 42.07.

(c) Any Unit Owner Default shall not constitute a Default under this Lease and, notwithstanding anything contained in this Lease, including, without limitation, this Article 42 to the contrary, Landlord shall not, nor shall it have the right to, terminate this Lease because of any Unit Owner Default.

Section 42.09. Landlord's Remedies with Respect to Unit Owner Defaults.

(a) Provided the Board of Managers shall have delivered a Default Certificate to Landlord in accordance with Section 42.07(b), Landlord shall, within ten (10) days thereafter, notify the Board of Managers whether or not Landlord intends to exercise the remedies granted to Landlord under this Section 42.09 with respect to such Defaulting Unit Owner. In the event Landlord shall have elected to exercise such remedies and shall have so notified the Board of Managers within such ten (10) day period, the Board of Managers

may, but shall not be obligated, at any time thereafter to commence any action against such Defaulting Unit Owner as provided in Section 42.07(b). In the event Landlord shall not have so notified the Board of Managers, the Board of Managers shall commence action against such Defaulting Unit Owner in accordance with Section 42.07(b). Provided the Board of Managers shall timely commence such action and diligently prosecute such action in accordance with Section 42.07(b), Landlord shall not, during the pendency of such action and except as otherwise provided in Section 42.09(d), commence any action against such Defaulting Unit Owner. In the event the Board of Managers shall fail to deliver the Default Certificate as provided in Section 42.07(b), Landlord may commence any action against such Defaulting Unit Owner at any time subsequent to the date that such Default Certificate should have been so delivered to Landlord.

(b) In the event Landlord shall have elected to exercise its remedies against a Defaulting Unit Owner in accordance with the provisions of Section 42.09(a), if at the expiration of sixty (60) days after such Rental shall have been due and payable a Defaulting Unit Owner shall not have paid its Proportionate Rent, Landlord shall so notify such Defaulting Unit Owner and if such Unit Owner does not pay such Proportionate Rent within thirty (30) days after such notice from Landlord, Landlord shall, subject to the rights granted to Recognized Unit Mortgagees pursuant to Section 42.11, commence and diligently prosecute an action against such Defaulting Unit Owner for such unpaid Proportionate Rent and, in connection with such action, may without further notice, re-enter and repossess the Unit of such Defaulting Unit Owner using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess such Defaulting Unit Owner by summary proceedings or otherwise and exercise such other rights and remedies granted to Landlord at law or in equity, and whether or not Landlord shall have theretofore obtained payment of such unpaid Proportionate Rent from the Security Fund pursuant to Section 42.06(a).

(c) In addition to the rights and remedies granted to Landlord pursuant to the provisions of this Lease, each Unit Owner hereby grants to Landlord, effective only upon the occurrence of a Unit Owner Default and continuing until the payment to Landlord of the Deficiency Amount, a lien on such Unit (a "Landlord's Lien"), which Landlord's Lien shall be provided for in the By-laws and shall be prior to all other liens on such Unit except for Taxes, Impositions, the lien granted to the Board of Managers pursuant to the Condominium Act, liens granted to Governmental Authorities which,

pursuant to applicable law, are granted a priority and all sums unpaid on a first mortgage of record. Such Landlord's Lien shall be enforceable by Landlord only if Landlord shall have elected, in accordance with Section 42.09(a), to pursue its rights and remedies against such Defaulting Unit Owner.

(d) Notwithstanding anything herein contained to the contrary, Landlord shall, subject to the rights granted to Recognized Unit Mortgagees pursuant to Section 42.11, have the right to commence and prosecute an action against any Defaulting Unit Owner for a Unit Owner Non-Monetary Default if, by reason of such Unit Owner Non-Monetary Default, (i) Landlord's interest in the Premises, or any part thereof, shall be in imminent danger of being forfeited or lost, (ii) Landlord shall be in imminent danger of being subjected to criminal and/or civil liability or penalty, or (iii) Landlord would, in Landlord's reasonable judgment, be in default under the Master Lease as a result of such Unit Owner Non-Monetary Default.

(e) Prior to commencing any action against a Defaulting Unit Owner under this Section 42.09 Landlord shall so notify the Board of Managers and shall keep the Board of Managers reasonably informed as to the status of such action. The Board of Managers shall cooperate with Landlord, and, upon Landlord's request, shall promptly furnish to Landlord such information and documentation as may be reasonably requested by Landlord.

(f) If, during the pendency of any such action by Landlord against a Defaulting Unit Owner, either the Board of Managers, such Defaulting Unit Owner or such Defaulting Unit Owner's Recognized Unit Mortgagee shall have remedied such Unit Owner Default, Landlord shall cause such action to be discontinued with prejudice provided the Board of Managers, such Defaulting Unit Owner or such Defaulting Unit Owner's Recognized Unit Mortgagee shall have reimbursed Landlord for Landlord's costs and expenses incurred in connection with such action (including reasonable attorneys fees) together with interest thereon at the Involuntary Rate.

(g) In the event Landlord shall have obtained a judgment against a Defaulting Unit Owner and shall have recovered such judgment from such Defaulting Unit Owner or such Defaulting Unit Owner's Recognized Unit Mortgagee prior to payment to Landlord of the Deficiency Amount by the Board of Managers pursuant to Section 42.07(c), Landlord shall apply the amount so collected, after deducting therefrom Landlord's reasonable costs and expenses incurred in connection with such action to the extent not previously recovered by Land-

lord, in payment of the Deficiency Amount for such Unit and Landlord shall so notify the Board of Managers, whereupon the obligations of the Board of Managers to Landlord with respect to payment of such Deficiency Amount shall cease.

(h) If, as a result of any action by Landlord against a Defaulting Unit Owner, Landlord or any nominee or designee of Landlord shall become the owner of such Defaulting Unit Owner's Unit, Landlord or such nominee or designee shall, upon Landlord's or such nominee's or designee's acquisition of such Unit, promptly pay to the Board of Managers an amount equal to the difference between all accrued but unpaid Common Charges with respect to such Unit and the Deficiency Amount for such Unit. The obligations of the Board of Managers to Landlord with respect to payment of any Deficiency Amount with respect to such Unit Owner Default shall cease. During the period that Landlord or such nominee or designee shall be the owner of a Unit, Landlord or such nominee or designee shall comply with all of the terms, covenants and conditions of the By-Laws and the Unit Assignment Agreement for such Unit, including without limitation, the payment of Common Charges for such Unit.

Section 42.10. Landlord's Remedies for Board of Managers Failure to Act.

In the event that the Board of Managers shall not have (x) paid to Landlord a Partial Rental Payment as provided in Section 42.07(c) or any Deficiency Amount or lesser amount obtained by the Board of Managers as provided in Section 42.07(c) or (y) performed or observed on behalf of the Unit Owners any term, covenant or condition of this Lease on Tenant's part to be performed or observed, which failure to perform or observe is not the direct result of a Unit Owner Default (hereinafter, a "Board of Managers Failure to Act"), the following provisions shall be applicable:

(a) Landlord shall give notice to the Board of Managers, all Unit Owners and Recognized Unit Mortgagees specifying the nature of the Board of Managers Failure to Act.

(b) Within forty-five (45) days after Landlord shall have given such notice (i) the Board of Managers, any Unit Owner(s) or Recognized Unit Mortgagee(s) shall cause such Board of Managers Failure to Act to be remedied or (ii) if the curing of such Board of Managers Failure to Act requires the imposition of an assessment or special meeting of Unit Owners for such purpose and/or special meeting of Unit Owners in order to replace the Board of Managers or work to

be performed, acts to be done or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be repaired, done or removed, as the case may be, within such forty-five (45) day period (collectively, "Unit Owner Action"), the Board of Managers or the Unit Owner(s) shall have commenced such Unit Owner Action within such forty-five (45) day period and shall thereafter (subject to Unavoidable Delays) diligently prosecute such Unit Owner Action to completion and promptly thereafter cause the Board of Managers Failure to Act to be remedied, provided any Board of Managers Failure to Act which can be remedied with the payment of money shall be so remedied within one hundred and eighty (180) days after the date of Landlord's notice.

(c) If a Board of Managers Failure to Act shall not have been remedied in accordance with Section 42.10(b), such unpaid Partial Rental Payment, Deficiency Amount or other unpaid item of Rental shall constitute Proportionate Rent and each Unit Owner shall be obligated to pay to Landlord its share of such Proportionate Rent in accordance with each Unit's common interest in the Premises as set forth in the Declaration. The failure of a Unit Owner to make such payment of Proportionate Rent shall constitute a Unit Owner Monetary Default, such Unit Owner shall be deemed to be a Defaulting Unit Owner and Landlord shall have the right, subject to the rights granted to Recognized Unit Mortgagees pursuant to Section 42.11, to pursue the rights and remedies granted to Landlord pursuant to Section 42.09 against such Defaulting Unit Owner for a Unit Owner Monetary Default.

Section 42.11. Unit Mortgages.

(a) Any Unit Owner shall have the right to mortgage its interest in a Unit to any Person (such mortgage being hereinafter referred to as a "Unit Mortgage" and the holder of such Unit Mortgage being hereinafter referred to as a "Unit Mortgagee").

(b) Prior to commencing any action against a Defaulting Unit Owner pursuant to Section 42.09, Landlord shall give to each Unit Mortgagee who shall have furnished Landlord with a true and correct copy of such Unit Mortgagee's Unit Mortgage together with the name and address of such Unit Mortgagee (such Unit Mortgagee being hereinafter referred to as a "Recognized Unit Mortgagee" and such Recognized Unit Mortgagee's Unit Mortgage being hereinafter referred to as a "Recognized Unit Mortgage") notice of such Unit Owner Default. Each Recognized Unit Mortgagee shall have a period of twenty (20) days more than is given to a Defaulting Unit Owner within which to pay to Landlord an amount equal to such

Unit Owner Monetary Default and thirty (30) days more than is given to a Defaulting Unit Owner within which to remedy any Unit Owner Non-Monetary Default or causing action to remedy such Unit Owner Non-Monetary Default to be commenced. Provided such Unit Owner Monetary Default shall be so remedied, Landlord shall not take any action against the Defaulting Unit Owner and the Recognized Unit Mortgagee shall, subject to the terms of its Recognized Unit Mortgage, have the right to institute and thereafter prosecute foreclosure proceedings. With respect to a Unit Owner Non-Monetary Default, so long as a Recognized Unit Mortgagee, in good faith, shall have commenced to cure such Unit Owner Non-Monetary Default within such thirty (30) day period and shall prosecute the same to completion or if possession of the Unit is required to cure such Unit Owner Non-Monetary Default, to institute foreclosure proceedings and obtain possession directly or through a receiver and to prosecute such proceedings with diligence and continuity and, upon obtaining such possession, to commence promptly to cure such Unit Owner Non-Monetary Default and to prosecute the same to completion with diligence and continuity, Landlord shall not take any action against the Defaulting Unit Owner. In the event such Recognized Unit Mortgagee shall have failed to so remedy such Unit Owner Default as hereinabove provided, Landlord may commence any action against such Defaulting Unit Owner without any further notice to such Recognized Unit Mortgagee. If, with respect to any Unit, there is more than one Recognized Unit Mortgagee, Landlord shall recognize the Recognized Unit Mortgagee whose Recognized Unit Mortgage is senior in lien as the Recognized Unit Mortgagee entitled to the rights afforded by this Section 42.11(b). Notwithstanding anything herein contained to the contrary, provided such Recognized Unit Mortgagee shall have otherwise complied with the provisions of this Section 42.11(b), such Recognized Unit Mortgagee shall have no obligation to cure any Unit Owner Default which is not susceptible to being cured by such Recognized Unit Mortgagee.

(c) Landlord shall accept performance by a Recognized Unit Mortgagee of any covenant, condition or agreement on a Unit Owner's part to be performed with the same force and effect as though performed by such Unit Owner.

(d) Landlord shall have no obligations hereunder and no Unit Mortgagee shall have any rights hereunder unless such Unit Mortgagee shall be a Recognized Unit Mortgagee.

