

AGREEMENT OF LEASE

Between

BATTERY PARK CITY AUTHORITY,

Landlord

And

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY,

Tenant

Premises:

Site 2B, Battery Park City, New York, New York

Dated as of June 25, 2008

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AGREEMENT OF LEASE (this "Lease") made as of the ~~25th~~ day of June, 2008 between BATTERY PARK CITY AUTHORITY ("Landlord"), a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, and NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, having an office at IDCNY Center, 30-30 Thomson Avenue, Long Island City, New York, NY 11101—3045

WITNESSETH:

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

ARTICLE 1
DEFINITIONS

The terms defined in this Article 1 shall, for all of this Lease, have the following meanings.

"Architect" shall mean an architect approved by Landlord, or any successor approved by Landlord, which approval, in each case, shall not be unreasonably withheld.

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

"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.

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

"Capital Improvement" shall have the meaning provided in Section 12.01.

"Certificate of Occupancy" shall mean a certificate of occupancy issued by the Department of Buildings of New York City pursuant to Section 1804 of the New York City Charter or other similar certificate issued by a department or agency of New York City.

"Civic Facilities" shall have the meaning provided in Section 25.01.

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

"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" Completion of the Building shall be deemed to have occurred upon the satisfaction of (i) all of the conditions to Substantial Completion of the Building, (ii) the completion of all work necessary to complete all so-called "punch list items" in accordance with the approved Construction Documents, and (iii) the delivery by the Architect to Landlord of a certification, in form and substance acceptable to Landlord, certifying to Landlord that all such punch list items have been completed substantially in accordance with the approved Construction Documents.

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

"Construction Commencement Date" shall mean the earlier to occur of (i) the date upon which Commencement of Construction occurs and (ii) the date which is forty-nine days after Landlord's approval of the Construction Documents (extended by the number of days necessary to obtain permits, consents, certificates and/or approvals of Governmental Authorities required under applicable law to commence construction, provided that (i) Tenant shall have applied for same as soon as reasonably practicable after Landlord's approval of the Construction Documents and shall have diligently and with continuity pursued obtaining same, and (ii) Tenant shall have notified Landlord not later than fourteen (14) days after Tenant knew or should have known of the occurrence of any event which would be likely to result in same not be issued prior to the expiration of said forty-nine day period. In no event shall the Construction Commencement Date be any later than August 1, 2008.

"Construction Documents" shall have the meaning provided in Section 10.02(d).

"Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers

published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y. - Northeastern N.J. Area, All Items (1967 = 100), or any successor or substitute index thereto, appropriately adjusted; provided that if there shall be no successor index and the parties shall fail to agree upon a substitute index within thirty (30) days, or if the parties shall fail to agree upon the appropriate adjustment of such successor or substitute index within thirty (30) days, a substitute index or the appropriate adjustment of such successor or substitute index, as the case may be, shall be determined by arbitration pursuant to Article 34.

"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).

"Design Development Plans" shall have the meaning provided in Section 10.02(c).

"Design Guidelines" shall mean the Design Guidelines for Site 2B dated September, 2007 and the Environmental Guidelines (hereinafter defined) as the same may be further amended, modified or supplemented prior to Substantial Completion.

"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.

"Environmental Consultant" shall mean TRC Engineers, Inc.

"Environmental Guidelines" shall mean the Sustainable Measures Matrix attached as Exhibit C hereto.

"Environmental Statutes" shall mean all federal, state and local laws, rules and regulations, whether now existing or hereafter enacted or promulgated, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material or the protection of the environment, including, without limitation: (1) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (known as CERCLA or Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986 (known as SARA); (2) Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq. (known as SWDA) as amended by Resource Conservation and Recovery Act (known as RCRA); (3) National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (known as NEPA); (4) Toxic Substances Control Act, 15 U.S.C., § 2601 et seq. (known as TSCA); (5) Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq. (known as Public Health Services Act, PHSA); (6) Refuse Act, 33 U.S.C. § 407 et seq.; (7) Clean Water Act, 33 U.S.C. § 1251 et seq. (known as Federal

Water Pollution Control Act, FWPCA); (8) Clean Air Act, 42 U.S.C. § 7401 et seq. (known as CAA); (9) The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 1101 et seq. (known as EPCRTKA); (10) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. (known as OSHA); and (11) the New York Environmental Conservation Law, § 1-0101 et seq. (known as ECL).

