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AGREEMENT OF LEASE

between

BATTERY PARK CITY AUTHORITY,

Landlord

and

RIVER ROSE COMPANY,

Tenant

Premises

Parcel H/I

Battery Park City -- Residential Phase II

New York, New York

Dated as of March 23, 1984

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EXHIBITS

- Exhibit "A" - Description of Land
- Exhibit "B" - Title Matters
- Exhibit "C" - Master Development Plan
- Exhibit "D" - Civic Facilities Drawings and Specifications and Development Schedule
- Exhibit "E" - Guaranty
- Exhibit "F" - Affirmative Action Program and Side Letter
- Exhibit "G" - Tenant's Development Schedule
- Exhibit "H" - Design Guidelines
- Exhibit "I" - Affirmative Marketing Program
- Exhibit "J" - Side Letter Relating to Construction Matters
- Exhibit "K" - Declaration of Easement
- Exhibit "L" - Map of Perimeter Fence

AGREEMENT OF LEASE made as of the 23rd day of March, 1984, 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 40 West Street, New York, New York 10006, and RIVER ROSE COMPANY ("Tenant"), a New York partnership having an office at 309 East 45th Street, New York, New York 10017.

W I T N E S S E T H:

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 elsewhere in this Lease shall, for all purposes of this Lease and all supplemental agreements referring hereto, have the following meanings.

"Additional Rent" shall have the meaning provided in Section 3.01(e).

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

"Approvals" shall have the meaning provided in Section 11.01.

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

"Architect" shall mean Charles Moore FAIA, Rothzeid Kaiserman, Thomson & Bee, P.C. Architects & Planners, or a successor who shall have been approved by Landlord, which approval shall not be unreasonably withheld or delayed.

"Article 11 Materials" shall have the meaning provided in Section 8.04(a)(ii).

"Authorized Person" shall have the meaning provided in the Declaration of Easement (hereinafter defined).

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

"BPC Development Corporation" shall mean BPC Development Corporation, a wholly-owned subsidiary of UDC (hereinafter defined).

"Building" shall mean the building (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, excluding, however, the Civic Facilities (hereinafter defined).

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

"Certificate of Occupancy" shall mean a certificate of occupancy issued by the Department of Buildings 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 Drawings and Specifications" shall have the meaning provided in Section 26.01(a).

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

"Commencement Date" shall mean the date as of which this Lease is made.

"Commencement of Construction" shall mean the date upon which on-site construction of the Building shall commence, including any excavation or pile driving, but not including test borings, test pilings, surveys and similar pre-construction activities.

"Completion of the Building" shall mean the issuance of a permanent Certificate of Occupancy for the Building and actual occupancy by bona fide Subtenants (hereinafter defined) under valid Subleases (hereinafter defined) of eighty percent (80%) of the rentable residential space and fifty percent (50%) of the rentable non-residential space in the Building.

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

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

"Corrected Pilot" shall have the meaning provided in Section 3.02(b).

"Corrected Supplemental Rent" shall have the meaning provided in Section 3.01(c).

"Declaration of Easement" shall mean the Declaration of Easement executed by Landlord, a copy of which is annexed hereto as Exhibit "K" and made a part hereof.

"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 any Person (hereinafter defined) who would qualify as an Institutional Lender (hereinafter defined) who is designated by Tenant (subject to the consent of Landlord, not to be unreasonably withheld) to serve as Depository pursuant to this Lease, provided that all funds held by the Institutional Lender so designated shall be held in New York City; on the date as of which this Lease is made, Depository is Citibank, N.A.

"Design Guidelines" shall mean the "Design Guidelines for the South Residential Area of Battery Park City", dated April, 1981, annexed hereto as Exhibit "H" and made a part hereof.

"Development Schedule" shall mean the development schedule annexed hereto as Exhibit "G" and made a part hereof.

"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 Building" 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 Building, 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 (hereinafter defined) and all additions to and replacements of such fixtures, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pipes, pumps, tanks, motors, air conditioning compressors, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas, computers, sensors. "Equipment" shall also mean laundry equipment (other than that owned by a concessionaire), refrigerators, stoves, dishwashers and other major kitchen appliances and all additions to and replacements of same, except to the extent any of the foregoing shall be installed and owned by Subtenants.

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

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

"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(f).

"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.

"Guaranty" shall mean the Guaranty executed and delivered by all Guarantors (hereinafter defined), a copy of which is annexed hereto as Exhibit "E" and made a part hereof.

"Guarantor" shall mean each of Frederick Elghanayan, H. Henry Elghanayan, Jeffrey Elghanayan and Kamran T. Elghanayan (collectively, "Guarantors").

*H.C. Lease
amendment*

TRUBIN SILLCOCKS EDELMAN & KNAPP

375 PARK AVENUE
NEW YORK, N.Y. 10152
(212) 759-5400

JOHN TRUBIN, R.C.
ALBERT I. EDELMAN, R.C.
CHARLES R. BERGOFFEN, R.C.
SHERWIN B. ABRAMS, R.C.
MARVIN V. AUSUBEL
THOMAS J. DEE, R.C.
PAUL E. ROBERTS
RICHARD L. KAY
JOHN GUTHEIL

GERALD M. FREEDMAN
LESTER M. BLIWISSE
P. BRUCE WRIGHT
JONATHAN SHOR
JOSEPH PHILIP FORTE
HOWARD J. LAZARUS
ROGER R. CRANE, JR.
ANTHONY E. SATULA, JR.

ARTHUR J. ROSNER
LAWRENCE DAVID SWIFT
WILLIAM C. VIETS
ELLEN C. EMORY
RICHARD P. BONSIGNORE
MARTIN J. NILSEN
LESLEY E. GOLDBERG
JUDITH ANN JACOBSON
ROBERT H. STEINFELD
THOMAS M. LOPEZ
LAWRENCE SWENSON
JUDITH OWEN DUMONT
DEIRDRE G. KESSLER

JOSEPH G. MARI
GRACE S. ONAGA
ANDREA S. BIENSTOCK
JOHN A. BOREK
RAYMOND O. GIETZ
PHILIP SPECTOR
GARY ALEXANDER STAHL
SETH J. TAFFAE
KENNETH J. FRIEDMAN
COREY R. SHANUS
DONNA SKWIERSKY
ALAN G. WEINBERG

BY HAND

March 27, 1984

JACOB K. JAVITS
H. JACKSON SILLCOCKS
SIDNEY R. PINE
RUSSELL S. KNAPP, R.C.
COUNSEL

CABLE ADDRESS
"JAMOTRU"

ITT TELEX 424017
WU TWX 7105815879

AUTOMATIC TELECOPIER
(212) 759-5468

Thomas Sullivan, Esq.
Battery City Park Authority
40 West Street
New York, N. Y. 10006

Re: River Rose Development Company

Dear Tom:

I have just had occasion to see the sublease in the form in which it was executed and I noted two areas that I believe require clarification. Although there is a reference at the bottom of page 119 to Sections 26.05(d) and 27.04, those sections say nothing about a subsidiary of a Mortgagee being deemed to be a Mortgagee for purposes of those sections. Secondly, for some reason there was no reference in those same sections to a Mortgagee becoming a Tenant by virtue of an assignment in lieu of foreclosure, even though in all other references in the lease to a foreclosure, the assignment in lieu concept is mentioned.

I assume the foregoing oversights were engendered by the rush to sign the lease last Friday and that they were not intentionally omitted. If I am correct, I would appreciate your confirming this to me by signing and returning the enclosed copy of this letter.

Sincerely,

John
John Gutheil

JG:lm
cc: Michael Utevsky, Esq.

CONFIRMED:

Thomas J. Sullivan

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

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

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

"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 real estate investment trust, a religious, educational or eleemosynary institution, an employee, benefit, pension or retirement plan or fund, General Electric Credit Corp. or any similar commercial credit corporation, a commercial bank or trust company acting as trustee or fiduciary of various pension funds or other tax-exempt funds, or a corporation or other entity which is owned by any other Institutional Lender, or a sub-trustee of any such commercial bank or trust company acting as such trustee, or any combination of the foregoing; pro-

vided, that each of the above entities, or any combination of such entities, shall qualify as an Institutional Lender within the provisions of this section only if (a) each such entity shall be subject to the supervision of (i) the Comptroller of the Currency or the Department of Labor 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 the City of New York or any successor to any of the foregoing agencies or officials, or (ii) any agency or official exercising comparable functions on behalf of any other state or country (provided, however, that the designation of any non-United States entity that is not supervised pursuant to clause (i) above shall be subject to the consent of Landlord, not to be unreasonably withheld), or (iii) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, or (iv) 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, shall have individual or combined assets, as the case may be, of not less than Five Hundred Million (\$500,000,000) Dollars. Notwithstanding the foregoing, any such entity or combination of such entities designated by

Tenant to act as construction lender in connection with the construction of the Building shall qualify as an Institutional Lender within the provisions of this section only if each such entity, in addition to meeting the above requirements, shall be subject to the jurisdiction of the courts of the State of New York in any actions relating to this Lease.

"Land" shall mean the land described in Exhibit "A" annexed hereto and made a part hereof.

"Land Tax Equivalent" shall mean for any Tax Year, 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 for the Tax Year in which the payment is made. 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 \$1,026,667.

"Landlord" shall mean the Landlord from time to time 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).

"Lease" shall mean this Agreement of Lease and all amendments, modifications, extensions and renewals hereof.

"Lease Year" shall mean the period beginning on the Commencement Date and ending on March 31, 1985, and each succeeding twelve-month period during the Term to, but not including, the First Appraisal Date, and, following such First Appraisal Date, the twelve-month period beginning on such Date and each succeeding twelve-month period during the balance of the Term.

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

"Master Development Plan" shall mean the plan annexed hereto as Exhibit "C" and made a part hereof.

"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.

"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 Reel 527, page 163, in the Office of the Register of New York City (New York County), and amended by First Amendment to Restated Amended Lease, made as of June 15, 1983, and recorded in said office on June 20, 1983, in Reel 696, page 424, and Second Amendment to Restated Amended Lease, dated June 15, 1983, and recorded in said office on June 20, 1983, in Reel 696, page 432, and as the same may be hereafter amended.

"Mortgage" shall mean (i) any mortgage, deed of trust, deed to secure debt or other security instrument (and any note, loan agreement or other instrument secured thereby) by which Tenant's interest in this Lease is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation, (ii) any assignment and subleaseback transaction (an "Assignment and Leaseback") in which Tenant's interest in this Lease is assigned and all or substantially

all of the Premises are subleased back to Tenant by a sublease (a "Leaseback") made concurrently with (or immediately after) such assignment, under which Tenant shall be required to perform and discharge all of Tenant's obligations under this Lease, (iii) any mortgage, deed of trust, deed to secure debt or other security instrument (and any note, loan agreement or other instrument secured thereby) by which the interest of a subtenant under a Leaseback is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation, and (iv) any other agreement or instrument by which a pledge of stock, partnership interest(s) or other ownership interests or such partnership arrangements as shall be employed for the purpose of financing or as security therefor is secured or evidenced; provided that the holder of any security interest referred to in the foregoing clauses (i) through (iv) shall be an Institutional Lender; and all references in this Lease to a "Mortgagee" shall be deemed to refer to and include (1) the holder of any Mortgage on Tenant's interest in this Lease, (2) the holder of the sublessor's interest in any Leaseback, (3) the holder of any Mortgage on the interest of a Leaseback subtenant in any Leaseback and (4) the holder of any such other agreement or instrument by which such pledge of stock, partnership interest(s) or other partnership arrangement is evidenced or secured, as the case may be. Each such Mortgagee shall have all of the rights of a Mortgagee of the Tenant's interest in this Lease.

All references in this Lease to a Mortgage on the Tenant's interest in this Lease and related matters shall be deemed also to refer to a Mortgage on the interest of a subtenant in a Leaseback; all references in this Lease to foreclosure or assignment in lieu of foreclosure of a Mortgage on Tenant's interest in this Lease and related matters shall be deemed also to refer to foreclosure or assignment in lieu of foreclosure of a Mortgage on the interest of a subtenant in a Leaseback; all references in this Lease to foreclosure shall also be deemed to refer to such other legal proceedings as are appropriate to enable the holder of the sublessor's interest in a Leaseback or the holder of any such other type of financing arrangement to obtain possession of the Premises; all references in this Lease to assignment in lieu of foreclosure and related matters shall refer to any voluntary surrender of possession to a Mortgagee; and all references in this Lease to principal under a Mortgage and related matters shall be deemed also to refer to the price paid for the assignment in an Assignment and Leaseback; and all references in this Lease to debt service, interest or amortization on a Mortgage and related matters shall be deemed also to refer to rent under a Leaseback and to any other form of payments or repayments of debt service, interest, principal or amortization on any such other type of financing arrangement.

"Mortgagee" shall mean the holder of a Mortgage or an entity owned or controlled by such Mortgagee and desig-

nated in writing by such Mortgagee to Landlord, provided that any such entity shall qualify as an Institutional Lender under this Lease.

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

"Parcels" shall have the meaning provided in Section 11.09.

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

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

"Phase II" shall mean Phase II Development of the Project Area, as such Phase II is delineated in the Design Guidelines.

"Plans and Specifications" shall mean the plans and specifications referred to in Section 11.02(b).

"Preliminary Plans and Specifications" shall mean

the preliminary plans and outline specifications for the construction of the Building referred to in Section 11.02(a).

"Premises" shall mean the Land and Building.

"Prime Rate" shall mean, at any time or from time to time, the annual interest rate announced as the prime or base rate by Citibank, N.A. or its successors.

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

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

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

"Related Party" shall have the meaning provided in Section 27.05(b).

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

"Rental" shall have the meaning provided in Section 3.05.

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

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

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

"Restoration Approvals" shall have the meaning provided in Section 8.04(a)(ii).

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

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

"Road Completion Date" shall have the meaning provided in Section 27.02.

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

"Schematics" shall mean the schematic drawings referred to in Section 11.02(a).

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

"Service Road" shall have the meaning provided in Section 27.01.

"Service Road Maintenance" shall have the meaning provided in Section 27.04.

"Settlement Agreement" shall mean the Settlement Agreement, dated as of June 6, 1980, between New York City and UDC, as supplemented by Letter, dated June 9, 1980, from Richard A. Kahan to Edward I. Koch.

"Side Letter Relating to Construction Matters" shall mean the letter signed by Landlord and Tenant, a copy of which is annexed hereto as Exhibit "J" and made a part hereof.

"Storage Area" shall have the meaning provided in Section 11.12(a).

"Supplemental Rent" shall have the meaning provided in Section 3.01(c).

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

"Subject to Indexing" shall mean, in the case of any dollar limit so specified herein, that such dollar limit shall be adjusted to reflect the percentage increase from the Commencement Date to the date on which such adjustment is made in the Consumer Price Index for All Urban Consumers, New York-Northeastern New Jersey (1967 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency. In the event said index shall cease to be published, there shall be substituted therefor such similar or comparable index as Landlord and Tenant shall agree upon, and if they are unable so to agree within ninety (90) days after said index ceases to be published, such matter shall be determined by arbitration in accordance with the provisions of Article 36.

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

"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, the total assessed value of the Premises for the 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 taxation in effect prior to such Commencement of Construction). As used herein, the term "total assessed value of the Premises" shall mean either the actual or the transitional assessed value of the Premises, in accordance with the then prevailing practice of the New York City Department of Finance or successor agency for the levying of real property taxes on comparable real property.

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

"Taxes" shall have the meaning provided in Section 4.03(a).

"Tenant" shall mean River Rose Company and, if River Rose Company or any successor to its interest hereunder shall assign or transfer its tenant's interest hereunder in accordance with the terms of this Lease, the term "Tenant" shall mean only such permitted assignee or transferee.

"Tenant's Architect" and "Tenant's Engineer" shall have the meanings provided in Section 8.04(a)(i).

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

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

"Title Matters" shall have the meaning provided in Article 2.

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

"Unavoidable Delays" shall mean delays incurred by the party asserting such delay 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 ordinary governmental restrictions which Tenant is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the control of the party asserting such delay, including, in the case of any such delay asserted by Tenant, delays in work ordered or

directed by Landlord (except for delays ordered or directed by Landlord pursuant to Section 11.11) or caused by Landlord's failure to complete the Civic Facilities in accordance with Section 26.02 (but not including Landlord's or Tenant's insolvency or financial condition), of which such party shall have notified the other party not later than fourteen (14) days after such party knows or should know 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 prevented through reasonable foresight and precautions.

"UDC" shall mean New York State Urban Development Corporation, a corporate governmental agency of the State of New York constituting a political subdivision and public benefit corporation, its successors and assigns.

"Zoning Lot Declaration" shall have the meaning provided in Section 3.01(a)(iii).

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 (including, without limitation, the easement created by Declaration of Easement in the form of Exhibit "K" annexed hereto), appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject only to those matters affecting title set forth in Exhibit "B" annexed hereto and made a part hereof ("Title Matters").

TO HAVE AND TO HOLD unto Tenant, its successors and (subject to the terms of this Lease) 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 set forth or referred to below (collectively, the "Base Rent"):

(i) For each Lease Year listed on Schedule 1 hereto, up to but not including the First Appraisal Date, the sum of (A) the amount set forth on Schedule 1 opposite such Lease Year plus (B) the Supplemental Rent, if any, payable in accordance with Subsection 3.01(c) hereof; and

(ii) For the Lease Year commencing on the First Appraisal Date and for each Lease Year thereafter until the first Reappraisal Date, an amount per annum equal to the greater of (A) one hundred nine percent (109%) of the Base Rent payable for the twelve (12) month period immediately preceding the First Appraisal Date, or

(B) 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 the Civic Facilities and other site improvements made by Landlord, if any, provided that, notwithstanding any determination of fair market value hereunder, Base Rent payable for each such Lease Year shall not in any event or under any circumstance be greater than one hundred fifteen percent (115%) of the Base Rent payable for the twelve (12) month period immediately preceding the First Appraisal Date.

(iii) For the Lease Year commencing on any Reappraisal Date and for each Lease Year thereafter until the next Reappraisal Date or the end of the Term, as the case may be, an amount per annum equal to the greater of (A) one hundred nine percent (109%) of the Base Rent payable for the twelve (12) month period immediately preceding such Reappraisal Date, or (B) six percent (6%) of the fair market value of the Land, determined and redetermined from time to time as hereinafter provided, considered (1) as unencumbered by this Lease and the Master Lease, (2) as

unimproved except for the Civic Facilities and other site improvements made by Landlord, and (3) as subject to Declaration of Zoning Lot and Development Restrictions, dated July 9, 1982, and recorded in the New York County Office of the Register of the City of New York in Reel 648 at Page 276 ("Zoning Lot Declaration") provided that, in the event that any provision of the Zoning Lot Declaration applicable to the Premises shall be hereafter amended and, pursuant to such amendment, Tenant shall replace, enlarge or substantially alter the Building or shall change the use of the Building or any material part thereof, to conform to, or as permitted by, such amendment, the Zoning Lot Declaration as so amended shall be considered when determining or redetermining the fair market value of the Land.

(b) Base Rent shall be payable in equal monthly installments in advance commencing on the Commencement Date and on the first day of each calendar month thereafter during the Term. 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.

(c) Supplemental Rent shall be paid in equal monthly installments and shall equal the amount, if any, by which the amount set forth on Schedule 2 hereto which is applicable to a given Tax Year exceeds PILOT for such Tax Year. Tenant shall calculate Supplemental Rent for each Tax Year simultaneously with the determination of the Adjusted Tax Equivalent for such Tax Year pursuant to Section 3.02(b) hereof. In the event that the City Council of the City of New York (or any successor governmental agency) shall not have fixed the tax rate for any Tax Year on or before the fifteenth day of the final month of the immediately preceding Tax Year and Tenant shall be unable to make the calculations required by Section 3.02 and this Section 3.01(c) prior to the commencement of such Tax Year, Tenant shall pay monthly as estimated Supplemental Rent an amount equal to the amount required to be paid under this Article on account of Supplemental Rent for the preceding month. Within ten (10) days of the date on which the City Council shall fix the tax rate, Tenant shall pay the amount ("Corrected Supplemental Rent"), if any, by which Supplemental Rent properly payable for the portion of such Tax Year in respect of which Tenant previously paid estimated Supplemental Rent exceeds the amount of such estimated Supplemental Rent. In the event that the amount of such es-

timated Supplemental Rent shall exceed the amount of Supplemental Rent properly payable for the portion of such Tax Year in respect of which Tenant previously paid such estimated Supplemental Rent, Tenant may either (i) credit such excess against future monthly payments of Supplemental Rent during such Tax Year, or (ii) deduct such excess from any Corrected PILOT payable pursuant to Section 3.02(b). No Supplemental Rent shall be payable after the twelfth Tax Year following the Tax Year in which the Residential TCO is issued.

(d) If Landlord fails substantially to complete construction or installation of a portion of Landlord's Civic Facilities as provided in Section 26.02 or substantially to complete construction of the Service Road as provided in Section 27.02, Tenant's obligation to pay Base Rent under this Lease shall be abated for a period equal to three (3) times the number of days elapsing between the date Landlord is obligated substantially to complete such construction or installation as provided in Section 26.02 or Section 27.02, as the case may be, and the date such construction or installation is substantially completed. The effective date of any increase in Base Rent payable by Tenant pursuant to Section 3.01(a) shall be delayed for a period equal to the period during which the abatement referred to in the preceding sentence shall be in effect.. In the event Landlord fails substantially to complete both Landlord's Civic Facilities and

the Service Road, and such failures are concurrent in time, the abatements in Base Rent provided herein shall be concurrent and not cumulative.

(e) Tenant shall also pay to Landlord, without notice or demand, all other amounts which Tenant herein assumes or agrees to pay to Landlord, including, without limitation, PILOT, the Civic Facilities Payment and all payments provided for in Article 27 (collectively, the "Additional Rent").

(f) For the purposes of calculating Base Rent pursuant to clauses (ii) and (iii) of Section 3.01(a), the fair market value of the Land shall be determined as of the first day of the calendar month next succeeding the twenty-fifth anniversary of the date on which a temporary certificate of occupancy shall be issued for any dwelling unit in the Building (the "First Appraisal Date") and as of each subsequent fifteenth anniversary thereof (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 Sections 3.01(a)(ii) and (iii) and 3.07 hereof, unless at least twelve (12) months before the First Appraisal Date or any Reappraisal Date, as the case may be, Landlord and Tenant shall have agreed upon such fair market value in writing.

It is expressly agreed that the third reappraisal period shall be extended, if necessary, so as to expire simultaneously with the term of the Lease, and that consequently there will be no more than three Reappraisal Dates.

(g) The parties shall equitably apportion any installment of any item of Rental if such installment is properly due for a period shorter than or longer than the period with respect to which such installment otherwise would be due pursuant to this Lease.

Section 3.02.

(a) For each Tax Year (or portion thereof) during the Term, Tenant shall pay to Landlord, without notice or demand, an annual sum (each such sum being referred to as a "Payment in Lieu of Taxes" or "PILOT") equal to the Adjusted Tax Equivalent for such Tax Year. PILOT shall be payable in equal quarterly installments during the Tax Year, in advance on the first day of each quarterly period of the Tax Year.

(b) Within ten (10) days of the date on which the City Council of the City of New York (or any successor governmental agency) shall fix the tax rate applicable to real property comparable to the Premises and situated in the

Borough of Manhattan for any Tax Year, Tenant shall advise Landlord of its calculation of the Adjusted Tax Equivalent for the forthcoming Tax Year, pursuant to Section 3.02(c) hereof. In the event that the City Council (or any successor governmental agency) shall not have fixed the tax rate for any Tax Year on or before the fifteenth day of the final month of the immediately preceding Tax Year and, therefore, Tenant shall be unable to calculate the Adjusted Tax Equivalent for such Tax Year prior to the commencement of such Tax Year, Tenant shall pay quarterly, as estimated PILOT, an amount equal to the amount required to be paid under this Article on account of PILOT for the final quarter of the preceding Tax Year. Within ten (10) days of the date on which the City Council shall fix the tax rate, Tenant shall pay to Landlord the amount ("Corrected PILOT"), if any, by which PILOT properly payable for the portion of such Tax Year in respect of which Tenant previously paid estimated PILOT exceeds the amount of such estimated PILOT. In the event that the amount of such estimated PILOT shall exceed the amount of PILOT properly payable for the portion of such Tax Year in respect of which Tenant previously paid such estimated PILOT, Tenant may either (i) credit such excess against future quarterly payments of PILOT during such Tax Year, or (ii) deduct such excess from any Corrected Supplemental Rent payable pursuant to Section 3.01(c).

(c) For the purposes of this Section 3.02, the Adjusted Tax Equivalent shall be, (i) for each Tax Year or portion thereof within the period commencing on the first day of the month following the Commencement Date (unless the Commencement Date shall be the first day of a month, in which case such period shall commence 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 Building ("Residential TCO"), 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, subject to the provisions of Section 3.06, 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, 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.

(d) 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 real estate taxes to an owner of comparable real property in the Borough of Manhattan 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 or the tax rate fixed therefor by the City of New York. 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 higher of (A) the PILOT as so determined, or (B) the amount stated for the period which is coterminous with such Tax Year on Schedule 2 hereto, 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 real property taxes, Tenant's credit shall include interest at the rate then being paid by the City of New York. In no event, however, shall Tenant be entitled to any refund of any such excess from Landlord.

Section 3.04. Landlord and Tenant agree that the Rental payable to Landlord shall be absolutely net to Landlord without any abatement, suspension, deduction, discount, counter-claim, offset, diminution or reduction whatsoever except as specifically set forth in Sections 3.01(c), 3.01(d), 3.02(b), 3.03, 4.03(a), 11.06(c), 26.03(b), 26.04(c), 26.05(b) and 27.02 hereof and in "Side Letter Relating to Construction Matters" in the form of Exhibit "J" annexed hereto, so that this Lease shall yield, net, to Landlord the Base Rent and Additional Rent 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, and that Landlord shall be indemnified by Tenant against, and held harmless by Tenant from, the same.

Section 3.05. All amounts payable by Tenant pursuant to this Lease, including, without limitation, Base Rent, Supplemental Rent, Additional Rent and Impositions shall constitute Rental under this Lease and, except as otherwise specifically provided, shall be payable in the same manner as Base Rent.

Section 3.06.

(a) Until the Release Date, as defined in paragraph (b) of this Section, Tenant, on a voluntary basis and solely as a condition precedent to receiving benefits (as set forth in Section 3.02(c) hereof) equivalent to benefits available under section 421-a of the Real Property Tax Law ("Section 421-a"), shall enjoy such rights and observe such requirements pertaining to the rental of dwelling units in the Building (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 Building pursuant to the Emergency Tenant Protection Act of 1974, Title YY of Chapter 51 of the Administrative Code of the City of New York, and the Code of the Real Estate Industry Stabilization Association of New York City, Inc., as well as regulations promulgated pursuant thereto, all as heretofore and

hereafter amended (collectively, the "Rent Regulations"), had construction of the Building commenced thirty (30) days after the Commencement Date and had the Building received partial tax exemption under Section 421-a and consequently been subject to rent stabilization under applicable law and regulation.

(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 § 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 Association"). Upon joining or submitting to the jurisdiction of the Stabilization Association, Tenant shall comply with all of the requirements thereof and shall remain a member in good standing thereof, and/or subject to the jurisdiction thereof, or of any successor association or agency, for as long as the owner of the Building would be required to so comply and to remain such a member and/or subject to such jurisdiction, had construction of the Building commenced thirty (30) days after the Commencement Date and had the Building received partial tax exemption under Section 421-a and consequently had been subject to rent stabilization under applicable law and regulation, or until

the twenty-seventh (27th) anniversary of the Commencement Date, whichever date is sooner (whichever date is applicable is hereinafter referred to as the "Release Date").

(c) In the event that Tenant fails to become a member or to subject itself to the jurisdiction of the Stabilization Association prior to the issuance of a temporary or permanent Certificate of Occupancy for any dwelling unit in the Building 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 Association, and in such case Tenant shall be subject to the jurisdiction of an impartial Rent Officer (who shall not be a tenant in the Project Area), appointed by Landlord, who shall administer a program of rent regulations which shall be the same as the Rent Regulations administered by the Stabilization Association (the "Rent Program"). The authority of the Rent Officer shall be limited to implementing and administering the Rent Program. In such event, Tenant shall pay to Landlord administration fees in a per unit amount equal to fees and dues paid by owners of comparable properties which are enrolled in the rent stabilization association, or its successor, such fees to constitute Rental hereunder. 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) Noncompliance 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 Association, had the Building received partial tax exemption under Section 421-a and 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 Association 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 applicable rent regulatory regime, because its membership or participation in, or registration with, the Stabilization Association 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 are then applicable to owners of buildings receiving partial tax exemption under Section 421-a 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 paragraph (c) of this section and Tenant's membership or participation in such Rent Program is terminated or revoked by reason of Tenant's noncompliance 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 Building 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) Solely as a condition precedent to receiving benefits (as set forth in Section 3.02(c) hereof) equivalent to benefits available under Section 421-a, Tenant shall comply with all of the requirements of Section 421-a and the rules and regulations promulgated 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, discontinuance or diminution of tax benefits under Section 421-a had the Building received partial tax exemption under such Section, then the PILOT payable under Section 3.02 hereof shall be increased to an amount equal to the real estate taxes which would be payable by the owner of the Premises in the case of such revocation, discontinuance or diminution, were Tenant the fee owner thereof and had the Building received partial tax exemption under Section 421-a. 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, discontinuance or diminution 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 Building shall be the maximum allowable rents as determined by the New York City Department of Housing Preservation and Development, as if the Building had received partial tax exemption under Section 421-a and consequently been subject to rent stabilization under applicable law and regulation, provided that, in addition to such allowable rents, Tenant shall be entitled to charge amounts equal to Civic Facilities Payments and

payments for Service Road Maintenance as set forth in paragraph (h) of this section.

(g) Subject to the applicable provisions of the Rent Regulations or the Rent Program, as the case may be, and subject to and pursuant to the terms of Article 10 of this Lease, Tenant may at its option, after Substantial Completion of the Building, sell the units in the Building or convert same to either cooperative form of ownership or condominium form of ownership. Landlord shall cooperate to effectuate such sale or such conversion, provided Tenant shall bear all costs of such sale or conversion and shall reimburse Landlord on demand for any costs incurred by it.

(h) Notwithstanding anything to the contrary contained in paragraphs (a) through (g) of this Section, Tenant, in addition to any rents permitted to be charged and collected pursuant to the Rent Regulations or Rent Program, shall be permitted to charge and collect from all Subtenants in the aggregate an amount equal to the Tenant's Civic Facilities Payment and payments for Service Road Maintenance made by Tenant pursuant to Section 27.05(a). Such charge shall be based on each Subtenant's pro rata share of the Civic Facilities Payment and Service Road Maintenance payments, apportioned according to the size of the unit.

(i) Tenant's obligations under this Section 3.06 shall cease upon the Release Date.

(j) Each Sublease for a dwelling unit in the Building 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. Upon request by any Subtenant, Tenant shall make available to such Subtenant a copy of the Rent Regulations or the Rent Program.

Section 3.07.

(a) Each determination of fair market value of the Land referred to in Sections 3.01(a)(ii) and (iii) shall be made in accordance with the procedures set forth in Article XVII of the Master Lease. 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 own 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, 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 prescribed by applicable law. Tenant shall have the same right to participate in such procedures, and to appoint an appraiser, as set forth in paragraph (a) of this Section 3.07.

SCHEDULE 1

BASE RENT

Lease Year

| | |
|---|-----------|
| 1 | \$224,000 |
| 2 | 224,000 |
| 3 | 448,000 |
| 4 | 448,000 |
| 5 | 448,000 |
| 6 | 700,000 |
| 7 | 700,000 |
| 8 | 700,000 |
| 9 | 700,000 |
| 10 | 700,000 |
| 11 and each Lease Year thereafter through the Lease Year in which occurs the First Appraisal Date | 844,000 |

SCHEDULE 2

Tax Year

For each Tax Year from
the Commencement Date
until the end of the Tax
Year in which is issued
the Residential TCO \$ 68,400

Thereafter:

| | |
|----|---------|
| 1 | 68,400 |
| 2 | 68,400 |
| 3 | 232,900 |
| 4 | 232,900 |
| 5 | 397,400 |
| 6 | 397,400 |
| 7 | 561,900 |
| 8 | 561,900 |
| 9 | 726,400 |
| 10 | 726,400 |
| 11 | 891,000 |
| 12 | 891,000 |

ARTICLE 4

IMPOSITIONS

Section 4.01. Tenant covenants and agrees to pay, as hereinafter provided, all Impositions (as defined below) which are imposed by any Governmental Authority other than Battery Park City Authority or any corporate successor or subsidiary, direct or indirect, of Battery Park City Authority (New York City not to be deemed such a corporate successor) and which are not solely applicable to the Project Area, to properties which are exempt from the payment of Taxes, or to lessees of any of the foregoing. Impositions shall mean (a) real property assessments (not including Taxes), (b) personal property taxes, (c) water, water meter and sewer rents, rates and charges, (d) excises, (e) levies, (f) license and permit fees, (g) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (h) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto, and (i) 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 be (1) assessed, levied, confirmed, imposed upon, or would grow or become due and payable out of or in respect of, or would be 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, the use and occupancy thereof by Tenant, or this transaction, 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 may be owned by any Subtenant, 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 to the appropriate imposing authority not later than ten (10) days prior to the Due Date thereof; provided, however, that 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 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, or the date of any termination of this Lease not attributable to an Event of Default hereunder, whichever shall be earlier, shall be made prior to the Expiration Date.

Section 4.02. Tenant, from time to time upon request of Landlord, shall promptly after Tenant's receipt thereof 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) "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 or any successor statute or statute in lieu thereof and which would otherwise be payable if the Premises or any part thereof or the owner thereof were not exempt therefrom. If New York City or any Person, except

the State of New York, or a bureau or department of the State of New York, or a public benefit corporation of the State of New York, or an agency or authority of the State of New York which is, or whose real property is, exempt from the payment of Taxes, shall become Landlord hereunder, or if Landlord shall for any reason no longer be exempt from the payment of Taxes, Landlord shall pay the Taxes on or before the due date thereof. Landlord shall have the right, at its own cost and expense, after consultation with Tenant, 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, provided that neither the Premises nor any part thereof, or interest therein or any income therefrom, or any assets of Tenant, would, by reason of such deferment, be forfeited or lost, or subjected to any lien, encumbrance or charge and neither Landlord nor Tenant would, by reason thereof, be subject to any civil or criminal liability. Landlord shall not, without Tenant's prior written consent, enter into a settlement of any such contest if such settlement would affect 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 would result in the loss or forfeiture of the Premises and the

termination of Tenant's interest under this Lease or subject Tenant's interest in the Premises or any part thereof or any assets of Tenant to any lien, encumbrance or charge or subject either Landlord or Tenant to any civil or criminal penalty, then Tenant may pay such unpaid Taxes and any interest, fines and penalties thereon and deduct such payment from the next installments 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) payable under the Lease. Nothing contained herein shall be construed to release Tenant from its obligation to pay Impositions other than Taxes as provided in this Article 4.

(b) Nothing herein contained shall require Tenant to pay municipal, state or federal income, inheritance, estate, succession, transfer or gift taxes of Landlord, or any corporate franchise tax imposed upon Landlord or any transfer tax imposed on Landlord by reason of this Lease or the transfer of any interest of Landlord or Master Landlord in this Lease or the Master Lease.