(e) In the event either the Board of Managers or the Recognized Unit Mortgagees shall have designated a representative (the "Unit Mortgagee Representative") and shall have notified Landlord of such fact, the Unit Mortgagee Rep-

resentative shall have the right to participate, to the same extent as a Mortgagee, in any arbitration or other proceedings, including, without limitation, condemnation proceedings and insurance adjustment proceedings, provided for in this Lease and shall be entitled to exercise any rights afforded to Mortgagees in such arbitration or other proceedings.

Section 42.12. Miscellaneous.

(a) In the event that Taxes are assessed and levied by New York City against the Units, payment by the Unit Owners of such Taxes to New York City shall be credited against the next ensuing payments of PILOT required to be paid under this Lease.

(b) Notwithstanding anything contained in this Lease, including, without limitation, Article 16 to the contrary, the Board of Managers shall be entitled to maintain its lien for unpaid Common Charges as provided in the Condominium Act.

(c) Except as otherwise specifically provided in this Lease, all notices, demands, requests, consents, approvals or other communications (collectively, a "notice") provided in this Lease to be given by Landlord to Tenant shall be effective for any purpose if addressed to the Board of Managers on behalf of all Unit Owners and given or served as provided in Article 25, except any notice relating solely to a Unit Owner or such Unit Owner's Unit shall be effective only if addressed to the relevant Unit Owner and given or served as provided in Article 25.

(d) Subsequent to the recording of the Declaration, the aggregate tax assessments for all Units shall be the basis for calculating PILOT payments under Section 3.02 hereof.

(e) (i) Notwithstanding anything contained in this Lease, including, without limitation, Article 21 to the contrary, Landlord may (but shall be under no obligation to) perform an obligation of a Defaulting Unit Owner without waiving or releasing the Defaulting Unit Owner from any obligation contained in this Lease, after notice to the Defaulting Unit Owner and after applicable grace periods provided hereunder for the Defaulting Unit Owner, the Board of Managers, and a Recognized Unit Mortgagee respectively to cure or commence to cure a Unit Owner Default.

(ii) All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation of a Defaulting Unit Owner as provided herein, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making each such payment until the date of actual repayment to Landlord, shall be paid by the Defaulting Unit Owner to Landlord on demand. Landlord shall look only to the Defaulting Unit Owner for such recovery or to the Security Fund, if any. Any payment or performance by Landlord of an obligation of a Defaulting Unit Owner shall not be nor be deemed to be a waiver or release of breach or a Unit Owner Default by the Defaulting Unit Owner, or of the right of Landlord to institute summary proceedings or take such other action as may be provided herein against such Defaulting Unit Owner.

(f) Notwithstanding anything contained in this Lease, including, without limitation, Article 13 to the contrary, a Unit Owner may make any changes, alterations or additions to the interior of its Unit and may combine two or more Units without Landlord's consent.

(g) Notwithstanding anything contained in this Lease, including, without limitation, Article 19 to the contrary, subsequent to the date of the Initial Unit Transfer a Unit Owner shall be obligated to indemnify and save the Indemnitees harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including without limitation engineers', architects' and reasonable attorneys' fees and disbursements (collectively the "Liabilities") which may be imposed upon or incurred by or asserted against any of the Indemnitees only if such Liabilities arise by reason of the occurrence of any of those matters specifically set forth in Article 19 in connection with the Unit owned by such Unit Owner; provided however, that each Unit Owner shall pay its proportionate share, in accordance with its Unit's common interest as set forth in the Declaration, of the Liabilities if such Liabilities arise by reason of the occurrence of any of those matters specifically set forth in Article 19 and only as such Liabilities may pertain to the common elements as defined in the Declaration.

(h) The Introduction section of the Condominium Plan shall contain the following disclaimer:

"DETERMINATION BY BATTERY PARK CITY AUTHORITY THAT THIS PLAN AND THE DECLARATION AND BY-LAWS OF THE CONDOMINIUM CONFORM TO THE PROVISIONS OF THE LEASE DOES NOT MEAN THAT BATTERY PARK CITY AUTHORITY HAS APPROVED THIS OFFERING."

(i) Nothing in this Article 42 shall be deemed to grant to Landlord the right to (x) require inclusion in the Condominium Documents of any provision which is not required by the express terms of this Article 42, or (y) delay or withhold its approval of the Condominium Documents pursuant to Section 42.02 as a result of Tenant's refusal to include in the Condominium Documents any provision which is not required by the express terms of this Article 42.

Section 42.13. Applicability.

To the extent the provisions of this Article 42 shall conflict with any other provisions of this Lease, the provisions of this Article 42 shall govern.

## ARTICLE 43

## LETTERS OF CREDIT

Section 43.01. (a) Letter of Credit. In accordance with (i) the provisions of Section 3.06 hereof, Tenant has delivered to Landlord the Transaction Payment Letter of Credit, (ii) the provisions of Section 11.12 hereof, Tenant has delivered to Landlord the Construction Period Letter of Credit and (iii) the provisions of Article 42 hereof, Tenant shall deliver to Landlord, in the manner therein provided, the Condominium Letter of Credit, in the event Tenant shall submit its leasehold estate in the Premises to condominium ownership (the Transaction Payment Letter of Credit, the Construction Period Letter of Credit and Condominium Letter of Credit being hereinafter called the "Letter of Credit", which term shall also refer to any Replacement Letter of Credit, as hereinafter defined).

(b) Presentment of Sight Draft(s) Under Letter of Credit. If Tenant (i) fails to perform any of Tenant's obligations under this Section 43.01 in strict compliance with the requirements of this Section 43.01 or (ii) violates any prohibition contained in this Section 43.01, then Landlord shall have the right (in addition to all other rights and remedies provided in this Lease and without Landlord's exercise of such right being deemed a waiver or a cure of Tenant's failure to perform), without notice to

Tenant, to present for immediate payment sight draft(s) in any amount Landlord elects up to the full amount then available under such Letter of Credit and to apply the proceeds thereof in the manner provided in this Lease for the application of the proceeds of such Letter of Credit. Any proceeds not so applied may, in Landlord's discretion, be held by Landlord or invested and reinvested in United States government securities maturing in no more than ninety days or in federally insured money market accounts. Any interest earned thereon shall constitute proceeds of such Letter of Credit and shall be applied in the same manner as the proceeds of such Letter of Credit are applied. Landlord's obligations with respect to the presentment of any Letter of Credit, the return of any Letter of Credit or any proceeds thereof shall be governed by the applicable provisions of this Lease.

(c) Purpose of Letter of Credit. Tenant acknowledges that the purpose of each Letter of Credit is to provide sure and certain security for Landlord and that Landlord has accepted each Letter of Credit for that purpose, in place of a cash deposit in the same amount, with the understanding that each Letter of Credit is to be the functional equivalent of a cash deposit. To further assure that each Letter of Credit achieves its intended purpose, the parties agree as set forth below. Tenant acknowledges that the waivers in this Section 43.01(c) constitute a material portion of the inducement to Landlord to accept each Letter of Credit under the terms and conditions of this Section 43.01, and that Landlord has agreed to accept each Letter of Credit in reliance on Tenant's waivers in this Section. Any breach by Tenant of the provisions of this Section 43.01(c) shall constitute an Event of Default hereunder.

(i) Waiver of Certain Relief. Tenant unconditionally and irrevocably waives (and as an independent covenant hereunder, covenants not to assert) any right to claim or obtain any of the following relief in connection with each Letter of Credit:

(A) A temporary restraining order, temporary injunction, permanent injunction, or other order that would prevent, restrain or restrict the presentment of sight drafts drawn under any Letter of Credit or the Issuer's honoring or payment of sight draft(s); or

(B) Any attachment, garnishment, or levy in any manner upon either the proceeds of any Letter of Credit or the obligations of the Issuer (either before or after the

presentment to the Issuer of sight drafts drawn under such Letter of Credit) based on any theory whatever.

(ii) Remedy for Improper Drafts. Tenant's sole remedy in connection with the improper presentment or payment of sight drafts drawn under any Letter of Credit shall be the right to obtain form Landlord a refund of the amount of any sight draft(s) that were improperly presented or the proceeds of which were misapplied, together with interest at the Involuntary Rate and reasonable attorneys' fees, provided that at the time of such refund, Tenant increases the amount of such Letter of Credit to the amount (if any) then required under the applicable provisions of this Lease. Tenant acknowledges that the presentment of sight drafts drawn under any Letter of Credit, or the Issuer's payment of sight drafts drawn under such Letter of Credit, could not under any circumstances cause Tenant injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. In the event Tenant shall be entitled to a refund as aforesaid and Landlord shall fail to make such payment within ten (10) days after demand, Tenant shall have the right to deduct the amount thereof together with interest thereon at the Involuntary Rate from the next installment(s) of Base Rent.

(iii) Notices to Issuer. Tenant shall not request or instruct the Issuer of any Letter of Credit to refrain from paying sight draft(s) drawn under such Letter of Credit.

(d) Assignment. If either Landlord or Tenant desires to assign its rights and obligations under this Lease in compliance with the provisions of this Lease, then the parties to this Lease shall, at the assignor's request, cooperate so that concurrently with the effectiveness of such assignment, Tenant shall deliver to Landlord a Replacement Letter of Credit as described in Section 43.01(e) or an appropriate amendment to such Letter of Credit, in either case identifying as Applicant and Beneficiary the appropriate parties after the assignment becomes effective. The assignor shall pay the Issuer's fees for issuing such Replacement Letter of Credit or amendment.

(e) Replacement of Letter of Credit. Tenant shall replace any Letter of Credit with a replacement letter of credit (the "Replacement Letter of Credit") (i) at least thirty (30) days prior to the expiry date of a Letter of Credit which is expiring or (ii) within ten (10) days after the date on which the Issuer delivers any notice purporting to terminate or to decline to renew such Letter of Credit, or expressing any intention to do either of the foregoing.

After Tenant delivers to Landlord a Replacement Letter of Credit complying with the provisions of this Lease, Landlord shall deliver in accordance with Tenant's reasonable instructions such Letter of Credit being replaced, provided that at such time no sight draft(s) under such Letter of Credit are outstanding and unpaid. Except as otherwise specifically provided in this Lease, any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced, but in any event:

(i) Amount. The amount of each Replacement Letter of Credit shall equal or exceed the amount of such Letter of Credit at the time of replacement.

(ii) Dates. The date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be exactly one year later than the expiry date of the Letter of Credit being replaced.

(iii) Issuer. Each Replacement Letter of Credit shall be issued or confirmed, within the meaning of New York Uniform Commercial Code Section 5-103(1)(f), in its entire amount, by an a bank reasonably satisfactory to Landlord that is a member of the New York Clearing House Association and has a net worth in excess of $500,000,000. The office for presentment of sight drafts specified in the Replacement Letter of Credit shall be located at a specified street address within the Borough of Manhattan, City of New York.

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

BATTERY PARK CITY AUTHORITY

By: _____
President

BATTERY PLACE ASSOCIATES,
a New York general partnership

By: _____
Howard P. Milstein,
a General Partner

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

On this 24 day of March, 1987, before me personally came Meyer S. Frucher, to me known, who, being by me duly sworn, did depose and say that he resides at 324 West 101st Street, New York, New York, that he is the President of BATTERY PARK CITY AUTHORITY, the public benefit 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.

Carolyn Kapner
Notary Public

CAROLYN KAPNER
Notary Public, State of New York
No. 31-4864388
Qualified in New York County
Commission Expires July 4, 1988

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

On this 24 day of March, 1987, before me personally appeared Howard P. Milstein, to me known, who, being by me duly sworn, did depose and say that he resides at One Lincoln Plaza, New York, New York, that he is a partner in the New York partnership known as BATTERY PLACE ASSOCIATES, the partnership described in and which executed the foregoing instrument and acknowledged that he executed the same.