"Equipment" shall mean all fixtures incorporated in the Buildings, including, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas, except to the extent any of the foregoing shall be owned by contractors engaged in maintaining the same.

"Equipment" shall not mean any fixture or utilities owned by any utility company.

"Event of Default" shall have the meaning provided in Section 23.01.

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

"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.

"Green Building Systems" shall have the meaning provided in Section 10.12(d).

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

"Improvement Approvals" shall have the meaning provided in Section 12.01(a).

"Landlord - Indemnitees" shall have the meaning provided in Section 18.01.

"Tenant – Indemnitees" shall have the meaning provided in Section 18.02.

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

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

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

"Landlord's Civic Facilities" shall have the meaning provided in Section 25.01(c).

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

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

"Maintenance Obligations" shall have the meaning provided in Section 25.03.

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

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

"Master Lease" shall mean the Restated Amended Agreement of Lease, made as of June 10, 1980, between BPC Development Corporation, as landlord, and Battery Park City Authority, as tenant, a Memorandum of which was recorded on June 11, 1980 in the Office of the City Register, New York County in Reel 527 at page 163, as amended by First Amendment to Restated Amended Lease dated as of June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 424, Second Amendment to Restated Amended Lease dated June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 432, Third Amendment to Restated Amended Lease dated as of August 15, 1986 and recorded on October 22, 1986 in said Register's Office in Reel 1133 at page 569, and Fourth Lease Amendment to Restated Amended Lease dated as of May 25, 1990 and recorded on May 30, 1990 in said Register's Office in Reel 1697 at page 302, as the same may be hereafter amended, modified or supplemented.

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

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

"Premises" shall mean the Land and Buildings.

"Pre-Schematics" shall have the meaning provided in Section 10.02(a).

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

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

"Proposal" shall mean the proposal for construction of the Building submitted by Tenant to Landlord dated November 14, 2007.

"Rental" shall have the meaning provided in Section 3.03.

"Requirements" shall have the meaning provided in Section 13.01.

"Restoration" shall have the meaning provided in Section 7.01.

"Restoration Funds" shall have the meaning provided in Section 7.02(a).

"Restore" shall have the meaning provided in Section

"Scheduled Completion Date" shall have the meaning provided in Section 10.04.

"Schematics" shall have the meaning provided in Section 10.02(b).

"School" shall mean the school to be constructed by Tenant on the Land as more fully described in the proposal.

"Settlement Agreement" shall mean The Settlement Agreement, dated as of June 6, 1980, between New York City and the Urban Development Corporation, as supplemented by Letter, dated June 9, 1980, from Richard A. Kahan to Edward I. Koch, and amended by Amendment to Settlement Agreement dated as of August 15, 1986 between New York City and Landlord, Agreement for Certain Payments dated as of June 28, 1989 between New York City and landlord, Agreement and Consent dated as of December 30, 1989 between New York City and Landlord, Amendment and Agreement and Consent Pursuant to Settlement Agreement dated as of May 18, 1990 between New York City and Landlord, Amendment and Agreement and Consent Pursuant to Settlement Agreement and Consent dated as of October 15, 1993 between New York City and Landlord, Amendment and Agreement and Consent Pursuant to Settlement Agreement dated as of April 10, 1995 between New York City and Landlord, 1996 Agreement and Consent Pursuant to Settlement Agreement dated as of October 1, 1996, and as the same may be hereafter amended, modified or supplemented.

"Substantial Completion of the Building or Substantially Completed" shall have the

meaning provided in Section 10.04.