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 or the Expiration Date (whether or not such Imposition shall be 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, such date definitely fixed for the expiration of the Term, or the date of any earlier termination of this Lease not attributable to an Event of Default hereunder, 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 for the expiration of the Term or the date of such earlier expiration 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 at its own expense 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 may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, or interest therein or any income therefrom, or any assets of or funds appropriated to Landlord, would, by reason of such deferment, be forfeited or lost, or subjected 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, at Tenant's option, either Landlord or Depository, cash or other security reasonably satisfactory to Landlord including, without limitation, a guaranty from one or more of the Guarantors, which guaranty and the financial condition of the guarantor(s) thereunder shall be reasonably 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 all costs, fees (including attorney's fees and disbursements), interest, penalties and other liabilities in connection therewith, and upon such payment, Landlord or Depository, as the case may be, shall

return, with interest, if any, any amount deposited with it with respect to such Imposition as aforesaid, provided, however, that Landlord or Depository, as the case may be, at Tenant's request or upon Tenant's failure to do so in a timely manner, shall disburse said monies on deposit with it directly to the imposing 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 proceeding, Landlord, acting reasonably, shall deem insufficient the amount deposited as aforesaid, Tenant, upon demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord reasonably may request, and upon failure of Tenant to do so, the amount theretofore deposited may be applied by 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 connection with any such proceedings, and the balance, if any, and any interest earned thereon shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord on demand. Nothing contained in this Section 4.05 shall be deemed to limit Tenant's obligation to make the deposits provided for in Article 5 of this Lease.

Section 4.06. Tenant shall have the right to seek a reduction or reductions 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 serve to defer Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05 hereof.

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 in effect at the time shall require that such proceedings be brought by and/or in the name of Landlord, in which event, Landlord shall join and cooperate in such proceedings and/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. Tenant shall promptly reimburse Landlord for any and all costs or expenses which Landlord may sustain or incur in connection with any such proceedings. In the event Tenant institutes 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 set forth hereinabove, 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 the event that there shall be an Event of Default (i) with respect to payment of Rental or any other monetary obligation hereunder or (ii) under Section 24.01(g), (h) or (i), then (x) for so long as the Default which is the basis for the Event of Default referred to in (i) above shall remain uncured, and for a period of one year after the date on which such Default shall be cured or (y) in case of an Event of Default referred to in (ii) above, for a period commencing upon the occurrence of such Event of Default and ending upon the date that the Default which is the basis for such Event of Default shall be cured or, failing such cure, upon the date any Mortgagee, in accordance with the applicable provisions of this Lease, obtains possession of the Premises or takes a new lease of the Premises, Tenant shall make deposits for Impositions in accordance with this Section 5.01 and shall otherwise be subject to this Article 5.

(b) In order to assure the payment of all Impositions, Tenant, upon the written demand of Landlord after the occurrence of an Event of Default described in paragraph (a) above, shall deposit with Depository on the first day of each and every month during the Term, an amount equal to one-twelfth

(1/12th) of the annual Impositions then in effect, as reasonably estimated by Landlord.

(c) 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 the next installment of Impositions at least ten (10) days prior to the Due Date thereof.

(d) 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.

(e) If, at any time, the amount of any Imposition is increased or Landlord receives information that an Imposition will be increased and the monthly deposits then being made by Tenant under this Article would be insufficient to pay such Imposition ten (10) days prior to the Due Date thereof, the monthly deposits shall thereupon be increased in order that Depository shall have sufficient monies for the payment of the next, increased installment of Impositions ten (10) days prior to the Due Date thereof (or, in the event no such monthly deposit is payable by Tenant before said tenth (10th) day, Tenant shall, on Landlord's demand, deposit immediately with Depository sufficient monies for the payment of the next, increased installment of Impositions). There-

after, the monthly payments shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay each Imposition at least ten (10) days prior to the Due Date of such Imposition.

(f) For the purpose of determining whether Depository has on hand sufficient monies to pay any particular Imposition at least ten (10) 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 item not yet due and payable for the payment of an item that is due and payable.

(g) Notwithstanding the foregoing, deposited monies may be held by Depository in a single bank account.

(h) If this Lease shall be terminated by reason of any Event of Default or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 24.03(b) hereof, all deposited monies under this Article 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.

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

(j) In the event that the Mortgagee shall require Tenant to deposit funds to insure payment of Impositions, any

amount so deposited by Tenant shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Article 5.

(k) If at the end of any period referred to in Section 5.01(a) for the payment of deposits for Impositions Tenant shall not be in Default with respect to payment of Rental or any other monetary obligation under this Lease, the requirement set forth in said section that Tenant make deposits shall cease and Depository shall refund to Tenant any balance held by Depository pursuant to said section, with interest, if any, earned thereon, after deducting from the aggregate of such balance and interest such amount as Depository may then be entitled to deduct pursuant to Section 41.04.

Section 5.02. If Landlord ceases to have any interest in the Premises, Depository shall continue to hold the deposits made pursuant to Section 5.01 in the special account referred to therein, subject to the provisions of said section. If appropriate, the name on the account shall be changed by reason of Landlord's ceasing to have any interest in the Premises. Upon notice from Landlord to Tenant of Landlord's transfer of said interest, Landlord shall be deemed to be released from all liability with respect to said deposits and Tenant agrees to look solely to Depository and/or the transferee of Landlord's interest, as the case may require, with respect thereto.

ARTICLE 6

LATE CHARGES

In the event that any payment of Rental payable to Landlord shall not be received on or before the tenth (10th) day after the due date thereof pursuant to this Lease, a late charge on the sums so overdue equal to the Prime Rate plus two percent (2%) per annum, for the period from the due date to the date of receipt of 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. Any such late charge shall be payable by Tenant on demand and shall constitute Rental under this Lease. 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. In the event that Tenant shall pay estimated Supplemental Rent and PILOT in accordance with Sections 3.01(c) and 3.02(b), the excess, if any, of the amounts finally determined to be due under Sections 3.01(c) and 3.02(b) over the estimates paid thereunder

shall not be subject to the imposition of a late charge under this Article 6.

ARTICLE 7

INSURANCE

Section 7.01.

(a) Tenant at its sole cost and expense shall, upon Substantial Completion of the Building and at all times thereafter throughout the Term:

(i) keep the Building 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); such insurance to be written on an "Agreed Amount" basis, with the replacement value of the Building 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, 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 Fifty Million Dollars (\$50,000,000) combined single limit inclusive of primary, umbrella and following form excess policies for liability for bodily injury, death and property damage (provided that, in the event of either an assignment of this Lease or any portion of Tenant's interest hereunder to a cooperative corporation or a Condominium Transfer, Tenant shall maintain such insurance in such amounts as may from time to time be reasonably required by Landlord with regard to such amounts as, at the time in question, are customarily carried by prudent owners of like cooperative or condominium buildings in the Borough of Manhattan, but with limits of not less than Two Million Dollars (\$2,000,000) in respect of bodily injury or death to any one person and Five Million Dollars (\$5,000,000) in respect of bodily injury or death to any number of persons in any one accident and

not less than Five Hundred Thousand Dollars (\$500,000) for damages to property), (B) include the Premises (including such portion of the Service Road as traverses 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 (including Supplemental Rent, if applicable), PILOT and Civic Facilities Payment ("Rent Insurance");

(v) if a sprinkler system shall be located in any portion of the Building, provide and keep in force sprinkler leakage insurance in amounts approved by Landlord, which approval shall not be unreasonably withheld or delayed (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 be required by the Master Lease or 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 this Section 7.01 (except the insurance under Section 7.01(a) (iii)) shall name Tenant as named insured and Land-

lord 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), (v), (vi) and (vii) and any other coverage, if required by any Mortgagee, also shall name each Mortgagee as an additional insured under a standard mortgagee clause.

(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 Building by fire or other casualty (other than Rent Insurance) shall be payable to Depository, except that amounts of less than Two Hundred Fifty Thousand Dollars (\$250,000) (Subject

to Indexing) shall be payable in trust directly to Tenant for application to the cost of Restoration in accordance with Article 8. Rent Insurance shall be carried in favor of Landlord, Master Landlord and Tenant, as their respective interests appear, but the proceeds thereof (not to exceed one year's current Base Rent, PILOT, Supplemental Rent and Civic Facilities Payment) shall be paid to Depository and shall be applied to the Rental payable by Tenant under this Lease until completion of Restoration of the Building by Tenant, and any proceeds in excess of one (1) year's current Base Rent, PILOT, Supplemental Rent and Civic Facilities Payment shall be paid directly to Tenant. All insurance required by any provision of this Lease shall be in such form and shall be issued by such responsible companies licensed to do business in the State of New York as are reasonably acceptable to Landlord. Any insurance company so licensed and rated by Best's Insurance Reports (or any successor publication of comparable standing) as A (Excellent) Class XII or better (or the then equivalent of such rating) shall be 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 or certified copies thereof 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, certi-

ificates with respect thereto, or if any insurance is carried by Tenant in blanket, primary, umbrella or following form excess policies, certified abstracted policies relating to the Premises, shall be so delivered to Landlord, together with proof satisfactory to Landlord that the then current installment of premiums thereon has 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 shall be delivered as aforesaid at least twelve (12) days before the date of expiration. Alternatively, (i) at least twelve (12) days before such date of expiration, Tenant shall deliver to Landlord binders for each such new or renewal policy or certificates with respect thereto (each such binder or certificate or any certified copy delivered by Tenant pursuant to this Lease to be signed by an authorized officer or employee of the insurance company which shall issue the underlying policy) together with proof of payment of premiums as aforesaid, (ii) no later than sixty (60) days after such date of expiration, Tenant shall deliver to Landlord a certified copy of the declaration page of, or a certificate with respect to, each such new or renewal policy showing amounts of coverage and limits of liability (and, in addition, with respect to any insurance carried by Tenant in blanket, umbrella, or following form excess policies, schedules showing the location of premises covered thereby and the amounts of

insurance afforded by the policies applicable to the Premises), and (iii) in any event, promptly after receipt thereof, Tenant shall deliver to Landlord each such new or renewal policy or a certificate with respect thereto or a certified copy or a duplicate original of each such policy. 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 in accordance with the provisions of the applicable policies.

(b) Tenant and Landlord shall cooperate in connection with the collection of any insurance monies 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 monies. Tenant shall not name any Subtenant as a named or additional insured in any insurance policy required under this Article 7 unless such Subtenant's Sublease contains a provision requiring such Subtenant to comply with the obligations imposed upon Landlord and Tenant in the preceding sentence. Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may sustain or incur in connection therewith.

(c) Tenant shall not obtain 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 is included therein as an additional insured to the extent of its insurable interest and each Mortgagee is included therein as an additional insured with loss payable as provided in this Lease. Tenant immediately shall notify Landlord if any such separate insurance is obtained and shall cause the policies therefor or certificates with respect thereto or certified abstracts thereof to be delivered as elsewhere required in this Article.

(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 Fifty Thousand Dollars (\$250,000) (Subject to Indexing) shall be made with Landlord, Tenant and any Mortgagee named as an additional insured. In the event that (i) the amount offered by Tenant's insurer in adjustment of a claim covered by the preceding sentence equals or exceeds the estimated cost of the Restoration as determined in accordance with Section 8.02(b) with respect to the loss, damage or destruction which is the basis of such claim or (ii) any such Restoration is completed prior to the adjustment of the applicable claim, Landlord shall consent to such adjustment. Any adjustments for claims with

the insurers involving sums of less than Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing) shall be made with Tenant. Landlord and Tenant agree to act reasonably in adjusting claims covered by this Section 7.02(d).

(e) All Rent Insurance shall provide in substance that all adjustments for claims with the insurers shall be made with Landlord and Tenant. Landlord and Tenant agree to act reasonably in adjusting claims covered by this Section 7.02(e).

(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 all applicable requirements of the companies writing such policies so that at all times companies of good standing, satisfactory to Landlord, shall be willing to write and continue such insurance.

(g) Each policy of property insurance required to be obtained by Tenant as herein provided and each certificate with respect thereto issued by the insurer shall contain (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) if any insurance policy sets forth one or more restrictions with respect to the performance of any work in or about the Building or the purposes for which the Premises may be occupied or used, an agreement that the coverage afforded by such policy shall not be affected, as the case may be, by the performance of any such work 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, (iii) a waiver by the insurer of any claim for insurance premiums against Landlord or any named insured or additional insured other than Tenant, and (iv) a waiver of subrogation by the insurers of any right to recover the amount of any loss resulting from the negligence of Tenant or Landlord or their respective agents, employees or licensees. In addition, each policy of insurance required to be obtained by Tenant as herein provided and each certificate with respect thereto issued by the insurer shall contain 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.

(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 and most Institutional Lenders, then Tenant may provide and keep in force liability insurance written on such other basis.

Section 7.03. In the event that there shall be an Event of Default (a) with respect to payment of Rental or any other monetary obligation hereunder or (b) under Section 24.01 (g), (h) or (i), then (x) for so long as the Default which is the basis for the Event of Default referred to in (a) above shall remain uncured, and for a period of one year after the date on which such Default shall be cured, or (y) in case of an Event of Default referred to in (b) above, for a period commencing upon the occurrence of such Event of Default and ending upon the date that the Default which is the basis for such Event of Default shall be cured or, failing such cure, upon the date any Mortgagee, in accordance with the applicable provisions of this Lease, obtains possession of the Premises or takes a new lease of the Premises, Tenant, on the written demand of Landlord after the occurrence of any such Event of Default, shall deposit with Depository on the first day of each and every month during such period an amount equal to one-twelfth (1/12th) of the annual insurance premiums payable in respect of coverage required to be maintained

by Tenant hereunder, as reasonably estimated by Landlord, unless such insurance premiums are required to be (and are) deposited with a Mortgagee. If at any time such 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 Article would be insufficient to pay such insurance premiums ten (10) days prior to the due date thereof, the monthly deposits shall thereupon be increased in order that Depository shall have sufficient monies for the payment of the next, increased insurance premium ten (10) days prior to the due date thereof (or, in the event no such monthly deposit is payable by Tenant before said tenth (10th) day, Tenant shall, on Landlord's demand, deposit immediately with Depository sufficient monies for the payment of the next, increased insurance premium). Thereafter, the monthly deposits shall be adjusted so that Landlord shall receive from Tenant sufficient monies to pay the insurance premiums at least ten (10) days before the insurance premiums become due and payable. If at the end of any period referred to in this Section 7.03 for the payment of deposits for insurance premiums Tenant shall not be in Default with respect to payment of Rental or any other monetary obligation under this Lease, the requirement that Tenant make deposits shall cease and Depository shall refund to Tenant any balance then held by Depository with interest, if any, earned thereon, after deducting from the aggregate of such

balance and interest such amount as Depository may then be entitled to deduct pursuant to Section 41.04.

Section 7.04. The insurance required by this Lease, at the option of Tenant, may be effected by blanket, primary, umbrella or following form excess policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or any affiliate of 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 or 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, umbrella or following form excess policies, Tenant shall furnish to Landlord and to each Mortgagee certified copies or duplicate originals of such policies, or certified abstracts thereof, showing all coverage relating to the Premises, 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 or make-up of all improvements affected by any such blanket or umbrella policy or insurance.

Section 7.05. In place of any policy of insurance required to be provided by Tenant under this Lease, Tenant may provide one or more other policies of insurance which shall be reasonably satisfactory to Landlord, so long as the types and amounts of coverage kept in force by Tenant at no time shall be different from or less than the types or amounts specifically required under this Lease.

Section 7.06. Notwithstanding any other provision of this Article, Tenant shall at all times throughout the Term 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 the Building 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 Five Thousand Dollars (\$5,000) (Subject to Indexing), and Tenant, at its sole cost and expense, whether or not insurance with respect to such damage or destruction shall have been in force at the time of the occurrence thereof, and whether or not insurance proceeds, if any, shall suffice to pay the cost of Restoration, with reasonable diligence (subject to Unavoidable Delays) shall restore, repair, replace or rebuild (collectively, "Restore") the Building or the portion thereof so damaged or destroyed to at least the same value and as nearly as possible to the condition, quality and class as the Building existing immediately prior to such occurrence, with such changes or alterations as Tenant, with the prior consent of

Landlord (which consent shall not unreasonably be withheld or delayed), shall elect to make, provided that, after the Restoration, the Building is 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 Commencement Date, the Plans and Specifications, and Landlord in no event shall be called upon to Restore any Building now or hereafter existing or any portion thereof or to pay any of the costs or expenses thereof. If Tenant shall fail to commence to Restore with reasonable diligence (subject to Unavoidable Delays) the Building or the portion thereof so damaged or destroyed, and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant, or having so commenced such Restoration, shall fail to pursue and complete the same with reasonable diligence (subject to Unavoidable Delays) in accordance with the terms of this Lease, and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant (unless such Restoration requires work to be performed which cannot by its nature reasonably be performed within such thirty (30)-day period and Tenant fails to diligently pursue the performance of such work during such period) or if prior to the completion of any such Restoration by Tenant, this Lease shall be terminated by reason of Tenant's Default, Landlord may, but shall not be required to, complete such Restoration, and Tenant shall pay to Landlord, on demand, all

costs and expenses of such completion in excess of the insurance proceeds (other than proceeds of Rent Insurance) received by Landlord on account of such damage or destruction. 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 the remainder, if any, of the Restoration Funds previously received by it.

Section 8.02.

(a) Subject to the provisions of Sections 8.03, 8.04 and, if applicable, Section 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") but, in no event, to any extent or in any sum exceeding the amount actually collected by Depository upon the loss; provided, however, that Depository, before paying such monies over to Tenant, shall be entitled to reimburse itself and Landlord therefrom to the extent, if any, of the necessary and proper expenses 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 by Tenant of the Building. Tenant shall restore the Building to a value which shall be not less than its value immediately prior to such fire or other casualty.

(b) Prior to the making of any Restoration, Tenant shall furnish Landlord with an estimate of the cost of such Restoration, prepared by a licensed professional engineer or registered architect, who shall be selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord, at its election, 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. Any reference in this Article 8 to the estimated cost of any Restoration shall mean such estimate as shall be determined in accordance with this Section 8.02(b).

(c) No Restoration shall be commenced until Tenant shall have delivered to Landlord insurance policies with respect to the Premises or certificates with respect to such policies or certified copies or duplicate originals of such

policies issued by responsible insurers, bearing notations evidencing the payment of the then current installment of premiums thereon or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance specified in Section 11.03(a)(i)-(iii) and, if the Restoration involves work which affects the structural portion of the Building, in Section 11.03(a)(iv). Alternatively, (i) at least five (5) days before the date any such Restoration shall be commenced, Tenant shall deliver to Landlord binders for each such policy of insurance or certificates with respect thereto, together with proof of payment as aforesaid, (ii) no later than sixty (60) days after such commencement date, Tenant shall deliver to Landlord a certified copy of the declaration page of, or a certificate with respect to, each policy (or a certified copy thereof) showing amounts of coverage and limits of liability (and, in addition, with respect to any insurance carried by Tenant in blanket, umbrella, or following form excess policies, schedules showing the location of premises covered thereby and the amounts of insurance afforded by the policies applicable to the Premises), and (iii) in any event, promptly after receipt thereof, Tenant shall deliver to Landlord each such policy or a certificate with respect thereto or a certified copy or a duplicate original of each such policy. Tenant, at no cost or expense to Landlord, shall keep in full force and effect, or cause to be kept in full force and effect, such insurance

until completion of such Restoration. 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 Restoration 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 the Restoration, shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies. Landlord and Tenant shall comply with the provisions of Section 7.02 hereof to the extent applicable to the insurance required by this Section 8.02(c).

(d) Subject to the provisions of Sections 8.03, 8.04 and, if applicable, 8.05, the Restoration Funds shall be paid to Tenant from time to time thereafter 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 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 of Restoration Funds until such lien is satisfied or otherwise discharged. The preceding sentence notwithstanding, the existence of any such lien shall not preclude Tenant from receiving any further installment of Restoration Funds, provided such lien will be discharged with funds from such installment.

(e) Subject to the provisions of Section 8.03 (a)(iv), the amount of any installment to be paid to Tenant shall be such proportion of the total Restoration Funds received by Depository as the cost of labor and materials theretofore incorporated (or delivered to the Premises to be incorporated) by Tenant in the Restoration bears to the total estimated cost of the Restoration by Tenant, less (i) all payments theretofore made to Tenant out of the Restoration Funds and (ii) a percentage of the amount so determined to be agreed upon by Landlord and Tenant, which shall not exceed ten percent (10%) thereof.

(f) Subject to the provisions of Sections 8.03, 8.04 and, if applicable, 8.05, upon completion of and payment for the Restoration by Tenant, the balance of the Restoration Funds held by Depository shall be paid over to Ten-

ant. In the event that the Restoration Funds do not suffice to pay the cost of the Restoration, Tenant shall nevertheless be required to complete the Restoration and pay any additional sums required for the Restoration.

(g) 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, on demand, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the 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 engineer or architect approved by Landlord pursuant to Section 8.02(b) stating (i) that 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 in connection

with the Restoration 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) that no part of such expenditures has been or currently is the basis, in any previous or then pending requisition, for payment of an installment of the Restoration Funds or has been paid out of any installment of the Restoration Funds previously received by Tenant; (iii) that the sum then requested does not exceed the value of the services and materials described in the certificate; and (iv) that the balance of the Restoration Funds held by Depository will be sufficient to pay the balance in full of the cost of the Restoration, and stating in reasonable detail an estimate of said cost;

(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, except such as will be discharged upon payment by Tenant of the requisite amount out of the sum then requested to be withdrawn; and

(c) at the time of such payment to Tenant, there is no existing and unremedied Event of Default on the part of Tenant under Article 24.

Section 8.04.

(a) If any loss, damage or destruction occurs, the estimated cost of Restoration of which equals or exceeds Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing) in the aggregate, Tenant shall:

(i) cause the proposed Restoration to be carried out under a registered architect selected by Tenant and approved in writing by Landlord ("Tenant's Architect") or a licensed professional engineer whose qualifications shall meet with the reasonable approval of Landlord ("Tenant's Engineer"), which approval shall not be unreasonably withheld or delayed;

(ii) furnish to Landlord at least thirty (30) days before the commencement of any such Restoration, the following:

(w) complete plans and specifications for the Restoration of the Building, prepared by a licensed professional engineer or registered architect whose qualifications shall meet with the reasonable approval of Landlord, together with any required approval thereof and all permits, consents, certificates and approvals required to be obtained from Governmental Authorities with respect to the Restoration and such plans and specifications (collectively, "Restoration Approvals"), and, at the request of Landlord, any other drawings, information or samples to which Landlord is entitled under Article 11 (collectively, "Article 11 Materials"), all of said plans and specifications and Article 11 Materials to be subject to Landlord's review and determination, which shall not be unreasonably withheld or delayed, that the proposed Restoration shall result in a Building of at least the same value and, as nearly as possible, the same condition, quality and class as the Building which existed immediately prior to the destruction or damage which created the need for such Restoration, with such changes or alterations as Tenant shall elect to make, provided that, after such Restoration, the Building is 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 Commencement Date, the Plans and Specifications; Landlord's review shall be carried out within thirty (30) days of the date of the submission of the plans and specifications by Tenant, and if Landlord shall not have notified Tenant of its determination within said period, it shall be deemed to have determined that such plans and specifications are in substantial conformity with the requirements of Section 8.01 and this Section 8.04(a)(ii)(w); in the event such plans and specifications and Article 11 Materials are substantially similar to the plans and specifications and Article 11 Materials approved by Landlord in respect of the Building as same was constituted immediately prior to the destruction or damage which created the need for such Restoration, Landlord shall determine that such plans and specifications and Article 11 Materials conform to the requirements of this Section 8.04(a)(ii)(w); (Landlord shall not unreasonably refuse to join in or otherwise cooperate in the application for any Restoration Approval, provided such application is made without cost or expense to Landlord);

(x) a contract, in form assignable to Landlord (subject to any prior assignment to any Mortgagee), made with a reputable and responsible contractor reasonably approved by Landlord, providing for (A) the completion of the Restoration in accordance with said plans and specifications, and (B) payment and performance bonds in forms and issued by sureties satisfactory to Landlord, naming the contractor as obligor and Landlord, Tenant and each Mortgagee 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, except that if, prior to the commencement of the Restoration, Tenant shall deposit with Depository a bond, cash or other security reasonably satisfactory to Landlord, in an amount equal to said penal sum, Tenant shall not be required to furnish said payment and performance bonds;

(y) an assignment to Landlord (subject to any prior assignment to any Mortgagee) without recourse, representation or warranty of the contract so furnished, 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 reentry 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 such contract, including payments made prior to the effective date of such assignment; and

(iii) upon completion of such Restoration, furnish Landlord with respect thereto (A) a complete set of "as-built" plans, prepared and certified to be complete and correct by Tenant's Architect or Tenant's Engineer, (B) where applicable, a survey meeting the requirements of Section 11.04 hereof, and (C) a copy of a current permanent Certificate of Occupancy duly issued by the New York City Department of Buildings, to the extent required for lawful occupancy and use of the Building.

(b) Notwithstanding that the estimated cost of Restoration of any loss, damage or destruction is less than Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing), to the extent that any portion of the Restoration involves work which affects the exterior of the Building, including windows, or involves a change in the height, bulk or setback of the Building from the height, bulk or setback

existing immediately prior to the loss, damage or destruction, or affects any other matter required to be in conformity with the Master Development Plan, the Design Guidelines or, in the event such Restoration is commenced within ten (10) years after the Commencement Date, the Plans and Specifications, then Tenant shall furnish to Landlord at least fourteen (14) days before the commencement of the Restoration a complete set of plans and specifications therefor, prepared by a licensed professional engineer or registered architect whose qualifications shall meet with the reasonable approval of Landlord, and, at Landlord's request, any of the Article 11 Materials, all of the foregoing to be subject to Landlord's review and approval as provided in Section 8.04(a)(ii)(w).

(c) In the event that Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Section 8.04(a)(ii)(w) with respect to, or which will in any way affect, any aspect of the exterior of the Building 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 Building. 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 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, 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 8.05. If the estimated cost of any Restoration, determined as provided in Section 8.02(b), exceeds the

net insurance proceeds, then, prior to the commencement of such Restoration, Tenant shall deposit with Depository a bond, cash or other security reasonably satisfactory to Landlord, which may include, without limitation, a guaranty from one or more of the Guarantors, which guaranty and the financial condition of the guarantor(s) thereunder shall be reasonably 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, as security for the completion of the Restoration, free of public improvement, vendors', mechanics', laborers' or materialmen's statutory or other similar liens.

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 the Building or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and, in accordance with Section 227 of the Real Property Law of the State of New York (or any successor statutory provision), Tenant expressly agrees that it shall have no right to quit or surrender possession of the Premises or any part thereof and that its obligations hereunder, including without limitation, the

payment of Rental payable by Tenant hereunder, shall continue as though the Building had not been damaged or destroyed and without abatement, suspension, deduction, discount, counter-claim, offset, diminution or reduction of any kind. Nothing set forth in this Section 8.06 shall impair Tenant's right to seek a reduction in the assessed value of the Premises by reason of such damage or destruction or otherwise.

ARTICLE 9

CONDEMNATION

Section 9.01.

(a) If at any time during the Term, 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 be deemed to 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 and the Master Development Plan, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein (including, but not limited to, the payment of Rental) or by law required to be observed or performed by Tenant, permit the Restoration of the Building thereon 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. The average net annual income produced by the Building during (i) the period commencing on the date of Completion of the Building and ending on the last anniversary of said 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 in accordance with the provisions of Article 36.

(c) If the whole or substantially all of the Premises including any Civic Facilities situated on, over or under the Premises shall be taken or condemned as provided in this Article 9, the award, awards or damages in respect thereof (collectively, the "Award") shall be apportioned as

follows: (i) there shall first be paid to the Trustee (as defined in the Master Lease) an amount equal to the amount, if any, which it is entitled to receive pursuant to Section 14.02 of the Master Lease as the same is in effect on the date of this Lease; (ii) there shall next be paid to the Mortgagee which holds a first lien on Tenant's interest in this Lease so much of the balance of the Award as shall equal the unpaid principal indebtedness secured by such Mortgage 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 (A) the Land, and the Civic Facilities, if any, situated on, over or under the Premises, less the amount, if any, paid to the Trustee pursuant to clause (i) of this paragraph (c), and (B) Landlord's reversionary interest in the Building so taken, and Tenant shall receive no part of such portion of the Award; and (iv) Tenant shall receive the balance of the Award, if any. If there be any dispute as to which portion of the Award is attributable to the Land and such Civic Facilities and which portion is attributable to the Building, or as to the value of Landlord's reversionary interest in the Building, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36, provided, however, that any apportionment made in accordance with the terms of this Lease and embodied in the decision of a court having jurisdiction over such taking shall be binding

upon the parties (except to the extent such decision may be appealed).

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

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 on 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 Rental or diminution of any of Tenant's obligations hereunder. Tenant, at its sole cost and expense, whether or not the portion of the Award paid to Depository or Tenant, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to Unavoidable

Delays) to Restore any remaining part of the Building not so taken so that the latter shall be complete, rentable, self-contained architectural units in good condition and repair in conformity with the Master Development Plan, the Design Guidelines, and, in the event such Restoration is commenced within ten (10) years after the Commencement Date, the Plans and Specifications. In the event of any taking pursuant to this Section 9.03, there shall first be paid to Landlord, subject to the rights of the Trustee (as defined in the Master Lease) pursuant to the Master Lease as the same is in effect on the date hereof, the entire portion of the Award for or attributable to the Land taken, considered as unimproved and unencumbered by this Lease, and the Civic Facilities taken, if any, situated on, over or under the Premises, without deducting therefrom the value of Tenant's interest in this Lease; and the balance of the Award, if any, shall be paid to Depository, except that if such balance shall be less than Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing), 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 Building 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 Building 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 agrees to facilitate collection by them of their respective portions of the Award. If the portion of the Award made available by Depository, as aforesaid, is insufficient for the purpose of paying for the Restoration, Tenant shall nevertheless be required to make the Restoration and pay any additional sums required for the Restoration.

Section 9.04. If the estimated cost of any Restoration required by the terms of this Article 9, as determined in the manner set forth in Section 8.02(b), exceeds the net Award, then, prior to the commencement of such Restoration, Tenant shall deposit with Depository a bond, cash or other security reasonably satisfactory to Landlord, which may include without limitation, a guaranty from one or more of

the Guarantors, which guaranty and the financial condition of the guarantors thereunder shall be reasonably 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, free of public improvement, vendors', mechanics', laborers' or materialmen's statutory or other similar liens.

Section 9.05. If the temporary use of the whole or any part of the Premises shall be taken at any time during the Term 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 any abatement, suspension, deduction, discount, counter-claim, offset, diminution or reduction whatsoever, 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, in accordance with the provisions of Article 3, to the payment of the Rental payable by Tenant hereunder, except that, if such taking results in changes or alterations in the Building which would necessitate an expenditure to Restore the Building to its former condition, then, a portion of such award or payment sufficient 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 the Building to its 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 Building 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 Building, net of

any amounts actually expended by Tenant for such Restoration, shall remain the property of Landlord if this Lease shall expire prior to the Restoration of the Building.

Section 9.06. 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 9.07. Landlord and 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 9.08. 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 Sub-tenants, or awards and damages, shall be subordinate to Landlord's claims under this Article.

ARTICLE 10

ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 10.01.

(a) Until Substantial Completion of the Building, neither this Lease nor any portion of the 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 under this Lease or which is a general partner of any partnership that is Tenant under this Lease 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, nor shall any general partner's interest in a partnership which is Tenant under this Lease 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 prior consent of Landlord (which consent shall be at the sole discretion of Landlord) in each case and the delivery to Landlord of all of the information and documents specified in Section 10.01(d) hereof. (For purposes of the preceding sentence, a Transfer shall not be deemed to include a sale, assignment or transfer by reason of the death of one or more of the Guarantors, but shall be deemed to include any such event occurring by reason of the death of all the Guarantors.) Notwithstanding the foregoing, Landlord agrees that it shall not withhold its consent to an assignment by Tenant, prior to Substantial Completion of the Building, of all or any portion of Tenant's interest in this Lease or to a Transfer, provided that (i) one or more of Frederick Elghanayan, H. Henry Elghanayan, Jeffrey Elghanayan or Kamran T. Elghanayan shall have and retain operating control of the assignee or of Tenant, (ii) the Guaranty and the letter of credit referred to in

Section 11.14 shall remain in full force and effect and shall in all respects be unaffected by such assignment or Transfer, (iii) no Default shall exist under this Lease, (iv) the proposed transaction does not violate the terms of Section 10.01(c) hereof and (v) Tenant complies with the applicable provisions of Section 10.01(d) hereof. In the event that Landlord withholds such consent, Landlord shall specify to Tenant the reason therefor.

(b) Landlord agrees that, after Substantial Completion of the Building, Tenant may (i) assign this Lease or any portion of Tenant's interest hereunder (including, without limitation, an assignment to a cooperative corporation), (ii) sublet the Premises as an entirety or substantially as an entirety, (iii) subject all or a portion of Tenant's interest in this Lease to a regime of condominium ownership ("Condominium Transfer") or (iv) effect a Transfer, in each such case without the consent of Landlord, provided that (X) the proposed transaction does not violate the terms of Section 10.01(c) hereof, (Y) Tenant complies with the applicable provisions of Sections 10.01(d) and, in the case of an assignment to a cooperative corporation or Condominium Transfer, 10.01(e) hereof and (Z) no notice specifying that a Default exists under this Lease shall have been given by Landlord to Tenant (unless the Default specified in any such notice has been cured). Notwithstanding any transfer by Tenant of all

or a portion of Tenant's interest in this Lease or the Premises, the then Tenant's obligation to effectuate Completion of the Building in accordance with the provisions of Article 11 shall remain in full force and effect.

(c) In no event, whether before or after Substantial Completion of the Building, shall Tenant make a Transfer or Condominium 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 (i) which is (or any principal of which is), at the time of such transaction, either (A) financially irresponsible, or (B) controlled by or under common control with Persons convicted of felonies or known to be engaged in criminal activities, (ii) against which (or against any principal of which) 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) to which (or to any principal of which) 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. Notwithstanding the foregoing, in the case of a Condominium Transfer, the requirements of this Section 10.01(c) shall not apply to purchases of individual residential units (except a sale of more than five (5) units to a single purchaser).

(d) No assignment of this Lease or any portion of Tenant's interest hereunder, subletting of the Premises as an entirety or substantially as an entirety, or Transfer or Condominium Transfer shall become effective under this Lease unless and until Tenant delivers the following documents to Landlord:

(i) in the case of an assignment, (A) an executed counterpart of the instrument(s) of assignment, in form and substance reasonably satisfactory to Landlord, which may be without recourse, representations or warranties, containing, inter alia, the name, address and telephone number of the assignee, (B) executed instrument(s) of assumption of all of Tenant's obligations under this Lease by said assignee, in form and substance reasonably satisfactory to Landlord, effective from and after the date of the assignment, and (C) a certificate 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 the general

partners thereof, (y) in the case of a privately held corporation, the names and addresses of all persons owning stock of, and all directors and officers of, the assignee and (z) in the case of a publicly held corporation, the names and addresses of all persons owning five percent (5%) or more of any class of stock of, 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) an executed counterpart of the sublease, which shall to Landlord's reasonable satisfaction require the subtenant to assume and perform all of the covenants and terms of this Lease, and containing, inter alia, the name, address, and telephone number of the subtenant, and (B) a certificate of the subtenant or an authorized officer or general partner thereof, setting forth: (x) in the case of a partnership, the names and addresses of the general partners thereof, (y) in the case of a privately held corporation, the names and addresses of all persons owning stock of, and all directors and officers of, the sublessee, and (z) in the case of a publicly held corporation, the names and addresses of all persons owning five percent (5%)

or more if any class of stock of, and all directors and officers of, the sublessee;

(iii) in the case of a Transfer, (A) an executed counterpart of each document by which such Transfer was accomplished, and (B) a certificate of an authorized officer or general partner of Tenant, setting forth: (x) if Tenant is a partnership, the names and addresses of all persons becoming general partners thereof as a result of such Transfer, (y) if Tenant is a privately held corporation, the names and addresses of all persons acquiring stock of Tenant as a result of such Transfer, and (z) if Tenant is a publicly held corporation, the names and addresses of all persons acquiring five percent (5%) or more of any class of stock of Tenant as a result of such Transfer;

(iv) in the case of a Condominium Transfer, (A) an executed counterpart of each document by which such Condominium Transfer shall be accomplished, which documents, in the aggregate, to Landlord's reasonable satisfaction shall evidence the assumption of, or agreement to fulfill, all of Tenant's obligations under this Lease in respect of

the portion of Tenant's interest hereunder so transferred, by the transferee(s) whose name(s) and address(es) shall be set forth therein, (B) a certificate of an officer or member of the board of managers of the condominium association or corporation, as the case may be, setting forth the names and addresses of all managers and officers of such association or corporation; and

(v) in all such cases, such other documents and information as Landlord may reasonably request.