Carolyn Kapner
Notary Public

CAROLYN KAPNER
Notary Public, State of New York
No. 31-4864383
Qualified in New York County
Commission Expires July 14, 1988

## EXHIBIT A

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

BEGINNING at the corner formed by the intersection of the Southerly line of West Thames Street with the easterly line of Battery Place;

RUNNING THENCE due South along the easterly line of Battery Place 199 feet to the corner formed by the intersection of the easterly line of Battery Place with the northerly line of Third Place;

THENCE due East along the Northerly line of Third Place and along the easterly prolongation of the northerly line of Third Place 143.18 feet to a point in the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line approved by the Secretary of War July 31, 1941;

THENCE North 12 degrees 23 minutes 50 seconds West along the Westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line approved by the Secretary of War July 31, 1941, 203.75 feet to a point in the southerly line of West Thames Street;

THENCE due West along the Southerly line of West Thames Street, 99.43 feet to the point or place of BEGINNING.

**EXHIBIT "B"**

**TITLE MATTERS**

1. Terms, covenants and conditions of Agreement of Lease between the City of New York, as landlord, and Landlord, as tenant, dated November 24, 1969, recorded December 26, 1969, in Reel 161, page 1, as amended by Amendment of Lease, dated October 19, 1971, by Second Amendment of Lease, dated June 18, 1974, by Third Amendment of Lease, dated October 24, 1974, by Fourth Amendment of Lease, dated October 24, 1974, and by Fifth Amendment to Lease, dated September 10, 1979, and as further amended and superseded by a Restated Amended Agreement of Lease between BPC Development Corporation, as Landlord, and Battery Park City Authority, as Tenant, dated June 10, 1980 a memorandum of which Restated Amended Agreement of Lease was recorded on June 11, 1980 in Reel 527 Page 163, as amended by First Amendment to Restated Amended Lease made between Battery Park City Authority, as Landlord, and Battery Park City Authority, as Tenant, dated as of June 15, 1983 and recorded on June 20, 1983 in Reel 696 Page 424 as further amended by Second Amendment to Restated Amended Lease made between Battery Park City Authority, as Landlord, and Battery Park City Authority, as Tenant, dated June 15, 1983 and recorded on June 20, 1983

in Reel 696 Page 432 as further amended by Third Amendment to Restated Amended Lease made between Battery Park City Authority, as Landlord, and Battery Park City Authority, as Tenant, dated as of August 15, 1986 and recorded on October 22, 1986 in Reel 1133 page 569.

2. The Settlement Agreement.

3. Memorandum of Understanding, dated as of November 8, 1979, among the Governor of the State of New York, the Mayor of the City of New York and the President and the Chief Executive Officer of UDC and Landlord, as supplemented by letter, dated November 8, 1979, from the President and Chief Executive Officer of UDC and Landlord to the Mayor of the City of New York.

4. Option to Purchase, dated as of June 6, 1980, among UDC, BPC Development Corporation, Landlord and the City of New York, recorded June 11, 1980, in Reel 527, page 153, in the Office of the Register of New York City (New York County) as amended by Amendment to Option to Purchase made between Battery Park City Authority and The City of New York dated as of August 15, 1986 and recorded on October 22, 1986 in Reel 1133 Page 582.

5. Terms, covenants and conditions of Agreement between BPC Development Corporation, Landlord and the City of New York, dated as of April 23, 1982, recorded October 27,

1982, in Reel 646, page 700, in the Office of the Register of New York City (New York County) as amended.

6. Any state of facts an accurate survey or visual inspection would reveal.

7. Terms, covenants and conditions of Declaration of Covenants and Restrictions made by Battery Park City Authority dated March 15, 1984, recorded March 21, 1984, in Reel 776, page 360, in the Office of the Register of New York City (New York County).

8. Easements and terms, covenants, conditions and agreements of Declaration of Easements made among BPC Development Corporation, Battery Park City Authority and the City of New York dated May 18, 1982 and recorded on October 15, 1982 in Reel 644, page 480, in the Office of the Register of New York City (New York County).

9. Zoning and other laws, ordinances, governmental regulations, orders and requirements pertaining to the premises or this transaction.

## EXHIBIT C

### 1. LANDLORD'S CIVIC FACILITIES

| South Cove Esplanade (To South Side of First Place) | Date of Substantial Completion |
|---|---|
| All work except planting which cannot be performed before the Spring following Substantial Completion. | Later of Substantial Completion of Building or October 1, 1988. |

**South Park**

| | |
|---|---|
| All work except planting which cannot be performed before the Spring following Substantial Completion. | Later of Substantial Completion of Building or October 1, 1990. |

### 2. TENANT'S CIVIC FACILITIES

#### DEVELOPMENT SCHEDULE

Each portion of Tenant's Civic Facilities shall be substantially completed no later than the Scheduled Completion Date.

#### TENANT'S CIVIC FACILITIES DRAWINGS

Vollmer Associates, South Residential Phase III Infrastructure Informational Drawings A1-A6, addendum No. 8 dated November 25, 1986, as may be amended and all referenced details and specifications.

EXHIBIT D
BATTERY PARK CITY
Battery Place Residential Area
AFFIRMATIVE ACTION PROGRAM

This Affirmative Action Program has been adopted by Battery Park City Authority ("BPCA"), pursuant to the provisions of Section 1974-d of the Public Authorities Law, in order to assist Battery Place Associates, c/o Milstein Properties, 1271 Sixth Avenue, Suite 4200, New York, New York 10020 ("Tenant"), its contractors, subcontractors and suppliers (collectively, "Contractors") and all other persons participating in the development, construction, operation and maintenance of that portion of the Battery Park City Battery Place Residential Area Development designated as Site 4 (the "Project") in complying with their respective obligations to give minority and women-owned business enterprises and minority group members and women opportunity for meaningful participation on contracts entered into in connection with the Project, to permit BPCA to carry out its statutory obligations and to redress the effects of past discrimination in the construction industry and in the management and operation of real estate development projects.

1. Definitions. As used in this Program, the following terms shall have the following respective meanings:

Approved MBE Contract: each Contract between Tenant or its Contractors and an eligible MBE approved by BPCA which has been entered into in accordance with this Program.

Approved WBE Contract: each Contract between Tenant or its Contractors and an eligible WBE approved by BPCA which has been entered into in accordance with this Program.

Construction of the Project: all work occurring on the Battery Park City site in connection with the development, design, construction and initial occupancy of the Project.

Contract: as defined in Section 2.

Contract Value: the sum of the MBE Contract Value and the WBE Contract Value.

Lease: the Agreement of Lease, of even date herewith, between BPCA and Tenant, as amended and supplemented from time to time.

MBE: a business owned, operated and controlled by one or more citizens or permanent resident aliens who are Minority persons. "Owned", for purposes of this definition, shall mean, (a) in the case of a corporation, that one or more Minority persons own fifty-one percent (51%) or more of each class of stock of such corporation or (b) in any other case, that one or more Minority persons own fifty-one percent (51%) or more of the beneficial interest in the

business and is/are entitled to receive fifty-one percent (51%) or more of the net profits (or losses) of the business, and such ownership interest is real, substantial and continuing. "Operated and controlled," for purposes of this definition, shall mean that one or more Minority persons have the day-to-day responsibility for running, and making all important decisions affecting, the business enterprise. Notwithstanding the foregoing, any business enterprise certified as, or determined to be, an MBE by a designated New York State certifying agency, office or authority pursuant to Executive Order 21, dated August 3, 1983, or any guidelines or regulations issued thereunder, shall be an MBE for purposes of this Program.

MBE Contract Value: the total contract price of all work let to MBEs by Tenant or its Contractors pursuant to Approved MBE Contracts less the total contract price of all work let to MBEs by other MBEs, provided that (a) where an MBE subcontracts (other than through supply contracts) more than fifty percent (50%) of its work, the contract price of the work let to such MBE shall be deemed to equal the excess, if any, of the work let to such MBE over the contract price of the work subcontracted by such MBE, (b) where materials are purchased from an MBE which acts merely as a conduit for a supplier or distributor of goods manufactured or produced by a non-MBE, the price paid by the MBE to the supplier, distributor, manufacturer or producer shall be deducted from such total contract price and

(c) where a contractor or subcontractor is a joint venture including one or more MBEs as joint venturers, such joint venture shall be treated as an MBE only to the extent of the percentage of the MBE's interest in the joint venture. In any event, MBE Contract Value shall include only monies actually paid to MBEs by Tenant or its Contractors.

Minority or Minorities: (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent, of either Indian or Hispanic culture or origin, regardless of race;

(c) Asian or Pacific Island persons or persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; and

(d) American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation in tribal associations or community identification.

Minority Workforce Participation: the number of person-hours of training (subject to the provisions of Section 3(c) below) and employment of Minority workers (including supervisory personnel) used by Tenant and its Contractors in the Construction of the Project.

Total Development Costs: all monies expended by, or on behalf of, Tenant in connection with the development, design, construction and initial occupancy of the Project, including the total contract price of all Contracts awarded by Tenant (a) for the furnishing of labor, materials and services for inclusion in the Project, plus the cost of all general conditions work applicable to the Project and not included in such Contracts, and (b) for non-construction services, including architectural, engineering, accounting, legal and technical consultant services, rendered in connection with the development, design, construction and initial occupancy of the Project. Total Development Costs shall include but not be limited to costs for: demolition and excavation, general contractor's or construction management fees, interim management, site work and landscaping, installation and hook-ups to utilities and infrastructure, leasehold improvements in preparation for initial occupancy of the Project by tenants, leasing commissions and other lease-up expenses, pre-opening and marketing expenses and public and other civic improvements to be completed by Tenant pursuant to the Lease. Total Development Costs shall not include monies expended by, or on behalf of, Tenant for the following: letter of credit fees, title insurance fees and charges, appraisal costs, developer's overhead and fees, mortgage interest, debt service, mortgage brokerage commissions, commitment and other mortgage fees and charges, mortgage recording taxes and other government fees and

taxes, insurance premiums and Rental and all other sums and charges paid to BPCA pursuant to the Lease.

WBE: a business owned, operated and controlled by one or more citizens or permanent resident aliens who are women. "Owned," for purposes of this definition, shall mean (a) in the case of a corporation, that one or more women own fifty-one percent (51%) or more of each class of stock of such corporation or (b) in any other case, that one or more women own fifty-one percent (51%) or more of the beneficial interest in the business and is/are entitled to receive fifty-one percent (51%) or more of the net profits (or losses) of the business, and such ownership interest is real, substantial and continuing. "Operated and controlled," for purposes of this definition, shall mean that one or more women have the day-to-day responsibility for running, and making all important decisions affecting, the business enterprise. Notwithstanding the foregoing, any business enterprise certified as, or determined to be, a WBE by a designated New York State certifying agency, office or authority pursuant to Executive Order 21, dated August 3, 1983, or any guidelines or regulations issued thereunder, shall be a WBE for purposes of this Program.

WBE Contract Value: the total contract price of all work let to WBEs by Tenant or its Contractors pursuant to Approved WBE Contracts less the total contract price of all work let to WBEs by other WBEs provided that (a) where a WBE subcontracts (other than through supply contracts) more

than fifty percent (50%) of its work, the contract price of the work let to such WBE shall be deemed to equal the excess, if any, of the work let to such WBE over the contract price of the work subcontracted by such WBE, (b) where materials are purchased from a WBE which acts merely as a conduit for a supplier or distributor of goods manufactured or produced by a non-WBE, the price paid by the WBE to the supplier, distributor, manufacturer or producer shall be deducted from such total contract price and (c) where a contractor or subcontractor is a joint venture including one or more WBEs as joint venturers, such joint venture shall be treated as a WBE only to the extent of the percentage of the WBE's interest in the joint venture. In any event, WBE Contract Value shall include only monies actually paid to WBEs by Tenant or its Contractors.

Women Workforce Participation: the number of person-hours of training (subject to the provisions of Section 3(c) below) and employment of women (including supervisory personnel) used by Tenant and its Contractors in the Construction of the Project.