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

"Taxes" shall mean the real property taxes assessed and levied against the Premises or any part thereof pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 2 of the Administrative Code of The City of New York, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part and which would otherwise be payable if the Premises or any part thereof or the owner thereof were not exempt therefrom.

"Tenant" shall mean the New York City School Construction Authority and if such entity or any successor to its interest hereunder shall assign or transfer its interest hereunder in accordance with the terms of this Lease, the term "Tenant" shall mean such assignee or transferee.

"Tenant's Civic Facilities" shall have the meaning provided in Section 25.01(b).

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

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

"Unapproved System" shall have the meaning provided in Section 10.14(b).

"Unavoidable Delays" shall mean (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to strikes, lockouts, work stoppages due to labor disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Tenant is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, casualty or other similar causes beyond the control of Tenant, and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Landlord is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, unusually severe weather, casualty or other similar causes beyond the control of Landlord (but not including Landlord's insolvency or financial condition); in each case provided such party shall have notified the other party not later than fourteen (14) days after such party knows of the occurrence of same and the effects of which a prudent Person in the position of the party asserting such delay could not have reasonably prevented.

“Zoning Floor Area” shall have the meaning provided in Section 10.02(i).

ARTICLE 2
PREMISES AND TERM OF LEASE

Section 2.01. Landlord does hereby demise and sublease to Tenant, and Tenant does hereby hire and take from Landlord, the Land, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Land, subject to the Title Matters. TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") commencing on the date on which Landlord delivers to Tenant vacant possession of the Land (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"). Notwithstanding the foregoing, Tenant acknowledges that a portion of the Land is currently occupied by a third party pursuant to an agreement with Landlord which grants such third party the right to continue such occupancy until it has completed certain construction within another building within the Project Area. Accordingly, if Landlord shall be unable to give possession of the Land to Tenant on any particular date because of the retention of possession thereof by such third party, (a) Landlord shall not be subject to any liability for such failure, and (b) the same shall not be construed in any way to extend the Term.

ARTICLE 3
ACQUISITION COSTS; RENT

Section 3.01 Landlord and Tenant agree that site acquisition costs consisting of the expense of (i) relocation of the sales office of Battery Place Green LLC (the "Developer") from its present location upon the Land to another location on Site 3 within the Project Area; and (ii) the Developer's use of residential units within the building it is constructing on Site 3 as construction offices and the attendant delay in closing upon the sale of those residential units, shall be borne as provided in this Lease. Landlord and Tenant agree that each such party shall be responsible for paying fifty percent (50%) of such acquisition costs, as provided in this Section 3.01.

- (a) Landlord and Tenant acknowledge that they have agreed to a detailed budget estimate prepared by Developer for such site acquisition costs specifying the (i) “hard costs” (including, but not limited to, charges for logistics, preparation for the move, and actual construction of the sales office in the retail space); (ii) “soft costs” (including design, construction supervision and oversight, fit-out and any other related soft costs); which budget estimate, without a factor for contingencies, is Two Million, Seven Hundred Thirty-six Thousand, Nine Hundred and Ninety - Five Dollars (\$2,736,995) .
- (b) Landlord acknowledges that prior to the date of this Agreement of Lease, Tenant has transferred to Landlord the amount of One Million, Six Hundred Forty Thousand, Eight Hundred Twenty-Eight Dollars and Fifty Cents (\$1,640,828.50), which shall be segregated from Landlord’s other accounts and funds in a separate account (“Tenant’s Acquisition Cost Account”).
- (c) Landlord shall be responsible for review and approval of Developer’s payment requisitions for payment of acquisition costs, and Landlord shall require that all such requisitions be fully documented by the Developer, including submission of the applicable contracts, invoices, books and records, and cancelled checks, etc., to substantiate the validity of the Developer’s claim(s) for payment. Upon Landlord’s approval of a payment requisition, as aforesaid, and Landlord’s payment of any portion thereof, fifty percent (50%) of the amount so paid may be withdrawn by Landlord from Tenant’s Acquisition Cost Account which withdrawn amount shall become the property of Landlord.
- (d) Any variations between budgeted amounts or allowances for hard and soft costs within the total budget estimate, as reflected in the Developer’s payment requisitions, shall be promptly reported to Tenant in writing by Landlord.
- (e) If the Developer shall request an upward modification in the total of the detailed budget estimate approved by Landlord and Tenant in order to pay the cost of additional expenses related to the cost of acquisition as described in Section 3.01 above, Landlord shall