Tenant shall have the right, prior to the effective date of any proposed transaction of the type specified in this section, to notify Landlord of such proposed transaction and to submit to Landlord all of the information and copies of the applicable documents provided for herein (which documents may be unexecuted but which shall, in all other respects, be in final form). Within twenty (20) days after the date of delivery of all of such information and documents, Landlord shall notify Tenant whether the form and substance of each such document required to be reasonably satisfactory to Landlord is reasonably satisfactory to Landlord, specifying, in the event that Landlord determines that any such document is not reasonably satisfactory, the reason for such determination. If Landlord shall not have notified Tenant of its

determination within such period, it shall be deemed to have determined that the form and substance of each such document is reasonably satisfactory.

(e) In connection with a proposed assignment to a cooperative corporation or Condominium Transfer pursuant to Section 10.01(b), Tenant shall be entitled, prior to Substantial Completion of the Building, (i) to submit to the New York State Department of Law an offering plan, cooperative policy statement and/or other necessary or appropriate documentation (copies of all of the foregoing simultaneously to be submitted to Landlord but not to be subject to Landlord's consent or approval) and (ii) to undertake marketing activities with respect to the units in the Building which are covered by such offering plan or cooperative policy statement. Tenant acknowledges that no such assignment to a cooperative corporation or Condominium Transfer shall be effective under this Lease, and Tenant agrees not to declare any such offering plan effective, unless and until (i) there has been achieved Substantial Completion of the Building, (ii) fifteen percent (15%) of the residential units in the Building have been made subject to bona fide purchase (subscription) agreements duly executed by purchasers who shall be unaffiliated with Tenant or any of the Guarantors (each such agreement to contain an affidavit wherein the purchaser

swears that he, she or it is purchasing the unit covered thereby for his, her or its own personal use and occupancy or for the personal use and occupancy of one or more members of such purchaser's immediate family and not for the account of any other person or entity) and (iii) Tenant complies with all requirements of the New York State Department of Law imposed with respect to such offering plan or cooperative policy statement and all other applicable Requirements.

Notwithstanding the foregoing, a bona fide purchase (subscription) agreement duly executed by a purchaser who shall be affiliated with Tenant or any Guarantor shall be counted in partial fulfillment of the requirements of clause (ii) of the preceding sentence provided that the aforesaid affidavit of such purchaser contains a statement that he, she or it then resides in the Building and resided therein prior to the making of such affidavit. In the event that, prior to the first anniversary of the date that eighty percent (80%) of the residential units in the Building have become subject to valid Subleases, Tenant shall declare any such cooperative or condominium offering plan effective, and if thirty-five percent (35%) of the residential units in the Building shall not have been made subject to bona fide purchase (subscription) agreements duly executed by purchasers as aforesaid, Tenant, prior to the date such offering plan is declared effective, shall deposit with Landlord a clean irrevocable letter of credit in an amount equal to the aggregate Base

Rent to be paid by Tenant under this Lease in respect of the twenty-four (24)-month period following the date of such deposit, drawn in favor of Landlord and in form and content acceptable to Landlord, 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. The letter of credit shall be renewed in the same amount and, as same may be renewed, shall remain in effect until thirty-five percent (35%) of the residential units in the Building shall have been made subject to such bona fide purchase (subscription) agreements, whereupon Landlord shall return the letter of credit to Tenant. Each renewed letter of credit shall be delivered to Landlord not less than forty-five (45) days before the expiration of the then current letter of credit. Tenant, in lieu of depositing with Landlord one or more renewals of the initial letter of credit, shall be entitled to so deposit one or more extensions of same or one or more new letters of credit, provided that each such extended or new letter of credit, as the case may be, shall be deposited forty-five (45) days before the expiration of the then current letter of credit and shall otherwise comply with the provisions of this Section 10.01(e). Failure of Tenant, in accordance with this Section 10.01(e), to deliver either a renewal of the letter of credit or an extension of the letter of credit or a new letter of credit

shall, in addition to the other remedies provided herein, entitle Landlord, after ten (10) days written notice to Tenant (unless such failure shall be cured within such ten (10)-day period), to present the letter of credit or renewal thereof for payment, in which event Landlord may hold and apply the proceeds thereof (together with any interest earned thereon) as provided hereinbelow. At any time during the period that Tenant shall be required under this Section 10.01(e) to maintain the letter of credit in effect, if Landlord shall fail to receive any installment of Rental or portion thereof before the expiration of the grace period set forth in Section 24.01(a), Landlord is hereby authorized by Tenant to present the letter of credit or renewal thereof for payment and apply all or a portion of said security (or the proceeds thereof) to the payment of any unpaid installment of Rental as the same becomes due. 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 present the letter of credit or renewal thereof for payment and retain all of said security (or the proceeds thereof) as liquidated damages. Landlord shall give notice to Tenant whenever Landlord applies any portion of said security or the proceeds thereof. No presentation for payment of the letter of credit or application of the security (or the proceeds thereof) shall be deemed to cure, or constitute a waiv-

er by Landlord of, any Default by Tenant in its obligation to pay Rental.

(f) The foregoing requirements of prior consents by Landlord shall not apply to the acquisition of this Lease by a Mortgagee through the foreclosure of a Mortgage complying with the terms of Sections 10.10 and 10.11 hereof, 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. Nothing contained in this Lease is intended to limit Tenant's right to place mortgages on its interest in this Lease, but if a holder of a mortgage is not an Institutional Lender it shall not be deemed to be a Mortgagee under any provision of this Lease except as expressly provided in Sections 10.01(f), 10.01(g), 10.10(d), 10.11(e), 26.05(d) and 27.04.

(g) In connection with a valid sale, assignment or other transfer (other than a Condominium Transfer), made after Substantial Completion of the Building in accordance with the provisions of Article 10, of all or a portion of Tenant's interest in the Premises, Tenant shall have the right to take back a mortgage on the Premises in Tenant's favor. Provided (i) Landlord is given prompt notice of such mortgage (together with a complete and correct copy thereof, certified as such by the holder) and the name and address of such holder, and (ii) the holder of such mortgage was a Tenant under this Lease or is one or more Guarantor(s) or an entity controlled by such Guarantor(s), such holder shall be entitled to receive all notices and copies of notices required to be given to a Mortgagee pursuant to Section 10.10(a) and to cure any Default within the applicable time period given to a Mortgagee under said section, and, further provided such holder is not a Person described in clauses (i), (ii) or (iii) of Section 10.01(c), it shall be entitled to obtain possession of the Premises and/or to obtain a new lease of the Premises, all in accordance with the applicable provisions of Sections 10.10 and 10.11. The holder of such a mortgage shall not be deemed to be a Mortgagee for any other purpose under this Lease.

Section 10.02.

(a) No assignment of this Lease or any portion of

Tenant's interest hereunder, subletting of the Premises as an entirety or substantially as an entirety, Transfer or Condominium Transfer shall have any validity under this Lease or become effective as to Landlord except upon compliance with the provisions of this Article 10.

(b) Upon the completion in accordance with the provisions of this Article 10 of (i) a valid assignment and assumption of Tenant's entire interest in this Lease, or (ii) a valid Condominium Transfer of Tenant's entire interest in this Lease to transferees who shall assume all of Tenant's obligations hereunder, the assignor shall be automatically released from all of its obligations under this Lease. Such release shall not affect the Guaranty or the letter of credit referred to in Section 11.14. Landlord shall execute any documents which may be necessary to confirm or evidence such release.

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 the requirement of obtaining the prior 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, as and to the extent required hereunder.

Section 10.04. Without Landlord's prior consent, but subject to the provisions of this Section 10.04, Tenant may enter into agreements for the subletting of residential and non-residential space in the Building (except for subletting of more than fifteen (15) residential units to one Subtenant), 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 as and for the purposes contemplated by the Master Lease and this Lease and in accordance with the Certificate or Certificates of Occupancy for the Premises and all other Requirements and (except for Subleases of residential space in the Building) with the Master Development Plan and the Design Guidelines, and Tenant shall diligently enforce all such provisions of the Sublease 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 of the Subtenants shall not relieve Tenant of Tenant's obligation to cure the same. Tenant shall take any

and all steps necessary to prevent or cure any such violation or breach.

Section 10.06. Subject to any assignment of Subleases and/or rents now or hereafter made to any Mortgagee, Landlord, after an Event of Default by Tenant, may collect subrent and all other sums due under Subleases, and apply the net amount collected to the Rental payable by Tenant hereunder, 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 Subtenants as Tenant hereunder, or a release of Tenant from performance by Tenant of its obligations under this Lease, or of any Guarantor from performance by such Guarantor of its obligations, if any, under the Guaranty.

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 now or hereafter made to any Mortgagee, 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 collec-

tion by Landlord of the rentals and other sums payable under the Subleases, and further agrees that 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 nor give rise to any claim on the part of Tenant, its servants or employees or any Person claiming through Tenant against Landlord for breach of any covenant hereunder or otherwise; provided, however, that such assignment shall become operative and effective only if (a) an Event of Default shall occur, 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, 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 but not more than once in each Lease Year, upon Landlord's demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants. Tenant shall provide to Landlord the forms of the Subleases to be used for the subleasing of residential and non-residential space in the Building at the time of the negotiation of the first of such Subleases and thereafter from time to time as such forms may be revised. Upon reasonable request of

Landlord, Tenant shall permit Landlord and its agents and representatives to inspect all Subleases.

Section 10.09. Tenant agrees that each Sublease shall provide that (a) it is subject to this Lease and to the Master Lease, (b) the Subtenant thereunder will not pay rent or, except for security deposits and deposits for Impositions and insurance, if any, other sums under the Sublease with Tenant for more than one (1) month in advance, and (c) at Landlord's option, on the termination of this Lease pursuant to Article 24, such Subtenant either will enter into a direct lease with Landlord or an entity designated by Landlord on substantially the same terms as those set forth in the Sublease or will attorn to Landlord. Landlord agrees, for the benefit of any commercial Subtenant of Tenant under a Sublease (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"), that Landlord shall deliver to such Subtenant a duly executed and acknowledged

instrument (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 (a) 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 (b) concurrently with such execution, acknowledgment and delivery by Landlord, such Subtenant shall deliver to Landlord the Non-disturbance and Attornment Agreement duly executed and acknowledged by such Subtenant, confirming the agreement of such Subtenant to attorn to Landlord and to recognize Landlord as such Subtenant's landlord under its Sublease, which agreement shall provide that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

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

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

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

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

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

(z) bound by any Sublease or amendment thereto or modification thereof which reduces 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 materially 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, 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 the Mortgagee, together with the name and address of such Mortgagee. After receipt of the foregoing, Landlord shall give to each 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 given to Tenant or notice to Tenant under Section 11.12(a) at the same time as, and whenever, any such notice shall thereafter be given by Landlord to Tenant, and no such notice 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 such Mortgagee. In the event that Tenant shall fail, within the applicable periods set forth in Article 24, to remedy the Default, or to cause the same to be remedied or to cause action to remedy a Default specified in Section 24.01(e) to be com-

menced, upon the receipt by each such Mortgagee of a notice from Landlord advising of such failure, each such Mortgagee (i) shall have an additional period of ten (10) days in the case of a Default in the payment of Rental and thirty (30) days in the case of any other Default, after receipt of such notice, to remedy the Default, or cause the same to be remedied, or cause action to remedy a Default mentioned in Section 24.01(e) to be commenced, and (ii) shall, within such additional period 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(e) to be commenced. At any time (except, if a Default has occurred and is continuing, not later than the expiration of the applicable period set forth above), 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. In the event that Tenant fails to remove from the Storage Area on or before the date specified in any notice given by Landlord pursuant to Section 11.12(a) and otherwise in accordance with the requirements of said section, Landlord shall use its best efforts to give to each such Mortgagee notice of such failure, but, notwithstanding anything set forth hereinabove, (i) no such Mortgagee shall be entitled to additional time to remedy such failure or cause the same to be remedied, and (ii) the failure of any such Mortgagee to receive such latter

notice shall not diminish Landlord's rights under Section 11.12(a).

(b) Notwithstanding the provisions of Section 10.10(a), no Default by Tenant (except in respect of a Default specified in Section 24.01(c)) shall be deemed to exist as long as a Mortgagee, in good faith, within the period specified in Section 10.10(a), either (i) shall have commenced 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 or if the Default is not susceptible to being cured, (A) shall have notified Landlord in writing of its intention to institute foreclosure proceedings and obtain possession directly or through a receiver, (B) shall have commenced such proceedings and prosecuted (or be prosecuting) the same with reasonable diligence and continuity and, (C) upon obtaining such possession, shall have commenced reasonably promptly to cure the Default and to prosecute the same to completion with reasonable diligence and continuity, (or if such Mortgagee shall have been unable to obtain such possession within the period specified in Section 10.10(a), shall have notified Landlord of its intention, upon obtaining such possession, to cure the Default and to prosecute the same to completion with reasonable diligence and continuity) provided, however, that the Mortgagee shall have delivered to Landlord, in writing within ten (10) days after notice to the Mortgagee of Tenant's failure to remedy such Default the

Mortgagee's agreement to take the action described in clause (i) or (ii) herein, and that during the period in which such action is being taken (and any foreclosure proceedings are pending), the Mortgagee is performing all of the other obligations of Tenant under this Lease, to the extent they are able to be performed by a party which is not in possession of the Premises, including payment of all Rental. 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, subject to the provisions of Section 10.11, Landlord shall have the unrestricted right to terminate this Lease in accordance with the provisions thereof and to take any other action it deems appropriate by reason of any Default by Tenant. Notwithstanding anything herein contained to the contrary, provided the Mortgagee shall have complied with all other provisions of this Section 10.10, the Mortgagee shall have no obligation to cure any Defaults which are not susceptible to being cured. Any Default referred to in Section 24.01(a) or (1) and, provided the Mortgagee shall have obtained possession of the

Premises, all Defaults referred to in Section 24.01(b), (d) and (e) shall be deemed to be susceptible to being cured.

(c) Subject to the provisions of Section 41.08, 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 as provided in Section 10.11. 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 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.

(d) Except as expressly provided in Section 10.01(g), each reference in this Section 10.10 to "Mortgagee" shall be deemed to include only an entity which shall qualify as an Institutional Lender hereunder, provided that "Mortgagee" shall also be deemed to include a wholly owned subsidiary (direct or indirect) of a 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 10.11.

(a) In the case of termination of this Lease by reason of any Event of Default or for any other reason, Landlord shall give prompt notice thereof to each Mortgagee under a Mortgage made in compliance with the provisions of Section 10.10, at the address of such Mortgagee set forth in the notice mentioned in the first sentence of Section 10.10(a) hereof, and otherwise in the manner provided by Article 25. Landlord, on written request of any such Mortgagee made any time within thirty (30) days after the giving of such notice by Landlord, shall, within thirty (30) days after receipt of such request, execute and deliver a new lease of the Premises to the Mortgagee for the remainder of the Term, upon all the covenants, conditions, limitations and agreements herein contained, provided that the 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, less the aggregate of all rents, if any, collected by Landlord from Subtenants, and (ii) shall immediately cure all Defaults existing under this Lease which are susceptible to being cured by the Mortgagee (unless Defaults exist which are

not susceptible to immediate cure, in which event Mortgagee shall promptly commence such cure and diligently and continuously prosecute it to completion). Notwithstanding anything contained herein to the contrary, provided the Mortgagee shall have otherwise complied with all of the provisions of this Section 10.11(a) the Mortgagee shall have no obligation to cure any Defaults which are not susceptible to being cured. All Defaults referred to in sections 24.01(c), (f), (g), (h), (i), (j), (k) and (m) shall be deemed not susceptible to being cured.

(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 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 monies (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 may have been assigned to Landlord shall be assigned and transferred, without recourse, representation or warranty, by Landlord to the tenant named in such new lease. Between the date of termination of this Lease and the date of execution and delivery of the new lease, if a Mortgagee shall have requested such new lease as provided in paragraph (a) of this Section 10.11, Landlord shall not (i) cancel any Subleases or accept any cancellation, termination or surrender thereof without the consent of the Mortgagee, except for a default as provided in the Subleases or for the purpose of permitting Landlord to enter into Subleases with other tenants 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 terms not less than the rental rates per square foot and for at least the remainder of the unexpired terms, respectively, of the cancelled Subleases, or (ii) accept prepayments of rent or additional rent for periods of more than one month.

(d) If there is more than one Mortgage, Landlord shall 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 Section 10.11, provided that Tenant shall have given Landlord notice of such

Mortgage in compliance with the provisions of Section 10.10(a).

(e) Each reference in this Section 10.11 to "Mortgagee" shall be deemed to include a wholly owned subsidiary (direct or indirect) of a 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 10.12. In any circumstances where arbitration is provided for under this Lease, Landlord agrees that Landlord shall give any Mortgagee as to whom Tenant 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 Mortgagee whose Mortgage is senior in lien as a proper party to participate in any arbitration, subject to the provisions of Article 36.

Section 10.13. There shall be no processing fee or other charge required to be paid to Landlord in connection with the granting of Landlord's consent under this Article.

ARTICLE 11

CONSTRUCTION OF BUILDING

Section 11.01. Tenant shall, at its sole cost and expense, and using a reputable and responsible contractor approved by Landlord, which approval shall not be unreasonably withheld or delayed, no later than thirty (30) days after the Commencement Date, commence, and thereafter diligently prosecute, the construction of the Building in accordance with the Master Development Plan, the Design Guidelines, the Plans and Specifications (except that, until such date as Landlord shall have approved the Plans and Specifications, Tenant shall perform its obligations set forth in this sentence in accordance with the Preliminary Plans and Specifications), and the applicable provisions of this Lease, including all Requirements. Promptly after Commencement of Construction, Tenant shall give Landlord notice thereof, specifying the date on which construction commenced. Construction of the Building shall include all required connections between the Building and electrical vaults, gas, telephone and water mains and sanitary and storm sewers. Tenant acknowledges that Landlord has delivered to Tenant possession of the Land on the Commencement Date, and Tenant, having inspected the Land to its full satisfaction, hereby accepts possession of the Land in its present condition. Tenant shall as soon as

practicable obtain from New York City and all other Governmental Authorities all permits, consents, certificates and approvals required to be obtained prior to the Commencement of Construction (collectively, "Approvals"). At the request of Tenant, Landlord shall join or otherwise cooperate in the application for any such Approval, provided it is made without cost or expense to Landlord. Tenant shall not undertake Commencement of Construction unless and until (i) Tenant (A) shall have obtained from Landlord all approvals required under this Lease to be obtained from Landlord prior to Commencement of Construction and (B) shall have obtained and delivered to Landlord copies of all Approvals, (ii) Tenant shall have delivered to Landlord binders for insurance, in accordance with the provisions of Section 11.03(b), and (iii) either (a) a building loan Mortgage in an amount sufficient to assure completion of construction of the Building shall have been made for the financing of such construction, or (b) Landlord shall have approved (such approval not to be unreasonably withheld) a plan submitted by Tenant for financing the construction of the Building, which plan shows the source of funds therefor. Tenant shall obtain such other permits, consents, certificates and approvals as may be required from time to time to continue and complete the construction and development of the Premises.

Section 11.02.

(a) Landlord has approved Schematics, dated June 4, 1982, prepared by the Architect, and the Preliminary Plans and Specifications, dated September 20, 1983, revised as of December 9, 1983.

(b) As soon as practicable but in no event later than sixty (60) days after the Commencement Date, Tenant shall submit to Landlord final plans and specifications for the Building by the Architect. The final 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 Preliminary Plans and Specifications. If Landlord determines that they do so conform, Landlord shall notify Tenant to that effect. If Landlord determines that the final plans and specifications do not conform to the Master Development Plan, the Design Guidelines or the Preliminary Plans and Specifications, Landlord shall so notify Tenant, specifying those portions of the final plans and specifications which do not so conform and stating in reasonable detail in what respects same do not so conform, and Tenant shall revise said nonconforming portions so as to so conform and shall deliver same to Landlord for review within twenty (20) business days of the date of notice from Landlord to Tenant that the final plans and specifications do not so

conform. Each review by Landlord shall be carried out within ten (10) business days of the date of delivery of the final plans and specifications (or one or more portions thereof) by Tenant and if Landlord shall not have notified Tenant of its determination within such ten (10)-day period, it shall be deemed to have determined that the final plans and specifications (or the portion or portions thereof so submitted) do conform to the Master Development Plan, the Design Guidelines and the Preliminary Plans and Specifications. The final plans and specifications, as approved hereunder and as may be changed from time to time by Tenant and approved by Landlord in accordance with Section 11.02(c), are hereinafter referred to as the "Plans and Specifications."

(c) In the event that Tenant shall desire to modify the approved Plans and Specifications with respect to, or which will in any way affect, any aspect of the exterior of the Building 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 Building. 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 Plans and Specifications, as approved by Landlord pursuant to the preceding Section 11.02(b), 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 Plans and Specifications as initially approved by Landlord. Within (20) days, 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 Plans and Specifications which Landlord has previously determined to be satisfactory provided same have not been changed by Tenant.

(d) Notwithstanding the provisions of Section 11.02(c), if, after the Commencement of Construction, Tenant

makes a good faith determination that any proposed modification which requires Landlord's approval under said section 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 a copy of said statement to Landlord's President and Chief Executive Officer). Landlord's Project Manager shall, in writing, before the expiration of the second 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 for in Section 11.02(c). 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(d) shall require Landlord to notify Tenant of Landlord's determination earlier than the expiration of the ten (10) business-day period set forth in Section 11.02(c) 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 two (2) business-day period set forth above, Landlord shall be deemed to have approved the proposed modification.

(e) The Plans and Specifications shall comply with all applicable 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 Plans and Specifications 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 Plans and Specifications comply with the Requirements. In the event that there shall be a conflict between the Requirements and the Design Guidelines, the Requirements shall prevail.

(f) In addition to the documents referred to in Section 11.01 and this Section 11.02, Tenant shall, at least fourteen (14) days prior to ordering the same for incorporation into the Building, submit to Landlord samples of materials to be used on the exterior, for the windows and in the public portions of the Building and the same shall be subject to Landlord's approval, which shall not be unreasonably withheld or delayed. Landlord reserves the right at its sole cost and expense 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 of this Lease.

(g) Tenant acknowledges that the Land and all other parcels in Block 16, Manhattan, constitute a single zoning lot for the purposes of and pursuant to the provisions of the Zoning Resolution of the City of New York. 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 232,000 square feet. In confirmation of the foregoing, Landlord has executed and caused to be recorded, and this Lease shall be subject to, the Zoning Lot Declaration.

(h) Tenant shall not construct or permit to exist any Building on the Land unless the Building is in compliance with the Zoning Lot Declaration, the Master Development Plan and the Design Guidelines.

Section 11.03.

(a) Tenant, prior to the Commencement of Construction on the Premises, 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 Building, the following at no cost or expense to Landlord:

(i) comprehensive general liability insurance, naming Tenant as named insured and, as additional insureds, Landlord, Master Landlord, any general contractor or construction manager engaged by Tenant 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 Fifty Million Dollars (\$50,000,000) 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), 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 Building), broad form contractual liability (designating the indemnity provisions of the Construction

Agreements), 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 Five Million Dollars (\$5,000,000) combined single limit, such insurance to name Tenant as named insured and, as additional insureds, Landlord, Master Landlord any general contractor or construction manager engaged by Tenant and each Mortgagee under a standard mortgagee clause;

(iii) workers' compensation insurance providing statutory New York State benefits for all persons employed in connection with the construction at the Premises; 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 that the proceeds received pursuant to the insurance coverage required under Section 11.03(a)(iv) hereof shall exceed Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing), 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 that such

proceeds shall be Two Hundred Fifty Thousand Dollars (\$250,000) or less (Subject to Indexing) such proceeds shall be payable, in trust, to Tenant for application to the cost of completion of construction of the Building.

(b) No construction shall be commenced until Tenant shall have delivered to Landlord binders for, or certificates with respect to, the insurance required by this Section 11.03, in accordance with this Section 11.03 and as more fully provided in Section 7.02(a) hereof, together with proof satisfactory to Landlord that the then current installment of premiums in respect of such insurance has been paid. Within sixty (60) days after the Commencement of Construction, Tenant shall deliver to Landlord a certified copy of the declaration page of, or a certificate with respect to, each policy providing such insurance showing amounts of coverage and limits of liability (and, in addition, with respect to any insurance carried by Tenant in blanket, umbrella or following form excess policies, schedules showing the location of premises covered thereby and the amount of insurance afforded by the policies applicable to the Premises), and, in any event, promptly after receipt thereof, Tenant shall deliver to Landlord policies for the insurance required by this Section 11.03 or certificates with respect thereto or certified copies or duplicate originals of such policies.

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

(d) In addition to the insurance required pursuant to this Section 11.03, if Tenant's construction lender requires Tenant to obtain payment and performance bonds, Tenant shall, prior to Commencement of Construction, obtain and furnish to Landlord such bonds in forms and issued by sureties satisfactory to Landlord, naming the construction contractor as obligor and Landlord, the construction lender and Tenant as co-obligees, each in a penal sum equal to the amount of the construction contract for the Building.

Section 11.04. Tenant covenants and agrees that, subject to Unavoidable Delays, construction of the Building (including all required connections between the Building and electrical vaults, gas, telephone and water mains and sanitary and storm sewers) shall be (a) commenced and prosecuted with all reasonable diligence and without interruption in accordance with the development schedule annexed hereto as Exhibit "G" (the "Development Schedule"), and (b) Substantially Completed (as hereinafter defined) in a good and workmanlike manner by twenty-four (24) months from the Commencement of Construction (the "Scheduled Completion Date"). Upon Substantial Completion of the Building (as defined below),

Tenant, at its sole cost and expense shall furnish Landlord with (i) a complete set of "as built" plans prepared and certified to be complete and correct by a registered architect, and (ii) a survey prepared and sealed by a licensed surveyor showing the Building situated on the Land and all easements and other matters of record of the type which are shown on such a survey relating to the Premises, certified by such surveyor to Landlord, and bearing the certification of such surveyor that the entire Building is within the property lines of the Land and does not encroach upon any easement or violate any restriction of record except as shown on said survey. "Substantial Completion of the Building" or "Substantially Completed" shall mean the occurrence of all of the following: (i) substantial completion of all construction work on the Building, (ii) the delivery to Landlord of a true copy of the Residential TCO and (iii) the delivery to Landlord of a certificate by a registered architect certifying that the construction has been substantially completed in accordance with all Approvals, the Plans and Specifications, the Master Development Plan and the Design Guidelines. Within six (6) months after the date of Substantial Completion of the Building, Tenant shall furnish Landlord with a permanent Certificate of Occupancy for all of the Building duly issued by the New York City Department of Buildings, but Tenant's failure to obtain such permanent Certificate of Occupancy within such six (6)-month period shall not be a Default here-

under 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 Building until such portion has been made subject to one or more Subleases). In any event, Tenant shall furnish Landlord with such permanent Certificate of Occupancy promptly after same has been duly issued.

Section 11.05. At all times during the Term, Landlord's interest in the Premises and the assets of, or funds appropriated to, Landlord shall be free and clear of all liens arising out of, or in connection with, the construction of the Building, as provided in Section 16.02, but the foregoing shall not modify Tenant's right to mortgage Tenant's interest in the Premises in accordance with the provisions of this Lease.

Section 11.06.

(a) The materials to be incorporated into the Building 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 Building or the incorporation of such materials therein, title thereto shall

continue in Landlord, provided, however, (i) that Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer, supplier of materials or other Person in connection with the purchase of any such materials, (ii) that Landlord shall have no obligation to pay any compensation to Tenant by reason of Landlord's acquisition of title to such materials and the Building, (iii) that Landlord shall have no obligation with respect to the storage or care of such materials or the Building, and (iv) that any refunds, credits or other proceeds which may be obtained in respect of such materials shall be the property of Tenant. All such materials, immediately upon purchase of same, shall be and shall be deemed to be automatically leased to Tenant hereunder.

(b) All Construction Agreements with respect to construction of the Building which shall be effective prior to the Completion of the Building 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 Building (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 [or, if Landlord is other

than Battery Park City Authority, insert name], notwithstanding that such materials have not been incorporated in, or made a part of, such Building at the time of such purchase; provided, however, that Battery Park City Authority [or, if Landlord is other than Battery Park City Authority, insert name] 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 [or, if Landlord is other than Battery Park City Authority, insert name] 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 [or, if Landlord is other than Battery Park City Authority, insert name], and provided further, that any refunds, credits or other proceeds which may be received in respect of such materials shall be the property of Tenant."

(c) By reason of the ownership of the Building by Landlord, certain sales and compensating use taxes will not be incurred in connection with the construction of the Building. Tenant shall pay to Landlord, as payments in lieu of such sales and compensating use taxes, the sum of Three Hundred Ninety-Two Thousand Dollars (\$392,000), payable in eight equal quarterly payments, the first such payment to be made on the first day of the fourth calendar month following the Commencement of Construction and the succeeding payments to

be made on the first day of each third month thereafter. Such amounts payable to Landlord by Tenant shall be deemed Rental under this Lease. In the event Tenant is compelled by any Governmental Authority to pay such sales or compensating use tax in respect of materials incorporated (or to be incorporated) in the Building 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 or PILOT in an amount equal to the total amount of such taxes and interest and penalty thereon, if any, which Tenant has been compelled to pay to such Governmental Authority, provided that (i) each Construction Agreement with respect to construction of the Building contains the provision set forth in section 11.06(b), (ii) Tenant has notified Landlord in writing prior to payment of such taxes and promptly after receiving notice of a 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 any such contest, be forfeited or lost, or subjected to any lien, encumbrance or charge, and Tenant would not be 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. Tenant acknowledges that, in con-

nection with the construction of the Building, Tenant may be liable for sales and compensating use taxes in respect of property other than materials to be incorporated in the Building.

Section 11.07. Upon the request of Landlord, Tenant, at its sole cost and expense, shall furnish and install a project sign, designed, and with such text as shall be required by Landlord, at a location on the Premises satisfactory to Landlord and Tenant, provided that Tenant shall not be required to expend more than Five Hundred Dollars (\$500) in respect of the foregoing. 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 11.08. Tenant, at its sole cost and expense, shall remove from the Project Area all fill which is excavated by Tenant therefrom and shall deposit same outside the Project Area in full compliance with all applicable Requirements. In addition, Tenant hereby indemnifies Landlord against and saves Landlord harmless from all liabilities, obligations, damages, judgments, claims, costs and expenses (including but not limited to reasonable attorneys' fees and disbursements) paid, suffered or incurred by Landlord as a

result of any claim, demand or cause of action by any person or entity arising out of, or in connection with, Tenant's actions or omissions in violation of this Section 11.08. In addition, Tenant shall reimburse Landlord for any damages Landlord itself may suffer by reason of Tenant's actions or omissions in violation of this Section.

Section 11.09. 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 but not limited to those carried on by other developers in Phase II and 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 the Civic Facilities, the Service Road 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 Building 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 reasonably required by Landlord, replace any portion of the 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. Landlord shall have the right, but shall not be obligated, to erect a perimeter fence enclosing some or all of Parcels E, F, G and J within Phase II (as shown on map annexed hereto as Exhibit "L" and made part hereof) (the Premises and such parcels collectively, the "Parcels"), provided such fence shall have entrances so as to permit construction access to the Premises, as provided in Exhibit "J" annexed hereto and made a part hereof. In the event Landlord erects such a fence, Tenant shall not inter-

fere 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 reasonably required by Landlord, replace same in the manner provided in the immediately preceding clause (iv)(A). Tenant shall enclose the Premises with an 8-foot high plywood fence to be painted green with an 18-inch blue strip at the top so as to separate the Premises from the remainder of the Project Area. During construction Tenant shall maintain Tenant's fence in good condition. Notwithstanding the foregoing, if the tenant of any parcel that is contiguous to the Premises shall commence construction on such parcel prior to Substantial Completion of the Building, then Tenant may remove the portion of Tenant's fence which separates the Premises from such parcel. Upon Substantial Completion of the Building, Tenant shall remove Tenant's fence. Subject to applicable Requirements, Tenant shall have the right to remove Tenant's fence at an earlier date if Tenant has commenced its program to lease or sell units in the Building.

Section 11.10. Tenant shall cause its contractors and all others in the Project Area 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, or permit its contractors to

engage in, any conduct which may disrupt such harmonious relationship.

Section 11.11. Tenant shall carry out development of the Building in a manner which does not interfere with, delay or impede the activities of other contractors and developers within the Project Area. If, in Landlord's reasonable judgment, Tenant fails to comply with its obligations under this Section 11.11, Landlord may, in addition, to any other remedies it may have hereunder, order Tenant (and Tenant's contractors and others in the Project Area connected with Tenant's construction) to cease those activities which Landlord believes interfere with, delay or impede such other contractors or developers. No delay or other loss or hindrance suffered by Tenant arising from any such order by Landlord or from the actions or omissions of any 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.

Section 11.12.

(a) In furtherance of Tenant's construction of the Building, but subject at all times to the status of construction activity on the Parcels, Landlord shall designate a portion or portions of one or more of Parcels E, F, G and J

as to which Tenant shall have a revocable license to store construction materials and equipment (the "Storage Area"). In the event Landlord gives Tenant notice that removal of all such construction materials and equipment from the Storage Area is required in connection with construction activity of other developers or Landlord then in progress or contemplated within Phase II, Tenant's license shall be deemed revoked and terminated on the date specified in such notice (which date shall not be earlier than twenty (20) days after the date such notice is given), and Tenant shall (subject to Unavoidable Delays), on or before the date specified in such notice remove from the Storage Area all such construction materials and equipment and every other thing placed therein by or on behalf of Tenant, repair all damage resulting from Tenant's activity in the Storage Area and restore the Storage Area to the condition it was in prior to any such activity. In any event, Tenant's license shall terminate and Tenant shall complete such removal, repair and restoration no later than the date of Enclosure of Building. In the event Tenant fails to vacate, repair or restore the Storage Area on or before the date specified in such notice and otherwise as hereinabove provided, then, in addition to and not in lieu of such rights as Landlord may have pursuant to Article 24, Landlord shall be entitled (but shall not be obligated) to remove from the Storage Area everything placed therein by or on behalf of Tenant and to undertake such repair and restora-

tion. Landlord shall not be liable to Tenant, any of Tenant's contractors or any other person (i) with respect to any property so removed, or (ii) for any delay, inconvenience, annoyance, disturbance or other damage by reason of any action taken by Landlord under this section. All reasonable costs and expenses incurred by Landlord in effectuating such removal, repair and restoration, together with interest thereon at the Prime Rate plus two percent (2%) per annum, shall be paid by Tenant to Landlord within ten (10) days after demand. Landlord shall submit to Tenant written evidence reasonably satisfactory to Tenant substantiating the amount demanded by Landlord. All monies payable to Landlord under this section shall constitute Rental under this Lease. Landlord reserves the right (for itself and its employees, agents and contractors) to enter upon the Storage Area to inspect the same and for the purpose of exercising Landlord's rights under this Section 11.12. During the period that Tenant shall be permitted to use the Storage Area hereunder, no party other than Tenant and its contractors, agents and employees shall be entitled to use same.