2. Compliance with Lease and Contract Obligations. Tenant shall (a) comply with all of its non-discrimination and affirmative action obligations as set forth in the Lease, and (b) cause each of its Contractors to comply with all of such Contractor's non-discrimination and affirmative action obligations as set forth in the Lease and

construction contract or other instrument (collectively, "Contract") pursuant to which such Contractor furnishes materials or services for the Project.

3. Minority and Women Workforce Participation.

(a) Tenant shall, and shall cause its Contractors to, promote the employment of Minority and women workers in the Construction of the Project, provided that such obligation shall be deemed to have been fulfilled when (i) the sum of the Minority Workforce Participation and Women Workforce Participation as a proportion of the total person-hours of training and employment in each trade group listed in Schedule 1 of this Program equals the specified percentages set forth in such Schedule and (ii) the Women Workforce Participation equals five percent (5%) of the total person-hours of training and employment used in the Construction of the Project. Tenant and BPCA have, after reviewing the work to be included in the Project and the qualifications and availability of Minority and women workers for participation in such work, determined that the percentages set forth above and in such Schedule are reasonable and attainable. In further fulfillment of its obligations hereunder, Tenant shall also comply with the procedures set forth in Section 4 hereof.

(b) In order to assist Tenant in carrying out the provisions of Section 3(a) above, Tenant shall, and shall cause its Contractors to, participate in the on-the-job

training program known as the "New York Plan," and such other or successor programs as shall be approved by BPCA.

(c) In order for the non-working training hours of apprentices and trainees to be counted in meeting the percentages set forth in Section 3(a) above and in Schedule 1 of this Program, such apprentices and trainees must be employed by the Tenant or Contractor during the training period, and the Tenant or Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities.

(d) Tenant shall, and shall cause its Contractors to, submit to BPCA daily reports on the composition of the workforce on the Project, monthly payroll reports by person-hours and such other or more frequent reports regarding workforce composition as BPCA shall require.

4. Minority and Women Workforce Procedures. Tenant shall, and shall cause its Contractors to, provide and maintain a working environment free of harassment, intimidation and coercion. Tenant shall ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out Tenant's non-discrimination obligations and its obligation to maintain such a working environment. In addition, Tenant shall, and shall cause its Contractors to, observe the following procedures throughout the Construction Period:

(a) Tenant shall, and shall cause its Contractors to, make a search for Minorities and women for employment in the Construction of the Project. In fulfillment of this obligation, Tenant shall establish and maintain a current list of employment, recruitment and training sources for Minorities and women, provide notification to these sources when Tenant or its Contractors have employment opportunities, provide a reasonable opportunity for such sources to refer workers and maintain records of each source's response and the action taken thereon. Such list shall include all employment, recruitment and training sources identified by BPCA.

(b) Tenant shall, and shall cause its Contractors to, encourage Minority and women employees to recruit other Minorities and women for employment on the Project.

(c) Tenant shall, and shall cause its Contractors to, fulfill its/their Minority and women workforce participation obligations under Section 3(a) above in a substantially uniform manner throughout the Construction Period.

(d) Tenant shall not, and shall cause its Contractors not to, transfer Minority and women employees from employer to employer or project to project for the purpose of meeting Tenant's and Contractors' obligations hereunder.

(e) Tenant shall, and shall cause its Contractors to, review, at least semi-annually, Tenant's non-discrimination obligations and obligations hereunder with all

Employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.

(f) Tenant shall meet with BPCA and such other persons as BPCA may invite, on a periodic basis as required by BPCA to discuss issues relating to Minority and Women Workforce Participation. At such meetings Tenant shall report on the names of its Contractors then engaged in construction on the Project or which within 60 days are scheduled to be engaged in construction on the Project, on the nature of the work and anticipated construction schedule of such Contractors, on the anticipated hiring needs of such Contractors, on the names of the responsible foremen for each of the construction trades directly employed by such Contractors, and such other information requested by BPCA that will promote the employment of Minorities and women. Tenant shall use best efforts to obtain the above information from its Contractors and shall, upon BPCA's request, cause its Contractors to attend said meetings and provide the above information.

(g) Tenant shall monitor all of its Contractors to ensure that the foregoing obligations are complied with by each Contractor.

(h) Tenant shall, and shall cause its Contractors to, consult with BPCA regarding fulfillment of its obligations hereunder.

5. Determination of MBE and WBE Eligibility. The determination of whether a business enterprise is an

eligible MBE or WBE hereunder shall be made by BPCA, and such determination shall be conclusive and final for purposes of this Program. In making any such determination, BPCA will rely on a determination with respect to MBE or WBE eligibility or a certification of, or failure to certify, a business enterprise as an eligible MBE or WBE made by a designated New York State certifying agency, office or authority pursuant to Executive Order 21, dated August 3, 1983, or any guidelines or regulations issued thereunder ("State Certification Determination"). In lieu of such a determination, BPCA may make a determination as to whether a business enterprise is an eligible MBE or WBE based upon, but not be limited to, the following factors:

(a) Whether the business is a small concern as defined in the Federal Small Business Act and the regulations issued thereunder.

(b) Whether the business is an independent enterprise or is controlled by another concern. A concern may be considered as controlling or having the power to control another concern when one or more of the following circumstances are found to exist and it is reasonable to conclude that under the circumstances such concern is directing or influencing or has the power to direct or influence the operation of such other concern:

(i) Interlocking Management. Officers, directors,employees or principal stockholders of

one concern serve as a majority of the board of directors or officers of another concern.

(ii) Common Facilities. One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or a related industry or field of operation, or where such concerns were formerly affiliated.

(iii) Newly Organized Concern. Former officers, directors, principal stockholders and/or key employees of one concern organize a new concern in the same or a related industry or field of operation and serve as its officers, directors, principal stockholders and/or key employees, and one concern is furnishing, or will furnish, the other concern with subcontracts, financial or technical assistance and/or other facilities, whether for a fee or otherwise.

(c) Whether the Minority or women ownership and control is actual and continuing and not created solely to take advantage of special or set aside programs aimed at Minority or women business development.

(d) Whether the Minority or woman owner enjoys thecustomary incidents of ownership and shares in the risks and profits commensurate with his/her percentage of ownership.

(e) Whether there are any restrictions which are placed on the Minority or woman owner's ability to control the firm, including, for example, by-law provisions, partnership agreements or charter requirements for cumulative voting rights which prevent the Minority or woman owner from making a business decision without the cooperation or vote of an owner who is not a Minority or a woman. Absentee ownership by a Minority or woman owner shall not be considered control by a Minority or woman owner.

(f) Whether all securities which evidence ownership of a corporation for purposes of establishing it as an MBE or WBE are held directly by the Minority or woman owner. No securities held in trust or by any guardian for a minor shall be considered held by a Minority or woman in determining ownership and control of a corporation unless legitimate business necessity for the same can be shown to the satisfaction of BPCA.

(g) Whether the contributions of capital or expertise made by the Minority or woman owner to acquire his/her interests in the firm are real and substantial. A Minority or woman owner's promise to contribute capital, a note payable to the firm or its owners who are not Minorities or women or mere participation as an employee shall not be capital contributions, unless such promise, note or participation can be shown to the satisfaction of BPCA to be a real and substantial capital contribution.

(h) Whether a firm engaged in the procurement of materials and supplies is significantly and substantially involved in the production of those materials and supplies or has sufficient inventory on hand in its own facility to effectively meet normal contractual obligations.

6. MBE and WBE Participation. Tenant shall, and, when contemplated by the applicable Contract bid package, shall cause its Contractors to, provide meaningful participation in Contracts for the Project to MBEs and WBEs, provided that such obligation shall be deemed to have been fulfilled when the aggregate Contract Value of Approved MBE Contracts and Approved WBE Contracts shall equal twenty percent (20%) of Total Development Costs. In order to fulfill its obligations hereunder:

(a) Tenant shall, during the Construction Period (which shall mean the period commencing at the Commencement Date and terminating at Substantial Completion of the Buildings, as such terms are defined in the Lease), enter into, or cause its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts having an aggregate Contract Value of at least eighteen percent (18%) of Total Development Costs; such aggregate Contract Value shall consist of an aggregate MBE Contract Value of at least twelve percent (12%) of Total Development Costs and an aggregate WBE Contract Value of at least five percent (5%) of Total Development Costs. After reviewing the work to be included in the Project, Tenant and BPCA have identified

portions of such work for which, in their judgment, qualified MBEs and WBEs are expected to be available and have set forth such portions of the work and the estimated Contract Value thereof in Schedule 2 of this Program. During the Construction Period, in partial fulfillment of its obligations hereunder, Tenant presently expects to enter into, or cause its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts in accordance with the procedures set forth in Section 7 below. The failure of Tenant to achieve the amount of Approved MBE Contracts or Approved WBE Contracts in any trade as set forth in Schedule 2 shall not enlarge, diminish or affect Tenant's obligation to achieve the aggregate Contract Value, aggregate MBE Contract Value and aggregate WBE Contract Value as set forth in this Section 6(a).

(b) In further fulfillment of its obligations under this Section 6, Tenant shall, throughout the Construction Period, (i) conduct a thorough and diligent search for qualified MBEs and WBEs to carry out additional portions of the Project, (ii) review the qualifications of each MBE and WBE suggested to Tenant by BPCA, and (iii) enter into, or cause its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts with all qualified and available MBEs and WBEs, respectively, in accordance with and subject to the procedures set forth in Section 7 below.

7. MBE/WBE Participation Procedures. Tenant shall observe the following procedures throughout the Construction Period and until such time as Tenant has fulfilled its obligations under Section 6 above:

(a) Tenant shall advise BPCA promptly of Tenant's proposed design and construction schedule for the Project and afford BPCA's Affirmative Action Officer a reasonable opportunity to become familiar with the proposed scope, nature and scheduling of Tenant's major Contracts. As promptly as practicable, but in any event at least thirty (30) days prior to issuing requests for proposals or invitations to bid for any Contracts, Tenant shall furnish BPCA with a projected schedule which shall include a detailed description (the "Contract Schedule") of such Contracts, broken down by trade. Tenant will update or amend the Contract Schedule as required to reflect any changes in Tenant's proposed Contracts. The Contract Schedule will set forth the anticipated times at which invitations to bid or requests for proposals are to be issued for work in each trade, the scope of such work and the estimated contract value or range of values of such work. In formulating the Contract Schedule, Tenant will confer with BPCA to identify those portions of the work which can be divided into separate contract packages or which can be subcontracted, so as to maximize opportunities for participation in the work by MBEs and WBEs. To the extent practicable, Tenant shall prepare separate contract

packages for such work which shall be bid and let separately by Tenant or which shall be subcontracted separately by Tenant's Contractors, and shall not be bid or let as part of any other work.

(b) BPCA will review the Contract Schedule as promptly as practicable, and will provide to Tenant a list of eligible MBEs and WBEs for all or portions of the work. Within five (5) days after Tenant's receipt of such list, Tenant shall contact each MBE and WBE on such list regarding the work identified by Tenant and BPCA as work to be separately bid and let. Tenant shall then promptly notify BPCA in writing that all MBEs and WBEs on such list have been contacted and of any business enterprise not on such list which claims to be an MBE or WBE and has expressed an interest in bidding on the work. As promptly as practicable after receipt of Tenant's notice, BPCA will advise Tenant in writing whether the business enterprises which have expressed an interest in the work, but were not included on the list of MBEs and WBEs furnished to Tenant by BPCA, are eligible MBEs or WBEs, provided that BPCA shall have no obligation to advise Tenant whether any business enterprise is an eligible MBE or WBE until a State Certification Determination has been made with respect to such business enterprise.