require the Developer to submit to Landlord and Tenant for their review and approval, detailed information justifying the necessity therefor and the reasonableness of the amount of the additional costs. If any such upward modification shall be approved by Landlord and Tenant, Tenant shall transmit to Landlord fifty percent (50%) of such amount for deposit into Tenant's Acquisition Cost Account.

- (f) Landlord shall require that the Developer's records pertaining to the cost of acquisition described in Section 3.01(a) above, including contract cost and payment documentation of every kind, shall at all times be subject to audit by Landlord and Tenant, and their representatives.
- (g) Upon completion of the payments described herein, and vacation of the Land by the Developer, Landlord shall forthwith transmit any remaining balance in the Tenant's Acquisition Cost Account to Tenant.

Section 3.02. For the period beginning on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to Landlord, without notice or demand, an annual sum (the "Base Rent") for each Lease Year (or portion thereof) from the Commencement Date through the Expiration Date, equal to One Dollar (\$1.00) per annum. The Base Rent shall be payable in advance on the Commencement Date, and on the first day of each succeeding Lease Year thereafter during the Term. The Base Rent shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable to the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. The Base Rent due for any period of less than a full Lease Year, shall be appropriately apportioned.

Section 3.03. All amounts required to be paid by Tenant pursuant to this Lease, including, without limitation, Base Rent and Impositions (collectively, "Rental"), shall constitute rent under this Lease. Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this Lease, so that this Lease shall yield, net, to Landlord, Rental in each year during the Term and that Tenant shall

pay all costs, expenses and charges of every kind and nature relating to the Premises which may arise or become due or payable during or after (but attributable to a period falling within) the Term.

ARTICLE 4

TAXES AND IMPOSITIONS

Section 4.01. From and after the Commencement Date, Tenant shall pay, as hereinafter provided, all of the following items (collectively, "Impositions") imposed by any Governmental Authority (other than a Governmental Authority acting solely in its capacity as Landlord and not as a Governmental Authority): (a) Taxes, (b) real property assessments, (c) personal property taxes, (d) occupancy and rent taxes, (e) water, water meter and sewer rents, rates and charges, (f) excises, (g) levies, (h) license and permit fees, (i) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (j) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (k) any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time during the Term are, or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, the use and occupancy thereof by Tenant, and (2) encumbrances or liens on (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault (other than a vault in respect of which a utility company is obligated to pay any charge specified above or which is exempt from any such charge by reason of use thereof by any such utility company), passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises, or (v) any personal property, Equipment or other facility used in the operation thereof, or (vi) the Rental (or any portion thereof) payable by Tenant hereunder, each such Imposition, or installment thereof, during the Term to be paid not later than thirty (30) days prior to the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or

not interest shall accrue on the unpaid balance of such Imposition), Tenant, after notice to Landlord, may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, provided that all such installment payments together with applicable interest, if any, relating to periods prior to the date definitely fixed in Article 2 hereof for the expiration of the Term shall be made prior to the Expiration Date.

Section 4.02. Notwithstanding anything contained in this Article 4 to the contrary, Landlord and Tenant each hereby represent that neither is aware of any Imposition which presently is or may hereafter become applicable to the Premises.

Section 4.03. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, capital or transfer gains tax, transfer or gift taxes of Landlord, or any corporate franchise tax imposed upon Landlord.