(b) In order to induce Landlord to agree to the provisions set forth in the preceding Section 11.12(a), Tenant agrees that time shall be of the essence with respect to Tenant's obligation to vacate, repair and restore the Storage Area, as set forth in said section.

(c) Tenant shall not be obligated to use the Storage Area, but any use of the Storage Area by Tenant shall be subject to and in accordance with the provisions of this Section 11.12.

Section 11.13. With respect to construction on the Premises, all persons employed by Tenant will be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 11.14. Tenant shall, at all times during the construction of the Building and until Completion of the Building, secure its obligation to pay Base Rent hereunder by depositing with Landlord upon the execution of this Lease a clean irrevocable letter of credit drawn in favor of Landlord and in form and content acceptable to Landlord, having a term of not less than one (1) year from the date of issuance, payable upon presentation of sight draft in United States dollars, and issued by and drawn on a commercial bank or trust company which is a member of the New York Clearing House Association. The amount of the initial letter of credit shall be Four Hundred Forty-eight Thousand Dollars (\$448,000). The letter of credit shall be renewed in the same amount, except that, provided Tenant shall have duly paid all Rental payable during the one (1)-year period commencing upon the date of issu-

ance of the letter of credit and no Default under this Lease as to which Landlord shall have given Tenant notice shall exist at the termination of such one-year period, at the termination thereof the amount of the letter of credit may be reduced to Two Hundred Twenty-four Thousand Dollars (\$224,000). The letter of credit, as same may be renewed, shall remain in effect until Completion of the Building, and, upon Completion of the Building, Landlord shall return the letter of credit to Tenant. Each renewed letter of credit shall be delivered to Landlord not less than forty-five (45) days before the expiration of the then current letter of credit. Tenant, in lieu of depositing with Landlord one or more renewals of the initial letter of credit, shall be entitled to so deposit one or more extensions of same or one or more new letters of credit, provided that each such extended or new letter of credit, as the case may be, shall be deposited forty-five (45) days before the expiration of the then current letter of credit and shall otherwise comply with the provisions of this Section 11.14. Failure of Tenant, in accordance with this Section 11.14, to deliver either a renewal of the letter of credit or an extension of the letter of credit or a new letter of credit shall, in addition to the other remedies provided herein, entitle Landlord, after ten (10) days written notice to Tenant (unless such failure shall be cured within such ten (10)-day period), to present the letter of credit or renewal thereof for payment, in which event Landlord may hold

and apply the proceeds thereof (together with any interest earned thereon) as provided in Section 11.15. The requirement under this Section 11.14 that Tenant maintain the letter of credit in effect until Completion of the Building shall not be deemed to constitute a waiver by Landlord of any Default by Tenant in its obligation to cause the Building to be Substantially Completed by the Scheduled Completion Date.

Section 11.15. At any time prior to Completion of the Building, if Tenant shall fail to pay any installment of Base Rent before the expiration of the grace period set forth in Section 24.01(a), Landlord is hereby authorized by Tenant to present the letter of credit or renewal thereof for payment and apply all or a portion of said security (or the proceeds thereof) to the payment of any unpaid installment of Base Rent as the same becomes due. 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 present the letter of credit or renewal thereof for payment and retain all of said security (or the proceeds thereof) as liquidated damages. Landlord shall give notice to Tenant whenever Landlord applies any portion of said security or the proceeds thereof. No presentation for payment of the letter of credit or application of the security (or the proceeds thereof) shall be deemed to cure, or constitute

a waiver by Landlord of, any Default by Tenant in its obligation to pay Base Rent.

Section 11.16. Tenant agrees that all piledriving shall take place in accordance with applicable Requirements and during hours normally permitted for such work in New York City. Landlord agrees (a) to include this provision in all leases of parcels within Phase II, and (b) not to grant to any other tenant of such a parcel permission to undertake piledriving other than as provided in this section.

Section 11.17. Landlord agrees that the leases to be entered into with other tenants of parcels within Phase II shall require such tenants to comply with requirements substantially similar to those required of Tenant pursuant to Sections 11.02(h), 11.07, 11.08, 11.09, 11.10, 11.11 and 11.13. Landlord further agrees to enforce compliance with such requirements on a non-discriminatory basis.

Section 11.18. Exhibit "J" is incorporated in this Article by reference.

ARTICLE 12

REPAIRS

Section 12.01. Except as may be otherwise expressly provided in Articles 26 and 27, Tenant, at its sole cost and expense, throughout the Term shall take good care of the Premises, including, without limiting the generality of the foregoing, the Building, 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) and sidewalk hoists in front of or adjacent to the Premises, water, sewer and gas connections and pipes which are located on and service the Premises and all Equipment, and shall keep and maintain the Building 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. 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) the laws, regulations and rules of New York City and all other Governmental Authorities, (b) requirements of the New York Board of Fire Underwriters or any successor thereto, and (c) the Building Code of New York City, as then in force, and (d) all other Requirements.

Section 12.02. Tenant, at its sole cost and expense, also shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances, the sidewalks, grounds, chutes, sidewalk hoists and curbs comprising a part of, or which are situated in front of or adjacent to, the Premises and any parking facilities and plazas on the Land.

Section 12.03. Except as may be expressly otherwise provided in Articles 26 and 27 and Exhibit "J", (a) 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, replacement, Restoration or repair to, or to demolish, the Building, and (b) Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises. Particularly, but without limitation of the immediately foregoing covenant, Tenant shall not clean

or require, permit, suffer or allow any window in the Building to be cleaned from the outside in violation of Section 202 of the Labor Law or any successor statutory provision 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 Building, Tenant shall not demolish, replace or materially alter the Building, or any part thereof (but not including Equipment, which shall be governed by the provisions of Article 15), or make any addition thereto, whether voluntarily or in connection with repairs or Restoration 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) Tenant shall furnish to Landlord a complete set of plans and specifications for the Capital Improvement which shall include a schedule for the completion of its construction and, at the request of Landlord, any of the Article 11 Materials, so as to enable Landlord to determine whether or not the Capital Improvement conforms to the Master Development Plan, the Design Guidelines and, in the event such Capital Improvement is commenced within ten (10) years after the Commencement Date, the Plans and Specifications.

(b) No Capital Improvement shall be undertaken until (i) Landlord shall have consented thereto, which consent shall not be unreasonably withheld or delayed and shall not be withheld if in Landlord's reasonable determination the proposed Capital Improvement conforms to the Master Development Plan, the Design Guidelines, and, if required pursuant to Section 13.01(a), the Plans and Specifications, and (ii) 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 construction (collectively, "Improvement Approvals"). Landlord shall not unreasonably refuse to join or otherwise cooperate in the application for any such Improvement Approval, provided such application is made without cost or expense to Landlord. Copies of all such Improvement Approvals, certified by Tenant to be true copies thereof, shall be delivered to Landlord. Notwithstanding the foregoing, if the estimated cost of any proposed Capital Improvement is less than Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing), such estimated cost for all purposes under this Article 13 to be determined as provided in Section 8.02(b), Tenant (i) subject to the provisions of Section 13.02(b), shall not be obligated to obtain Landlord's consent with respect to such Capital Improvement, but (ii) shall comply with all other provisions of this Section 13.01.

(c) Any Capital Improvement, 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 was commenced.

(d) Any Capital Improvement shall be made with reasonable diligence and continuity (Unavoidable Delays excepted) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals and building and zoning laws, (ii) the Master Development Plan, the Design Guidelines and, if required pursuant to Section 13.01(a), the Plans and Specifications, (iii) the plans and specifications therefor as the same may be amended and approved by Landlord when such approval is required under this Lease, (iv) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, and (v) all other Requirements.

(e) The cost of any Capital Improvement shall be paid in cash or its equivalent, so that the Premises and the assets of, or funds appropriated to, Landlord shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Premises except as provided in Section 16.02.

(f) No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to Landlord insurance policies with respect to the Premises or certificates with respect to such policies or certified copies or duplicate originals of such policies issued by responsible insurers, bearing notations evidencing the payment of the then current installment of premiums thereon or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance specified in Section 11.03(a)(i)-(iii), and, if the Capital Improvement involves work which affects the structural portion of the Building, in Section 11.03(a)(iv). Alternatively, (i) at least five (5) days before the date any such Capital Improvement shall be commenced, Tenant shall deliver to Landlord binders for each such policy of insurance or certificates with respect thereto, together with proof of payment as aforesaid, (ii) no later than sixty (60) days after such commencement date, Tenant shall deliver to Landlord a certified copy of the declaration page of, or a certificate with respect to, each policy (or a certified copy thereof) showing amounts of coverage and limits of liability (and, in addition, with respect to any insurance carried by Tenant in blanket, umbrella, or following form excess policies, schedules showing the location of promises covered thereby and the amounts of insurance afforded by the policies applicable to the Premises), and (iii) in any event, promptly after receipt thereof, Tenant shall deliver to Landlord each

such policy or a certificate with respect thereto or a certified copy or a duplicate original of each such policy. Tenant, at no cost or expense to Landlord, shall keep in full force and effect, such insurance until completion of such Capital Improvement. 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 the Capital Improvement, shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies. Landlord and Tenant shall comply with the provisions of Section 7.02 hereof to the extent applicable to the insurance required by this Section 13.01(f).

(g) Landlord shall notify Tenant of Landlord's determination with respect to any request for consent required under this Section 13.01 within fourteen (14) days of the later of (i) Landlord's receipt of such request from Tenant and (ii) Landlord's receipt of the plans and specifications and the Article 11 Materials, if any, which Landlord shall have requested in accordance with Section 13.01(a). Landlord's failure so to notify Tenant within said time period shall be deemed to constitute consent to such request.

Section 13.02.

(a) If the estimated cost of any proposed Capital Improvement shall exceed Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing), either individually or in the aggregate with other Capital Improvements undertaken in any twelve (12) month period during the Term, Tenant shall:

(i) cause the proposed Capital Improvement to be carried out under Tenant's Architect or Tenant's Engineer (Landlord not unreasonably to withhold or delay approval of same);

(ii) furnish to Landlord the following at least fourteen (14) days before the commencement of any work in connection with the proposed Capital Improvement:

(w) complete plans and specifications for the Capital Improvement, prepared by Tenant's Architect or Tenant's Engineer, and, at the request of Landlord, any of the Article 11 Materials, 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 after the Commencement Date, the Plans and Specifications;

(x) a contract, in form assignable to Landlord (subject to any prior assignment to any Mortgagee), made with a reputable and responsible contractor reasonably approved by Landlord, providing for (1) the completion of the Capital Improvement in accordance with the schedule included in the plans and specifications, and (2) payment and performance bonds in forms and issued by sureties satisfactory to Landlord, naming each contractor as obligor and Landlord, Tenant and each Mortgagee as obligees, each in a penal sum equal to the amount of such contract or other security reasonably satisfactory to Landlord;

(y) an assignment to Landlord (subject to any prior assignment to any Mortgagee) without recourse, representation or warranty of the contract so furnished, 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 reentry 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; and

(z) deposit with Depository a bond, cash or other security reasonably satisfactory to Landlord, which may include, without limitation, a guaranty from one or more of the Guarantors, which guaranty and the financial condition of the guarantor(s) thereunder shall be reasonably satisfactory to Landlord, in the amount of the estimated cost of such Capital Improvement, to be held and applied by Depository, to the extent applicable, in accordance with the procedures of Section 8.02, as security for the completion of the work, free of public improvement, vendors', mechanics', laborers' or materialmen's statutory or similar liens; and

(iii) upon completion of the proposed Capital Improvement, furnish Landlord with respect thereto (A) a complete set of "as-built" plans, prepared and certified to be complete and correct by Tenant's Architect or Tenant's Engineer, (B) where applicable, a survey meeting the requirements of Section 11.04 hereof, and (C) a copy of a current permanent Certificate of Occupancy duly issued by the New York City Department of Buildings, to the extent required for lawful occupancy and use of such Capital Improvement.

(b) Notwithstanding that the estimated cost of any Capital Improvement is less than Two Hundred Fifty Thousand Dollars (\$250,000) (Subject to Indexing), to the extent that any portion of the Capital Improvement involves work which affects either the exterior of the Building, including windows, or any other matter required to be in conformity with the Master Development Plan, the Design Guidelines or, in the event such Capital Improvement is commenced within ten (10) years after the Commencement Date, the Plans and Specifications, or involves a change in the height, bulk or setback of the Building from the height, bulk or setback existing immediately prior to the Capital Improvement, then Tenant shall deliver to Landlord at least fourteen (14) days before the

commencement of the Capital Improvement, a complete set of plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or registered architect whose qualifications shall meet with the reasonable approval of Landlord, and, at Landlord's request, any of the Article 11 Materials, all of the foregoing to be subject to Landlord's review and approval as provided in Section 13.02(a)(ii)(w).

(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) days of the later of (i) Landlord's receipt of such request from Tenant and (ii) Landlord's receipt of the plans and specifications and the Article 11 Materials, if any, which Landlord shall have requested in accordance with Section 13.02(b). Landlord's failure to so notify Tenant within said time period shall be deemed to constitute approval. Landlord's approval shall not be withheld unreasonably and shall not be withheld if, in the reasonable judgment of Landlord, the proposed Capital Improvement conforms to the Master Development Plan, the Design Guidelines and, in the event such Capital Improvement is commenced within ten (10) years after the Commencement Date, the Plans and Specifications.

(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) with respect to, or which will in any way affect, any aspect of the exterior of the Building 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 Building. 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 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, 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. Title to all additions, alterations, improvements and replacements made to the Building, including without limitation, the Capital Improvements, shall forthwith vest in Landlord as provided in Section 11.06, 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. Subject to the provisions of Section 14.02 hereof, Tenant, at its sole cost and expense, promptly shall comply with any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, 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 any and all Governmental Authorities (other than those of Landlord and Master Landlord acting in their respective capacities as Landlord and Master Landlord as distinguished from their capacities as Governmental Authorities, except as otherwise expressly required in this Lease or the Master Lease) now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable Fire Underwriting Bureau or other body exercising similar functions, affecting the Premises or any street, avenue or sidewalk comprising a part of, or which is situated in front of or adjacent to, the Premises or any vault in or under the Premises, 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, and 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. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be maintained by Tenant under the provisions of this Lease. In the event that performance by Tenant of, or compliance by Tenant with, any covenant, agreement, term or condition contained in this Lease shall cause Tenant to violate one or more Requirements, the Requirement(s) shall govern.

Section 14.02. Notwithstanding any provision to the contrary contained in Section 14.01 or elsewhere in this Lease, Tenant shall have the right to contest the validity of any Requirements or the application thereof at Tenant's sole cost and expense, provided that neither the Premises nor any part thereof, or interest therein or any income therefrom, or any assets of or funds appropriated to Landlord, would, by reason of any such proceeding instituted by Tenant, be forfeited or lost, or subjected to any lien, encumbrance or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability. Any such proceeding shall be begun as soon as is reason-

ably possible after the issuance of any such contested matters, 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. In no event, however, shall the institution of any such proceedings excuse Tenant from its obligation to comply with such Requirements in accordance with the terms thereof. Upon Tenant's request, Landlord shall join in or otherwise cooperate in any proceeding brought by Tenant, but in no event shall Landlord be subject to any liability for the payment of any costs or expense in connection with any such proceeding, and Tenant shall be responsible for any such costs or expense.

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, at its sole cost and expense, perform all of Landlord's obligations as tenant under the Master Lease relating to the maintenance and operation of the Premises.

ARTICLE 15

EQUIPMENT

Section 15.01. All Equipment shall become 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, except for repairs, cleaning or other servicing, without the prior consent of Landlord, which consent shall not be unreasonably withheld or delayed, unless the same is reasonably promptly replaced (subject to Unavoidable Delays) 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 or appropriate with items at least equal in utility and value to the Equipment being replaced.

ARTICLE 16

DISCHARGE OF LIENS; BONDS

Section 16.01. Except for any Mortgages or other mortgages on Tenant's interest in this Lease, and any security agreements or interests or financing statements executed in connection with such Mortgages or other mortgages, and except for Subleases and the Title Matters, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, or the income therefrom. Tenant shall not create or permit to be created any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord or upon Landlord's interest in the Premises.

Section 16.02. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of Landlord's construction activity pursuant to Article 27) at any time shall be filed against the Premises 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 twenty (20) days after notice of the filing thereof, 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 seven (7) 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. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Prime Rate plus two percent (2%) per annum, from the respective dates of Landlord's making of the payment or incurring of such costs and expenses, shall constitute Rental payable by Tenant under this Lease and shall be paid by Tenant to Landlord on 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 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 or any Subtenant or 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, 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

NO REPRESENTATIONS BY LANDLORD

Tenant acknowledges that Tenant is fully familiar with the Premises, the physical condition thereof (including, without limitation, the fact that the Premises include substantial portions of landfill which may present special difficulties in the design, construction and maintenance of the Building), the Title Matters, the Master Lease, the Master Development Plan and the Design Guidelines. Tenant accepts the Premises in their existing condition and state of repair, and, except as otherwise expressly set forth in this Lease or the exhibits hereto, Tenant agrees (a) that no representations or warranties, express or implied, have been made by or on behalf of Landlord in respect of (i) the Premises or the status of title thereto or physical condition thereof (including, without limitation, the landfill portions thereof), (ii) zoning or other laws, regulations, rules or orders applicable to the Premises or the use thereof, this transaction or Landlord, (iii) Taxes, or (iv) the Master Lease, the Master Development Plan or the Design Guidelines, and (b) that Tenant has relied on no such representations or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Premises.

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, or 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 the Building (including, but not limited to, any of the common areas within the Building, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the negligence or other tortious acts of Landlord or its agents, servants or employees; 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 sup-

ply, gas or electric current except as expressly set forth in Exhibit "J", or 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, or 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 other tortious acts of Landlord or its agents, servants or employees.

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, movements, subsidence, failure in loadbearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on or constituting a part of the Premises (except to the extent any of the foregoing shall occur with respect to the Service Road and shall result from the negligence or other tortious acts of Landlord or

its agents, servants or employees in connection with the design or construction of the Service Road), 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 or any employee, agent or contractor of Tenant or of any Subtenant to do any act or thing upon the Premises or elsewhere in the Project Area which may reasonably be likely to subject Landlord or any former 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 and, during such period as Tenant shall be using the Storage Area, the Storage Area so as to fully protect Landlord and any former Landlord against any such liability. Tenant, to the fullest extent permitted by law, but subject to the provisions of Section 41.08, shall indemnify Landlord and any former Landlord and the State of New York and their agents, directors, officers and employees (collectively, the "Indemnitees"), against and save the Indemnitees harmless from 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

the occurrence of any of the following during the Term, except to the extent that the same shall have been caused by the negligence or other tortious acts of any one or more of the Indemnitees:

(a) construction of the Building or any other work or thing done in or on the Premises or any part thereof except for Landlord's construction of the Service Road;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof, or any alteration, repair, condition, operation, or maintenance of any street, alley, sidewalk, curb, vault, passageway or space comprising a part of the Premises or adjacent thereto (except, with respect to the Service Road, any of the foregoing by Landlord or any employee, agent or contractor of Landlord or any entity to which Landlord transfers its obligations under Article 27);

(c) any negligent or tortious act or failure to act (or act or failure 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, on or about any alley, sidewalk, curb, vault, passageway or space adjacent thereto;

(e) during such period as Tenant shall use the Storage Area, any use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Storage Area or any part thereof, or any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Storage Area or any part thereof;

(f) any failure on the part of Tenant to pay Rental or 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 (including, without limitation, Tenant's obligations under Article 11 hereof);

(g) any lien which may be alleged to 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 (except if same arises out of Landlord's construction activity), or any lien 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;

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

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

(j) any contest by Tenant permitted pursuant to the provisions of 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, subject to the provisions of Section 19.03, 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 Indemnitees in Section 19.01, then, upon demand by Landlord, Tenant, at its sole cost and expense, 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 or delayed. 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 settle-

ment separately agreed to by Landlord without Tenant's written consent, nor if Landlord retains its own attorneys and such retention will materially impair or materially diminish Tenant's insurance coverage and Landlord has been so advised in writing by Tenant's insurer.

Section 19.04. The obligations of Tenant, as set forth herein, to indemnify Landlord with respect to any event occurring prior to the Expiration Date shall survive the Expiration Date.

ARTICLE 20

RIGHT OF INSPECTION, ETC.

Section 20.01. Upon reasonable notice, Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times 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 portion of the Civic Facilities, and (d) making any necessary repairs to the Premises and performing any work therein or thereon that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, (i) except in any emergency, Landlord shall have given Tenant a notice specifying such repairs or work and Tenant shall have failed to make said repairs or to do such work within thirty (30) days after the giving of such notice, or if said repairs or such work cannot reasonably be completed during such thirty (30)-day period, to have commenced and be diligently pursuing the same, or (ii) in an emergency, Landlord shall have attempted to advise Tenant of same in such manner as, under the circumstances, shall have been practicable.

Section 20.02. Nothing in this Article 20 shall be construed so as to impose upon Landlord the obligation to do any work that Tenant is obligated to do 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 or any Subtenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into or on to the Premises during the course thereof, provided Landlord shall use reasonable efforts to minimize damage resulting from Landlord's exercise of its rights under this Article 20, and the obligations of Tenant under this Lease shall not be affected thereby.

ARTICLE 21

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 21.01. If Tenant at any time shall be in Default of any of its obligations under this Lease, after notice thereof and after the expiration of applicable grace periods, if any, permitted hereunder for Tenant and its Mortgagee, respectively, to cure or commence to cure same, Landlord, in its own name and not as agent of Tenant, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligations on Tenant's behalf.

Section 21.02. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord pursuant to Section 21.01 in connection with the performance of any obligation of Tenant under this Lease, together with interest thereon at the Prime Rate plus two percent (2%) per annum 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 receipt of repayment by Landlord, shall be paid by Tenant to Landlord within (10) days after demand, provided that Landlord shall have submitted to Tenant written evidence reasonably satis-

factory to Tenant substantiating the amount demanded by Landlord. 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 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. All monies payable to Landlord pursuant to this section shall constitute Rental under this Lease.

ARTICLE 22

NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided in this Lease, there shall be no abatement, suspension, deduction, discount, counter-claim, offset, diminution or reduction of or against Rental payable by Tenant hereunder or of or against 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 use (and require each Subtenant to use) the Premises as and for the purposes contemplated by the Master Lease and in accordance with the Certificate or Certificates of Occupancy for the Premises and all other Requirements, the Master Development Plan and the Design Guidelines, and for no other uses or purposes, provided that Subleases of residential space (other than Subleases of more than a floor) need not specify the Master Development Plan and the Design Guidelines.

Section 23.02. Tenant shall not use or occupy, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful or illegal business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that is offensive by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of the Certificate or Certificates of Occupancy for the Premises or of any present or future governmental laws, ordinances, requirements, orders, directions, rules, regulations or other Requirements, or which may reasonably be expected to make

void or voidable any insurance then in force in respect of the Premises or, without Landlord's prior consent, for any use which requires a special permit under the Zoning Resolution of the City of New York. Tenant shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal or extra hazardous use, all necessary and lawful actions, legal and equitable, to compel the discontinuance of such use or to oust or remove any Subtenants or others causing or permitting such unpermitted, unlawful, illegal, or extra hazardous use. If for any reason Tenant shall fail to commence such actions within thirty (30) days after receipt of notice from Landlord specifying such unpermitted, unlawful, illegal or extra hazardous use, 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 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 Prime Rate plus two percent (2%) per annum 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 on demand and shall constitute Rental under this Lease.

Section 23.03. Tenant shall not 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 (except to the extent, if any, required by the Declaration of Easement).

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 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 terms of the Master 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 Base Rent or any other payment 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 thereof from Landlord to Tenant;

(b) if (i) (subject to Unavoidable Delays) Commencement of Construction shall have failed to occur on or before the thirtieth (30th) day subsequent to the Commencement Date, and (ii) such failure shall continue for twenty-five (25) days after notice thereof from Landlord to Tenant;

(c) if (subject to Unavoidable Delays) Tenant shall fail to remove from the Storage Area all construction materials, equipment and every other thing placed therein by or on behalf of Tenant on or before the date specified in any notice given to Tenant by Landlord in accordance with the provisions of Section 11.12;

(d) if Tenant shall fail to perform (subject to Unavoidable Delays) any of Tenant's obligations under Article 11 of this Lease other than the obligations referred to in the preceding Sections 24.01(b) and 24.01(c), and such failure shall continue for fifty (50) days after notice thereof from 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 reasonably be performed, done or removed within such fifty (50)-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 period and shall, subject to Unavoidable Delays, thereafter diligently and continuously prosecute the same to completion;

(e) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Lease and such failure shall continue for a period of thirty (30) days after notice thereof from 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 period and shall, subject to Unavoidable Delays, thereafter diligently and continuously prosecute the same to completion);

(f) to the extent permitted by law, if Tenant or any Guarantor (during the period that the Guaranty shall be in effect) shall admit, in writing, that either is unable to pay its debts as such become due;

(g) to the extent permitted by law, if Tenant or any Guarantor (during the period that the Guaranty shall be in effect) shall make an assignment for the benefit of creditors;

(h) to the extent permitted by law, if Tenant or any Guarantor (during the period that the Guaranty shall be in effect) shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed with respect to any such party, and an order for relief is entered, or if either shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other bankruptcy or similar statute or law, or shall seek

or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator creditor's agent or other similar official of Tenant or any such Guarantor or of all or any substantial part of the properties of Tenant or any such Guarantor or of the Premises or any interest therein of Tenant or any such Guarantor (during the period that the Guaranty shall be in effect), or if Tenant shall take or acquiesce in any corporate action or any such Guarantor (during such period that the Guaranty shall be in effect) shall take or acquiesce in any action in furtherance of any action described in Sections 24.01(f), (g) or (h) hereof; or

(i) to the extent permitted by law, if within sixty (60) days after the commencement of any proceeding against Tenant or any Guarantor (during the period that the Guaranty shall be in effect), seeking relief under any federal bankruptcy code or any other present or future applicable federal, state or other similar bankruptcy statute or law, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant or any Guarantor (during the period that the Guaranty shall be in effect), of any trustee, receiver, custodian, assignee, sequestrator, liquidator, creditor's agent or other similar official of Tenant or such Guarantor or of all or any substantial part of their

properties or of the Premises or any interest therein of Tenant or such Guarantor, 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;

(j) if Tenant shall abandon the Premises;

(k) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred or encumbered, voluntarily or involuntarily, or there shall be a Transfer, voluntary or involuntary, without Landlord's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto, and such noncompliance is not remedied or such approval is not obtained or such assignment, sublease, transfer encumbrance or transfer is not cancelled within thirty (30) days after notice thereof from Landlord to Tenant ("involuntary" not to be deemed to include the death of one or more of the Guarantors but to be deemed to include the death of all the Guarantors at the time the Guarantors are principals of Tenant);

(l) if a levy under execution or attachment shall be made against the Premises or any part thereof, or against this Lease or the leasehold estate created thereby and such

execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days; or

(m) if either Tenant or any Guarantor (during the period that the Guaranty shall be in effect) shall be a corporation and shall at any time fail to maintain its corporate existence in good standing, and such failure shall continue for twenty (20) days after notice thereof from Landlord or any governmental agency to Tenant.

Section 24.02. If an Event of Default shall occur, Landlord may elect to declare all Base Rent for the remainder of the Term, less the value of the unexpired term of this Lease, due and payable and if Landlord shall make such an election, such Base Rent shall be due and payable ten (10) days after notice by Landlord to Tenant of such election. 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(b), (c), (f), (g), (h), or (i) hereof shall occur,

or (ii) described in Sections 24.01(d), (e), (j), (k), (l) or (m) shall occur and Landlord, at any time thereafter, at its option, gives written 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 if 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 to Landlord. 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(h) or 24.01(i) hereof, or by federal or state statute, then, following the expiration of any such stay, or if the trustee or similar official 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 24.13 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 five (5) days' notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said five (5)-day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or said trustee shall immediately quit and surrender the Premises as aforesaid.

(b) 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 without being liable to indictment, prosecution or damages therefor and/or 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 disposses-

sed 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, substantially in accordance with the Master Development Plan and the Design Guidelines, 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 11.14) 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 (A) terminating this Lease, re-entering,

retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, (B) removing all persons and property therefrom and (C) securing any new tenants and other occupants and, (ii) second, 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. For all purposes under this Section 24.04(b), Landlord's cost and expense shall include, but shall not be limited to, 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 cost of maintaining and operating the Premises;

(c) if Landlord shall not have declared all Base Rent 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 (after deducting from the rents collected under any such reletting all of the payments to Landlord described in said Section 24.04(b)); 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;

(d) if Landlord shall not have declared all Base Rent 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 constituted 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; and

(e) in any event, Landlord shall have the right to retain as liquidated damages all of the security (or the proceeds thereof) deposited by Tenant under Section 11.14.

Section 24.05. No termination of this Lease pursuant to Section 24.03(a) or (b) or taking possession or reletting of 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, nor relieve any Guarant-

tor of any obligation under the Guaranty, all of which shall survive such expiration, termination, repossession or reletting.

Section 24.06. 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 24.07. 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 a 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 24.08. No receipt of monies by Landlord from Tenant or any Guarantor after the termination of this Lease, or after the giving of any notice of the termination of this Lease shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, 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 monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.09. 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 to the extent permitted by law 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 24.10. 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, condition, right or remedy. No covenant, agreement, term or

condition of this Lease shall be waived except as provided in Section 41.11. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 24.11. 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, to the extent permitted by law, be entitled to enjoin such breach or threatened breach and shall have the right, subject to Section 41.08, 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, but nothing herein shall preclude Tenant from applying to the court for the posting of such bonds or other security.

Section 24.12. Subject to the provisions of Section 41.08, 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 24.13. If an order for relief is entered or if a stay of proceedings or other acts as to Tenant, any Guarantor (during the period that the Guaranty shall be in effect) or Tenant's interest in this Lease becomes effective in any proceeding which is commenced by or against Tenant or any such Guarantor under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other bankruptcy or similar 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 protect Landlord's right, title and interest in and to the Premises or any part thereof or 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 in lieu of Rental 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 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;

(e) 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;

(f) that Tenant has and will continue to have unencumbered assets (including, without limitation, rents to be derived under Subleases) 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;

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

(h) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession assumes this Lease and proposes to assign the same or enter into a Sublease with respect to all or substantially all of the Premises (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 and assume the obligations of Tenant hereunder or enter into any such Sublease, as the case may be, on terms acceptable to the trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment or subletting, 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 this Lease or such Sublease, as the case may be, 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 or Sublease, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee given no later than thirty (30) days after receipt by Landlord of the notice of the proposed assignment or subletting and prior to the effective date of such proposed assignment or subletting, to accept an assignment of this Lease or to enter into such Sublease 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 in connection with such assignment or subletting.

Section 24.14. 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, same 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 delivering or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at 309 East 45th Street, New York, New York 10017, Att: Director of Management (except that prior to Substantial Completion of the Building all such communications shall, instead, be sent to the attention of Director of Construction) (with a copy to Kramer, Levin, Nessen, Kamin & Frankel, 919 Third Avenue, New York, New York 10022, Att: Michael P. Korotkin, Esq.), or to such other address 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 Section 10.11(a) hereof, 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 40 West Street, New York, New York 10006, 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, received or served when delivered, or if mailed, three 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).

Section 25.03. Landlord shall give to Tenant a copy of any notice relating to the Premises or the Civic Facilities which is given or received by Landlord pursuant to the Master Lease or the Settlement Agreement.

ARTICLE 26

CONSTRUCTION AND MAINTENANCE OF THE CIVIC FACILITIES

Section 26.01

(a) The term "Civic Facilities" shall mean the following improvements on, over, under, through or adjacent to the Premises, as more particularly described in the Civic Facilities Drawings and Specifications enumerated in Exhibit "D" annexed hereto and made part hereof (the "Civic Facilities Drawings and Specifications") and the Plans and Specifications:

- (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 concrete paving;

- (x) Landscaped esplanade ("Esplanade");
- (xi) Landscaped park ("Rector Park");
- (xii) Street trees;
- (xiii) Balustrade; and
- (xiv) Such supporting platforms and foundations as may be required for (i) through (xiii) above and for electrical vaults to be installed by the appropriate utility company. (1 and 2)

(b) The term "Tenant's Civic Facilities" shall mean the following portions of the Civic Facilities:

- (i) Permanent sidewalk, including cobble strip and concrete paving; and
- (ii) Street trees (Tenant to install ten (10) trees on Rector Place and four (4) trees on South End Avenue in accordance with specifications to be supplied by Landlord, provided, however, that Tenant shall not be obligated to expend more than Seven Thousand Dollars (\$7,000) with respect to such installation).

(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, each party, at its sole cost and expense, shall commence and thereafter diligently undertake and complete, or cause to be undertaken and completed, in accordance with the Civic Facilities Drawings and Specifications, the Plans and Specifications, the Development Schedule set forth in Exhibit "G" and the schedule set forth in Exhibit "D", the construction or installation of Landlord's Civic Facilities or Tenant's Civic Facilities, as the case may be, in a good and workmanlike manner and in compliance with normal New York City construction rules and all applicable Requirements. Notwithstanding the fact that, prior to the date hereof, certain portions of Landlord's Civic Facilities have been dedicated to New York City, Landlord's obligation to complete construction or installation of such Civic Facilities shall remain in full force and effect. Alterations and restorations of Rector Park and the Esplanade shall be made in conformity with the Master Development Plan, the Design Guidelines and, in the event any such alteration or restoration is commenced within ten (10) years after the Commencement Date, the Civic Facilities Drawings and Specifications.

Section 26.03.

(a) Landlord and Tenant each shall, at its respective sole cost and expense, 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 make all repairs (including structural repairs), restorations and replacements necessary to maintain the same in first-class condition (collectively, "Maintenance Obligations"), and may create a reserve fund for such purposes except that, (i) if Tenant installs temporary concrete sidewalks adjacent to the Premises, pursuant to "Side Letter Relating to Construction Matters" in the form of Exhibit "J" annexed hereto, then Tenant shall have the sole obligation to 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 have the sole obligation to perform Maintenance Obligations in respect of said street trees. The obligation of Landlord to perform Maintenance Obligations hereunder 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 marked¹ shall be performed by the appropriate utility companies and for those portions of the Civic Facilities marked² shall be performed by New York City. Notwithstanding the initial sentence of this Section

26.03(a), Maintenance Obligations on the part of Landlord in respect of any portion of the Civic Facilities marked¹ or 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.

(b) Subject to the provisions of the next-to-last sentence of this Section 26.03(b), each party shall, at its sole cost and expense, keep those portions of the Civic Facilities with respect to which and for so long as such party is obligated to perform Maintenance Obligations pursuant to Section 26.03(a) insured (except that Landlord's obligations under this Section 26.03(b) shall not, and Tenant's obligations shall, pertain to the street trees referred to in Section 26.01(b)(ii)) for the mutual benefit of Landlord and Tenant against:

(i) loss or damage by fire, water and flood and such other risks as may be insured under an "All Risk of Physical Loss" form of policy, in amounts sufficient in each case to prevent any insured thereunder from becoming a coinsurer within the terms of the applicable policies, and in any event, in an amount not less than one hundred percent (100%) of the actual replacement value of such portions of the Civic Facilities, excluding foun-

dation and excavation costs (such policies shall name Tenant as an additional insured to the extent of its insurable interest in such Civic Facilities); and

(ii) loss or damage by such other hazards and in such amounts as is customarily carried by prudent owners of like improvements, having regard to the character of such portions of the Civic Facilities and the use or function thereof, (it being agreed by Landlord that it shall maintain in force comprehensive general liability insurance against liability for bodily injury, death and property damage, naming Tenant as an additional insured thereunder).