(c) Concurrently, BPCA and Tenant will review the eligible MBEs and WBEs to determine the extent to which such MBEs and WBEs are qualified and available to perform all or

portions of the work identified in the contract packages. In general, an MBE or WBE will be deemed to be qualified to perform work if its personnel have successfully performed work of a similar nature in the past and demonstrate the present ability, after giving effect to the assistance which Tenant will provide under Section 7(f) below, to organize, supervise and perform work of the kind and quality contemplated for the Project. In determining whether an MBE or WBE meets these standards, BPCA and Tenant shall consider reputation in the construction community, experience in the trade, technical competence, organizational and supervisory ability and general management capacity. An MBE or WBE shall not be considered unqualified to perform work on the Project (i) because such MBE or WBE (A) cannot obtain bonding or (B) cannot obtain commercial credit or cannot obtain such credit on normal terms or (ii) solely because such MBE or WBE (A) does not have the capacity to perform work of the nature and scope required without the assistance to be made available by Tenant under Section 7(f) below or (B) has not previously performed work equal in scope or magnitude to such work. In the event that BPCA and Tenant cannot agree on whether an eligible MBE or WBE is qualified and available hereunder, BPCA's determination on those issues shall be final and conclusive for the purposes of this Program, unless Tenant shall, within ten (10) days after written notice of such determination is given by BPCA,

request that the matter be determined by arbitration pursuant to Section 7(g) below.

(d) Tenant shall invite all MBEs and WBEs found qualified and available hereunder (including those MBEs and WBEs on the list provided by BPCA pursuant to Section 7(b) above) to submit proposals for work required to be performed under Tenant's contract packages (including both contracts and subcontracts). At least ten (10) days prior to any award of any Contract by Tenant, Tenant shall notify BPCA in writing of all responses or bids in connection with Tenant's requests for proposals or invitations to bid.

(e) Tenant shall award, and shall cause its Contractors to award, Contracts to the MBE or WBE which submits the lowest bid or proposal submitted by MBEs and WBEs in response to a request for proposals or an invitation to bid, provided that such MBE's or WBE's proposal is responsive to the Contract requirements and its proposed Contract price is fair and reasonable. A proposed MBE or WBE Contract price shall be deemed fair and reasonable for the purposes of this Section 7(e) if such price is within ten percent (10%) of the lowest responsible bid or proposal from a contractor which is not an eligible MBE or WBE. Whenever a bid or proposal from an MBE or WBE is within twenty percent (20%) of the lowest responsible bid or proposal received from a Contractor which is not an eligible MBE or WBE, Tenant shall review and discuss the MBE's or

WBE's proposal with the MBE or WBE so as to afford the MBE or WBE an opportunity to revise its bid or proposal to provide for a fair and reasonable Contract price as defined above. Notwithstanding the foregoing, Tenant shall not be required to award, or cause its Contractors to award, a Contract to an MBE or WBE which submits the lowest bid or proposal submitted by MBEs and WBEs if (i) in the case of an MBE which submits the lowest bid or proposal, (A) the Tenant and its Contractors have entered into Approved MBE Contracts with an aggregate MBE Contract Value equal to or in excess of the percentage of Total Development Costs specified in Section 6(a) above and (B) a WBE has submitted a proposal with a fair and reasonable Contract price that is responsive to the Contract requirements (in which case the Tenant or its Contractor shall award the Contract to such WBE), or (ii) in the case of a WBE which submits the lowest bid or proposal, (A) the Tenant and its Contractors have entered into Approved WBE Contracts with an aggregate WBE Contract Value equal to or in excess of the percentage of Total Development Costs specified in Section 6(a) above and (B) an MBE has submitted a proposal with a fair and reasonable Contract price that is responsive to the Contract requirements (in which case the Tenant or its Contractor shall award the contract to such MBE).

(f) Upon execution of the Lease, Tenant will pay to BPCA the sum of $50,000 to be used by BPCA to retain the services of (i) professional estimators and other qualified

personnel to review bid proposals prepared by MBEs and WBEs in order to assist MBEs and WBEs in submitting informed and responsive bid proposals, and/or (ii) construction specialists to provide technical assistance to MBEs and WBEs performing work in connection with the Project. Neither Tenant, any of its Contractors, nor any MBE or WBE shall have any interest in such fund, which shall be administered by BPCA in such manner as BPCA shall from time to time determine to be appropriate. In addition, Tenant will provide financial assistance to an MBE or WBE to which a contract or subcontract is to be awarded and which is unable to obtain credit or financing on normal terms by (i) guaranteeing payment to suppliers, subject to obtaining an appropriate security interest in the materials paid for, (ii) making progress payments for work performed more frequently than the normal one-month cycle, and (iii) paying for reasonable mobilization costs in advance of the commencement of construction, or guaranteeing payment to banks for funds advanced to an MBE or WBE for such costs, subject to obtaining an appropriate security interest in any materials or equipment paid for with such advances and mobilization costs. Tenant shall also waive bonds where MBEs and WBEs are unable to obtain the same, shall make available to MBEs and WBEs technical assistance to conform to the method of construction of the Project, shall provide supervision consistent with the MBE's and WBE's experience and capacity and shall conduct periodic job meetings with

each MBE and WBE at reasonable intervals to review the progress of such MBE's and WBE's job performance and suggest appropriate action to remedy any deficiency in such performance. Tenant shall offer to provide the foregoing assistance to MBEs and WBEs prior to their submission of bid proposals and, wherever practicable, at the time of Tenant's request for such proposals.

(g) In the event that Tenant shall demand arbitration as to the question of the qualifications or availability of any MBE or WBE pursuant to Section 7(c) above, the matter shall be determined in the County of New York by three arbitrators, one of whom shall be appointed by BPCA, one by Tenant and the third by agreement of the two arbitrators appointed by the parties (or failing such agreement, the third arbitrator shall be appointed by the American Arbitration Association), in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided that, anything to the contrary contained in such rules notwithstanding, (i) Tenant shall, together with such demand for arbitration, submit in writing to such arbitrators (when selected) and BPCA its reasons for its disagreement with BPCA's determination on such question, (ii) BPCA shall, within five (5) days after its receipt of such written statement from Tenant, submit to such arbitrators and Tenant the reasons for such challenged determination, and (iii) such arbitrators shall, after such hearing, if any, as they may deem appropriate, render their

decision within ten (10) days after receipt of such written statement from BPCA. Such decision shall be conclusive and final for all purposes of this Program, provided that, anything to the contrary contained herein notwithstanding, any decision that an eligible MBE or WBE is or is not available or qualified to perform work on a particular Contract shall not preclude a later determination by Tenant, BPCA or the arbitrators to the contrary in light of changed or different circumstances. Tenant and BPCA shall each bear its own costs and attorneys' fees in connection with such arbitration and shall share equally the costs of such arbitration (including the arbitrator's fees).

(h) Tenant shall maintain complete and accurate written records of (i) its efforts to identify and contract with MBEs and WBEs, (ii) the reasons, if applicable, for any determination by Tenant that an MBE or WBE is not qualified or available to perform work on the Project, (iii) the assistance offered or provided to MBEs and WBEs in accordance with Section 7(f) above, and (iv) the reasons, if applicable, why contracts or subcontracts were not awarded to MBEs and WBEs found qualified hereunder. Tenant shall also maintain complete and accurate written records of all Contracts, including Approved MBE Contracts and Approved WBE Contracts, awarded on the Project, which records shall contain, without limitation, the dollar value of such awards and a description of the scope of the work awarded. Such

records shall be furnished to BPCA quarterly and at such other times as BPCA may reasonably request.

(i) Prior to the issuance by Tenant of any letter of intent to a Contractor, Tenant shall provide to BPCA a written list of specific affirmative action measures which the Contractor has agreed to undertake in performing work on the Project, including a list of MBEs and WBEs to which subcontracts are to be let.

(j) Tenant shall not enter into any Contract, nor permit its Contractors to enter into any Contract, unless Tenant has certified to BPCA in writing that such Contract has been awarded in accordance with the requirements of this Program and BPCA has approved, in writing, the award of such Contract. BPCA shall advise Tenant within five (5) business days of receipt of any such proposed Contract and Tenant's written certification whether or not BPCA has approved such Contract and shall, if such Contract has not been approved, advise Tenant of BPCA's reasons for disapproval. In the event that BPCA shall fail to advise Tenant within such five (5) business day period that a proposed Contract has been approved or disapproved hereunder, BPCA shall be deemed to have approved such Contract for purposes of this Section 7(j). After award of a Contract, Tenant shall not enter into, or permit its Contractors to enter into, any modification or amendment of such Contract which will reduce the scope of work to be performed by an MBE or WBE or

diminish the Contract Price of any Contract (including subcontracts) awarded to an MBE or WBE without the prior written consent of BPCA. Each Contract entered into by Tenant shall (i) contain such non-discrimination provisions as are required by the Lease, (ii) require the Contractor thereunder to comply with the applicable Minority and Women Workforce Requirements of Section 3, and the procedures set forth in Section 4, of this Program and (iii) require such Contractor to comply with the applicable provisions of Sections 6 and 7 of this Program with respect to any Contracts awarded by such Contractor. Tenant shall promptly furnish BPCA with the name of each party to whom Tenant (or its Contractors) awards a Contract, together with, in the case of each Approved MBE Contract or Approved WBE Contract, a summary of the scope of services to be performed under such Contract and the Contract price thereof, as the same may be amended from time to time.

(k) Tenant shall, and shall cause its Contractors to, submit to BPCA within five (5) days after execution of any Approved MBE Contract or Approved WBE Contract or amendment thereto between Tenant or its Contractor and an MBE or WBE, a copy of such contract or amendment. Within thirty (30) days after substantial completion of work done pursuant to any such contract as amended, Tenant shall submit to BPCA sworn affidavits as described hereafter, for the purpose of determining Tenant's fulfillment of its obligations under Section 6 above. The affidavits required

by this subsection shall consist of one affidavit of a duly authorized officer of Tenant or its Contractor, as the case may be, and one affidavit of a duly authorized officer of the MBE or WBE, as the case may be, attesting to the following information: (i) identifying the contract and describing the scope of services required thereunder; (ii) that the MBE or WBE is, or is believed to be by Tenant or its Contractor, a bona fide MBE or WBE as defined by the State of New York pursuant to Gubernatorial Executive Order No. 21 and any guidelines or regulations issued thereunder or, if the MBE or WBE has not been certified by a New York State agency, as defined by this Program; (iii) that the MBE or WBE actually performed the services described pursuant to clause 7(k)(i) above; (iv) the total compensation paid or received for the performance of the services described pursuant to clause 7(k)(i) above and whether such amount represents all sums due and owing and if not, the reason for any unpaid sums due and owing; (v) that such officer's statements pursuant to clauses 7(k)(i) above are made with full knowledge that they will be used and relied upon by one or more public servants in the performance of their official duties; and (vi) that such officer is familiar with the provisions of Article 210 of the Penal Law relating to false sworn statements made to public officials in their official capacity.

(l) Tenant shall from time to time designate an affirmative action officer, satisfactory to BPCA, with full

authority to act on behalf of and to represent Tenant in all matters relating to this Program and advise BPCA in writing of such designee.

(m) Tenant shall, within ninety (90) days after Substantial Completion of the Buildings, provide a statement to BPCA of Tenant's Total Development Costs, certified by Tenant and a Certified Public Accountant, listing in reasonable detail the components thereof. Within ninety (90) days after receipt of such statement, BPCA may cause a firm of independent Certified Public Accountants selected by BPCA to examine and audit the records, account books and other data of Tenant used as the basis for such certified statement, and be informed as to the same by a representative of Tenant, all of which Tenant shall make available to BPCA. If such audit shall establish that the Total Development Costs were understated, then the Total Development Costs shall be increased accordingly. The audit, if any, shall be conducted at the expense of BPCA unless it shall be established that Tenant understated the Total Development Costs by more than one (1%) percent, in which case Tenant shall pay the cost of BPCA's audit. If any items of Total Development Costs are not yet determined at the time of Substantial Completion of the Buildings (for example, costs of tenant improvements not yet completed or paid for), Tenant may make one or more supplemental

submissions of such additional Total Development Cost items, and such items shall be subject to audit by BPCA as provided in this Section 7(m).