Section 4.04. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the date definitely fixed in Article 2 hereof for the expiration of the Term (whether or not such Imposition shall 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 or such date definitely fixed for the expiration of the Term, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the Commencement Date or before such date definitely fixed in Article 2 for the expiration of the Term bears to such fiscal period, and Landlord shall pay the remainder thereof. Other than in respect of Impositions relating, in part, to a period of time before the Commencement Date, no such apportionment of Impositions shall be made if this Lease is terminated prior to the Expiration Date as the result of an Event of Default.

Section 4.05. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition (other than Taxes) by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition shall be postponed if, and only as long as neither the Premises nor any part thereof, or interest therein or any income therefrom (except to the extent covered by security deposited in accordance with this Section 4.05) or any other assets of or funds appropriated to

Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability.

Section 4.06. Tenant shall have the right to seek a reduction in the valuation of the Premises assessed for Taxes and to prosecute any action or proceeding in connection therewith, provided no such action or proceeding shall affect Tenant's obligation to pay any installment of Taxes.

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

In the event that any payment of Rental shall become overdue beyond the due date thereof (or if no such date is set forth in this Lease, then such due date for purposes of this Article 5 shall be deemed to be the date upon which demand therefor is made), a late charge on the sums so overdue equal to the Involuntary Rate, for the period from thirty (30) days after written notice from Landlord to Tenant with respect to such payment to the date of actual payment, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. The late charges shall be payable by Tenant within ten (10) days after demand. No failure by Landlord to insist upon the strict performance by Tenant of its obligations-to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 5 in any instance thereafter occurring. The provisions of this Article 5 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 23.

ARTICLE 6
INSURANCE

Section 6.01. In addition to the insurance coverage specified in Section 10.03, Tenant shall, at all times after the Commencement Date and thereafter throughout the Term procure and maintain at its sole expense insurance in such amounts, covering such risks and issued by such carriers as may be required by the Master Lease as of the date hereof, and all policies with respect to such insurance, and the use of the proceeds of such policies, shall comply with the terms of the Master Lease as of the date hereof.

All insurance provided by Tenant as required by this Section 6.01(a) shall name Tenant as named insured and Landlord and Master Landlord as additional insureds to the extent, where applicable, of their respective insurable interests in the Premises.

Whenever Tenant shall be required to carry insurance under this Section 6.01, 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 Tenant for similar educational facilities, 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 34.

Section 6.02. (a) The originals of all policies required pursuant to Section 6.01 shall be delivered to Landlord immediately upon receipt from the insurance company or companies, together with proof satisfactory to Landlord that the full premiums thereon have been paid, provided, that Landlord shall not, by reason of custody of such policies, be deemed to have knowledge of the contents thereof. New or renewal policies replacing any policies expiring during the Term or duplicate originals thereof, shall be delivered as aforesaid at least ten (10) days before the date of expiration, together with proof satisfactory to Landlord that the full premiums thereon have been paid. Premiums on policies shall not be financed in any manner whereby the lender, on default or otherwise, shall have the right or privilege of surrendering or cancelling the policies or reducing the amount of loss payable thereunder, provided, however, that premiums may be paid in installments.

Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments as may be required for the purpose of obtaining the recovery of any such insurance moneys. Tenant shall promptly reimburse Landlord for any and all reasonable costs or expenses which Landlord may sustain or incur in connection therewith. Tenant shall not carry separate insurance (other than personal injury liability insurance) concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and Master Landlord are included therein as named insureds with loss payable as provided in this Lease. Tenant immediately shall notify Landlord of the carrying of any such separate insurance and shall cause the policies therefor or duplicate originals thereof to be delivered as required in this Lease.