The obligations imposed upon Landlord by this Section 26.03(b) in respect of any portion of the Civic Facilities marked¹ or 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. In the event Landlord fails to maintain in force the insurance required to be maintained by Landlord under this Section 26.03(b), Tenant, after thirty (30) days' notice to Landlord, or such shorter notice as may be necessary to prevent cancellation of the applicable policy shall have the right (but shall not be obligated) to pay the prem-

iums therefor and to receive an offset against Base Rent and the Civic Facilities Payment in an amount equal to the total premiums so paid together with interest thereon at the Prime Rate plus two percent (2%) per annum from the respective dates of Tenant's making of each such payment until the date of offset by Tenant.

Section 26.04.

(a) Except as provided in Section 26.04(d), Tenant's sole remedies for a failure by Landlord substantially to complete construction or installation of a portion of Landlord's Civic Facilities as provided in Section 26.02 ("Landlord's Construction Obligations") shall be (i) an extension of the Scheduled Completion Date (and, in the event of such a failure by Landlord with respect to those portions of Landlord's Civic Facilities enumerated in paragraph I.A. of Exhibit "D", an extension of the respective dates set forth in Exhibit "G" for Substantial Completion of Superstructure and Enclosure of Building) by the number of days elapsing between the date Landlord is obligated substantially to complete such construction or installation and the date such construction or installation is substantially completed, (ii) as more fully described in Section 3.01(d), the abatement of Tenant's obligation to pay Base Rent and delay in the

effective date of any increase in Base Rent provided for in Section 3.01(a), (iii) 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) and (iv) the right to seek an injunction (the remedies specified in (i) through (iv) above, collectively, "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 Sections 3.01(d) and 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 (i) the right to engage in Self-Help and to receive the offset against Base Rent and Civic Facilities Payment provided for in Section 26.04(c) and (ii) the right to seek an injunction, and no such failure shall entitle Tenant to any other right, remedy or damages against Landlord. Furthermore, notwithstanding the provisions of Section 26.04(b), Tenant shall not be entitled to act pursuant to the preceding sentence at any time that a Default exists with

respect to Tenant's obligation to pay Civic Facilities Payment, as provided in Section 26.05. 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 set forth herein.

(b) If (subject to Unavoidable Delays) Landlord fails to perform Landlord's Construction Obligations or thereafter to 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 written 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 such thirty (30)-day period, Ten-

ant 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 II of whose names and addresses Landlord shall have given Tenant notice, and, in the event Tenant engages in Self-Help, Tenant covenants to use its best 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 II. 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 the 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 the 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 this Section 26.04 (except pursuant to the succeeding Section 26.04(d)), 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 payable under this Lease an amount equal to the reasonable expenses thereby incurred and/or theretofore paid by Tenant together with interest thereon at the Prime Rate plus two percent (2%) per annum computed with respect to each payment made by Tenant under this Section 26.04(c) from the date such payment is made until the date(s) Tenant effectuates the offset(s).

(d) In the event Landlord shall fail substantially to complete construction or installation of a portion of Landlord's Civic Facilities by the date set forth in Exhibit "D" 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, 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, Landlord shall incur no

penalty or liability and Tenant shall have no remedies or rights other than as expressly provided herein, it being agreed by the parties that Landlord's failure to achieve such substantial completion 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 Rector 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 insuring the Civic Facilities in accordance with Section 26.03(b) (and creating a reserve fund for such purposes) (such costs being hereinafter referred to as "Operating Costs"), Tenant, for each Tax Year or portion thereof within the period commencing on the date on which a Temporary Certificate of Occupancy shall be issued for any dwelling unit in the Building ("Initial Occupancy Date") and ending on the last day of the Term, shall pay to Landlord an annual sum ("Civic Facilities Payment") determined as follows:

- (i) for the period commencing on the Initial Occupancy Date and ending on the last day of the Tax 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 number of days between the Initial Occupancy Date and the last day of the Tax 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 Tax Years an amount equal to the product obtained by multiplying the number of residential units in the Building by One Hundred Fifty Dollars (\$150);

(iii) for each of the next three Tax Years, an amount equal to the product obtained by multiplying the number of residential units in the Building by Two Hundred Dollars (\$200);

(iv) for the next succeeding Tax Year and for each Tax Year thereafter throughout the remainder of the Term, with respect to Rector Park, said curbs and said street trees, an amount equal to the product of

(A) the Rector Park Budget (as hereinafter defined) multiplied by (B) .112 (said figure being computed by dividing the number of square feet of floor area in the Building, as permitted by the Zoning Lot Declaration, by the total number of square feet of floor area in all buildings in Phase II, as permitted by said Declaration);

- (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 (as hereinafter defined) multiplied by (B) .112 (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 Tax Year referred to therein shall not be greater than one hundred twenty-five percent (125%) of Tenant's allocable share of Operating Costs for the immediately preceding Tax Year.

- (b) For each Tax Year (or portion thereof in the case of (i) the period commencing on the Initial Occupancy

Date and ending on the last day of the Tax Year in which the Initial Occupancy Date occurs and (ii) the Tax Year during which the Term ends) (each such Tax 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 Rector 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 "Rector 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 Rector 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 Rector 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 intereseects 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 II 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 calendar month that occurs within such Payment Period. As soon as shall be practicable after the end of each such Payment Period, Landlord shall submit to Tenant a written 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, 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 26.03(a) and the net proceeds of insurance or condemnation available to Landlord for such purpose, provided Landlord shall have maintained the insurance coverage required under Section 26.03(b)(i), Tenant shall pay to Landlord eleven and two-tenths percent (11.2%) of such excess. Landlord shall

submit to Tenant a written 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 twenty-five (25) days of the date any such statement and documentation are submitted to Tenant, Tenant shall make the payment provided for above. All monies payable to Landlord under this Section 26.05(c) shall constitute Rental under this Lease. In the case of any replacement of Landlord's Civic Facilities for which Landlord expects to require contribution from Tenant pursuant to this Section 26.05(c), Landlord shall give Tenant six (6) months' advance notice of same, provided that where, due to emergency or exigency, such notice is not practicable, Landlord shall give such notice as is practicable under the circumstances.

(d) Landlord shall have the right, subject to Tenant's reasonable approval, to transfer to a trust or other entity the responsibility of performing Landlord's obligations relating to the Civic Facilities, and provided such trust or other entity, in writing, assumes and agrees to perform all such obligations for the benefit of all tenants of parcels within Phase II, from and after the date of such assumption Landlord shall have no further liability with respect thereto. In the event such trust or other entity is composed of the tenants of at least five (5) of the twelve

(12) parcels within Phase II (for the purpose of this sentence Tenant to be deemed to be the tenant of two (2) of such parcels), Tenant shall be deemed to have granted its approval to such transfer. Prior to effecting such transfer, Landlord shall (i) furnish Tenant with reasonable assurances of the transferee's ability to perform Landlord's obligations in respect of the Civic Facilities and to recover the costs of same and of Tenant's right to enforce the obligations of other tenants within Phase II to make payments in respect of the Civic Facilities 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 and, commencing with the first month following such notice, Tenant shall pay installments of the Civic Facilities Payment directly to such trust or other entity, which Payment shall continue to constitute Rental hereunder. Thereafter, for each Tax Year throughout the remainder of the Term, 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 obligations hereunder, Tenant shall retain the rights provided in this Article 26 with respect to Self-Help and offsets against Civic

Facilities Payments. From and after such transfer, (i) a Mortgagee which holds a first lien on Tenant's interest in this Lease and becomes Tenant by virtue of a foreclosure, as Mortgagee in possession or as Tenant under a new lease, shall have the right of offset against Base Rent provided in Section 26.04(c), unless such Mortgagee has approved a transfer referred to in this Section 26.05(d), and (ii) no other Tenant shall have such a right of offset against Base Rent.

(e) The leases of all parcels within Phase II 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.

Section 26.06. Landlord shall perform the obligations of Landlord set forth in Exhibit "J".

ARTICLE 27

SERVICE ROAD

Section 27.01. The Parcels shall be serviced by a road (including catch basins located thereon and the sidewalks and curbs adjacent thereto) (the "Service Road") to be constructed in accordance with plans prepared by Vollmer Associates, entitled "Contract Plans for Albany Street Service Drive," dated December 29, 1983, as same may hereafter be revised in accordance with letter delivered to Tenant simultaneously with the execution and delivery of this Lease (the "Service Road Plans"). To effectuate the foregoing, Landlord has executed and caused to be submitted to the New York County Office of the Register of the City of New York for recordation therein the Declaration of Easement.

Section 27.02. Subject to Unavoidable Delays, Landlord shall (a) commence construction of the Service Road on or before November 1, 1984, and (b) substantially complete construction of the Service Road in accordance with the Service Road Plans by the later of (i) Enclosure of Building or (ii) January 1, 1985. The date of substantial completion of the Service Road is hereinafter referred to as the "Road Completion Date." Landlord shall advise Tenant of such substantial completion and shall thereafter diligently complete construction of the Service Road in accordance with the Ser-

vice Road Plans. Tenant's sole remedies for a failure by Landlord substantially to complete such construction as provided in the first sentence of this Section 27.02 shall be the remedies set forth in Section 26.04. Prior to the commencement of construction of the Service Road, Landlord shall provide, and thereafter shall keep in force, comprehensive general liability insurance against liability for bodily injury, death and property damage, naming Landlord as named insured and the tenants of all the Parcels as additional insureds, in such amount as a prudent person in the position of Landlord would maintain, but not less than Fifty Million Dollars (\$50,000,000) combined single limit for liability for bodily injury, death and property damage.

Section 27.03. After the Road Completion Date, Landlord shall submit to Tenant a written statement setting forth, on an itemized basis, the total cost incurred by Landlord in constructing the Service Road, including, but not limited to, costs in respect of design, engineering, labor, materials and supervision of construction. Tenant shall pay to Landlord thirty-four and seven-tenths percent (34.7%) of such cost (said percentage being computed by dividing the total number of square feet of floor area in the Building, as permitted by the Zoning Lot Declaration, by the total number of square feet of floor area in all buildings permitted by said Declaration to be erected on the Parcels)

within fifteen (15) days after receiving the aforesaid statement. Such payment shall constitute Rental under this Lease.

Section 27.04. Subsequent to the Road Completion Date, (a) Landlord shall keep and maintain the Service Road in good and safe order and condition, free of debris, snow and ice, making all repairs (including structural repairs), restorations, replacements, alterations and additions to the Service Road necessary to maintain the same in first-class condition (collectively, "Service Road Maintenance"), and (b) Tenant shall, at its sole cost and expense, install and maintain adjacent to that portion of the Service Road which traverses the Premises street lighting (in accordance with specifications which shall be provided by Landlord). The obligation of Landlord to perform Service Road Maintenance is expressly conditioned upon Tenant's compliance with Tenant's obligations under Section 27.05. Tenant's sole remedies against Landlord for a failure by Landlord to perform Service Road Maintenance shall be the right to engage in Self-Help as provided in Section 26.04(b) and to receive an offset against Base Rent and the payments in respect of Service Road Maintenance in the manner provided in Section 26.04(c), provided that Tenant shall not be entitled to act pursuant to this sentence at any time that a Default exists with respect to Tenant's obligation to make payments pursuant to Section 27.05. At any time after the Road Completion Date, Landlord, subject

to Tenant's reasonable approval, shall have the right to transfer to a trust or other entity (including, but not limited to, a tenant of one of the Parcels or a trust or other entity established by Landlord) the responsibility of performing Landlord's obligations set forth in this Article 27, and provided such entity, in writing, assumes and agrees to perform all such obligations for the benefit of all tenants of the Parcels, from and after the date of such assumption Landlord shall have no further liability with respect thereto. In the event such trust or other entity is owned or controlled by the tenants of three (3) of the six (6) Parcels (for the purpose of this sentence Tenant is deemed to be the tenant of two (2) of such Parcels) Tenant shall be deemed to have granted its approval to such transfer. Landlord shall give Tenant notice of the consummation of any such transfer and thereafter such trust or other entity shall submit to Tenant the statement, and Tenant shall pay directly to such trust or other entity the charges, specified in Section 27.05 (such charges to continue to constitute Rental under this Lease). Notwithstanding any transfer of Landlord's obligations hereunder, Tenant shall retain the rights provided in Section 27.04 with respect to Self-Help and offsets against payments in respect of Service Road Maintenance. From and after such transfer, (i) a Mortgagee which holds a first lien on Tenant's interest in this Lease and becomes Tenant by virtue of a foreclosure, as Mortgagee in possession or as Tenant under a new

lease, shall have the right of offset against Base Rent in the manner provided in Section 26.04(c), unless such Mortgagee has approved a transfer referred to in this Section 27.04, and (ii) no other Tenant shall have such a right of offset against Base Rent. Nothing herein contained shall be deemed to limit Tenant's remedies against tenants of the other Parcels under the Declaration of Easement or otherwise.

Section 27.05.

(a) After the end of each Maintenance Payment Period (as defined below), Landlord shall submit to Tenant a written statement setting forth the total cost incurred by Landlord in performing Service Road Maintenance for such Maintenance Payment Period (the "Service Road Maintenance Cost"), together with supporting documentation. Within ten (10) days after such submission, Tenant shall pay to Landlord thirty-four and seven-tenths percent (34.7%) of such cost (said percentage being computed as set forth in Section 27.03 above). Such payment shall constitute Rental under this Lease. For purposes of this Section 27.05, Maintenance Payment Period shall mean each three (3) month-calendar period from and after the Road Completion Date.

(b) In the event that Tenant, any contractor, subcontractor or other Person in the Project Area connected

with Tenant's construction, or any employee, licensee, agent, invitee or Subtenant of Tenant, or any employee, licensee, agent or invitee of any such Subtenant (each, a "Related Party"), causes damage to the Service Road, Tenant shall, within ten (10) days after receipt from Landlord of a written statement setting forth the total cost incurred in repairing such damage, pay such cost, such payment to constitute Rental. Any monies received by Landlord pursuant to this paragraph (b) shall be subtracted by Landlord from the Service Road Maintenance Cost.

(c) Tenant shall be obligated to pay Tenant's share of the costs of constructing and maintaining the Service Road, as provided herein, irrespective of whether the Building has been completed.

Section 27.06. From and after the Road Completion Date, if any tenant of one of the Parcels, or any person or entity which is an Authorized Person by reason of such tenant's lease with Landlord, shall obstruct Tenant's access to the Premises over any portion of the Service Road in violation of the Declaration of Easement, Landlord, after receipt of written notice from Tenant advising of the existence of such obstruction, shall use its best efforts to pursue such remedies as shall be available to Landlord under the Declaration of Easement and such tenant's lease in order to remove such

obstruction. From and after the Road Completion Date, Landlord shall take such action as shall be necessary to assure Tenant and any Authorized Person of Tenant continuous access to the Premises from Albany Street across one leg of the Service Road. Nothing herein contained shall be deemed to impair Tenant's rights of enforcement under the Declaration of Easement.

Section 27.07. If any mechanic's, laborer's, public improvement or materialman's lien arising out of Landlord's construction of the Service Road at any time shall be filed against the land on which the Service Road shall be constructed or against any other part of the Premises, Landlord, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

Section 27.08. In the event that, during any period subsequent to the Road Completion Date, there shall be one or more Parcels with respect to which no lease shall be in effect, Landlord, during such period but not otherwise, shall, in addition to Landlord's obligation to undertake Maintenance, if the street lighting referred to in Section 27.04 shall not have been installed in respect of such Parcel(s), install and maintain such street lighting. Except (a) as expressly provided in this Article 27 and (b) with

respect to any liability arising out of the negligence or other tortious acts of Landlord or any employee or agent of Landlord, Landlord shall have no obligation or liability with respect to the Service Road. Under no circumstance shall Landlord be liable to any Related Party for any act or omission of any other Related Party.

Section 27.09. The Premises shall be subject to the Declaration of Easement, as same may be changed or modified from time to time in accordance with the provisions of Paragraph 6 thereof. The execution and delivery of this Lease shall constitute an agreement by Tenant that the provisions of the Declaration of Easement, as same may be changed or modified as aforesaid, are accepted and ratified by Tenant and Tenant agrees to comply with and abide by said provisions. Tenant shall be deemed to be a licensee of Landlord under Paragraph 4 of the Declaration of Easement for the purpose of enabling Tenant to exercise Self-Help with respect to the construction and maintenance of the Service Road as provided in this Article.

Section 27.10. Landlord agrees to include the provisions set forth in Sections 27.03, 27.04, 27.05 and 27.09 in all leases of the Parcels (Sections 27.03 and 27.05 to be modified so that the tenant under each such lease shall be required to pay its allocable share of the costs referred to in said sections computed in the same manner as Tenant's share).

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 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, at Tenant's sole cost and expense, reasonably promptly (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 criminal or civil liability or penalty as a result of Tenant's failure to comply promptly with any

of the foregoing orders. Any award or damages in respect of the widening or other enlargement of any such street shall be paid as follows: first to Tenant, in trust, an amount equal to the cost of any required removal of any projection or encroachment on, under or above any such street so widened or enlarged, or any required changes or alterations upon the Premises, or in the sidewalks, vaults, gutters, curbs or appurtenances for application by Tenant to the cost thereof, and Landlord shall receive the balance of the award or damages, if any. Notwithstanding the foregoing, if any such widening or other enlargement of any such street shall be deemed a condemnation of any portion of the Premises, such taking shall be subject to the provisions of Section 9.01(c) or Section 9.03 of this Lease, whichever shall be applicable, and any award or damages in respect of such taking shall be paid in accordance with the provisions of such applicable section.

ARTICLE 29

SUBORDINATION; ATTORNMENT

Section 29.01. Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter 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. The Tenant agrees to 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 necessary and 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 posses-

sion 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, at its option, 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 Building 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 all applicable Requirements, (ii) Tenant shall have an opportunity to have its representatives present during all such work, (iii) Tenant shall be indemnified by Landlord or such other person (whichever shall do the work) against any injury or damage to the Building or persons or property therein which may result from any such work, but shall not have any claim against Landlord for abatement, suspension, deduction, discount, counter-claim, offset, diminution or reduction of or against

Rental payable by Tenant hereunder and (iv) Landlord or such other person (whichever shall do the work) shall agree to reimburse Tenant for income, if any, lost by Tenant as a result of any such work; 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 Building from injury or damage and to support the same by proper foundations, provided that (i) Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for abatement, suspension, deduction, discount, counter-claim, offset, diminution or reduction of or against Rental payable by Tenant hereunder and (ii) Landlord or such other person for whom the work is being performed shall agree to reimburse Tenant for income, if any, lost by Tenant as a result of any such work.

ARTICLE 31

CERTIFICATES BY LANDLORD AND TENANT

Section 31.01. Tenant agrees at any time and from time to time upon not less than ten (10) days' prior notice by Landlord to execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement in writing 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 the Rental has been paid, and stating whether or not, to the best knowledge of Tenant, (a) there is a continuing default by Landlord in the performance or observance of any covenant, agreement or condition contained in this Lease to be performed or observed by Landlord, or (b) there shall have occurred any event which, with the giving of notice or passage of time or both, would become such a default, and, if so, specifying each such default or occurrence of which Tenant may have knowledge.

Section 31.02. Landlord agrees at any time and from time to time upon not less than ten (10) days' prior notice by Tenant to execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement

in writing 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 the Rental has been paid, and stating whether or not, to the best knowledge of Landlord, (a) there is a continuing Default by Tenant in the performance or observance of any covenant, agreement or condition contained in this Lease to be performed or observed by Tenant, or (b) there shall have occurred any event which, with the giving of notice or passage of time or both, would become such a Default, and, if so, specifying each such Default or occurrence of which Landlord may have knowledge. Upon Tenant's request, Landlord shall use its best efforts to obtain for Tenant such a certificate in respect of the Master Lease from Master Landlord, in accordance with Section 20.01 of the Master Lease. If Master Landlord fails to deliver such a certificate, then, in lieu thereof, Landlord shall execute, acknowledge and deliver to Tenant a statement in writing 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 in full force and effect. Whenever any provision of this Lease requires Tenant to perform an act or undertaking to the satisfaction or subject to

the approval of Landlord but does not provide a specific time period for Landlord to inform Tenant whether Tenant has performed such act or undertaking to Landlord's satisfaction or so as to meet with Landlord's approval, Landlord agrees at any time and from time to time upon not less than ten (10) days prior notice by Tenant or any Mortgagee to execute, acknowledge and deliver to Tenant or such Mortgagee a statement in writing certifying to Tenant or such Mortgagee whether Tenant has performed such act or undertaking to Landlord's satisfaction or so as to meet with Landlord's approval, provided, however, that this agreement shall not enlarge, alter or diminish any express time periods within which Landlord is required to grant approvals or consents hereunder.

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 or approval 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 not to be unreasonably withheld or delayed or is subject to a specified standard, then in the event that there shall be a final determination that the consent or approval shall have been unreasonably withheld or delayed or that such specified standard had been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and Landlord or Tenant, as the case may be, promptly shall deliver to the other, upon request therefor, written confirmation of such consent or

approval. Unless there shall be a final determination that the withholding or delay of such consent or approval was arbitrary and capricious or an abuse of discretion, such granting of the consent or approval shall be the only remedy available to the party requiring the consent or approval. If any lease entered into by Landlord in respect of a parcel within Phase II or any agreement supplemental thereto shall contain provisions with respect to the aforesaid subject matter which are more favorable to the tenant thereunder than the provisions set forth in this Section 32.02, this Section 32.02 shall be deemed modified to recite such more favorable provisions.

Section 32.03. Whenever any provision of this Lease requires Tenant to obtain the consent or approval of Landlord, Landlord shall act expeditiously, provided that nothing herein shall alter or reduce any express time periods provided herein for the granting of any consent or approval.

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

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 (subject to applicable law), liens and encumbrances other than those, if any, existing at the date hereof, created 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 re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall deliver to Landlord all of the following which shall be in Tenant's possession: Tenant's executed counter-

parts 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 the Building, 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 Building, 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 construction, use or operation of the Premises.

Section 33.03. Any personal property of Tenant or of any Subtenant 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 from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see it. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant.

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.

ARTICLE 35

QUIET ENJOYMENT

Landlord covenants that, if and as long as Tenant shall faithfully perform the agreements, terms, covenants and conditions hereof, 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, liens or defects of title 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

In such cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the same shall be finally determined by arbitration conducted in New York City, before and in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction. In the event that the American Arbitration Association or any successor body of similar function shall not then be in existence, 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 written notice thereof to the first party (each such arbitrator to be experienced in the field in which the dispute or question to be settled arose). The arbitrators thus appointed shall appoint a third disinterested person, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration. The decision of the majority of the arbitrators 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 within fifteen (15) days after the appointment of the second arbitrator to appoint a third arbitrator, then either party) may apply to any court of competent jurisdiction to appoint such arbitrator. 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 do all other things necessary to submit any such matter to arbitration and shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary, reform or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. Landlord shall recognize the Mortgagee whose Mortgage is senior in lien (and as to whom Tenant shall have given a notice as provided in the first sentence of Section 10.10(a)) as a proper party to participate in any arbitration conducted pursuant to this Lease, provided, however, that such Mortgagee shall not have the right to appoint or participate in the appointment of the arbitrators.

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. Anything to the contrary contained in this Lease notwithstanding, in no event shall any interest payable by Tenant or Landlord hereunder exceed the maximum permissible interest rate then in effect in the State of New York.

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 on or before the fifteenth (15th) day of each third month during the period after Completion of the Building and prior to actual occupancy by bona fide Subtenants under valid Subleases of ninety percent (90%) of the rentable residential space, and thereafter on or before the fifteenth (15th) day of each Lease Year and at such additional times as Landlord may reasonably request throughout the Term, a vacancy report/leasing status report as of the first day of each such period or Lease Year, as the case may be.

Section 38.02. Upon Landlord's request, 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 complies 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 generally accepted accounting principles consistently applied throughout the periods involved 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 of the Premises. Upon written 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 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 complies with any provision of applicable law requiring such disclosure).

Section 38.04. From time to time during the period that the Guaranty shall be in effect, at Landlord's request Tenant shall furnish or cause to be furnished to Landlord evidence of the net worth within the United States of any Guarantor or Guarantors, such evidence to be similar in nature and degree of specificity to the evidence furnished to Landlord in connection with the execution and delivery of this Lease. Landlord shall use its best efforts to avoid disclosing such information (but shall incur no liability to Tenant if Landlord complies with any provision of applicable law requiring such disclosure).

ARTICLE 39

RECORDING OF MEMORANDUM

After Landlord has executed and delivered leases in respect of all parcels within Phase II, but not prior thereto, either party hereto may record this Lease. On the date hereof, Landlord and Tenant have joined in the execution of a memorandum of this Lease in proper form for recordation. At the request of either party, the other party hereto shall join in the execution of a memorandum, in proper form for recordation, with respect to any amendments of this Lease which may be executed and delivered by Landlord and Tenant.

ARTICLE 40

NO DISCRIMINATION

Section 40.01. Tenant covenants and agrees that in the sale, transfer or assignment of its interest under this Lease, or in its use, operation or occupancy of the Premises and employment and conditions of employment in connection therewith, or in its subleasing of the Premises or any part thereof, or in connection with the erection, maintenance, repair, Restoration, alteration or replacement of, or addition to, any Building or the Civic Facilities (a) it shall 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) it 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.

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 a 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 Restated Amended Agreement of Lease, made as of June 30, 1980, between BPC Development Corporation, as landlord, and Battery Park City Authority, as tenant, as thereafter amended, 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 fulfillment 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 [or successor statute to either of the foregoing], shall upon reasonable notice furnish all information and reports deemed 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 [or any successor statute].

"(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 annexed hereto as Exhibit "F". Tenant covenants and agrees that it shall, and shall cause each of its agents, contractors and subcontractors to, promptly and diligently carry out its obligations under said Program in accordance with the terms thereof. Notwithstanding the provisions of Article 24, if Tenant fails to comply with its obligations under this Section 40.03 or under Exhibit "F", Landlord's sole remedies shall be as provided in Exhibit "F", provided that any amounts payable by Tenant to Landlord under Section 8 of the Affirmative Action Program shall constitute Rental hereunder.

Section 40.04. Tenant has reviewed and participated in the development of the Affirmative Marketing Program annexed hereto as Exhibit "I". Tenant covenants and agrees that it shall, and shall cause each of its agents to, comply with all of the terms and provisions of said Program. Notwithstanding the provisions of Article 24, if Tenant fails to comply with its obligations under this Section 40.04 or under Exhibit "I", Landlord's sole remedies shall be as provided in Exhibit "I".

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. Each entity named as Tenant shall be fully liable, subject to the provisions of Section 41.08, 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, provided such notice is given to all other persons named pursuant to Article 25. 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, li-

censes, 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 of 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. 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 or at law or in equity to the contrary, it is expressly understood, acknowledged and agreed by Landlord that, subsequent to Substantial Completion of the Building (and prior to Substantial Completion of the Building, if the

Guaranty remains in full force and effect until Substantial Completion of the Building and the letter of credit referred to in Section 11.14 remains in full force and effect until Completion of the Building), (a) the liability under this Lease of Tenant or of any Person who has at any time acted as Tenant for Rental, damages or any other obligation arising out of this Lease or relating to the Premises shall be limited to Tenant's interest in the Premises, including, without limitation, any then present or future rents or profits, the proceeds of any insurance policies covering or relating to the Premises and payable to Tenant or Depository on behalf of Tenant, any awards payable to Tenant or Depository on behalf of Tenant in connection with any condemnation of the Premises or any part thereof (it being agreed that, for purposes of this Section, 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 of Tenant, arising out of this Lease or appurtenant to the Premises; and (b) neither Tenant nor any of the directors, officers, partners, joint venturers, principals, stockholders, employees, agents or servants of Tenant (but excluding Guarantors, during such

period that the Guaranty shall be in effect) shall have any liability (personal or otherwise) hereunder and no property or assets of Tenant (other than Tenant's leasehold interest in the Premises) or of any of the directors, officers, partners, joint venturers, principals, stockholders, employees, agents or servants of Tenant (but excluding Guarantors, during such period that the Guaranty shall be in effect) shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Landlord's remedies hereunder. If a Mortgagee becomes Tenant pursuant to Section 10.10 or 10.11 or as permitted by Section 10.01(f), then, in addition to the foregoing exculpation, prior to Substantial Completion of the Building, the liability of such Mortgagee shall be limited to the assets of the entity that is Mortgagee, including, without limitation, such Mortgagee's interest in the Premises and excluding the assets of any parent or affiliate of such Mortgagee. 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 will store all refuse from the Premises off the streets, in an enclosed area on the Premises and in a manner which shall both be reasonably satisfactory to Landlord and Tenant 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, shall 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, 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. In addition, no breach of any covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant or Landlord, as the case may be, shall be waived by the other party hereto except by a written instrument executed by such other party.

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 heirs, personal representatives, 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. Subject to the rights of Tenant's construction lender, all plans and drawings required to be furnished by Tenant to Landlord pursuant to Article 11, including, without limitation, the Schematics, the Preliminary Plans and Specifications and the Plans and Specifications, and any and all other plans, drawings, specifications or models prepared in connection with the initial construction of the Building, shall become the sole and absolute property of Landlord upon termination of this Lease. Tenant shall deliver all such documents to Landlord promptly upon such termination.

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 by, or registered with, as the case may be, the State of New York or any successor licensing body or authority.

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 the Landlord's entire interest in the Premises as lessee under the Master Lease, Battery Park City Authority 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 Landlord 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 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 to be performed 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. Nothing contained in this section shall alter or affect the obligations of any Guarantor during the period that the Guaranty is in effect.

Section 41.19. This Lease is subject to all the terms and conditions of the Master Lease. Landlord covenants and agrees that it shall not enter into or cause to be entered into any amendment or supplement to the Master Lease or the Design Guidelines which (a) increases or materially alters or otherwise materially affects Tenant's obligations under this Lease, (b) decreases or materially alters or otherwise materially affects Tenant's monetary rights or monetary claims under this Lease, (c) limits the permitted uses of the Premises, the Civic Facilities or the Service Road, (d) limits Tenant's rights under this Lease to dispose of or assign its interest in, the Premises or (e) decreases or alters the rights of a Mortgagee which holds a first lien on Tenant's interest in this Lease under Sections 10.01(f), 10.10 or 10.11, unless the same is consented to by Tenant (or, in the case of (e), by Mortgagee) or is made subject and subordinate to this Lease and to the rights of any Mortgagee. In the event that Landlord shall enter into or cause to be entered into an amendment or supplement to the Master Lease or Design Guidelines which is not in conformity with this Section 41.19, Tenant shall not be obligated to comply with the provision or provisions of such amendment or supplement which do not so conform and same shall have no effect on Tenant.

Section 41.20. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant.

Section 41.21. To the extent permitted by law from time to time, 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 Building. 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 not disseminate, release or in any way use any advertising or promotional materials of any kind, in whatever medium, in connection with the sale or lease (by Tenant, any Subtenant or any successor to Tenant) of any part of the Building unless, simultaneously with such dissemination, release or other use, Tenant shall submit such materials to Landlord, but Tenant shall not be required to obtain Landlord's approval of or consent to any such materials. Tenant shall have the right to use the name Battery Park City in such materials.

Section 41.24. In connection with any payment to be made to Landlord pursuant to Section 11.06(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 Building by Landlord, no sales or compensating use tax is payable in respect of materials incorporated (or to be incorporated) in the Building. Tenant shall promptly reimburse Landlord for any and all costs or expenses which Landlord may sustain or incur while acting pursuant to this section.

41.25. Prior to the execution of any Mortgage which is a first lien on Tenant's leasehold estate or the refinancing of such Mortgage (other than a Mortgage given by Tenant to Citibank, N.A. or to a subsidiary (direct or indirect) of Citibank, N.A. pursuant to commitment dated March 20, 1984), Landlord agrees to make such reasonable changes as may be requested by a prospective Mortgagee with respect to such Mortgagee's rights under this Lease (a) to perform Tenant's obligations and/or exercise Tenant's rights under this Lease, (b) to receive notice of and cure Defaults under this Lease, (c) to obtain a new lease of the Premises in the event this Lease is terminated by Landlord, or (d) to participate in any arbitration, insurance adjustment and condemnation proceeding.

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

RIVER ROSE COMPANY

By: 

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On this 23 day of March, 1984, before me personally came Mayor A. Fuchs to me known, who, being by me duly sworn, did depose and say that he resides at 324 W 101st St. New York, N.Y. 10025

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 the order of the members of said corporation, and that he signed his name thereto by like order.

Kathleen A. Onorato
Notary Public

KATHLEEN A. ONORATO
Notary Public, State of New York
No. 30-4764667
Qualified in Nassau County
Commission Expires March 30, 1984

[Seal]

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On this 23 day of March, 1984, before me personally came Norman F. Eighanayian to me known, who, being by me duly sworn, did depose and say that he is a partner of RIVER ROSE COMPANY, a general partnership organized and existing under the laws of the State of New York, that he executed the foregoing instrument in the firm name of RIVER ROSE COMPANY, and that he had authority to sign the same, and he acknowledged to me that he executed the same as the act and deed of said partnership for the uses and purposes therein mentioned.

Kathleen A. Onorato
Notary Public

KATHLEEN A. ONORATO
Notary Public, State of New York
No. 30-4764667
Qualified in Nassau County
Commission Expires March 30, 1984

Exhibit A

EXHIBIT "A"

DESCRIPTION OF LAND

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

BEGINNING at the corner formed by the intersection of the westerly line of South End Avenue with the northerly line of Rector Place;

RUNNING THENCE in a westerly direction along the northerly line of Rector Place North 77 degrees 31 minutes 29 seconds east 247.41 feet to a point;

THENCE in a northerly direction North 12 degrees 28 minutes 31 seconds west 124.83 feet to a point;

THENCE in an easterly direction North 77 degrees 31 minutes 29 seconds east 132.00 feet to a point;

THENCE in a southerly direction south 12 degrees 28 minutes 31 seconds east 25 feet to a point;

THENCE in an easterly direction North 77 degrees 31 minutes 29 seconds east 128.53 feet to a point on the westerly side of South End Avenue;

THENCE southerly along the westerly line of South End Avenue on a curve to the right on an arc of a circle having a radius of 1244.14 feet and a central angle of 4 degrees 38 minutes 17 seconds 100.71 feet to the point or place of BEGINNING.

Exhibit B

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 the Master Lease.

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 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).

5. Terms, covenants and conditions of Agreement between EPC 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).

6. Zoning Lot Declaration.

7. State of facts shown on survey by Benjamin D. Goldberg (Earl B. Lovell - S.P. Belcher, Inc.), bearing notation "surveyed March 8, 1984", as updated by visual examination made on March 22, 1984.

8. Declaration of Easement, made as of the date of this Lease, by Landlord.

9. Zoning and other laws, ordinances, governmental regulations, orders and requirements pertaining to the Premises or this transaction.

10. Standard printed exceptions set forth in Schedule B of title insurance policy issued by the title insurance company selected by Tenant, except to the extent such exceptions are modified by such policy.

Exhibit C

2

revised 6-20-1983 REEL 696 R 432

(2)

SECOND AMENDMENT TO RESTATED AMENDED LEASE, dated the 15th day of June, 1983 between BATTERY PARK CITY AUTHORITY ("Landlord"), a public benefit corporation of the State of New York, as landlord under the Restated Amended Lease (as hereinafter defined) and BATTERY PARK CITY AUTHORITY ("Tenant"), a public benefit corporation of the State of New York, as tenant under the Restated Amended Lease.