8. Subsequent Construction and Project Management.

(a) After the Construction Period, in connection with all subsequent construction work on the Project, including interior improvements, alterations, capital improvements, structural repairs, Restoration (as defined in the Lease) and replacement of, or additions to, the Project undertaken by Tenant (including its successors, permitted assigns and commercial subtenants), whether on its own behalf or on behalf of its subtenants or other occupants (collectively, "Subsequent Work"), Tenant shall, and shall cause its Contractors to, provide meaningful participation to qualified and available MBEs and WBEs which submit competitive proposals for such work. Additionally, Tenant shall provide meaningful participation in all service and management agreements, agreements for the purchase of goods and services and other agreements relating to the operation of the Project (collectively, "Operating Agreements") to MBEs and WBEs. Tenant and BPCA hereby agree that the annual goal for MBE and WBE participation in Subsequent Work and Operating Agreements is fifteen percent (15%) of the total contract prices thereof. In order to achieve the goal of fifteen percent (15%) established under this Section 8(a), Tenant shall, and shall cause its Contractors to, (i) conduct a thorough and diligent search for qualified MBEs

and WBEs, (ii) review the qualifications of each MBE and WBE suggested to Tenant by BPCA and (iii) afford an opportunity to submit proposals for all Subsequent Work and Operating Agreements to those MBEs and WBEs found qualified. Prior to the end of the Construction Period, Tenant shall meet with BPCA as required by BPCA to review the operation and status of this Program and develop a plan for meeting the MBE and WBE participation goals set forth above. Thereafter, Tenant shall meet with BPCA on a periodic basis as required by BPCA to review the operation and status of this Program and such plan and identify measures to be taken by Tenant to ensure that the MBE and WBE participation goals are met. In addition, BPCA may require Tenant to comply with procedures similar to those set forth in Section 7 above in the event that Tenant fails to meet the MBE and WBE participation goals. Tenant shall submit quarterly reports to BPCA setting forth the nature and scope of Subsequent Work carried out and Operating Agreements in effect during the preceding quarter, all efforts made by Tenant and its Contractors to employ qualified MBEs and WBEs to perform the Subsequent Work and participate in the Operating Agreements and all contracts let to MBEs and WBEs. The obligations under this Section 8(a) shall continue until BPCA finds that this Program is no longer necessary to remedy the effects on the Project of discrimination in the construction industry and in the management and operation of projects.

(b) In connection with Subsequent Work and the management and operation of the Project, Tenant (including its successors, permitted assigns and commercial subtenants) shall, and shall cause such persons as it may employ or contract with to manage and operate the Project (collectively, the "Operator"), to:

(i) make good faith efforts to include Minority group members and women in such work in at least the proportion that Minorities and women are available for such work in the New York City workforce;

(ii) in the event of lay-offs, make good faith efforts to maintain the same proportion of Minority and women employees in Tenant's (or Operator's, as the case may be) workforce as existed immediately prior to commencement of such lay-offs; and

(iii) meet with BPCA on a periodic basis as required by BPCA, but not less than quarterly, to review Tenant's and Operator's compliance with this Section 8(b) and to determine specific opportunities where Minority and women workforce participation in Subsequent Work and management and operation of the Project might be encouraged.

9. Non-Compliance. (a) Tenant acknowledges that the percentages of Minority and Women Workforce Participation set forth in Section 3(a) above and in Schedule 1, and the work and Contract Value thereof set forth in Schedule 2, represent reasonable estimates of Tenant's ability to provide meaningful participation to Minority and women workers and MBEs and WBEs, respectively, during the Construction Period. Tenant recognizes and acknowledges that the purpose of this Program and of Tenant's and BPCA's undertakings hereunder is to fulfill BPCA's and Tenant's statutory obligations and redress the effects of past discrimination in the construction industry and in the management and operation of projects by affording Minority and women workers and MBEs and WBEs an opportunity to participate in the Construction of, and Contracts for, the Project, to the end that such Minority and women workers and MBEs and WBEs can share in economic benefits from which they have heretofore been excluded by such discrimination and also can gain necessary training, experience and other benefits, including increased financial resources, which will facilitate their full participation in the construction industry and management and operation of projects hereafter. Tenant recognizes and acknowledges that its failure to achieve the goals set forth in Sections 3 and 6 above, or comply with the procedures set forth in Sections 4 and 7 above, with respect to the utilization of Minority and women workers and MBEs and WBEs in the Construction of, and

Contracts for, the Project will result in substantial damage to BPCA's affirmative action programs and policies, as well as to Minority and women workers and MBEs and WBEs who will be denied an opportunity to share in the economic benefits provided by the construction work and will be denied the training, experience and other benefits which participation in the Project would provide. Tenant further recognizes and acknowledges that the damage referred to above cannot be readily quantified, but that the amounts set forth below are reasonable in light of the magnitude of the harm which would result from its non-compliance hereunder, and that payments made for the purposes of the Minority Workers Training Fund and Women Workers Training Fund and the MBE Assistance Fund and WBE Assistance Fund, referred to in Section 9(e) below, are a reasonable means of compensating for that harm.

(b) In the case of Tenant's failure to achieve the goals set forth in Section 3 or 6 above, or meet the requirements set forth in Section 4 or 7 above, with respect to the utilization of Minority and women workers and MBEs and WBEs in the Construction of, and Contracts for, the Project during the Construction Period (other than failure resulting directly from any order of judicial authorities having jurisdiction over the Project or this Program), Tenant shall pay to BPCA compensatory damages, in addition to any other remedies available to BPCA under this Program, the Lease or in law or equity, in the following liquidated amounts:

(i) in the event that Tenant fails to employ or cause its Contractors to employ Minority and women workers in any trade group equal to the percentage set for such trade group in Schedule 1 hereto, for each such trade group, the product of (A) the aggregate number of person-hours of training and employment of Minority and women workers which would have resulted from achievement of the percentage set forth in such Schedule for such trade group <u>less</u> the sum of the actual Minority Workforce Participation and Women Workforce Participation achieved in the construction of the Project by Tenant or its Contractors in such trade group, <u>multiplied by</u> (B) fifty percent (50%) of the average hourly wage (including fringe benefits) paid to journey-level workers employed in such trade group in the Construction of the Project;

(ii) in the event that Tenant fails to employ or cause its Contractors to employ women workers equal to the percentage set forth in Section 3(a) above, the product of (A) the aggregate number of person-hours of training and employment of women workers which would have resulted from achievement of the percentage set forth in such Section <u>less</u> the sum of the actual Women Workforce Participation achieved in the construction of the Project by Tenant or its Contractors, <u>multiplied by</u> (B) fifty percent (50%) of

the average hourly wage (including fringe benefits) paid to all journey-level workers employed in the Construction of the Project;

(iii) in the event that, at any time during the Construction Period, Tenant fails to enter into, or cause its Contractors to enter into, an Approved MBE Contract or Approved WBE Contract for work on the Project with any eligible MBE or WBE found to be qualified and available to perform such work for a fair and reasonable price, in accordance with and subject to the provisions of Sections 5, 6 and 7 above, fifty percent (50%) of the Contract price at which such MBE or WBE was willing to perform such work, but in no event less than $25,000 for each such Contract, provided that if such failure is either willful or a result of a pattern of continuing violation of Tenant's obligations hereunder after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal one hundred percent (100%) of such Contract price, but in no event less than $50,000 for each such Contract;

(iv) in the event that Tenant fails to enter into, or cause its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts having an aggregate Contract Value at least equal to eighteen percent (18%) of Total Development Costs as provided in Section 6(a) above ("Specified Amount"),

fifty percent (50%) of the amount by which the Specified Amount exceeds the aggregate Contract Value of Approved MBE Contracts and Approved WBE Contracts actually entered into by Tenant and its Contractors during the Construction Period, provided that if such failure is either willful or a result of a pattern of continuing violation of Tenant's obligations hereunder after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal one hundred percent (100%) of the amount by which the Specified Amount exceeds the aggregate Contract Value;

(v) in the event that Tenant fails to enter into, or cause its Contractors to enter into, Approved MBE Contracts having an aggregate MBE Contract Value at least equal to twelve percent (12%) of Total Development Costs as provided in Section 6(a) above ("MBE Specified Amount"), fifty percent (50%) of the amount by which the MBE Specified Amount exceeds the aggregate MBE Contract Value of Approved MBE Contracts actually entered into by Tenant and its Contractors during the Construction Period, provided that if such failure is either willful or a result of a pattern of continuing violation of Tenant's obligations hereunder after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal one

hundred percent (100%) of the amount by which the MBE Specified Amount exceeds the aggregate MBE Contract Value; and

(vi) in the event that Tenant fails to enter into, or cause its Contractors to enter into, Approved WBE Contracts having an aggregate WBE Contract Value at least equal to five percent (5%) of Total Development Costs as provided in Section 6(a) above ("WBE Specified Amount"), fifty percent (50%) of the amount by which the WBE Specified Amount exceeds the aggregate WBE Contract Value of Approved WBE Contracts actually entered into by Tenant and its Contractors during the Construction Period, provided that if such failure is either willful or a result of a pattern of continuing violation of Tenant's obligations after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal one hundred percent (100%) of the amount by which the WBE Specified Amount exceeds the aggregate WBE Contract Value.

(c) Anything to the contrary contained herein notwithstanding, Tenant shall not be liable for damages under paragraph (b)(i) or (b)(ii) of this Section 9 if and to the extent that Tenant can demonstrate (i) that it has fully complied with each and every provision hereof including Section 4(h) above and (ii) that, notwithstanding

such efforts, it was unable to employ qualified Minorities or women, as the case may be, in accordance with and subject to the requirements set forth in Sections 3 and 4 of this Program, provided that neither the provisions of any collective bargaining agreement nor the refusal of a union, with which Tenant or its Contractors has a collective bargaining agreement or other contract or understanding, to work with or assist Tenant in complying with its obligations hereunder shall excuse Tenant from compliance hereunder. In addition, Tenant shall not be liable for damages under paragraph (b)(iii), (b)(iv), (b)(v) or (b)(vi) of this Section 9 if and to the extent that Tenant can demonstrate (i) that it has fully and diligently performed all of its obligations under this Program and diligently complied with each and every provision hereof and (ii) that, notwithstanding such efforts, it was unable to contract with additional, qualified MBEs or WBEs, as the case may be, in accordance with and subject to the requirements set forth in Sections 5, 6 and 7 of this Program.

(d) Anything to the contrary contained herein notwithstanding, (i) the aggregate damages payable by Tenant pursuant to paragraphs (b)(i) and (b)(ii) of this Section 9 shall in no event exceed ten percent (10%) of Total Development Costs and (ii) the aggregate damages payable by Tenant pursuant to paragraphs (b)(iii) through (b)(vi) of this Section 9 shall in no event exceed fifteen percent (15%) of Total Development Costs. Tenant shall, in any

event, be entitled to credit against any sums payable under paragraphs (b)(iv), (b)(v) and (b)(vi) of this Section 9 all payments made by Tenant pursuant to paragraph (b)(iii) of this Section 9.

(e) Payments made by Tenant under paragraph (b)(i)of this Section 9 shall be deposited in a Minority Workers Training Fund and payments made by Tenant under paragraph (b)(ii) of this Section 9 shall be deposited in a Women Workers Training Fund. The monies in such Funds shall be used by BPCA to provide job training and other assistance to Minority and women workers, respectively, as BPCA shall determine to be useful in enabling such workers to overcome the effects of past discrimination and to participate more fully in the construction industry. Payments made by Tenant under paragraphs (b)(iii) through (b)(vi) of this Section 9 shall be deposited in either an MBE Assistance Fund or WBE Assistance Fund, depending upon whether such payments resulted from a failure to meet requirements regarding MBEs or WBEs. The monies in such Funds shall be used by BPCA to provide such financial, technical and other assistance to MBEs and WBEs, respectively, as BPCA shall determine to be useful in enabling MBEs and WBEs to overcome the effects of past discrimination and to participate more fully in the construction industry.