All property insurance policies as required by this Lease shall provide in substance that all adjustments for claims with the insurers in excess of Two Hundred and Fifty Thousand Dollars (\$250,000) shall be made with Landlord and Tenant. Any adjustments for claims with the insurers involving sums of less than Two Hundred and Fifty Thousand Dollars (\$250,000) shall be made with Tenant. Such amount shall be adjusted on the fifth (5th) anniversary of the

Commencement Date and on each fifth (5th) anniversary of the date on which an adjustment is made pursuant to this Section 6.02(d) by adding to \$250,000 an amount equal to the product of (x) \$250,000 and (y) the percent of increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Commencement Date occurs. Any dispute as to the calculation of such adjustment shall be determined by arbitration pursuant to Article 34.

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

Each policy of insurance required to be obtained by Tenant as herein provided shall contain to the extent obtainable and whether or not an additional premium shall be payable in connection therewith (i) a provision that no act or omission or negligence of Tenant or any other named insured or violation of warranties, declarations or conditions by Tenant or any other named insured shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (ii) an agreement by the insurer that such policy shall not be cancelled or modified without at least thirty (30) days prior written notice to Landlord, (iii) an agreement that the coverage afforded by the insurance policy shall not be affected by the performance of any work in or about the Premises or the occupation or use of the Premises by Tenant for purposes more hazardous than those permitted by the terms of such policy, (iv) a waiver by the insurer of any claim for insurance premiums against Landlord or any named insured other than Tenant, and (v) a waiver of subrogation by the insurers of any right to recover the amount of any loss resulting from the negligence of Tenant, Landlord, their agents, employees or licensees. (g) All liability insurance required to be provided and kept in force by Tenant under this Lease shall be written on an "Occurrence" basis, provided, however, that if (i) a basis other than such "Occurrence" basis shall be adopted throughout the insurance industry and (ii) such other basis shall be accepted by most prudent owners of like buildings and improvements, then Tenant may provide and keep in force liability insurance written on such other basis satisfactory to Landlord.

Section 6.03. The insurance required by this Lease, at the option of Tenant, may be effected by blanket or umbrella policies issued to Tenant covering the Premises and other

properties owned or leased by Tenant, provided that the policies otherwise comply with the provisions of this Lease and specifically allocate to the Premises the coverages required hereby, without possibility of reduction 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 or umbrella policies, Tenant shall furnish to Landlord certified copies or duplicate originals of such policies in place of the originals, with schedules thereto attached showing the amount of insurance afforded by such policies applicable to the Premises, and in addition, within thirty (30) days after the filing thereof with any insurance ratemaking body, copies of the schedule of all improvements affected by any such blanket or umbrella policy of insurance.

Section 6.04. Notwithstanding the provisions of this Article 6, during such period as the Tenant shall be The Board of Education of the City of New York, Tenant shall have no obligation to comply with the provisions of this Article 6.

ARTICLE 7

RESTORATION

Section 7.01. Subject to the terms of Section 7.04, if all or any part of any of the Buildings shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord immediate notice thereof, except that no notice shall be required if the estimated cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration") shall be less than \$10,000 (as such amount shall be increased as provided in Section 6.02(d)), and Tenant shall, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration, with reasonable diligence (subject to Unavoidable Delays) repair, alter, restore, replace and rebuild (collectively, "Restore") the same, in accordance with applicable law and regulation, at least to the extent of the value and as nearly as possible to the condition, quality and class of the Buildings existing immediately prior to such occurrence, with such changes or alterations as Tenant, with the consent of Landlord, which consent shall not be unreasonably withheld, shall elect to make, provided that, after the Restoration, the Buildings are in substantial conformity with the Master Development Plan, the

Design Guidelines and, with respect to the exterior of the Buildings, such plans and specifications as Landlord shall approve. Landlord in no event shall be obligated to Restore the Buildings or any portion thereof or to pay any of the costs or expenses thereof. Tenant's obligations under this Section 7.01 shall survive the expiration or termination of this Lease.

Section 7.02. Any insurance proceeds which may be received by Tenant together with any other monies available to Tenant for Restoration (collectively, the "Restoration Funds") shall be used for the purpose of the Restoration.

Prior to commencing any Restoration, Tenant shall furnish Landlord with an estimate of the cost of such Restoration, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld. Landlord 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 34.