W I T N E S S E T H :

WHEREAS, Battery Park City Authority is both the landlord and the tenant under the Restated Amended Agreement of Lease, dated as of June 10, 1980, originally between BPC Development Corporation, as landlord, and Battery Park City Authority, as tenant (the "Lease"), as amended by First Amendment to Restated Amended Lease, of even date herewith (the Lease as so amended hereinafter collectively referred to as the "Restated Amended Lease"); and

WHEREAS, the City of New York has promulgated a housing policy and program approved by the Mayor and the Board of Estimate and set forth in the "Seventh Year Community Development Program: Housing Assistance Plan" dated September 1, 1981 (the "Housing Plan"); and

NY 686 R 433

WHEREAS, on November 13, 1981 the New York City Board of Estimate approved an amendment (the "Zoning Amendment") to the Zoning Resolution of the City of New York amending the Special Battery Park City District relating to the Project Area (as that term is defined in the Restated Amended Lease); and

WHEREAS, on January 13, 1983, the New York City Board of Estimate approved an increase in the amount of allowable retail space from 100,000 square feet to 233,000 square feet in the commercial core of the Project Area; and

WHEREAS, Landlord and Tenant desire to amend the Restated Amended Lease to insure that development thereunder is consistent with the Housing Plan, the Zoning Amendment and the January 13, 1983 Resolution of the New York City Board of Estimate;

NOW, THEREFORE, Landlord and Tenant hereby amend the Restated Amended Lease as follows:

1(a). Section 1.01(x) of the Lease is hereby amended by deleting the words "superseded and modified" appearing on the third line thereof and inserting in lieu thereof "supplemented";

(b). Schedule A to the Lease is hereby amended by deleting such Schedule in its entirety and substituting in its place thereof Schedule A to this Amendment; and

(c). Schedule B to the Lease is hereby amended

REEL 696 PG 434

by deleting such Schedule in its entirety and substituting
in lieu thereof Schedule "B" to this Amendment.

2. As amended hereby, the Restated Amended Lease
is in all respects ratified and confirmed.

IN WITNESS WHEREOF, the parties have duly executed
this Second Amendment to the Restated Amended Lease as
of the day and year first above written.

BATTERY PARK CITY AUTHORITY.
Landlord

By: 
President

BATTERY PARK CITY AUTHORITY.
Tenant

By: 
President

SCHEDULE A

REF 6967 435

MASTER DEVELOPMENT PLAN -- RESIDENTIAL AREA

AT BATTERY PARK CITY

This Master Development Plan concerns itself with the approximately 91 acres of land located between the existing bulkhead line to the United States Pierhead line from Battery Place to the edge of the landfill located approximately 300 feet north of Chambers Street extended. A map of the project area is attached as Exhibit 1.

The residential area at Battery Park City shall contain no more than 14,100 dwelling units and be developed in accordance with the Zoning Resolution of New York City applicable to Battery Park City, as same is in effect from time to time, and shall be consistent with New York City's Housing Assistance Plan, as same is in effect from time to time. The development shall be predicated upon an overall development strategy that seeks to incorporate the best physical qualities of New York City. Each developer shall use every effort to make the residential neighborhood at Battery Park City an extension of New York City. This is to be accomplished by applying to Battery Park City familiar and proven design elements in existence in other areas of New York City. At the heart of each development shall be a system of traditional streets and blocks punctuated by open spaces and landscaped areas.

The residential areas shall be organized around an at grade circulation system of streets surrounding conventionally sized blocks. The use of this traditional pattern of streets and blocks is intended to establish a direct relationship to the adjoining upland areas and reflect the long-standing and successful pattern of development in New York City.

A strong relationship between streets and parks is to be created. Parks are to be integrated into the street grid and the streets are to take on the characteristics of parks wherever they meet. In some areas, such as Rector Place, North End Avenue and South End Avenue, the neighborhoods are to enjoy a direct relationship to the parks. At Rector Place, a formal landscaped park shall become a focus for the adjacent residential development. Along North End Avenue and South End Avenue, landscaping is to enhance the streets which will introduce complementary retail and commercial uses to the residential area. As the residential area is developed, the neighborhoods will take on qualities that provide a sense of specialness and create a unique address for their residents.

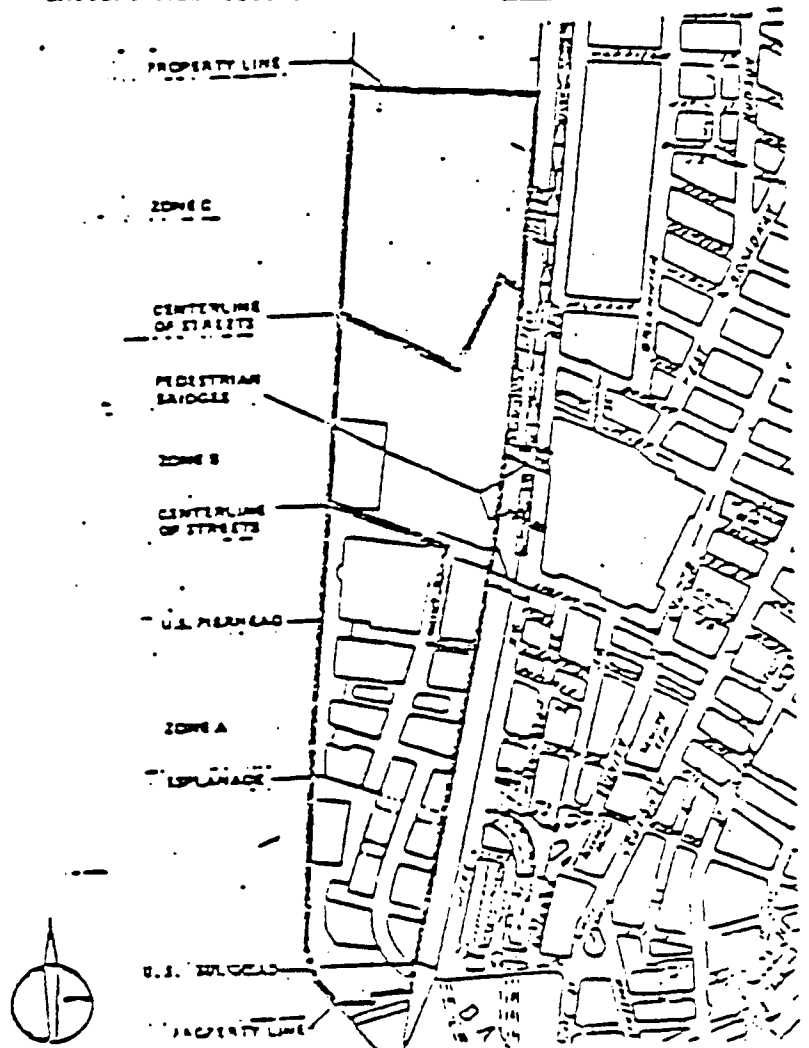
REEL 696 x 423

The development of the residential area contemplates construction of a variety of building types. This mix shall include high rise apartment towers, medium size apartment houses, and small, brownstone scaled buildings. These different kinds of structures shall be configured to complement each other, to create desirable relationships to the adjacent parks and to allow unobstructed views of the City and the waterfront wherever possible.

The residential area shall be developed in accordance with additional design guidelines that will describe the individual buildings in terms of location, bulk and materials. The guidelines also shall prescribe certain design features for the buildings such as arcades, mandatory street walls and architectural treatments. It is intended that careful application of the guidelines set forth herein and of any such additional guidelines shall ensure creation of the desired character of the residential development. All such guidelines shall govern and direct the residential development as it is completed over a period of several years by numerous developers on dozens of development parcels. Within the context of the aforesaid directives variety of development at the residential area will be provided through the creative interpretation of the guidelines by the different developers.

Exhibit 1
BATTERY PARK CITY BOUNDARIES

REEL 696 X 437



BATTERY PARK CITY
LARGE-SCALE COMMERCIAL DEVELOPMENT PLAN

In order to promote and facilitate superior site planning and to allow greater flexibility while safeguarding the present and future uses of the surrounding areas, the following regulations shall guide development within the project:

1. Description of the Site (See Attachment "A")

(1.1) The site is approximately 13.2 acres of and bounded by the north edge of Liberty Street Extended on the south; the 1941 Bulkhead line on the east; the north edge of Vesey Street Extended on the north; and the 1977 Bulkhead line at the Hudson River on the west.

2. Use Regulations

(2.1) Total retail space may not exceed 200,000 square feet.

(2.2) The uses permitted for 100,000 square feet shall be those allowed by the New York City Zoning Resolution for general retail (Use Groups 6-12).

(2.3) In addition, uses permitted in Use Group 14, special services and facilities for boating and related activities, shall also be allowed except with respect to the 183,000 square feet of retail space referred to in 2.5 below.

(2.4) Retail uses permitted shall be limited to those intended to serve only the site; retail space shall be distributed in a shallow, linear configuration limited, except as set forth in 2.5 below, to not more than 10,000 square feet per establishment.

(2.5) For the remaining 183,000 square feet, retail space shall be limited to the following uses in Use Group 6:

6A. Convenience Retail or Service Establishments

1. Bakeries
2. Barber shops
3. Beauty parlors

REEL 896 ~ 439

4. Drug stores
 5. Drycleaning or clothes pressing establishment
 6. Eating and drinking places
 7. Food stores, including - delicatessen stores
 8. Hardware stores
 9. Package liquor stores
 10. Post offices
 11. Shoe or hat repair shops
62. Offices
1. Offices, business, professional or governmental, provided that the offices shall be restricted to those that deal directly with the public, such as but not limited to stockbrokers, OTS, real estate, insurance and professional offices
- 6C. Retail or Service Establishments
1. Art galleries, commercial
 2. Artists' supply stores
 3. Banks
 4. Book stores
 5. Candy or ice cream stores
 6. Cigar or tobacco stores
 7. Florist shops
 8. Gift shops
 9. Loan offices
 10. Locksmith shop
 11. Medical or orthopedic appliance stores
 12. Meeting halls

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- 13. Music stores
- 14. Newstands, open or enclosed
- 15. Optician or optometrist establishments
- 16. Pet shops
- 17. Photographic studios
- 18. Picture framing shops
- 19. Record stores
- 20. Stamp or coin stores
- 21. Telegraph offices
- 22. Travel bureaus
- 6D. Public Service Establishments
 - Telephone exchanges or other communications equipment structures.
- 6E. Clubs
 - Non-commercial clubs without restrictions on activities or facilities.
- 6F. Accessory Uses
 - Further, eating and drinking establishments, meeting halls, public service establishments, non-commercial clubs and theaters, and offices located on the ground (-12.5) level may exceed the limit of 10,000 square feet per establishment.

3. Bulk Regulations

(3.1) For the purposes of future development within the site, the site shall be considered as one zoning lot.

(3.2) The density of the site shall not exceed an overall Floor Area Ratio (FAR) of 15.0. This FAR is attributable to the entire area of the site, excluding those areas designated for street or public open space usage.

- (3.2.1) Residential density, if provided, shall not exceed a FAR of 12.0. No residential building or residential portion of a mixed building shall exceed a floor area of 12.0 times the lot area of the site attributable to such building.
- (3.2.2) For each 100 square feet of gross residential floor area, there shall be no more than one zoning room.
- (3.3) Public open space of not less than 1.0 acres (20 percent of the site area) shall be provided (See Attachment "B").
- (3.4) Setbacks shall be provided in the following manner:
 - (3.4.1) Along the perimeter streets of the site, buildings may rise on their street line without setbacks for a height of 140 feet. They must then set back no less than 15 feet for the remaining height. If a building provides an initial setback of 20 feet or greater from the street line, no additional setback is required. For purposes of this paragraph, Liberty, West and Vesey Streets shall be deemed to be perimeter streets.
 - (3.4.2) Total coverage of the site by buildings above elevation +140 shall not exceed 30 percent.
- (3.5) The height of any building may not be greater than one-half the height of the adjacent World Trade Center.
- (3.6) The minimum distance between buildings, above a base height of 140 feet, shall be no less than 100 feet, measured from the center point of facing walls.
- (3.7) The distribution of bulk shall in general reflect the illustrative concept plan shown in Attachments A, B and C.

4. Off-street Parking

- (4.1) Parking shall be limited to 1,000 spaces within the site.

(4.2) All permanent spaces shall be provided within enclosed structures.

5. Provision of Improvements (See Attachment "B")

(5.1) Public improvements shall be scheduled for construction such that same will be substantially completed prior to the issuance of permanent Certificates of Occupancy for the commercial office space as follows:

(5.1.1) Enclosed pedestrian bridge: in excess of 2.5 million square feet

(5.1.2) Public open space: in excess of 4.0 million square feet

(5.1.3) Private streets: in excess of 5.5 million square feet

(5.2) The central portions of the Wintergarden and the Courtyard shall be designed in accordance with the following:

(5.2.1) The central portion of the Wintergarden in an east-west alignment shall provide public access between the landing of the North Bridge and the public plaza and waterfront promenade or esplanade. To that end, the central portion of the space, 65 feet wide between column lines, shall be devoted to public use with an average aggregate unobstructed width of 30'-0" for pedestrian access and circulation, and with at least one major pedestrian route having a clear path of not less than 15'-0". Permitted obstructions, within the 65 foot wide space, but not infringing upon the 30 foot wide public pedestrian path(s), and in addition to the small, movable, income producing retail and display uses, such as fountains and reflecting pools, sculpture and other works of art, shall not occupy more than 10% of said space.

(5.2.2) In the remaining central space, small movable, income-producing retail or display uses may be permitted, but in no event shall the total area occupied by such uses exceed eight percent of the area of the space within the column line. The City Planning Commission will be concerned specifically with the size and number of such movable elements.

(5.2.3) Free public seating shall be provided in the central space of the Wintergarden. The City Planning Commission will be looking for public seating throughout that space, in addition to the seating permitted on the grand staircase.

(5.2.4) Physically and visually uninterrupted access, including access for the handicapped, shall be provided from the west elevation of the Wintergarden to the public plaza and promenade or esplanade. The City Planning Commission, in its subsequent review, will be looking for adequate provision of access and appropriate signage, as specified in the June 15, 1981 Letter of Certification.

100 690 p 440
(5.2.5) The central portion of the Courtyard (the public space, open to the sky, located between Tower C and Tower D) in a north-south alignment, shall provide public access between the extension of Vesey Street and the public plaza and waterfront promenade or esplanade. To that end, the central bay of the Courtyard, 25 feet wide between column lines, shall be devoted to public use. Within this space there shall be an average, aggregate circulation path of not less than 15'-0". Permitted obstructions, within the 25 foot wide space, but not infringing upon the 15 foot wide public pedestrian path, shall be limited to fountains and reflecting pools, sculpture and other works of art, seating, and trees and planting beds flush with grade. These permitted obstructions shall, however, occupy no more than 10% of the public access area, between the columns.

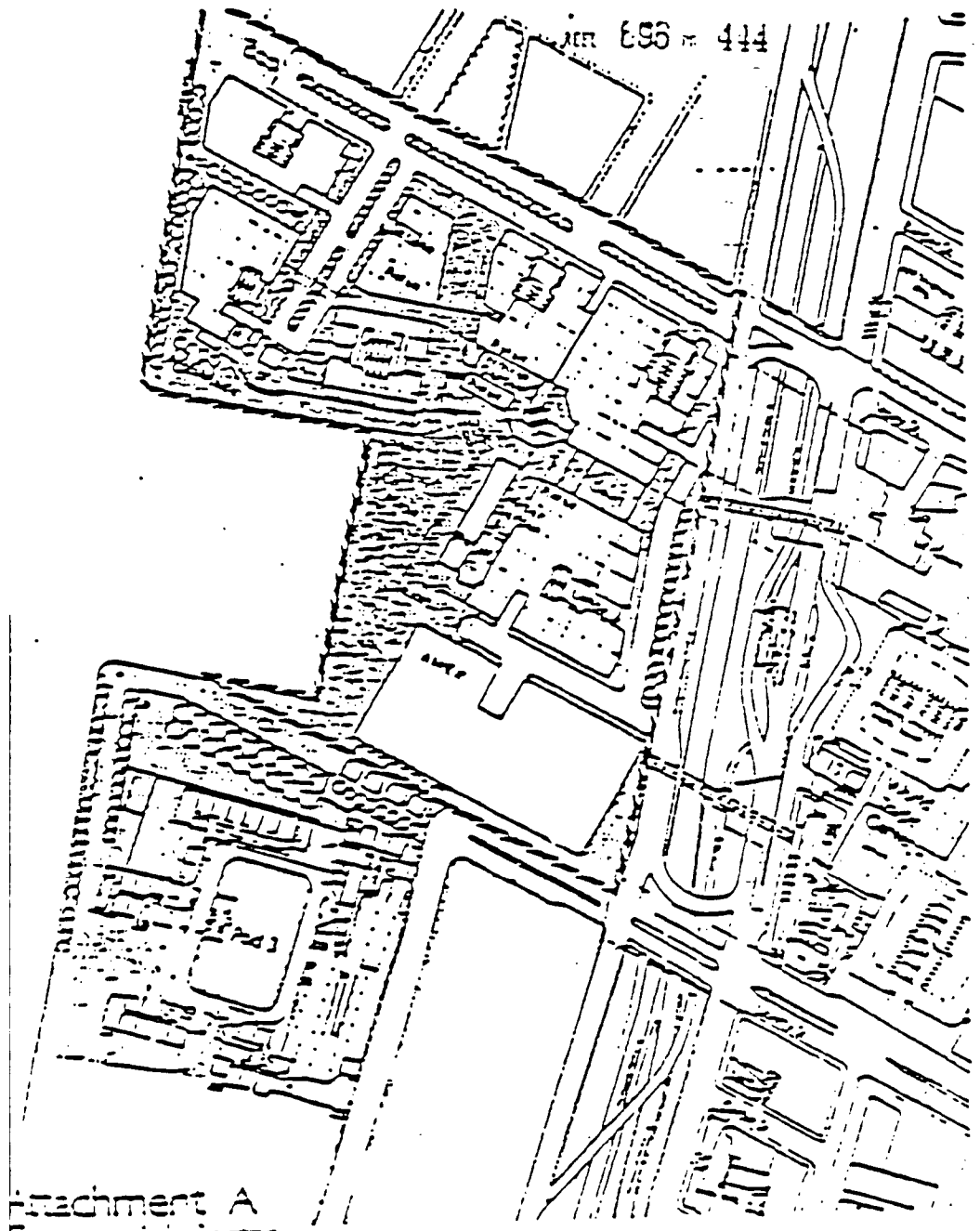
(5.2.6) Physically and visually uninterrupted access and egress, including access and egress for the handicapped, shall be provided through the open air courtyard to the public plaza and waterfront promenade or esplanade, to the south, and the extension of Vesey Street, to the north. The City Planning Commission, in its subsequent review, will be looking for adequate provision of access and appropriate signage, as specified in the June 15, 1981 Letter of Certification.

6. Site Boundary Alternative (See Attachment "C")

(6.1) In the event that waterfront portions of the site are developed for residential use, the site boundaries may be extended along West Street north of Vesey Street and south of Liberty Street as shown. Commercial development on these sites would be subject to the Large Scale Development Plan controls previously outlined.

7. Modifications to the Plan

(7.1) If BPCA wishes to make any major modifications to the Large Scale Development Plan, it shall submit the proposed major modifications to the New York City Planning Commission for review.

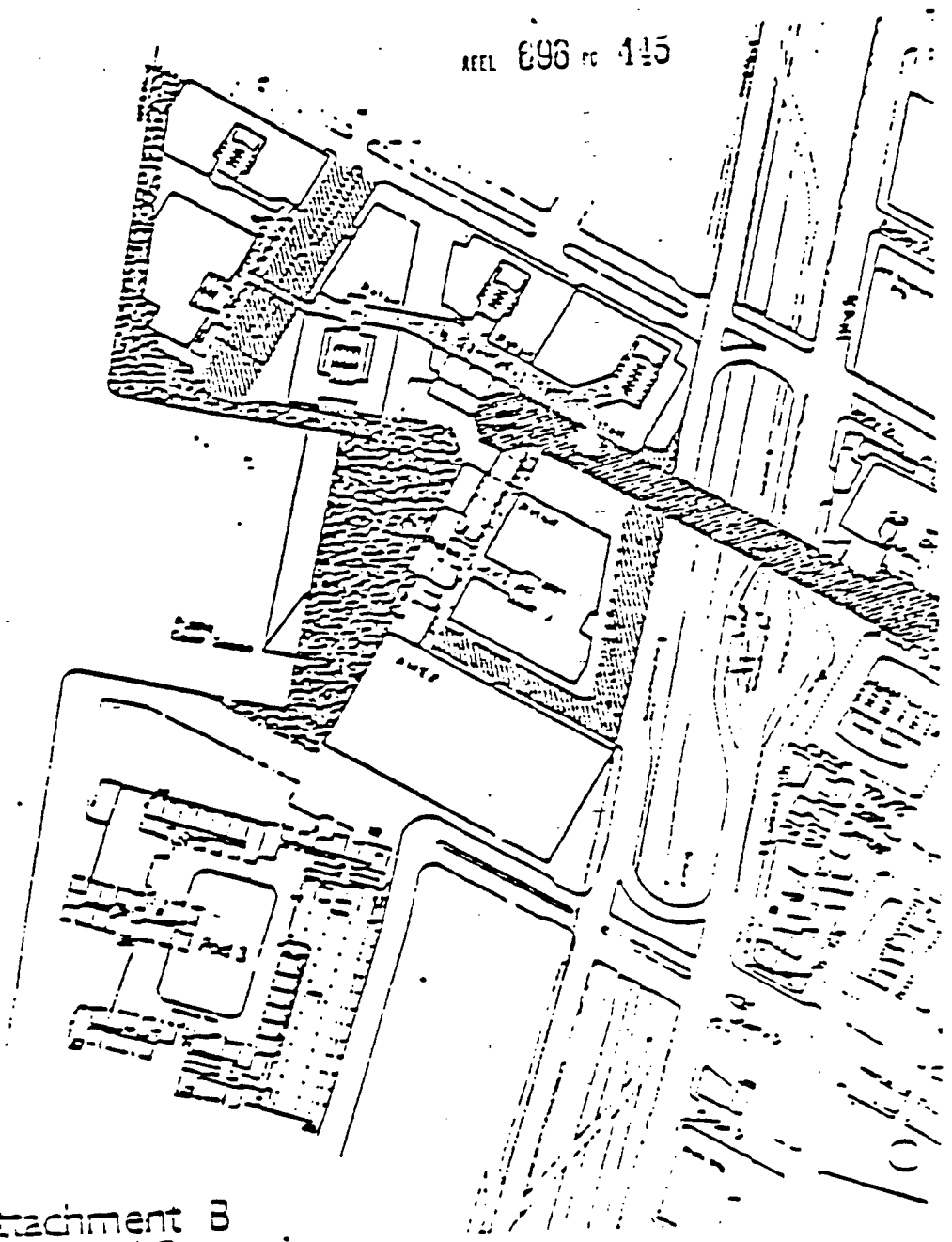


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Attachment A
Commercial Center
Site Plan
Drawing 1-1-1

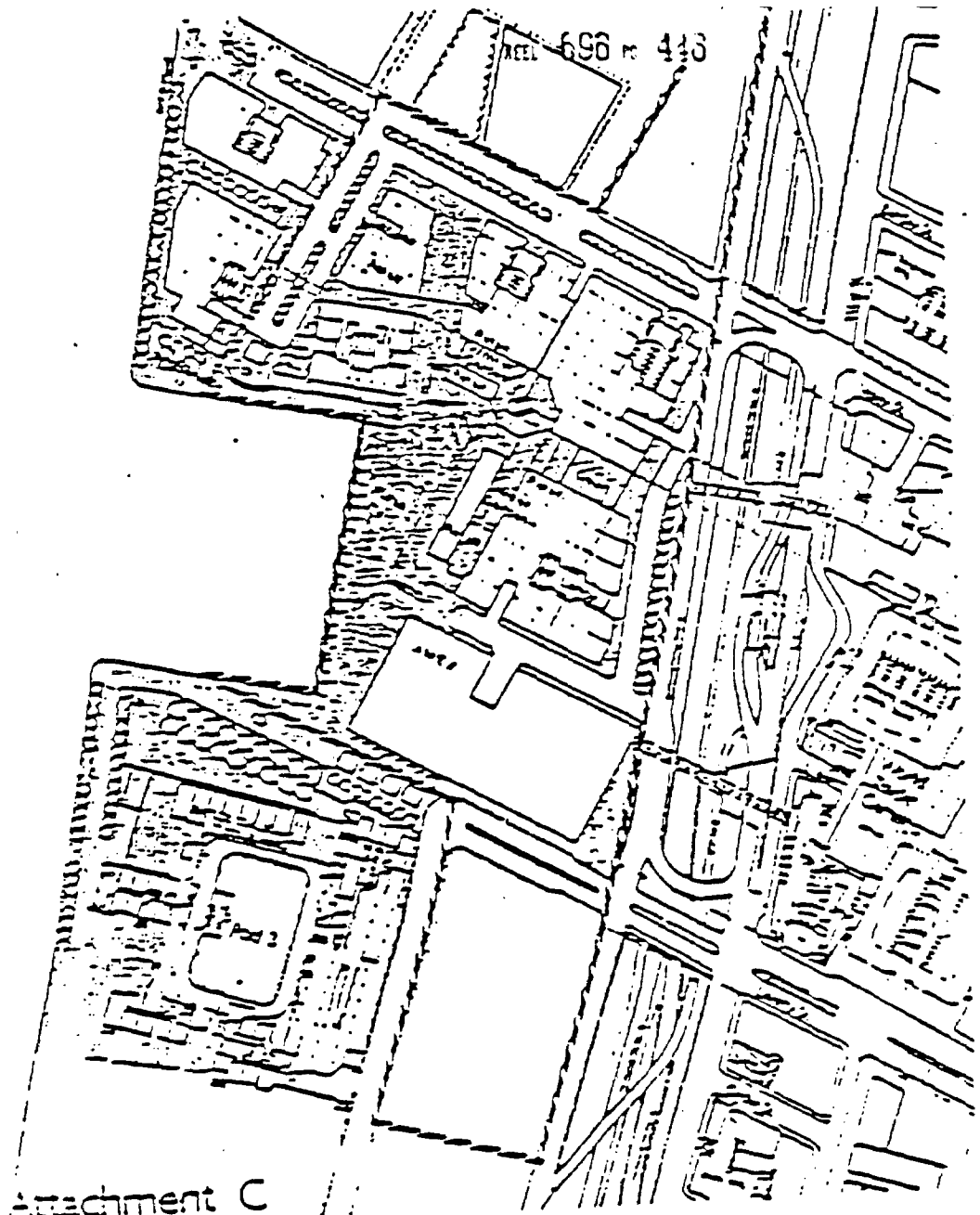
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REF 096 PG 115



Attachment B
Commercial Center
- 115 -
Drawing 115

SEE ALSO ATTACHMENT C



Attachment C
Commercial Center
Site Plan
Date: 11/11

Scale: 1" = 100'

NEEL 696 m 447

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

On the 15th day of June, 1983, before me personally came Benny E. Doyle, to me known, who, being by me duly sworn, did depose and say that he resides at 345 West 88th Street New York, NY; that he is the President and Chief Executive Officer of Battery Park City Authority, the Authority described in and which executed the foregoing instrument; that he knows the seal of said Authority; that the seal affixed to said instrument is such Authority's seal; that it was so affixed by orders of the ~~members~~ of said Authority; and that he signed his name thereto by like order.

FRANK L. LUCIA, JR.
Notary Public, State of New York
No. 61479248
Qualified in Queens County
Commission Expires March 21, 1985

Notary Public

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

On the 15th day of June, 1983, before me personally came Benny E. Doyle, to me known, who, being by me duly sworn, did depose and say that he resides at 345 West 88th Street New York, NY; that he is the President and Chief Executive Officer of Battery Park City Authority described in and which executed the foregoing instrument; that he knows the seal of said Authority; that the seal affixed to said instrument is such Authority's seal; that it was so affixed by order of the ~~members~~ of said Authority, and that he signed his name thereto by like order.

FRANK L. LUCIA, JR.
Notary Public, State of New York
No. 61479248
Qualified in Queens County
Commission Expires March 21, 1985

Notary Public

REEL 696 N 448

Comp *HK*
By

Title 418300160

Sec: 1

Blk: 16

Lot: Pl 3

Address: Battery Park City
(No Street Address)

Doc. 122. 125

Return By Mail To:

Kaye, Scholar, Tigerman, Hayes & Handler, Esq

Attn: Martin J. Sisman, Esq.

425 Park Ave.

New York, N.Y. 10022

OFFICE OF CITY REGISTER

New York County

RECORDED

Witness my hand
and official seal

George J. Stuch

CITY REGISTER

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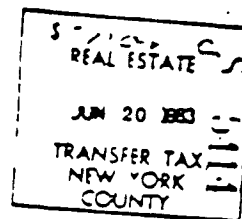


Exhibit D

EXHIBIT "D"

PHASE II CIVIC FACILITIES DRAWINGS AND
SPECIFICATIONS AND DEVELOPMENT SCHEDULE

Landlord's Civic Facilities

Date of Substan-
tial Completion

I. STREETS

Albany Street, Rector Place
and South End Avenue (to
south side of Rector Park)

- | | | |
|----|---|--|
| A. | All subsurface work, including supporting platforms and foundations, mains for utilities specified in Section 26.01 (a)(i) and (ii), sanitary and storm sewers, concrete base and 1 1/2" of asphalt surface paving. Finish treatments: curbs and fire hydrants. | Later of Substantial Completion of Foundation or May 1, 1984 |
| B. | Finish treatments: temporary concrete sidewalks (6-feet wide except the sidewalks in (v) and (vi) below shall be full-width) extending along (i) south side of Albany Street from eastern boundary of Parcel D to Esplanade; (ii) east side of South End Avenue from Albany Street to Rector Place North; (iii) Rector Place North from South End Avenue to the eastern boundary of Parcel D; (iv) Rector Place South from eastern boundary of Parcel B to Esplanade; (v) west side of South End Avenue adjacent to Parcel G; and (vi) north side of Rector Place from boundary between Parcels H/I and J to portion of Esplanade situated to the west of Rector Park (except that Landlord may provide alternative access consistent with New York City construction rules over temporary concrete sidewalks | Later of Enclosure of Building or January 1, 1985 |

if parcels adjacent to the fore-going sidewalks are, or are about to be, under construction); ERS conduits and boxes; final 1" of asphalt surface paving.

All other streets in Phase II (including South End Avenue from south side of Rector Park to north side of West Thames Street)

All work, including West Thames Street (no curb or sidewalk to be installed on south side of West Thames Street).

Later of Enclosure of Building or January 1, 1985

II. STREET LIGHTING

Conduit, cable, poles fixtures and connections

Later of Enclosure of Building or January 1, 1985

III. ESPLANADE & BALUSTRADE

All work except planting which cannot be performed effectively before Spring, 1985

Later of Enclosure of Building or January 1, 1985

IV. RECTOR PARK

All work except planting which cannot be performed effectively before Spring, 1985

Later of Enclosure of Building or January 1, 1985

Tenant's Civic Facilities

Each portion of Tenant's Civic Facilities shall be substantially completed no later than the Scheduled Completion Date.