(f) In the event Tenant fails to fulfill any of its obligations hereunder, BPCA may, in addition to assessing

damages as provided in Section 9(b) above, (i) advise Tenant that, except for completion of the Project, Tenant shall be ineligible to participate in any work at Battery Park City and (ii) apply to any court of competent jurisdiction for such declaratory and equitable relief as may be available to BPCA to secure the performance by Tenant of its obligations hereunder.

10. Confidentiality. BPCA acknowledges that the information to be furnished by Tenant hereunder concerning Tenant's Contracts and bidding procedures constitutes information which, if disclosed, could impair present or imminent Contract awards, is maintained for the regulation of Tenant's commercial enterprise and could, if disclosed, cause substantial injury to the competitive position of that enterprise. Accordingly, BPCA will, in accordance with and subject to applicable law, treat such information as confidential and use its best efforts to prevent the unauthorized disclosure thereof, except to the extent that (a) BPCA and Tenant shall agree is necessary in connection with the recruitment of qualified MBEs and WBEs to perform work on the Project, (b) BPCA may determine to use such information, without identifying such individual Contracts, as part of BPCA's overall assessment of the effectiveness of this Program in overcoming the effects of discrimination in the construction industry or (c) is otherwise necessary in connection with the enforcement of this Program in accordance with the provisions hereof.

11. No BPCA Liability. No act of, nor failure to act by, BPCA hereunder shall create or result in any liability on the part of BPCA or any of its members, officers, employees or agents to Tenant or to any other party, or give rise to any claim by Tenant or any other party against BPCA or any of its members, officers, employees or agents, whether for delay, for damages or for any other reason.

12. Performance under Lease. No requirement of this Program, nor the assumption or performance by Tenant of any obligation hereunder, shall excuse Tenant from the performance of any of its obligations under the Lease, nor constitute a defense to any claim by BPCA under the Lease, whether for default, rental, damages or otherwise.

13. Persons Bound. Except as may be required elsewhere in this Program, this Program and the Schedules hereto, including any amendments thereto, shall be binding upon and inure to the benefit of Tenant and its respective legal representatives, successors and permitted assigns, including without limitation, any cooperative corporation, condominium association or similar entity for the Buildings. Tenant shall require its successors or assigns to confirm and agree in writing to all terms and conditions of this Program.

14. Additional Requirements. In the event that legislation is enacted or an executive order is issued which

authorizes or directs BPCA to carry out additional affirmative action requirements or programs with respect to Minority or women workers or business enterprises owned and operated by Minorities or women, BPCA reserves the right to take such measures as may be necessary or appropriate to implement such requirements or programs.

15. Notices and Addresses.

(a) Any notice or other communication (except as otherwise provided in Section 7(j) above) given by BPCA or Tenant to the other relating to this Program shall be in writing and sent by postage prepaid, registered or certified mail, return receipt requested, addressed to the other at its address set forth below, or delivered personally to the other at such address, and such notice or other communication shall be deemed given three (3) days after the date of mailing or when so delivered:

If to BPCA, to: Battery Park City Authority
One World Financial Center
18th Floor
New York, New York 10281
Attn: Vice President
for Affirmative Action

If to Tenant, to: Battery Place Associates
c/o Milstein Properties
1271 Sixth Avenue
Suite 4200
New York, NY 10020
Attn: Affirmative Action Officer

(b) Either BPCA or Tenant may at any time advise the other of a change in its address or designate a

different person to whom notice shall be mailed by giving written notice to the other of such change or designation in the manner provided in this Section 15.

16. Separability and Invalidity. If any provision of this Program shall for any reason be held unenforceable or invalid, neither the enforceability nor the validity of any other provision of this Program shall be affected thereby. In the event that the Program is, in whole or in part, held to be unenforceable or invalid, then Tenant agrees to undertake a program of affirmative action, as directed by BPCA, which program shall not impose obligations on Tenant which are more onerous than those contained herein.

17. Approvals. All approvals and consents to be given by BPCA pursuant to this Program shall be in writing, and Tenant shall not be entitled to rely on any approval or consent which is not in writing.

18. Governing Law. This Program shall be construed and enforced in accordance with the laws of the State of New York.

Dated: New York, New York
March 12, 1987

Accepted and Agreed:

BATTERY PLACE ASSOCIATES

By: _____
Howard P. Milstein, Partner

Schedule 1

## MINORITY AND WOMEN WORKFORCE PARTICIPATION

| Trade Group | Percentage |
|---|---|
| Skilled Trades (including but not limited to Electricians, Carpenters, Steamfitters, Metal Lathers, Painters, Op. Engineers, Plumbers, Iron Workers (structural and ornamental), Elevator Constructors, Bricklayers, Roofers, Glazers, Plasterers and Boilermakers) | 30.0 |
| Laborers (including but not limited to Cement Masons and Mason Tenders) and all Others (including but not limited to Teamsters) | 30.0 |

## WOMEN WORKFORCE PARTICIPATION

| | |
|---|---|
| All Trades | 5.0 |

Schedule 2

## MBE AND WBE PARTICIPATION

| Contract Amount | Anticipated % of Trade MBE | WBE |
|---|---|---|
| Excavation & Foundation | | |
| Site Improvements | | |
| Concrete Superstructure | | |
| Masonry | | |
| Miscellaneous Metals | | |
| Carpentry & Drywall | | |
| Millwork | | |
| Waterproofing | | |
| Spandrel Flashing | | |
| Roofing & Sheetmetal | | |
| Caulking & Sealants | | |
| Hollow Metal | | |
| Finish Hardware | | |
| Windows | | |
| Entrance Work & Glass | | |
| Ceramic Tile & Marble | | |
| Acoustical Ceilings | | |
| Wood Flooring | | |
| Carpeting | | |
| Painting & Finishing | | |
| Vinyl Wall Covering | | |
| Toilet Compartments | | |
| Toilet Accessories | | |
| Compactors | | |
| Refuse Chutes | | |
| Kitchen Cabinets | | |
| Vanities & Tops | | |
| Appliances | | |
| Elevators | | |
| Plumbing | | |
| Sprinklers | | |
| HVAC | | |
| Electric | | |
| Lighting Fixtures | | |
| General Conditions | | |

The above stated percentages are set forth for illustrative purposes only and are not intended to modify in any way the requirements set forth elsewhere in this Exhibit D.

EXHIBIT E

BATTERY PARK CITY

Battery Place Residential Area

AFFIRMATIVE FAIR MARKETING PROGRAM FOR SITE

This Affirmative Fair Marketing program has been adopted by the Battery Park City Authority ("BPCA") in order to assure that Battery Place Associates, c/o Milstein Properties, 1271 Sixth Avenue, Suite 4200, New York, New York 10020, organized under the laws of the State of New York ("Tenant"), its agents, successors and assigns, comply with their obligations to prevent discrimination on account of race, color, creed, sex or national origin in the rental, sale or other disposition of Tenant's residential and commercial units and related facilities (collectively, "Units") located on that portion of the Battery Park City Battery Place Residential Area Development designated as Site 4 and to permit BPCA to promote open, integrated housing and to afford individuals a range of housing or commercial facility choices regardless of race, color, creed, sex or national origin.

This Program is designed to implement BPCA's corporate policy of ensuring that all housing and commercial facilities at Battery Park City afford equal access to, and equal opportunity for, minority persons and families and single women and single parent households headed by women, and that occupancy reflects, to the maximum extent possible, the minority and gender demographic characteristics of the City of New York's population.

1. Definitions. As used in this Program, the following terms shall have the following respective meanings:

Building: As defined in the Lease.

Lease: The Agreement of Lease, of even date herewith, between BPCA and Tenant, as amended and supplemented from time to time.

Minority or Minorities: (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent, of either Indian or Hispanic culture or origin, regardless of race;

(c) Asian or Pacific Island persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; and

(d) American Indian or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through memberships and participation in tribal associations or community identification.

2. Submission of Affirmative Fair Marketing Plan

Tenant shall submit to BPCA an affirmative fair marketing plan (the "Plan") at least one hundred twenty (120) days prior to undertaking any marketing activity. For the purposes of this Program "marketing activity" shall include any advertising and/or the solicitation of applications for the Units. No marketing activity shall take place until BPCA shall have approved in writing the Plan. The Plan shall specify all actions which Tenant proposes to take to attract Minorities and women who might not otherwise apply for the Units in the Building. The Plan shall include, inter alia, provisions for: (a) publicizing the availability of the Units to Minorities in Minority media and other Minority outlets; (b) publicizing the availability of the Units to women in women-oriented media and

other outlets; (c) maintaining a non-discriminatory hiring policy for marketing staff; (d) instructing all marketing staff and agents in writing and orally in the policies of non-discrimination for fair marketing; (e) displaying fair marketing posters approved by BPCA; (f) including in any printed materials used in the marketing of the Units an equal opportunity logo, slogan, or statement approved by BPCA; (g) prominently posting signs displaying the logo, slogans and statements referred to in (e) and (f) above at each of Tenant's sales or rental offices; and (h) listing all community groups and organizations and Minority and women's groups and organizations to be contacted by Tenant.

The Plan shall also include: (a) a description of the training to be given to Tenant's rental and/or sales staff; (b) evidence of non-discriminatory hiring and recruiting policies for staff engaged in the rental or sale of the Units; (c) a description of Tenant's selection and screening procedures for prospective renters or buyers; and (d) copies of Tenant's lease or sale agreements for the Units.

In addition, the Plan shall include information concerning the number of Units available, a description of the commercial units and related facilities available, the type of commercial and other uses sought for such units and facilities,

the rental or sale range of the Units, the financial eligibility and other selection criteria to be employed by Tenant in the rental or sale of the Units, the anticipated occupancy results for Minorities and for single women and single parent households headed by women, and Tenant's commitment to make such changes to the Plan as may be reasonably required by BPCA to achieve the purposes thereof. In the event BPCA requires Tenant to make changes to the Plan, such changes shall not cause Tenant to incur more than ten thousand dollars ($10,000) in additional expenditures in excess of the amount set forth in the Plan.

Tenant shall submit with the Plan an advertising and promotional budget for its outreach effort to Minorities and women, which budget shall also be subject to BPCA's prior written approval.

3. Pre-Marketing Conference. At least ninety (90) days prior to undertaking any marketing activity, Tenant and BPCA shall meet to review the Plan and determine what modifications, if any, of the Plan should be made to achieve the purposes thereof.

4. Marketing of Commercial Units. Prior to undertaking any marketing activity with respect to the commercial units and related facilities, Tenant shall request BPCA to submit the names of minority and women-owned business enterprises which may

be interested in renting or purchasing such units and facilities, if any. Upon receipt of such submission, Tenant shall contact the minority and women-owned business enterprises set forth in such submission regarding the rental or sale of the commercial units and related facilities.

5. Reporting Requirements. Following the commencement of marketing activities and until eighty percent (80%) of the Units are rented or sold, Tenant shall submit, on a monthly basis, to BPCA: (a) one copy or script of all advertising regarding the Units, including newspaper, radio and televisions advertising and a photograph or copy of all rental or sale signs at the Building and each rental or sale office of Tenant; (b) one copy of all brochures and other printed material used in connection with the rental or sale of the Units; (c) evidence of outreach efforts to community groups and organizations; (d) evidence of affirmative outreach to Minorities and women with respect to the Units; (e) evidence of instructions to employees with respect to Tenant's policy of non-discrimination in the rental or sale of the Units; (f) data by Minority group and sex on the composition of Tenant's rental or sales staff; (g) one copy of each application list and waiting list of prospective renters or buyers; (g) one copy of each sign-in list maintained at the Building and each rental or sales office of Tenant for prospective renters or buyers who are shown the Units; (i) any other information which documents Tenant's

efforts to comply with the Plan; (j) a list of any Minority or women applicants who have been rejected and the basis for their rejection; and (k) any other documents, records and information relating to the marketing of the Units which BPCA may reasonably request (except that Tenant need not provide proprietary marketing studies and information utilizied solely by Tenant in setting sale prices or rent levels for the Units).