Civic Facilities Drawings and Specifications

Drawings Prepared by Cooper, Eckstut Associates

I. Esplanade and Streets

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> | ADDENDUM NO. 2 |
|----------------|---|-------------|---------------------------------|
| | | | (Revision No. 5) <u>Date</u> |
| A.0 | Title Sheet | 7/30/82 | 3/28/83 |
| A.1 | Overall Plan | " | " |
| A.2 | Northwest Plan | " | " |
| A.3 | Southwest Plan | " | " |
| A.4 | Southeast Plan | " | " |
| A.5 | Northeast Plan | " | " |
| A.6 | Partial Plans: Esplanade | " | " |
| A.7 | Partial Plans: Rector Place West | " | " |
| A.8 | Partial Plans: West Thames Street Park | " | " |
| A.9 | Partial Plans: Street Intersections | " | " |
| A.10 | Partial Plans: Rector Place East | " | " |
| A.11 | Sections | " | " |
| A.12 | Sections | " | " |
| A.13 | Seawall: Elevations, Plans, Details | " | " |
| A.14 | Seawall & Property Wall Details | " | " |
| A.15 | Property Walls: Elevations and Details | " | " |
| A.16 | Rector Place East: Wall Elevations | " | " |

ADDENDUM NO. 2
(Revision No. 5)
Date

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> | |
|----------------|------------------------------------|-------------|---------|
| A.17 | Rector Place East: Wall Details | 7/30/82 | 3/28/83 |
| A.18 | Rail Elevations and Plans | " | " |
| A.19 | Rails and Fence Details | " | " |
| A.20 | Paving Details | " | " |
| A.21 | Paving Details | " | " |
| A.22 | Miscellaneous Details | " | " |
| A.23 | Esplanade Profiles | " | " |
| A.24 | Street Profiles | " | " |
| A.25 | Street Profiles | " | " |
| A.26 | Grading Plan: Northwest | " | " |
| A.27 | Grading Plan: Southwest | " | " |
| A.28 | Grading Plan: Southeast | " | " |
| A.29 | Grading Plan: Northeast | " | " |
| A.30 | Planting Plan: Northwest | " | " |
| A.31 | Planting Plan: Southwest | " | " |
| A.32 | Planting Plan: Southeast | " | " |
| A.33 | Planting Plan: Northeast | " | " |
| A.34 | Planting Details | " | " |
| S.1 | Northwest Structural Plan | " | " |
| S.2 | Southeast Structural Plan | " | " |
| S.3 | Northeast Structural Plan | " | " |
| S.4 | Walls P-1, P-2 | " | " |
| S.5 | Walls P-3, P-4 | " | " |
| S.6 | Walls P-5, P-6 | " | " |

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> | ADDENDUM NO. 2 |
|----------------|--------------------------------------|-------------|---------------------------------|
| | | | (Revision No. 5) <u>Date</u> |
| S.7 | Rector Place (East Side) Details | 7/30/82 | 3/28/83 |
| S.8 | Rector Place (East Side) Sections | " | " |
| S.9 | Seawall and Miscellaneous Details | " | " |
| S.10 | Foundation Details | " | " |
| U.1 | Northwest Utility Plan | " | 4/29/83 (Revision No. 6) |
| U.2 | Southwest Utility Plan | " | 4/29/83 |
| U.3 | Southeast Utility Plan | " | " |
| U.4 | Northeast Utility Plan | " | " |
| U.5 | Esplanade Drainage Details | " | " |
| U.6 | West Street Drainage Details | " | " |
| U.7 | Water Details | " | " |
| U.8 | Miscellaneous Details | " | " |
| U.9 | Informal Dwg. | " | " |
| E.1 | Northwest Electric Plan | " | 3/28/83 |
| E.2 | Southwest Electric Plan | " | " |
| E.3 | Southeast Electric Plan | " | " |
| E.4 | Northeast Electric Plan | " | " |
| E.5 | Electrical Details | " | " |
| L.1 | Type "B.C." Fixture | " | " |
| L.2 | Type "B" and "B-1" Fixtures | " | " |
| L.3 | Luminaire Details | " | " |

Drawings Prepared by Vollmer Associates

II. Utilities and Related Support Systems

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> | <u>REV. NO.</u> | <u>DATE</u> |
|----------------|--|-------------|-----------------|-------------|
| G-1 | Title Sheet | | | |
| G-2 | Location Plan and List of Drawings | 10/9/81 | 3 | 7/30/82 |
| G-3 | General Plan Support System | " | " | " |
| G-4 | General Plan Road Alignment | " | 3 | " |
| G-5 | General Plan Utilities | " | 4 | 9/30/82 |
| C-1 | Sewers and Water Main Plan - 1 | " | 5 | 12/20/82 |
| C-2 | Sewers and Water Main Plan - 2 | " | 7 | 3/23/83 |
| C-3 | Sewers and Water Main Plan - 3 | " | 3 | 7/30/82 |
| C-4 | Sewers and Water Main Plan - 4 | " | 4 | 9/30/82 |
| C-5 | Typical Street Sections South End Avenue and Albany Street | " | 2 | 4/30/82 |
| C-6 | Typical Street Sections Rector Place and West Thames Street | " | 2 | 4/30/82 |
| C-7 | Roadway Profiles and Sewer Lines: South End Avenue and West Thames Street | " | 4 | 9/30/82 |
| C-8 | Roadway Profiles and Sewer Lines: Albany Street and Rector Place | " | 7 | 3/23/83 |

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> | <u>REV. NO.</u> | <u>DATE</u> |
|----------------|--|-------------|-----------------|-------------|
| C-9 | Water Main Profiles: South End Avenue and West Thames Street | 10/9/81 | 4 | 9/30/82 |
| C-10 | Water Main Profiles: Rector Place and Marginal Street | " | 7 | 3/23/83 |
| C-11 | Drainage Tables | 10/9/81 | 4 | 9/30/82 |
| C-12 | Water Distributions Details - 1 | " | 4 | " |
| C-13 | Water Distributions Details - 2 | " | 4 | " |
| C-14 | Storm and Sanitary Sewer Details - 11 | " | 4 | " |
| C-15 | Storm and Sanitary Sewer Details | " | 4 | " |
| C-15A | Chamber St-17 Chamber St-21 | 10/9/82 | 4 | " |
| C-15B | Sewers on Cradle on Pile Profiles | " | 4 | " |
| C-16 | Utility Plan Enlarge- ment at South End Ave. and Rector Place | 10/9/81 | 8 | 7/15/83 |
| C-16A | Utility Critical Profiles | " | 8 | " |
| C-17 | Utility Plan Enlargement at South End Ave. and West Thames Street | " | 8 | " |
| C-17A | Utility Critical Profiles | " | 8 | " |
| C-17B | Utility Critical Profiles | " | 8 | " |

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> | <u>REV. NO.</u> | <u>DATE</u> |
|----------------|---|-------------|-----------------|-------------|
| C-18 | Utility Plan Enlargement at South End Avenue and Battery Place | 10/9/81 | 8 | 7/15/83 |
| C-18A | Utility Critical Profiles | " | 8 | " |
| C-19 | Albany Street Utilities | " | 8 | " |
| C-20 | Utility Critical Profiles | " | 8 | " |
| C-21 | Utility Critical Profiles | " | 8 | " |
| C-22 | Utility Critical Profiles | " | 8 | " |
| S-1 | Support System Piles Plan and Sections | " | 2 | 4/30/82 |
| S-2 | Support System Piles Plan and Sections | " | 3 | 7/30/82 |
| S-3 | Support System Piles Plan and Sections | " | 2 | 4/30/82 |
| S-4 | Support System Typical Bar Placement | " | 2 | " |
| E-1 | Dry Utility Site Plan - 1 | " | 9 | 7/11/83 |
| E-2 | Dry Utility Site Plan - 2 | " | 9 | " |
| E-3 | Dry Utility Site Plan - 3 | " | 7 | " |
| E-4 | Dry Utility Site Plan - 4 | " | 6 | " |

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> | <u>REV. NO.</u> | <u>DATE</u> |
|----------------|---------------------------------|-------------|-----------------|-------------|
| E-5 | Detail Sheet (Electric) | 10/9/81 | Reissued | 7/11/83 |
| E-6 | Detail Sheet (Telephone) | " | New Dwg. | " |
| E-7 | Detail Sheet (Miscellaneous) | " | Reissued | " |
| E-8 | Profiles | " | " | " |
| E-9 | Detail Sheet (Electric) | " | " | " |
| E-10 | Detail Sheet (Electric) | " | " | " |
| E-11 | Detail Sheet (Electric) | " | " | " |

III. Rector Park

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> |
|----------------|---|-------------|
| 1 | Title Sheet | 9/22/83 |
| 2 | Legend, General Notes, Key Plan and List of Drawings | " |
| 3 | Layout Plan-West Park | " |
| 4 | Layout Plan-East Park | " |
| 5 | Grading and Drainage Plan-West Park | " |
| 6 | Grading and Drainage Plan - East Park | " |
| 7 | Electrical, Lighting and Irrigation Plan - West Park | " |
| 8 | Electrical, Lighting and Irrigation Plan - East Park | " |

| <u>DWG NO.</u> | <u>TITLE</u> | <u>DATE</u> |
|----------------|---|-------------|
| 9 | Planting Plan-West Park & Plant List | 9/22/83 |
| 10 | Planting Plan - East Park | " |
| 11 | Pavement and Curb Details | " |
| 12 | Sitting Wall and Granite Pier | " |
| 13 | Picket Fence and Bench Details | " |
| 14 | Detail Layout Plans | " |
| 15 | Drainage Details | " |
| 16 | Electrical Details | " |
| 17 | Irrigation Details | " |
| 18 | Planting Details | " |

Dated: 10/9/81

TECHNICAL SPECIFICATIONS

FOR
UTILITIES AND
RELATED SUPPORT SYSTEMS

FOR
SOUTH RESIDENTIAL PHASE II INFRASTRUCTURE

BATTERY PARK CITY
NEW YORK, NEW YORK

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EXHIBIT "E"

GUARANTY

The undersigned, H. HENRY ELGHANAYAN, KAMRAN T. ELGHANAYAN, FREDERICK ELGHANAYAN and JEFFREY ELGHANAYAN (collectively, the "Guarantors" and each, a "Guarantor"), having an office at 309 East 45th Street, New York, New York 10017, to: 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 40 West Street, New York, New York 10006.

W I T N E S S E T H:

WHEREAS, the Guarantors are partners of River Rose Company, a New York partnership ("Tenant"); and

WHEREAS, Landlord and Tenant, contemporaneously with the execution and delivery hereof, are entering into a certain Agreement of Lease (the "Lease") between Landlord, as landlord, and Tenant, as tenant, of certain premises known as Parcel H/I, Phase II Residential Development, Battery Park City, and as more particularly bounded and described in the Lease;

NOW, THEREFORE, the Guarantors hereby agree as follows:

1. The Guarantors hereby jointly and severally guaranty to Landlord the complete and punctual performance by Tenant

of its obligations to commence and prosecute construction of the Building and to accomplish the Substantial Completion thereof, all in accordance with, and subject to the terms and conditions of, Article 11 of the Lease, including without limitation Exhibit J annexed to the Lease (hereinafter, collectively, the "Guarantied Obligations").

2. Except as otherwise expressly set forth herein, (i) this Guaranty is an absolute, present, primary, continuing, irrevocable, unlimited and unconditional guaranty by each of the Guarantors of the Guarantied Obligations, and (ii) neither this Guaranty nor the obligations of the Guarantors hereunder are conditioned or contingent upon any effort or attempt to seek performance or payment from Tenant, any Mortgagee, or any other Guarantor, or upon any other condition or contingency. Landlord is not and shall not be required, before exercising any right or remedy against any Guarantor, to first attempt to exercise any right or remedy against or seek any redress from Tenant, any Mortgagee, any other Guarantor, or any other person, firm or corporation, or to first take any action whatsoever under or with respect to the Lease or the Premises.

3. If at any time an Event of Default described in Section 24.01(b) or 24.01(d) of the Lease occurs and is continuing, Landlord may at its option, without waiver of the Default which is the basis for such Event of Default, and without release

of Tenant, exercise one or more of the following rights: (a) by written notice to one or more of the Guarantors, require such Guarantor(s) to cure such Default within ten (10) days after the giving of such notice or, if such cure requires work to be performed which cannot by its nature reasonably be performed within such ten (10)-day period, to commence the cure of the same within such ten (10)-day period and thereafter diligently and continuously prosecute the curing thereof; and (b) if such Guarantor(s) shall fail to perform as required in (a) above, take action to commence or prosecute construction and/or Substantially Complete the Building substantially in accordance with all Approvals, the Plans and Specifications, the Master Development Plan and the Design Guidelines, and require any one or more of the Guarantors to reimburse Landlord for all reasonable costs and expenses incurred in so doing, including, without limitation, construction costs, bidding costs, attorneys', architects', engineers' and other professional fees and disbursements, and supervisory and inspection costs. In the event Landlord takes action to commence or prosecute construction and/or Substantially Complete the Building as aforesaid and requires the Guarantors to reimburse Landlord for the cost thereof, Landlord may, from time to time but not more frequently than monthly, present written statements to the Guarantors, setting forth in reasonable detail the costs incurred by Landlord since the submission of the previous statement, which statement shall be accompanied by docu-

mentation supporting the same. The Guarantors shall reimburse such costs within ten (10) days after receipt of each such statement; and if the Guarantors shall fail so to reimburse Landlord within such ten (10)-day period, they shall also pay interest to Landlord on any unpaid amount at the Prime Rate plus two (2%) percent per annum from the date of receipt of such statement. The foregoing notwithstanding, (i) Landlord shall not have the right to take the actions described in clause (b) of this paragraph unless and until any Mortgagee has, in accordance with Sections 10.10 and 10.11 of the Lease, been given an opportunity and has failed to cure the Defaults specified in Section 24.01(b) or 24.01(d), as the case may be, of the Lease; and (ii) Landlord shall have the right to require the Guarantors to cure any such Default by notice given pursuant to clause (a) of this paragraph simultaneously with notice given to such Mortgagee pursuant to Section 10.10(a) of the Lease advising such Mortgagee of Tenant's failure to cure such Default.

4. The obligations and liabilities of each Guarantor hereunder shall not be impaired, abated, deferred, diminished, modified or otherwise affected by: (a) any amendment or modification of or addition or supplement to the Lease; (b) any modification, compromise, settlement, adjustment, waiver or extension of the obligations or liabilities of Tenant under the Lease or of any other Guarantor under this Guaranty; (c) any waiver, consent, indulgence, forbearance, lack of diligence, action or inaction on

the part of Landlord in enforcing the obligations of Tenant or any of the Guarantors or other parties in connection with the Lease or this Guaranty; (d) any default by Tenant under the Lease or of any other Guarantor hereunder; (e) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation, rehabilitation or other proceeding for the relief, liquidation or rehabilitation of debtors (each of which is referred to herein as an "Insolvency Proceeding" regardless of whether the insolvency of the subject of such proceeding is a prerequisite to the commencement thereof) involving or affecting Tenant or any other Guarantor; (f) any limitation on or release, impairment, abatement, deferral, diminution, modification or discharge of the obligations or liabilities of Tenant or any other Guarantor in or as a result of an Insolvency Proceeding; (g) any stay or other provision of law or court order in an Insolvency Proceeding delaying, limiting or prohibiting performance or enforcement of any obligation of Tenant or any other Guarantor; (h) any claim, counterclaim, cause of action, offset, recoupment or other right or remedy which Tenant or any other Guarantor may at any time have against Landlord; (i) any assignment, conveyance, extinguishment, merger or other transfer, voluntary or involuntary (whether by operation of law or otherwise) of all or any part of the interest of Tenant in the Lease or the Premises, or any Transfer; and any action taken or omitted to be taken by or on behalf of Landlord in accordance with the

Lease and in respect of the Premises, whether or not the Guarantors shall have notice or knowledge thereof. Anything to the contrary set forth in clauses (a) or (b) of the foregoing sentence notwithstanding, the Guaranteed Obligations shall be modified, waived or extended to the extent, if any, that Tenant's obligations under Article 11 of the Lease have been so modified, waived or extended. Nothing contained in this Guaranty is intended to impair any rights the Guarantors may have to assert any claims against Landlord or any other person or entity.

5. The obligations and liabilities of each Guarantor hereunder are independent of the obligations and liabilities of Tenant and all other Guarantors. Each Guarantor may be joined in any action, suit or proceeding in respect of the Guaranteed Obligations or otherwise to enforce Landlord's rights hereunder commenced by Landlord against Tenant or another Guarantor, or may be sued in a separate action, suit or proceeding. Recovery may be had against the Guarantors or any of them in such an action, suit or proceeding without any requirement that Landlord previously or simultaneously assert, prosecute or exhaust any right, power or remedy against Tenant or any other Guarantor or any other party or with respect to the Lease or the Premises. In any action, suit or proceeding commenced by Landlord against Tenant or one or more of the Guarantors, dismissal from such action, suit or proceeding with respect to, or judgment on any ground in favor of, any Guarantor, or any finding of unenforceability or invalidity

of the Guaranteed Obligations as against Tenant shall not impair, abate, defer, diminish, modify or otherwise affect the obligations and liabilities of any Guarantor, as set forth in this Guaranty, with respect to whom there has been no such dismissal, discontinuance, judgment or finding.

6. The Guarantors shall reimburse Landlord for all costs and expenses (including attorneys' fees) reasonably incurred by or on behalf of Landlord in enforcing the obligations and liabilities of the Guarantors hereunder.

7. Each Guarantor absolutely and unconditionally waives all notices and consents, except to the extent such notices and consents may be expressly required herein, which may otherwise be necessary, whether by statute, rule of law or otherwise, to charge such Guarantor or to preserve Landlord's rights and remedies against such Guarantor hereunder, including but not limited to: (a) notice of any of the matters referred to in paragraph 4 hereof; (b) presentment or demand for payment or performance by Tenant or Guarantors; and (c) protest for nonpayment or nonperformance.

8. (a) No waiver by Landlord of any Default or Event of Default described in Section 24.01(b) or 24.01(d) of the Lease or of any default, breach or violation of any of the obligations of any Guarantor shall be considered a waiver of any other or subsequent Default or Event of Default, and no delay or omission

by Landlord in enforcing the rights, exercising the powers, or pursuing the remedies granted in the Lease or herein shall be construed as a waiver of such rights, powers or remedies; no enforcement of any right, exercise of any power, or pursuit of any remedy by Landlord shall be held to exhaust such right, power or remedy, and every such right may be enforced, every such power may be exercised, and every such remedy may be pursued from time to time.

(b) None of the rights, powers and remedies of or for the benefit of Landlord provided in this Guaranty is exclusive of, and all are in addition to, any and all other rights, powers and remedies now or hereafter existing under this Guaranty and the Lease, at law or in equity. Landlord, in addition to the rights, powers and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist under the Lease, at law or in equity for the enforcement of the obligations and liabilities of Tenant and the Guarantors. The resort by Landlord to any right, power or remedy provided in this Guaranty or the Lease at law or in equity, shall not prevent the concurrent or subsequent employment of any right, power or remedy provided in this Guaranty or the Lease, at law or in equity.

9. By accepting this Guaranty, Landlord covenants and agrees that if the Guarantors or any Guarantor shall fully and

punctually perform the Guaranteed Obligations in accordance with paragraph 3(a) hereof, then any Default of Tenant in respect of the Guaranteed Obligations shall be deemed cured and Landlord shall not terminate the Lease by reason of such Default. By accepting this Guaranty, Landlord further covenants and agrees that the Guarantors shall not be obligated to perform hereunder unless the notice referred to in paragraph 3 hereof is duly given; and Landlord further agrees to give the Guarantors a copy of any notice of Default given by Landlord to Tenant if such Default is in respect of any of the Guaranteed Obligations.

10. In any action or proceeding brought by Landlord against any Guarantor on this Guaranty, each Guarantor shall and does hereby waive trial by jury, and each Guarantor agrees that the Supreme Court of the State of New York for the County of New York, or, if a basis for federal jurisdiction exists, the United States District Court for the Southern District of New York shall have jurisdiction of any such action or proceeding.

11. In the event Landlord takes action to complete construction of the Building and requires the Guarantors to reimburse Landlord for the costs thereof, as provided in paragraph 3(b) hereof, Landlord may, prior to Substantial Completion, commence one or more actions to recover its costs to the date of such recovery and may, subsequent to Substantial Completion, commence additional actions to recover the balance of its costs.

12. In the event any provision of this Guaranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

13. This Guaranty is effective upon the date hereof. This Guaranty, and all of the Guarantors' obligations hereunder, shall terminate (a) upon the Substantial Completion of the Building by Tenant, the Guarantors or any Guarantor, or any Mortgagee, or (b) if construction is undertaken by Landlord, upon full reimbursement of Landlord by the Guarantors or any Guarantor, as provided in paragraph 3(b) hereof. By accepting this Guaranty, Landlord agrees that after the termination of this Guaranty, Landlord shall (i) promptly return this Guaranty and all counterparts hereof to the Guarantors, and (ii) at the request of any Guarantor, confirm once in writing to such Guarantor that the Guaranty, and all of the Guarantors' obligations thereunder have terminated.

14. Unless otherwise specifically defined in this Guaranty, all initially capitalized terms used in this Guaranty shall have the respective meanings ascribed to them in the Lease.

15. All notices, demands and other communications which any party desires to give hereunder shall be given in the manner

set forth in the Lease for the giving of notices, to the parties hereunder at their respective addresses set forth above, or to such other addresses as the parties may specify by like notice.

16. This Guaranty shall inure to the benefit of Landlord and its successors and assigns and shall be binding upon the successors, assigns, heirs, executors, administrators and personal representatives of the Guarantors; except that, in the event of the death of one or more (but not all four) Guarantor(s), the estate, heirs, executors, administrators and personal representatives of such Guarantor(s) shall have no further liability or obligation hereunder if the aggregate net worth of the surviving Guarantors shall exceed \$35 million in the aggregate, as demonstrated by evidence reasonably satisfactory to Landlord.

17. This Guaranty is made in the State of New York and shall be governed, construed and interpreted as to validity,

enforcement and in all other respects, in accordance with the internal laws of said State.

IN WITNESS WHEREOF, the Guarantors have executed this Guaranty as of this day of March, 1984.

H. HENRY ELGHANAYAN

KAMRAN T. ELGHANAYAN

FREDERICK ELGHANAYAN

JEFFREY ELGHANAYAN

Acknowledgements

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

On the ____ of March, 1984, before me personally came
____ Elghanayan, to me known to be the person
described in and who executed the foregoing instrument, and he
acknowledged that he executed the same.

Notary Public

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

On the ____ of March, 1984, before me personally came
____ Elghanayan, to me known to be the person
described in and who executed the foregoing instrument, and he
acknowledged that he executed the same.

Notary Public

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

On the ____ of March, 1984, before me personally came
____ Elghanayan, to me known to be the person
described in and who executed the foregoing instrument, and he
acknowledged that he executed the same.

Notary Public

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

On the ____ of March, 1984, before me personally came
____ Elghanayan, to me known to be the person
described in and who executed the foregoing instrument, and he
acknowledged that he executed the same.

Notary Public

EXHIBIT F

BATTERY PARK CITY

River Rose Company's Affirmative Action Program

This Affirmative Action Program has been adopted by Battery Park City Authority ("BPCA") in order to assist River Rose Company, a New York general partnership ("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 Phase II Residential Development designated as Site H/I (the "Project") to comply with their respective affirmative action obligations relating to the Project, and to permit BPCA to carry out its affirmative action obligations under applicable laws and regulations.

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.

Contract: as defined in Section 2.

Contract Value: the total contract prices of all Contracts let to MBEs by Tenant or its Contractors pursuant to Approved MBE Contracts less the total contract prices

of all work let to MBEs by other MBEs, provided that (a) where an MBE subcontracts (other than through supply contracts) more than 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 goods manufactured or produced by a non-MBE, the price paid by the MBE to the 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, such joint venture shall be treated as an MBE only to the extent of the percentage of the joint venture's profits which are to accrue to the MBE joint venturer under the terms of the joint venture arrangement. In any event, Contract Value shall include only amounts of money actually paid to MBEs by Tenant or its Contractors.

Lease: the Agreement of Lease, of even date herewith, to which this Program is annexed between BPCA and Tenant, as amended and supplemented from time to time.

MBE: a business owned, operated and controlled by one or more Minority (hereinafter defined) persons. "Owned", for purpose of this definition, shall mean, (A) in the case of a corporation, that one or more Minority persons owns more than fifty percent (50%) of each class of stock of such corporation or, (B) in any other case, that

one or more Minority persons owns more than fifty percent (50%) of the beneficial interest in the business and is entitled to receive more than fifty percent (50%) of the net profits of the business. "Operated and controlled," for purposes of this definition, shall mean that one or more Minority persons has the day-to-day responsibility for running and making all important decisions affecting the business enterprises. In determining whether a firm is a bona fide MBE, BPCA shall consider, but not be limited to, the following factors:

(i) Whether the business is a small concern as defined in Section 3 of the Federal Small Business Act and implementing regulations.

(ii) 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:

-- Interlocking Management. Officers, directors, employees, or principal stockholders of one concern serve as a majority of directors or officers of another concern.

- ... 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.
- 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.

(iii) Whether the Minority ownership and control is actual and continuing and not created solely to take advantage of special or set aside programs aimed at Minority business development.

(iv) Whether the Minority owner enjoys the customary incidents of ownership and shares in the risks and profits commensurate with his percentage of ownership.

(v) Whether there are any restrictions which are placed on the Minority owner's ability to control the firm, including, for example, by-law provisions, part-

nership agreements or charter requirements for cumulative voting rights which prevent the Minority owner from making a business decision without the cooperation or vote of a non-minority owner. Absentee ownership by a Minority owner shall not be considered control.

(vi) All securities which evidence ownership of a corporation for purposes of establishing it as a MBE shall be held directly by the Minority owner. No securities held in trust or by any guardian for a minor shall be considered held by Minority persons in determining ownership and control of a corporation unless a legitimate reason (including, without limitation, tax planning) for the same can be shown.

(vii) The contributions of capital or expertise made by the Minority owner to acquire his interests in the firm shall be real and substantial. A Minority owner's promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged or mere participation as an employee are not real and substantial contributions of capital or expertise.

(viii) A firm engaged in the procurement of materials and supplies shall be significantly and substantially involved in the production of those materials and supplies or have sufficient inventory on hand in its own facility to effectively meet contractual obligations.

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, Cuban, Central or South American 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 and employment of Minority workers (including supervisory personnel) in each trade used by Tenant's Contractors in the construction of the Project.

Total Development Costs: the total contract prices of all Contracts awarded by Tenant for the furnishing of labor, materials or services for inclusion in the Project plus (x) the cost of all general conditions work applicable to the Project and not included in such Contracts and (y) the cost of architectural, structural engineering, mechanical

engineering, graphic design and controlled inspection services on 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 construction contract or other instrument relating to construction (collectively, "Contract") pursuant to which such Contractor furnishes materials or services for the Project.

3. Minority Workforce Participation. (a) Tenant

shall, and shall cause its Contractors to, afford priority with respect to employment in the construction of the Project to Minority group workers, provided that such obligation shall be deemed to have been fulfilled when the proportion of Minority Workforce Participation to total person-hours of training and employment in each trade listed on Schedule 1 of this Program equals the specified percentages set forth in such Schedule. Tenant and BPCA have, after reviewing the work to be included in the Project and the qualifications and availability of Minority group workers for participation in such work, determined that the percentages set forth in such Schedule are reasonable and reasonably attainable.

(b) In order to assist Tenant in carrying out the provisions of paragraph (a) above, Tenant shall, and

shall cause its Contractors to, participate in an on-the job training program of the type known as the "New York Plan" or, if neither BPCA nor any other entity shall continue to sponsor such a program in New York City for any trade included in construction of the Project, such other or successor program as shall be generally applicable to public construction in New York.

(c) Tenant shall cause its Contractors to submit daily reports on the composition of the workforce on the Project and monthly payroll reports by person-hours to BPCA.

4. MBE Participation. Tenant shall, and, when contemplated by the applicable contract bid package, shall cause its Contractors to, afford priority in the construction of the Project to MBEs, provided that such obligation shall be deemed to have been fulfilled when the aggregate Contract Value of Approved MBE 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 of Construction of the Building and terminating at Substantial Completion of the Building, as such terms are defined in the Lease), enter into, or cause its Contractors to enter into, Approved MBE Contracts having an aggregate Con-

Contract Value of at least ten percent (10%) of Total Development Costs.

(b) In further fulfillment of its obligations under this Section 4, Tenant shall, with BPCA's assistance, throughout the Construction Period, (i) conduct a thorough and diligent search for qualified MBEs to carry out additional portions of the construction of the Project, (ii) review the qualifications of each MBE suggested to Tenant by BPCA, and (iii) enter into, or cause its Contractors to enter into, Approved MBE Contracts with all qualified and available MBEs in accordance with and subject to the procedures set forth in Section 5 hereof.

5. Procedures. Tenant and BPCA shall observe the following procedures throughout the Construction Period:

(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 ten (10) working days before issuing requests for proposals or invitations to bid for any Contracts, Tenant shall furnish BPCA with a projected schedule (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 for the Project. 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 prices or range of prices of such work. In formulating the Contract Schedule, Tenant will, with BPCA's assistance, 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.

(b) BPCA will review the Contract Schedule as promptly as practicable, and, within seven (7) working days of receipt, will advise Tenant whether and how, in BPCA's judgment and consistent with the method of construction utilized on the Project, the work can be further divided or subcontracted so as to maximize opportunities for participation by MBEs. To the extent practicable and consistent with such method of construction, Tenant will prepare contract packages which will provide maximum opportunity for those MBEs found qualified and available hereunder to participate in the work, provided that, Tenant shall not be required to award more than ten (10) Contracts for Fifty Thousand Dollars (\$50,000) or less (including no more than five (5) Contracts for Twenty-Five Thousand Dollars (\$25,000) or less) for construction work which would, in the absence of this Program, otherwise have been awarded through individual Contracts exceeding

Fifty Thousand Dollars (\$50,000) in value. The foregoing limitations shall not apply to Contracts for general conditions work on the Project.

(c) Concurrently, BPCA and Tenant will review the qualifications and availability of MBEs to determine the extent to which MBEs are qualified and available to perform all or portions of the work identified in the contract packages. In general, an MBE 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 paragraph (f) of this Section 5, to organize, supervise and perform work of the kind and quality contemplated for the Project. In determining whether an MBE meets these standards, BPCA and Tenant shall consider experience in the trade, technical competence, organizational and supervisory ability, general management capacity and, where applicable, whether the employees of an MBE are licensed in their respective trades. An MBE shall not be considered unqualified to perform work on the Project (i) because such MBE (A) cannot obtain bonding or (B) cannot obtain commercial credit or cannot obtain such credit on normal terms or (ii) solely because such MBE (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 paragraph (f) of this Section 5 or (B) has not previously performed work

equal in scope or magnitude to such work, provided that the work previously performed by such MBE reasonably demonstrates the capacity to perform work on the Project.

(d) Tenant and BPCA shall agree on those MBEs which are qualified and available to perform work on the Project. In general, an MBE will be deemed to be available to perform work contemplated by a contract bid package if it is capable of completing the work in accordance with the terms and conditions of the proposed contract. In the event of any failure to agree, BPCA's determination with respect to any MBE's qualifications and availability to perform the work contemplated by any contract bid package shall be final and binding for purposes of the Contract in question, unless Tenant shall, within twenty (20) days after the receipt of BPCA's written notice of such determination, request that the matter be determined by arbitration pursuant to paragraph (h) of this Section 5, in which event such MBE's qualifications and availability shall be determined as provided in such paragraph.

(e) Tenant shall invite, and, when contemplated by the applicable contract bid package, shall cause its Contractors to invite, all MBEs found qualified and available hereunder to submit proposals for work required to be performed under Tenant's contract packages (including both contracts and subcontracts). Tenant shall award, and shall cause its Contractors to award, the Contract to an MBE which

submits a bid or proposal in response to such request, provided that such MBE's proposal is responsive to the Contract requirements and its proposed Contract price is fair and reasonable.

(f) In order to assist MBEs in submitting informed and responsive bid proposals, Tenant will pay to BPCA the sum of Three Thousand Dollars (\$3,000) to be used by BPCA to retain the services of professional estimators and other qualified personnel to review bid proposals prepared by MBEs. Tenant shall have the right to approve the consultants retained by BPCA. Payment shall be made by Tenant to BPCA, from time to time, as needed to pay for such services. Neither Tenant, any of its Contractors, nor any MBE 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 order to carry out the purposes thereof. In addition, Tenant will provide financial assistance to an MBE 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 and (ii) making progress payments for work performed more frequently than the normal one-month cycle, but not more than twice a month. Tenant shall also waive bonds where MBEs are unable to obtain the same, shall make available to MBEs technical assistance to conform to the method of construction of

the Project, shall provide guidance consistent with the MBE's experience and capacity and shall conduct periodic job meetings with each MBE at reasonable intervals to review the progress of such MBE's job performance and suggest appropriate action to remedy any deficiency in such performance. As may be necessary to carry out this Program, Tenant shall offer to provide the foregoing assistance to MBEs prior to their submission of bid proposals and, wherever practicable, at the time of Tenant's request for such proposals.

(g) The determination of whether a business enterprise is an eligible MBE hereunder shall be made by BPCA in accordance with the criteria set forth above in the definition of MBE in Section 1, and such determination shall be conclusive for purposes of this Program, provided that, where (i) BPCA determines that a proposed Contractor is not an eligible MBE and (ii) Tenant thereafter enters into a Contract with such proposed Contractor, Tenant may request that the question of such Contractor's eligibility as an MBE be submitted to arbitration as provided in paragraph (h) of this Section 5.

(h) In the event that Tenant shall demand arbitration as to the question of the qualifications or availability of any MBE pursuant to paragraph (d) above, or the eligibility of any proposed MBE pursuant to paragraph (g) above, such question shall be determined 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 rules of the American Arbitration Association then obtaining, 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, if any, 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 (when selected) 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 for all purposes of this Program, provided that, anything to the contrary contained herein notwithstanding, any decision that an MBE is or is not qualified or available 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 attorney's fees in connection with such arbitration and shall share equally the costs of such arbitration (including the arbitrators' fees).

(i) Tenant shall maintain reasonably complete and accurate written records of (i) its efforts to identify and contract with MBEs, (ii) the reasons, if applicable, for any determination by Tenant that an MBE is not qualified or available to perform work on the Project, (iii) the assistance offered or provided to MBEs in accordance with paragraph (f) of this Section 5, (iv) the reasons, if applicable, why contracts or subcontracts were not awarded to MBEs found qualified hereunder, and (v) total Contracts and Approved MBE Contracts awarded on the Project, including 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, provided that only the aggregate amount of the contract prices and a summary description of the scope of the work need be furnished to BPCA for non-minority Contracts, but the individual contract prices for such non-minority Contracts shall be made available to BPCA at Tenant's offices.

(j) Prior to the issuance by Tenant of any letter of intent or Contract to a Contractor which will be entering into subcontracts with MBEs in accordance with Sections 5(b), (e) and (k) of this Program, Tenant shall provide to BPCA a written list of specific affirmative action measures which such Contractor will undertake in complying with this Program, including a list of MBEs to which Tenant intends to let subcontracts.

(k) Tenant shall not enter into any Contract, or permit its Contractors to enter into any Contract, except in accordance with the requirements of this Program. After the award of a Contract, Tenant shall not enter into, or permit its Contractors to enter into, any one or more written modifications of such Contract which will, singly or in the aggregate, reduce the scope of the work to be performed by an MBE under any Contract (including subcontracts) by more than five percent (5%) without giving written notice and explanation to BPCA within fifteen (15) days of such modification or modifications. Each Contract entered into by Tenant shall (i) contain such non-discrimination provisions as shall be required by the Lease, (ii) require the Contractor thereunder to comply with the applicable Minority Workforce requirements of Section 3 of this Program and (iii), when contemplated by the applicable contract bid package, require such Contractor to comply with the applicable provisions of Sections 4 and 5 of this Program with respect to any Contracts awarded by such Contractor. Tenant shall promptly furnish BPCA with the name of each Contractor to which Tenant (or its Contractors) awards a Contract, together with, in the case of each Approved MBE 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.

(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. Tenant hereby designates, and BPCA hereby approves, Stephen Eisner as such affirmative action officer. BPCA and Tenant shall meet to review the implementation of this Program as frequently as BPCA deems necessary. BPCA shall provide Tenant with at least forty-eight (48) hours prior notice of any such meeting.

6. Subsequent Construction. 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), replacement of, or additions to, the Project or any portion thereof, undertaken by Tenant, whether on its own behalf or on behalf of its subtenants, Tenant shall, and shall cause its Contractors to, afford priority in such work to qualified and available MBEs which submit competitive proposals for such work. Tenant and BPCA hereby agree that the annual goal for MBE participation in such work is ten percent (10%) of the total contract prices thereof. In order to achieve the goal of ten percent (10%) established under this Section 6, Tenant shall, and shall cause its Contractors to, (i) conduct a thorough and diligent search for qualified MBEs, (ii) review the qualifications of each MBE suggested to Tenant by BPCA and (iii) afford an opportunity to submit proposals for the work to those MBEs found qualified. Tenant shall meet semi-annually with BPCA

to review the operations and status of this Program, and Tenant shall submit quarterly reports to BPCA setting forth the nature and scope of construction work carried out during the preceding quarter, all efforts made by Tenant and its Contractors to employ qualified MBEs in performing the work and all contracts let to MBEs. The obligations under this Section 6 shall continue until the Members of BPCA find that this Program is no longer necessary to remedy the effects on the Project of discrimination in the construction industry.

7. Project Management. In connection with the management and operation of the Project, Tenant shall, and shall cause such persons as it may employ to manage and operate the Project (collectively, the "Operator"), to:

(i) make good faith efforts to include Minority group members in such work in the proportion that Minorities bear to the total New York City workforce;

(ii) in the event of lay-offs, make good faith efforts to maintain the same proportion of Minority employees in Tenant's (or Operator's, as the case may be) workforce as existed immediately prior to commencement of such lay-offs;

(iii) make good faith efforts to seek and to include MBEs in all service and management

agreements, agreements for the purchase of goods and services and other agreements relating to the operation of the Project (for purposes of this subparagraph (iii) of this Section 7, whether or not Tenant has made "good faith efforts" will be determined in light of the circumstances under which Tenant acted);

(iv) advise BPCA a reasonable time in advance of each service, management or purchase agreement exceeding Five Thousand Dollars (\$5,000) in amount (for each calendar year subsequent to 1984 this \$5,000 threshold shall be adjusted by the percentage increase or decrease in the U.S. Consumer Price Index or its successor index for such year), which Tenant or Operator proposes to execute, so that BPCA may furnish Tenant or Operator, as the case may be, with a list of MBEs which may be capable of performing the work called for by such proposed agreement; and

(v) meet with BPCA's Affirmative Action Officer on a periodic basis, but not less than semi-annually, to review employment needs and practices of Tenant or Operator, to review Tenant's and Operator's compliance with this Section 7 and to determine specific contract-

ing opportunities where Minority workforce or MBE participation in the management and operation of the Project might be encouraged.

8. Non-Compliance. (a) Tenant acknowledges that the percentages of Minority Workforce Participation set forth in Schedule 1 and the aggregate Contract Value set forth in Section 4(a) above with respect to the Project, represent reasonable estimates of Tenant's ability to afford priority to Minority workers and MBEs, respectively, during the Construction Period. Tenant recognizes and acknowledges that the purpose of this affirmative action program and of Tenant's and BPCA's undertakings hereunder is to redress the effects of past discrimination in the construction industry by affording Minority workers and MBEs an opportunity to participate in the construction of the Project, to the end that such Minority workers and MBEs 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 hereafter. Tenant recognizes and acknowledges that its failure to afford priority in construction of the Project to such Minority workers and MBEs, as provided herein, will result in substantial damage to BPCA's affirmative action program, as well as to Minority workers and MBEs who will be denied an opportunity to share in the economic benefits provided by the construction work and who

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 the MBE Assistance Fund, referred to in paragraph (c) of this Section 8, are a reasonable means of compensating for that harm.