Thereafter, whenever Tenant revises, amends, changes or corrects any document, record or information previously provided to BPCA, Tenant shall provide a copy of such revised, amended, changed or corrected version to BPCA.

6. Recordkeeping. Tenant shall maintain records which show the Minority group and gender characteristics of all applicants for, occupants of, the Units. The date of each application shall be recorded and applications shall be retained for a period of two years. On or before the fifteenth day of each month beginning with the commencement of marketing activities and until ninety-five percent (95%) of the Units are rented or sold, Tenant shall submit to BPCA a report, on the form annexed hereto as Schedule I, summarizing the Minority group and gender characteristics of applicants and occupants, and an occupancy report on the Units. After eighty percent (80%) of the Units have been rented or sold, Tenant may, if it so chooses, provide such information with respect to new

occupants only. The classification of applicants and occupants by the required characteristics shall be made in accordance with estimates of Tenant's staff, which will make such estimates on the basis of their observations of the personal appearance, surname, speech pattern and other identifying characteristics of the applicants and occupants. Such observations shall be subject to and shall respect the applicants' and occupants' rights of privacy. Tenant and its staff shall not be required to ask any applicant or occupant to identify his or her race, ethnicity or gender.

If the number of Minorities or women applying for the Units does not meet the expectations of BPCA and Tenant, they will consider jointly the implementation of other measures designed to attract Minority and women applicants and occupants.

7. Monitoring. At BPCA's request and expense, Tenant shall allow BPCA to place a representative at Tenant's rental or sales office or offices to monitor compliance with the Plan, provided that such BPCA representatives shall not interfere with Tenant's sales and marketing activities. BPCA shall determine, in its discretion, when and whether it wishes to commence, discontinue or renew monitoring Tenant's activities under the Plan.

8. Non-Compliance. In the event that Tenant fails to comply with the Plan or with any of its other obligations

hereunder, BPCA shall be entitled to take the following remedial action or actions, as BPCA shall deem appropriate, as its exclusive remedies hereunder: (a) applying to any court of competent jurisdiction for such declaratory and equitable relief as may be available to BPCA to secure the specific performance by Tenant ineligible to participate in any other aspect of, or work on, Battery Park City or any other BPCA project (except for completion of the Building and the exercise of its rights under the Lease); (c) requiring Tenant to take remedial action such as holding some or all of the units off the market until Tenant is in compliance; (d) hiring a consultant to assist with outreach efforts to Minorities and women whose services shall be paid for by Tenant; and (e) pursuing any other remedies available to BPCA under the Lease (except for declaring Tenant in default thereunder).

9. Rent Levels and/or Sale Prices. Nothing herein contained is intended to restrict or limit Tenant in setting rent levels and/or sale prices for the Units.

10. No BPCA Liability. No act of, or failure to act by, BPCA hereunder shall create or result in any liability on the part of BPCA or any of its members, officers, employees or agents to Tenant or to any other party, or give rise to any claim by Tenant or any other party against BPCA or any of its members, officers, employees or agents, whether for delay, for

damages or for any other reason. The provisions of this Program shall be enforceable by BPCA and Tenant only, and are not intended to confer any right of enforcement or cause of action upon any other person, entity or association.

11. Performance under Lease. No requirement of this Program, or the assumption or performance by Tenant of any obligation hereunder, shall excuse Tenant from the performance of any of its obligations under the Lease, or constitute a defense to any claim by BPCA under the Lease, whether for default, rental, damages or otherwise.

12. Notices and Addresses. (a) Any notice or other communication given by BPCA or Tenant to the other relating to this Program shall be in writing and sent by postage prepaid, registered or certified mail, return receipt requested, addressed to the other at its address set forth below, or delivered personally to the other at such address, and such notice or other communication shall be deemed given three (3) days after the date of mailing or when so delivered:

If to BPCA, to:

Battery Park City Authority
One World Financial Center
18th Floor
New York, NY 10281

Attention: Vice President for
Affirmative Action

If to Tenant to:

Battery Place Associates
c/o Milstein Properties
1271 Sixth Avenue, Suite 4200
New York, NY 10020

Attention: Affirmative Action Officer

(b) BPCA or Tenant may at any time advise the other of a change in its address or designate a different person to whom notice shall be mailed by giving written notice to the other party of such change or designation in the manner provided in this Section 12.

13. Separability. If any provision of this Program shall for any reasons be held unenforceable or invalid, neither the enforceability nor the validity of any other provision of this Program shall be affected thereby.

14. Governing Law. This Program shall be construed and enforced in accordance with the laws of the State of New York.

Date: New York, New York
March 12, 1986

ACCEPTED AND AGREED:

BATTERY PLACE ASSOCIATES

By: _____
Howard P. Milstein, Partner

SCHEDULE I

BATTERY PARK CITY AUTHORITY
MONTHLY RENTAL OR SALES REPORT

PERIOD ENDING: REPORT NO. _____

CHECK, IF APPLICABLE
[ ] Initial Report
[ ] Final Report

1. INTRODUCTION

Pursuant to each approved Plan for the rental or sale of housing or commercial units, this report shall be filed with BPCA on or before the fifteenth day of each month following rental or sale of the first unit and shall be submitted monthly until 95% of the units covered by the Plan are rented or sold.

2. PROJECT IDENTIFICATION

A. SITE: _____

B. NUMBER OF UNITS: _____

C. RENTAL OR SALE RANGE OF HOUSING UNITS

From $ _____ To: $ _____

D. RENTAL/MANAGEMENT AGENCY

NAME: _____

ADDRESS: _____

3. ANTICIPATED HOUSING OCCUPANCY RESULTS FOR MINORITIES (State in number of units the racial/ethnic mix anticipated as a result of the Plan)

[ ] White [ ] Black [ ] American Indian or Alaskan Native

[ ] Hispanic [ ] Asian or Pacific Islander

4. ANTICIPATED HOUSING OCCUPANCY RESULTS FOR WOMEN (State in number of units the mix of single women and single percent households headed by women anticipated as a result of the Plan)

[ ] Single Women [ ] Single Parent Households Headed by Women

5. HOUSING RENTAL OR SALES ACTIVITIES (Entries must be made for all items and columns. Use "0" when necessary.) The approximations required throughout this report should be judged from personal appearance, surname, speech pattern and/or other identifying characteristics or information.

A. RENTALS OR SALES FOR REPORTING PERIOD

| | RENTALS | SALES |
|---|---|---|
| WHITE..... | | |
| BLACK..... | | |
| AMERICAN INDIAN OR ALASKAN NATIVE..... | | |
| HISPANIC..... | | |
| ASIAN OR PACIFIC ISLANDERS..... | | |
| TOTAL..... | | |
| SINGLE WOMEN..... | | |
| SINGLE PARENT HOUSEHOLDS HEADED BY WOMEN..... | | |
| OTHER..... | | |
| TOTAL..... | | |

B. TOTAL NUMBER OF HOUSING UNITS CURRENTLY OCCUPIED INCLUSIVE OF TOTALS INDICATED IN ITEM 5.A. ABOVE.

| | RENTALS | SALES |
|---|---|---|
| WHITE..... | | |
| BLACK..... | | |
| AMERICAN INDIAN OR ALASKAN NATIVE..... | | |
| HISPANIC..... | | |
| ASIAN OR PACIFIC ISLANDERS..... | | |
| TOTAL..... | | |
| SINGLE WOMEN..... | | |
| SINGLE PARENT HOUSEHOLDS HEADED BY WOMEN..... | | |
| OTHER..... | | |
| TOTAL..... | | |

C. ESTIMATED PERCENTAGE RACIAL/ETHNIC MIX OF VISITORS TO RENTAL OR SALES OFFICE FOR REPORTING PERIOD

| | |
|---|---|
| WHITE..... | |
| BLACK..... | |
| AMERICAN INDIAN OR ALASKAN NATIVE..... | |
| HISPANIC..... | |
| ASIAN OR PACIFIC ISLANDERS..... | |
| TOTAL..... | 100% |

n D. ESTIMATED PERCENTAGE GENDER MIX OF VISITORS TO RENTAL OR SALES OFFICE FOR REPORTING PERIOD

WOMEN.....
MEN.....
WOMEN AND MEN TOGETHER.....
TOTAL..... 100%

6. INDEMNIFICATION OF NEW HOUSING TENANTS OR OWNER WHO ARE MINORITIES DURING REPORTING PERIOD (continue on a separate page if necessary)

NAMES APARTMENT NUMBERS

7. IDENTIFICATION OF NEW HOUSING TENANTS OR OWNERS WHO ARE SINGLE WOMEN OR SINGLE PARENT HEADS OF HOUSEHOLDS DURING REPORTING PERIOD (continue on a separate page if necessary)

NAMES APARTMENT NUMBERS

8. COMMERCIAL UNITS (if any)

A. NUMBER OF UNITS: _____

B. RENTAL OR SALE RANGE OF UNITS

From: $ _____ To $ _____

C. RENTAL OR SALE ACTIVITIES (Entries must be made for all items and columns. Use "0" when necessary)

1. RENTALS OR SALES FOR REPORTING PERIOD

| | RENTALS | SALES |
|---|---|---|
| WHITE..... | | |
| BLACK..... | | |
| AMERICAN INDIAN OR ALASKAN NATIVE..... | | |
| HISPANIC..... | | |
| ASIAN OR PACIFIC ISLANDERS..... | | |
| TOTAL..... | | |

2. TOTAL NUMBER OF UNITS CURRENTLY OCCUPIED INCLUSIVE OF TOTALS INDICATED IN ITEM C.1. ABOVE.

| | RENTALS | SALES |
|---|---|---|
| WHITE..... | | |
| BLACK..... | | |
| AMERICAN INDIAN OR ALASKAN NATIVE..... | | |
| HISPANIC..... | | |
| ASIAN OR PACIFIC ISLANDERS..... | | |
| TOTAL..... | | |
| SINGLE WOMEN..... | | |
| SINGLE PARENT HOUSEHOLDS HEADED BY WOMEN..... | | |
| OTHER..... | | |
| TOTAL..... | | |

3. IDENTIFICATION OF NEW MINORITY TENANTS OR OWNERS DURING REPORTING PERIOD (continue on a separate page if necessary)

NAMES UNIT NUMBERS

4. IDENTIFICATION OF NEW TENANTS WHO ARE SINGLE WOMEN OR SINGLE PARENT HEADS OF HOUSEHOLDS DURING REPORTING PERIOD (continue on a separate page if necessary)

NAMES UNIT NUMBERS

SIGNATURE OF PERSON SUBMITTING REPORT NAME (Type or Print)

_____ _____

TITLE AND COMPANY: _____ DATE: _____

ADDRESS: _____

_____

TELEPHONE: _____

EXHIBIT F

## ARTICLE XVII

### Appraisal

SECTION 17.01. Whenever under the terms of this Lease it becomes necessary to appraise the Project Area or any part thereof, the same shall be appraised as follows; each party shall appoint a competent and impartial appraiser who shall have appraised property as such in the vicinity of the Project Area for a period of at least five (5) years before the date of his appointment. In case either party shall fail to appoint an appraiser for a period of thirty (30) days after written notice from the other party to make such appointment, then the appraiser appointed by the party not in default hereunder shall appoint a second competent and impartial appraiser for and on behalf of the party so failing to make an appointment. In the case of the failure of the appraisers so appointed to agree upon the fair market value of the Project Area or part thereof constituting the subject matter of the appraisal, said appraisers shall appoint a third party who shall be a similar competent and impartial appraiser. In the case of the failure of such appraisers to agree upon a third appraiser then such third appraiser shall be appointed by the Presiding Justice of the Appellate Divison 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 Project Area or portion thereof as to which it has become necessary to make an appraisal and shall furnish each party with a signed copy thereof.

SECTION 17.02. The fees of the appraisers and the expenses incident to the appraisal proceedings shall be borne equally by the parties. The fees and expenses of counsel for the respective parties and of witnesses shall be paid by the respective party engaging such counsel and calling such witnesses.