(b) In the case of Tenant's failure to afford priority in the construction of the Project to Minority workers and MBEs, respectively (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 (such damages, together with the relief provided in Section 8(e) below, constituting BPCA's exclusive remedies hereunder), in the following liquidated amounts:

(i) in the event that during the Construction Period Tenant fails to employ, or to cause its Contractors to employ, Minority group workers in any trade equal to the percentages set for such trade in Schedule 1 hereto, fifty percent (50%) of the hourly wages that would have been paid (a) to the minority group workers who were made available to, but not

hired by, Tenant or its Contractors by BPCA or the unions representing workers in each trade under applicable collective bargaining agreements, and (b) to the trainees made available to, but not hired by, Tenant or its Contractors under the "New York Plan" or any successor or comparable training program operating in New York City;

(ii) in the event that during the Construction Period, Tenant fails to enter into, or cause its Contractors to enter into, an Approved MBE Contract for work on the Project with any MBE 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 Section 4 and 5 hereof, twelve and one-half percent (12.5%) of the contract price at which such MBE was willing to perform such work but in no event less than Two Thousand Five Hundred Dollars (\$2,500) (or, in the event the contract price is less than \$2,500, the contract price) 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 to exist, then such dam-

ages shall equal twenty percent (20%) of such contract price but in no event less than Five Thousand Dollars (\$5,000) (or, in the event the contract price is less than \$5,000, the contract price) for each such Contract; and

(iii) in the event that during the Construction Period, Tenant fails to enter into, or cause its Contractors to enter into, Approved MBE Contracts having an aggregate Contract Value at least equal to ten percent (10%) of Total Development Costs as provided in Section 4(a) above ("Specified Amount"), twelve and one-half percent (12.5%) of the amount by which the Specified Amount exceeds the aggregate Contract Value of Approved MBE Contracts actually entered into by Tenant and its Contractors during such Period, provided that (A) 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 to exist, such damages shall equal twenty percent (20%) of the amount by which the Specified Amount exceeds the aggregate Contract Value of such Approved MBE Contracts and (B) Tenant shall, in any event, be entitled

to credit against any sums payable under this paragraph (iii) all payments theretofore made by Tenant pursuant to paragraph (ii) of this Section 8(b). Notwithstanding the foregoing, Tenant shall not be liable for damages under this paragraph (iii) if and to the extent that Tenant can demonstrate (A) that it has fully and diligently performed all of its obligations under this Program and diligently complied with each and every provision of Sections 4 and 5 and (B) that, notwithstanding such efforts, it was unable to locate additional, qualified MBEs with which to contract in accordance with and subject to the procedures set forth in Sections 4 and 5 of this Program.

(c) Payments made by Tenant under paragraph (b)(i) of this Section 8 shall be used by BPCA for the purposes of a Minority Workers Training Fund to provide job training and other assistance to Minority Workers 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)(ii) and (b)(iii) of this Section 8 shall be used by BPCA for the purposes of an MBE Assistance Fund to provide such financial, technical and other assistance to MBEs as BPCA shall determine to be useful

in enabling MBEs to overcome the effects of past discrimination and to participate more fully in the construction industry.

(d) Anything to the contrary contained herein notwithstanding, (i) the aggregate damages payable by Tenant pursuant to paragraph (b)(i) of this Section 8 shall in no event exceed Two Hundred Thousand Dollars (\$200,000), and (ii) the aggregate damages payable by Tenant pursuant to paragraphs (b)(ii) and (iii) of this Section 8 shall in no event exceed Eight Hundred Seventy-Five Thousand Dollars (\$875,000).

(e) In the event Tenant fails to fulfill any of its obligations hereunder, BPCA may, in addition to assessing damages as provided in paragraph (b) of this Section 8, (i) advise Tenant that, except for completion of the Project and the exercise of its rights under the Lease, Tenant shall be ineligible to participate in any work on Battery Park City or any other BPCA project 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, provided that such equitable relief shall not include enjoining or restraining the performance of any Contract which Tenant has previously entered into or of which Tenant has given BPCA notice pursuant to Section 5(k) hereof.

9. 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 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. BPCA and Tenant shall agree on measures to be taken by them to protect the confidentiality of information furnished by Tenant.

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, 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, employees or agents, whether for delay, for damages or for any other reason, provided that nothing contained herein shall preclude Tenant from challenging any such act or failure to act as unreasonable, arbitrary or capricious.

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
40 West Street - Gate 3
New York, New York 10006

Att'n: Vice President for Affirmative Action

If to Tenant, to:

River Rose Company
309 East 45th Street
New York, New York 10017

Att'n: 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 12.

13. Persons Bound. This Program, the Schedule and the Side Letter hereto, including any amendments thereto, shall be binding upon and inure to the benefit of BPCA and Tenant and their legal representatives, successors and permitted assigns. Tenant shall require its successors or assigns to confirm and agree in writing to all terms and conditions of this Program. 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.

14. Women. Consistent with its other obligations hereunder, Tenant shall use good faith efforts to (a) employ, and cause its Contractors to employ, qualified women workers in all trades during the construction of the Project; (b) request proposals from and employ qualified construction firms which are owned and operated by women; and (c) utilize the services of women workers and service and management firms owned and operated by women in connection with the operation and management of the Project. In the event that legislation is enacted which authorizes or directs BPCA to carry out additional affirmative action programs with respect

to women workers or business firms owned and operated by women, BPCA reserves the right to take such measures as may be necessary or appropriate to implement such programs.

15. Separability. 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.

16. 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
As of March 23, 1984

ACCEPTED AND AGREED:

TENANT

RIVER ROSE COMPANY

By: _____, General Partner

MINORITY WORKFORCE PARTICIPATION

| <u>Trade</u> | <u>Percentage</u> |
|---------------------------|-------------------|
| Electricians | 20.0 |
| Carpenters | 30.0 |
| Steamfitters | 20.0 |
| Metal Lathers | 30.3 |
| Painters | 35.5 |
| Op. Engineers | 25.8 |
| Plumbers | 20.0 |
| Iron Workers (structural) | 29.0 |
| Iron Workers (ornamental) | 29.0 |
| Elevator Constructors | 13.0 |
| Bricklayers | 30.0 |
| Asbestos Workers | 30.0 |
| Roofers | 20.0 |
| Cement Masons | 30.0 |
| Glazers | 22.5 |
| Plasterers | 30.0 |
| Teamsters | 27.5 |
| Boilermakers | 17.5 |
| Laborers | 35.0 |
| All other | 22.5 |

EXHIBIT "G"

TENANT'S DEVELOPMENT SCHEDULE

Event

- | | | |
|----|---|--|
| 1. | Commencement of Construction | No later than 30 days after Commencement Date |
| 2. | Substantial Completion of Foundation | 6 months after commencement of construction |
| 2. | Substantial Completion of Superstructure | 11 months after commencement of construction |
| 3. | Enclosure of Building | 20 months after commencement of construction |
| 4. | Residential TCO | 24 months after commencement of construction |

Exhibit H
Not Included

EXHIBIT I

BATTERY PARK CITY
Phase II Residential Development
RIVER ROSE COMPANY'S AFFIRMATIVE FAIR HOUSING MARKETING PROGRAM

This Affirmative Fair Housing Marketing Program has been adopted by the Battery Park City Authority ("BPCA") in order to assure that River Rose Company, a New York general partnership ("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 located on that portion of the Battery Park City Phase II Residential Development designated as Site H/I and to permit BPCA to promote open, integrated housing and to afford individuals a range of housing or commercial facility choices regardless of their race, color, creed, sex or national origin.

This Program is designed to implement BPCA's corporate policy of ensuring that all housing at Battery Park City affords equal access to, and equal opportunity for, minority persons and families, and that occupancy reflects, to the maximum extent possible, the minority 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, Cuban, Central or South American 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 Housing Marketing Plan. Tenant shall submit to BPCA an affirmative fair housing 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 Tenant's residential units (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 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) maintaining a non-discriminatory hiring policy for marketing staff; (c) instructing all marketing staff and agents in writing and orally in the policies of non-discrimination and fair housing; (d) displaying fair housing posters approved by BPCA; (e) including in any printed materials used in the marketing of the Units an equal opportunity logo, slogan, or statement approved by BPCA; (f) prominently posting signs displaying the logo, slogans and statements referred to in (d) and (e) above at each of Tenant's sales or rental offices; and (g) listing all community 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, the rental or sale range of the Units, the financial eligibility and other se-

lection criteria to be employed by Tenant in the rental or sale of the Units, the anticipated occupancy results for Minorities and non-minorities 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 five thousand dollars (\$5,000) in additional expenditures in excess of the amount set forth in the Plan.

Tenant shall submit with the Plan an advertising budget for its Minority outreach effort, 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, to the Plan should be made to achieve the purposes thereof. At the pre-marketing conference Tenant shall provide BPCA with information regarding the commercial, professional and other non-residential space available at the Building. Tenant shall accept for consideration referrals from BPCA of prospective lessees of such commercial, professional and non-residential space.

4. 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 adver-

tising regarding the Units, including newspaper, radio and television 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) any other evidence of affirmative outreach to Minorities 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 race 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; (h) 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 applicants who have been rejected and the bases 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 utilized solely by Tenant in setting 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.

5. Recordkeeping. Tenant shall maintain records which show the racial, ethnic and gender characteristics of all applicants for, and occupants of, the Units. The date of each application shall be recorded and applications shall be retained for a period of one year. On or before the fifteenth day of each month beginning with the commencement of marketing activities and until ninety-five (95%) of the Units are rented or sold, Tenant shall submit to BPCA a report, on the form annexed hereto as Schedule I-1, summarizing the racial, ethnic 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 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 applicants and occupants.

6. Monitoring. At BPCA's request and expense, Tenant shall allow BPCA to place a representative at Tenant's rental or sale office to monitor compliance with the Plan, provided that such BPCA representative 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.

7. 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 of its obligations hereunder; (b) declaring 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 (provided that the aggregate

number of Units required to be held off the market is proportional to the materiality of Tenant's non-compliance); (d) hiring a consultant to assist with the Minority outreach efforts 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).

8. 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 or non-residential space at the Building.

9. 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, 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, 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.

10. 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.

11. 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
40 West Street - Gate 3
New York, New York 10006

Att'n: Vice President for
Affirmative Action

If to Tenant, to:

River Rose Company
309 East 45th Street
New York, New York 10017

Att'n: Director of Marketing

(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 11.

12. Separability. 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.

13. 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 23, 1984

ACCEPTED AND AGREED:

RIVER ROSE COMPANY

By: _____
 , General Partner

SCHEDULE I-1BATTERY PARK CITY AUTHORITY
MONTHLY RENTAL OR SALES REPORT

PERIOD ENDING:

REPORT NO. _____

CHECK IF APPLICABLE

☐ Initial Report☐ Final Report1. INTRODUCTION

Pursuant to each approved Plan for multifamily or other rental or sale of housing 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. PROJECT

NUMBER OF UNITS

RENTAL OR SALE RANGE OF UNITS

From \$

To \$

C. RENTAL/MANAGEMENT AGENCY

NAME

ADDRESS

3. 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.

A. RENTALS OR SALES FOR REPORTING PERIOD

| | <u>RENTALS</u> | <u>SALES</u> |
|--|----------------|--------------|
| WHITE | | |
| BLACK | | |
| AMERICAN INDIAN OR ALASKAN NATIVE | | |
| HISPANIC | | |
| ASIAN OR PACIFIC ISLANDERS | | |
| TOTAL | | |

B. TOTAL NUMBER OF UNITS CURRENTLY OCCUPIED INCLUSIVE
OF TOTALS INDICATED IN ITEM 3.A. ABOVE

| | <u>RENTALS</u> | <u>SALES</u> |
|--|----------------|--------------|
| WHITE | | |
| BLACK | | |
| AMERICAN INDIAN OR ALASKAN NATIVE | | |
| HISPANIC | | |
| ASIAN OR PACIFIC ISLANDERS | | |
| 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% |

4. IDENTIFICATION OF NEW MINORITY TENANTS OR OWNERS DURING
REPORTING PERIOD (continue on a separate page if necessary)

| NAMES | APARTMENT NUMBERS |
|-------|-------------------|
|-------|-------------------|

SIGNATURE OF PERSON SUBMITTING REPORT NAME (Type or Print)

TITLE AND COMPANY

DATE

ADDRESS

TELEPHONE

EXHIBIT "J"

Battery Park City Authority
40 West Street
New York, New York 10006

March 23, 1984

River Rose Company
309 East 45th Street
New York, New York 10017

Agreement of Lease (the "Lease") of even date
herewith between Battery Park City Authority,
as landlord, and River Rose Company, as
tenant, covering Parcel H/I at Battery Park
City - Phase II Residential Development

Gentlemen:

Supplementing the provisions of the Lease, we
hereby agree as follows:

1. From and after the Commencement Date, Landlord shall provide construction access to Tenant (a) until Substantial Completion of the Building, from West Street to the Premises over Rector Place or South End Avenue and (b) until the Road Completion Date, from Albany Street to the rear of the Premises over the Service Road or over the land on which the Service Road shall be constructed or over cleared and graded landfill. Any interruption in such access shall entitle Tenant to seek equitable relief (in the event such interruption is attributable to an act or omission of Landlord) and, for the period of such interruption, constitute an Unavoidable Delay. In addition, if Landlord shall fail to

provide the foregoing access to the Premises on the date that Tenant shall attempt to commence construction of the Building, Tenant's obligation to pay Base Rent and Additional Rent shall be abated until Tenant shall have such access to the Premises. If any tenant of one of the Parcels, or any person or entity which is an Authorized Person (as defined in the Declaration of Easement), shall obstruct Tenant's construction access as aforesaid in violation of the Declaration of Easement, Landlord, reasonably promptly after receipt of written notice from Tenant advising of the existence of such obstruction, shall use its best efforts to pursue such remedies as shall be available to it under the Declaration of Easement and such tenant's lease with Landlord in order to remove such obstruction.

2. a. Notwithstanding anything to the contrary contained in the Lease, Tenant shall not be obligated to commence construction in accordance with Section 11.01 thereof until the later of the date set forth in said section or ten (10) days after Landlord has delivered to Tenant a copy of an agreement executed by Landlord and Con Edison whereby Con Edison agrees to provide temporary electric power to the Premises. Landlord hereby undertakes and agrees to obtain such agreement and to perform all of the obligations to be performed by Landlord under such agreement, including the deposit of any funds required thereunder. Failure by Con

Edison to supply temporary electric power to the Premises in sufficient quantity for Tenant's construction requirements by the later of (i) May 1, 1984, and (ii) sixty (60) days after the date of Commencement of Construction shall (A) constitute an Unavoidable Delay until such time as Con Edison supplies temporary electric power to the Premises (provided that such sixty (60)-day period shall be extended one day for each day of delay in construction occurring during such sixty (60)-day period which results from any Unavoidable Delays other than absence of electric power) and (B) obligate Landlord to reimburse Tenant, within twenty (20) days after demand made from time to time by Tenant, in respect of the period commencing on such later date (as same may be extended) and ending on the date that Con Edison supplies temporary electric power to the Premises, for the reasonable costs (including, without limitation, labor and equipment costs) incurred during such period by Tenant in supplying to the Premises such temporary electric power as shall be necessary to meet Tenant's construction requirements less such costs as would have been incurred by Tenant had Con Edison in fact supplied such temporary electric power to the Premises during such period, provided Tenant (x) shall diligently and in good faith have taken all action to be taken by Tenant and its contractors necessary or appropriate for Con Edison to supply such temporary electric power to the Premises by such later date (in-

cluding but not limited to delivering all information, applications and other documentation required of Tenant and its contractors by Con Edison or any Governmental Authority, making all required payments and undertaking all construction), and (y) shall have submitted to Landlord written evidence reasonably satisfactory to Landlord substantiating the amount requested to be reimbursed. In the event Landlord shall fail to reimburse Tenant as hereinabove provided, Tenant shall have the right to offset against the next installment(s) of Base Rent payable under this Lease an amount equal to the sum required to be reimbursed together with interest thereon at the Prime Rate plus two percent (2%) per annum computed from the date such reimbursement is due hereunder until the date(s) of such offset(s).

b. Landlord represents and warrants to Tenant that permanent water mains, including related manholes, and empty telephone line conduits, have been placed in Rector Place North, and such mains and conduits are presently available for connection and use by Tenant. Landlord agrees, prior to the completion of the foundation of the Building, to provide sewer service mains to which the Department of Environmental Protection (Bureau of Sewers) will approve connections, sized and located as follows: (i) Rector Place: (A) twelve (12)-inch storm drain connection to Chamber K, Sta. 3 + 87, four (4) feet from the manhole toward the curb line; (B) eight

(8)-inch sanitary drain connection to Manhole SS-15A, Sta. 3 + 98; and (C) eight (8)-inch sanitary drain connection to Manhole SS-16, Sta. 5 + 40; and (ii) South End Avenue: twelve (12)-inch storm drain connection to manhole converted from former catch basin CB-12L, Sta. 30 + 64, at the curb line. Landlord represents that it previously secured approval from Department of Environmental Protection of "Utilities and Related Support Systems Albany St. to W. Thames St." design prepared by Vollmer Associates. Amendments to this design, if required for approval of subject connections, will be secured by Landlord.

c. Landlord understands that Tenant intends to install in the Building gas-operated ranges and clothes dryers and gas-operated pilot lights in two (2) boilers. However, Landlord and Tenant agree that, in the event Con Edison has not committed (such commitment to be evidenced by the delivery by Con Edison to Tenant of a "Service Layout Plan" as set forth in either Form "2-74 (EA) 1/78 CONST" or Form "2-80 (PAD) 2/78 CONST") within ninety (90) days after Commencement of Construction to make gas available to the Premises no later than fifty (50) days after Tenant has obtained a New York City certification in the form of a "Blue Card," in sufficient quantity for the operation of such gas-operated equipment, Tenant, in lieu thereof, may elect to install electricity-operated equipment. In such event, provided (i)

Tenant shall diligently and in good faith have taken all action to be taken by Tenant or its contractors necessary or appropriate for Con Edison to deliver such Service Layout Plan (including but not limited to delivering all information, applications, and other documentation required of Tenant or its contractors by Con Edison or any Governmental Authority, making all required payments and undertaking all required construction), and (ii) written evidence of such election is given to Landlord within ten (10) days after the expiration of such period, in the event the reasonable cost of fitting the Building for such additional electrical electric usage, exceeds the cost of fitting the Building for gas usage, Landlord, within thirty (30) days after demand by Tenant, shall reimburse Tenant for such reasonable excess cost incurred by Tenant. Tenant shall submit to Landlord written evidence reasonably satisfactory to Landlord substantiating the amount requested to be reimbursed. Such evidence shall include a certification by the Architect as to the cost of fitting the Building for such additional electric usage, including a trade payment breakdown of such cost, any change orders (whether increases or decreases) granted to any contractors as a result of such fitting, and an estimate (including trade payment breakdown) from the Architect as to what the cost of fitting the Building for gas usage would have been had such course been effectuated. In the event

Landlord shall fail to reimburse Tenant as hereinabove provided, Tenant shall have the right to offset against the next installment(s) of Base Rent payable under this Lease an amount equal to the sum required to be reimbursed together with interest thereon at the Prime Rate plus two percent (2%) per annum from the date such reimbursement is due hereunder until the date(s) of such offset(s). Landlord represents and warrants to Tenant that a permanent gas main, including related manhole, has been placed in Rector Place North and that, subject to actions to be taken by Con Edison, such main is presently available for connection and use by Tenant.

3. Landlord hereby approves Rockrose Construction (Charlie) Corp. ("RCC") as Tenant's contractor and/or construction manager, in accordance with Section 11.01 of the Lease. Landlord also approves the engagement by Tenant of the following architects and engineers in connection with the construction of the Building: Charles Moore, FAIA, Rothzeit, Kaiserman, Thomson & Bee, P.C., and Avinash K. Malhotra, P.C., architects; I.M. Robbins & Associates, mechanical engineer; and Ysrael A. Seinuk, P.C., structural engineer.

4. Normal New York City construction rules shall apply to construction on all parcels in Phase II, including, but not limited to, any construction by (or on behalf of) Landlord of the Civic Facilities and the Service Road.

5. Landlord shall not erect or maintain gates or other permanent obstructions on any public street, or across

any access route from Albany Street to the rear of the Premises, as provided in paragraph 1(b) hereof.

6. Landlord shall cause its contractors and all others in the Project Area connected with Landlord's construction to work harmoniously with each other and with the other contractors and workers in the Project Area, and Landlord shall not engage in, or permit its contractors to engage in, any conduct which may disrupt such harmonious relationship. In addition, Landlord shall coordinate its construction activities under the Lease with the construction activities of Tenant at the Premises.

7. a. Tenant shall have the right, at Tenant's sole cost and expense, to display Tenant's marketing signs (including, without limitation, signs identifying Rockrose Development Corp. as the developer of the Premises) on Tenant's construction fence or on other portions of the Premises which are visible from outside the Premises, provided that Landlord shall have approved such signs(s), which approvals(s) shall not unreasonably be withheld or delayed. ✓

b. Tenant shall have the right, at Tenant's sole cost and expense, to maintain a marketing sign on the fence maintained along West Street (or adjacent to West Street, if there shall be no such fence). Such sign, and the location thereof, shall be subject to the approval of Landlord, which shall not unreasonably be withheld or delayed, but such sign L

shall in any event (i) be clearly visible to motorists and pedestrians along West Street, and (ii) after Tenant's rental office shall open to the public, be located at the pedestrian and vehicular entrance to Battery Park City that is most convenient for access to the Premises.

8. a. In respect of any parcels in Phase II that are situated to the north of Rector Park, and as to which construction has not been commenced by the tenants thereof by the later of (a) January 1, 1985, and (b) the date of Tenant's Enclosure of Building, Landlord shall, on or before the later of such dates (subject to Unavoidable Delays) (i) landscape, in accordance with generally accepted practices, all such parcels (except Parcel G) with grass and bushes and (ii) landscape Parcel G in a manner similar to the landscaping of the park adjacent to the so-called Jefferson Market Library in New York City. Thereafter, until commencement of construction on each such parcel, Landlord shall maintain (A) all such landscaping in good and safe order and condition, and (B) the temporary sidewalks in good and safe order and condition and free from dirt, snow, ice, rubbish, obstructions and encumbrances. Upon commencement of construction with respect to any such parcel, Landlord shall cause such temporary sidewalks to be maintained in the aforesaid manner (except for such temporary alterations thereto as may be permitted by applicable New York City construction rules).

Any failure by Landlord to perform the aforesaid obligations, including, without limitation, the failure in a timely manner (to be judged in light of the planting seasons) to undertake the planting required in connection with the aforesaid landscaping (it being agreed that Landlord cannot guarantee the fruits thereof) shall entitle Tenant to seek equitable relief and, as to any such parcels which have not been made subject to leases, to engage in Self-Help in accordance with Section 26.04(b) of the Lease and to receive the offset against Base Rent and Civic Facilities Payment provided for in Section 26.04(c) of the Lease.

b. If the tenant of any parcel in Phase II that is situated to the north of Rector Park shall commence construction thereon and thereafter shall fail to continue such construction in accordance with the provisions of the lease in respect of such parcel, in the event such parcel shall not be enclosed by a fence, Landlord shall use Landlord's best efforts to enclose such parcel with a safe and attractive fence and to maintain such fence in good order until construction shall again be commenced on such parcel; provided, however, that Landlord shall not be so obligated to act under this Paragraph 8.b. until Landlord shall be entitled, pursuant to said lease, to obtain possession of such parcel or otherwise to enter upon such parcel to perform such obligations.

9. In the event that any tenant of a parcel in Phase II that is situated to the north of Rector Park opens a rental or sales office on such parcel prior to the installation of permanent sidewalks adjacent to the Premises, Tenant shall (subject to an extension of one (1) day for each day that Tenant is unable to pour cement because the temperature is too cold), no later than fourteen (14) days after notice from Landlord that such office is or shall within thirty (30) days be opened, install and thereafter maintain temporary concrete sidewalks (which shall be 6 feet wide and, in all other respects, be identical to the temporary sidewalks to be installed by Landlord pursuant to the Lease).

10. In respect of the parcels bounded on the north by Rector Place South and on the south by West Thames Street, Landlord shall clear said parcels of debris and level same to existing grades by the later of (a) Enclosure of Building or (b) January 1, 1985.

11. Landlord represents that, pursuant to agreement dated September 1, 1981, Olympia & York Battery Park Company is obligated to Landlord to construct a pedestrian overpass which crosses West Street to the south of Liberty Street and connects to the sidewalk, and substantially to complete same by December 31, 1984 (subject to extensions of said date as provided in said agreement).

12. Capitalized terms used herein, unless otherwise expressly defined in this letter, shall have the respective meanings ascribed to them in the Lease.

Very truly yours,

Battery Park City Authority

By: _____

Accepted and agreed:

River Rose Company

By: _____

EXHIBIT "K"

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT (this "Declaration"), made as of the 23rd day of March, 1984, by BATTERY PARK CITY AUTHORITY, a public benefit corporation under the laws of the State of New York having an office at 40 West Street, Gate No. 3, New York, New York 10006 ("Declarant"),

W I T N E S S E T H T H A T :

WHEREAS Declarant, as successor in title to BPC Development Corporation, is the fee owner of certain real property, located in the City, County and State of New York, generally consisting of 92 acres of land (including the Easement Land, as hereinafter defined) located on the west side of Manhattan and bounded by Pier A to the South, the westerly prolongation of Reade Street to the North, the United States Bulkhead Line to the East and the United States Pierhead Line to the West (collectively, "Battery Park City"); and

WHEREAS Declarant has succeeded to the interest of lessor and remains lessee under the Restated Amended Agreement of Lease, dated as of June 10, 1980, between BPC Development Corporation, as lessor, and Declarant, as lessee, a memorandum of which was recorded on June 11, 1980, in Reel 527, Page 163, in the Office of the Register of New York City

(New York County), which Lease was amended by Declarant, as lessor, and Declarant, as lessee, pursuant to two amendments, each dated as of June 15, 1983, and recorded on June 20, 1983, in Reel 696, Page 424, and Reel 696, Page 432, respectively, in said Office; and

WHEREAS Declarant has commenced the staged development of Battery Park City in individual parcels with the goal of creating a richly diversified mixed-use community which will provide residential and commercial space, with related amenities such as parks, plazas, recreational areas and a waterfront esplanade; and

WHEREAS in furtherance of the aforesaid intention, Declarant contemplates entering into leases in respect of those portions of Battery Park City known as Parcels E, F, G, H/I and J of Phase II Residential Development and more fully described on Schedule A annexed hereto and made part hereof (each such parcel individually, a "Parcel" and collectively, the "Parcels"), pursuant to which leases the tenants thereunder (each such tenant individually, a "Tenant" and collectively, the "Tenants") shall cause to be erected on the Parcels improvements which shall be used for residential and ancillary commercial purposes; and

WHEREAS Declarant desires that the Tenants and certain other specified parties shall have rights of ingress to and egress from each of the Parcels on, over and through a

road (such road, including catch basins located thereon and the sidewalks and curbs adjacent thereto, hereinafter referred to as the "Service Road") to be constructed by Declarant on the land more fully described on Schedule B annexed hereto and made a part hereof (the "Easement Land"). The Easement Land traverses Parcels E, G, H/I and J.

NOW, THEREFORE, in consideration of the foregoing premises, Declarant hereby declares as follows:

1. From and after the date that the Service Road has been substantially completed (the "Road Completion Date"), each Tenant shall have a non-exclusive easement to use (and the right to permit public service vehicles and such Tenant's employees, agents, licensees, invitees, contractors and Subtenants and the employees, agents, licensees, invitees and contractors of such Subtenants to use) the Service Road solely for the purpose of pedestrian and vehicular ingress and egress to and from the Parcels and Albany Street. In addition, during any period when construction is being carried out on a Tenant's Parcel, whether in connection with initial construction of a building on the Parcel or in connection with any restoration, repair, alteration or capital improvement, such Tenant and each person or entity employed by such Tenant in connection with such construction shall have a non-exclusive easement to use the Service Road for the sole purpose of transporting (but not storing, stationing or operating)

equipment, machinery and materials used in connection with such construction from Albany Street to such Tenant's Parcel(s). Each person or entity that is authorized to use the Service Road pursuant to this Paragraph 1 is hereinafter referred to as an "Authorized Person."

2. No Tenant shall obstruct, or permit any person or entity which is an Authorized Person by reason of such Tenant's lease with Declarant to obstruct, any portion of the Service Road. Nor shall any Tenant interfere with, or permit any such Authorized Person to interfere with, the use thereof by any other Authorized Person for any purpose permitted hereunder.

3. Notwithstanding the provisions of the preceding Paragraphs 1 and 2, the right of any Authorized Person to use the Service Road is and shall be subject to the right of (a) any Tenant, in connection with construction on such Tenant's Parcel(s), to erect scaffolding or other protective structures over such portion of the Service Road as traverses such Tenant's Parcel(s), and (b) the Tenant of Parcel J to excavate such portion of the Service Road as traverses said Parcel in order to construct the building on said Parcel, provided that, in order to minimize obstruction and interference with the use of the Service Road, all of such erection and excavation shall be performed at such times and in accordance with such requirements as shall be specified in

writing by Declarant (including the requirement to repair or rebuild any portion of the Service Road affected by such excavation using materials identical to those used by Declarant, or, if such Tenant, despite its best efforts, is unable to procure such materials, using materials in quality and appearance similar to those used by Declarant and approved by Declarant).

4. At all times from and after the date of this Declaration, Declarant and Declarant's employees, agents, contractors and licensees shall have ingress and egress to and from the Easement Land and the Service Road for purposes of constructing and maintaining the Service Road and for any other proper purpose.

5. Each Tenant, in accordance with the provisions of such Tenant's lease with Declarant, shall pay its allocable share of the cost of constructing and maintaining the Service Road, including but not limited to the cost of all restorations, replacements, alterations and additions thereto.

6. All of the provisions of this Declaration, as same may be modified from time to time in accordance with the provisions of Paragraph 7 below, shall bind and inure to the benefit of Declarant and each Tenant and the respective successors and assigns of Declarant and each such Tenant. Nothing set forth in this Declaration is intended to create nor shall be construed as creating any rights in or for the benefit of the general public, and to this end Declarant and all

Tenants shall cooperate to take whatever steps are necessary or desirable to prevent the Service Road from becoming a public way, including, if necessary, closing the Service Road for one (1) day each year. Each Tenant and Declarant shall have the right to enforce the obligations created hereunder against every other Tenant by pursuing any and all remedies available at law or in equity.

7. This Declaration may not be changed, modified or terminated orally. No change or modification shall be effective unless made by written instrument executed by Declarant and the Tenants of no fewer than three (3) Parcels, except that any change or modification which materially impairs a Tenant's ingress and egress to and from such Tenant's Parcel and Albany Street shall be effective only if such Tenant gives its written consent thereto. Notwithstanding the foregoing, at such time as three (3) or fewer leases of Parcels shall be in effect any change or modification made by written instrument executed by Declarant and all of the then Tenants shall be effective. Declarant shall give not less than seven (7) days written notice to all of the then Tenants before submitting for recordation any instrument which changes or modifies this Declaration. This Declaration may be terminated only by a written instrument executed by Declarant and all of the then Tenants.

8. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date and year first above written.

BATTERY PARK CITY AUTHORITY

By: _____

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

On this day of , 1984, before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at that he is the 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 the order of the members of said corporation, and that he signed his name thereto by like order.

Notary Public

SCHEDULE A

PARCEL E

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

BEGINNING at a point in the southerly line of Albany Street, distant 265.58 feet westerly of the corner formed by the intersection of the westerly line of South End Avenue with the southerly line of Albany Street;

1. running thence south $12^{\circ}-28'-31''$ east, 100.00 feet;
2. thence south $77^{\circ}-31'-29''$ west, 145.29 feet;
3. thence north $18^{\circ}-14'-10''$ west, 100.51 feet;
4. thence north $77^{\circ}-31'-29''$ east, partially along the southerly line of Albany Street, 155.38 feet, to the point or place of BEGINNING.

PARCEL F

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

BEGINNING at a point in the southerly line of Albany Street, distant 133.58 feet westerly from the corner formed by the intersection of the westerly line of South End Avenue with the southerly line of Albany Street;

1. running thence south $12^{\circ}-28'-31''$ east, 97.00 feet;
2. thence south $77^{\circ}-31'-29''$ west, 132.00 feet;
3. thence north $12^{\circ}-28'-31''$ west, 97.00 feet;
4. thence north $77^{\circ}-31'-29''$ east, along the southerly line of Albany Street, 132.00 feet, to the point or place of BEGINNING.

PARCEL G

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

BEGINNING at the corner formed by the intersection of the southerly line of Albany Street with the westerly line of South End Avenue;

1. running thence south $12^{\circ}-28'-31''$ east, along the westerly line of South End Avenue, 10.00 feet, to a point of tangency;
2. thence southerly, along the westerly line of South End Avenue, curving to the right, on the arc of a circle having a radius of 1244.14 feet and a central angle of $5^{\circ}-09'-54''$, 112.15 feet.
3. thence south $77^{\circ}-31'-29''$ west, 128.53 feet;
4. thence north $12^{\circ}-28'-31''$ west, 122.00 feet;
5. thence north $77^{\circ}-31'-29''$ east, along the southerly line of Albany Street, 133.58 feet, to the point or place of BEGINNING.

PARCEL H/I

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

BEGINNING at the corner formed by the intersection of the westerly line of South End Avenue with the northerly line of Rector Place;

1. running thence south in a westerly direction along the northerly line of Rector Place north $77^{\circ}-31'-29''$ east 247.41 feet to a point;
2. thence in a northerly direction north $12^{\circ}-28'-31''$ west 124.93 feet to a point;
3. thence in an easterly direction north $77^{\circ}-31'-29''$ east 132.00 feet to a point;

4. thence in a southerly direction south $12^{\circ}-28'-31''$ east 25 feet to a point;
5. thence in an easterly direction north $77^{\circ}-31'-29''$ east 128.53 feet to a point on the westerly side of South End Avenue;
6. thence southerly along the westerly line of South End Avenue on a curve to the right on an arc of a circle having a radius of 1244.14 feet and a central angle of $4^{\circ}-38'-17''$ 100.71 feet to the point or place of BEGINNING.

PARCEL J

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

BEGINNING at a point in the northerly line of Rector Place, distant 247.41 feet westerly from the corner formed by the intersection of the westerly line of South End Avenue with the northerly line of Rector Place;

1. running thence south $77^{\circ}-31'-29''$ west, partially along the northerly line of Rector Place, 133.00 feet;
2. thence north $18^{\circ}-14'-10''$ west, 122.44 feet;
3. thence north $77^{\circ}-31'-29''$ east, 145.29 feet;
4. thence south $12^{\circ}-28'-31''$ east, 121.83 feet, to the point or place of BEGINNING.

SCHEDULE B

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

BEGINNING at a point in the Southerly line of Albany Street, distant 108.58 feet westerly from the corner formed by the intersection of the westerly line of South End Avenue with the southerly line of Albany Street;

1. running thence south $12^{\circ}-28'-31''$ east, 122.00 feet;
2. thence south $77^{\circ}-31'-29''$ west, 182.00 feet;
3. thence north $12^{\circ}-28'-31''$ west, 122.00 feet to the southerly line of Albany Street;
4. thence north $77^{\circ}-31'-29''$ east along the southerly line of Albany Street, 25.00 feet;
5. thence south $12^{\circ}-28'-31''$ east, 97.00 feet;
6. thence north $77^{\circ}-31'-29''$ east, 132.00 feet;
7. thence north $12^{\circ}-28'-31''$ west, 97.00 feet to the southerly line of Albany Street;
8. thence north $77^{\circ}-31'-29''$ east along the southerly line of Albany Street, 25.00 feet to the point or place of BEGINNING.