If any vendor's, mechanic's, laborer's, or material man'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 cause such lien to be satisfied or discharged (by bonding or otherwise).

Section 7.03. (a) In the event that (i) any loss, damage or destruction occurs, the cost of Restoration of which equals or exceeds Two Hundred and Fifty Thousand Dollars (\$250,000) in the aggregate, determined as provided in Section 7.02(b) (as such amount shall be increased as provided in Section 6.02(d)) or (ii) any portion of the Restoration involves work on the exterior of the Buildings or a change in the height, bulk or setback of the Buildings from the height, bulk or setback existing immediately prior to the damage or destruction, or in any other matter relates to the Master Development Plan or the Design Guidelines, Tenant shall furnish to Landlord, at least thirty (30) Business Days prior to commencement of such Restoration, complete plans and specifications for the Restoration, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld, together with the approval thereof and any required permits issued by any Governmental Authority with respect to the Restoration; all such plans and specifications and materials for the Restoration affecting the exterior of the Buildings shall be subject to Landlord's prior approval and all of the

foregoing to be subject to Landlord's review and approval for substantial conformity with the Master Development Plan and the Design Guidelines. Such plans and specifications shall become the sole and absolute property of Landlord if for any reason this Lease shall be terminated. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of delivery of the plans and specifications 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 plans and specifications are satisfactory.

(b) In the event Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Section 7.03(a) with respect to, or which will in any way affect, any aspect of the exterior of the Buildings or the height, bulk or setback of the Buildings or which will affect compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect the interior of the Buildings. Landlord shall review the proposed changes (other than changes to the interior of the Buildings) to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines and (ii) provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications, and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes are not satisfactory in light of the above criteria, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines or do not provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within ten (10) Business Days of the date of delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant, and if Landlord shall not have notified Tenant of its determination within such ten (10) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 7.04. 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 Buildings 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 Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Buildings had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York. Notwithstanding the foregoing, in the event of damage or destruction to the Buildings, Tenant may, within one hundred and twenty (120) days after such damage or destruction, notify Landlord in writing of Tenant's intention not to restore the Buildings in accordance with Section 7.01 hereof. Tenant shall promptly thereafter clear the Land of all the remaining portions of the Buildings at Tenant's sole cost and expense, and shall execute and deliver to Landlord a surrender of this Lease. Upon completion of the foregoing, the term of this Lease shall thereupon be deemed terminated.

Section 7.05. Tenant shall deliver to Landlord, within ninety (90) days of the completion of such Restoration, a complete set of "as built" plans thereof certified to be complete and correct by a registered architect.

ARTICLE 8

CONDEMNATION

Section 8.01. If the whole or substantially all of the Premises shall be taken (excluding a taking of the fee interest in the Premises, or any leasehold interest superior to that of the Tenant's, if after such taking, Tenant's rights under this Lease are not affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking.

The term "substantially all of the Premises" shall mean such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws, building regulations then existing or prevailing or the Master Development Plan, and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed or performed by Tenant, permit the Restoration of the Buildings so as to constitute a complete, operational school comparable to the School. If there be any dispute as to whether or not "substantially all of the Premises" has been taken, such dispute shall be resolved by arbitration with the provisions of Article 34.

If the whole or substantially all of the Premises shall be taken or condemned as provided in Section 8.01(a), the award, awards or damages in respect thereof shall be apportioned as follows: (i) there shall first be paid to Landlord so much of the award which is for or attributable to the value of the Land, considered as unimproved and unencumbered by this Lease or the Master Lease and (ii) Tenant shall receive the balance of the award, if any.

Section 8.02. For purposes of this Article 8, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (ii) the date in which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 8.03. If less than substantially all of the Premises shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining without abatement of the Base Rent or diminution of any of Tenant's obligations hereunder. Tenant, whether or not the award or awards, if any, shall be sufficient for the purpose shall (subject to Unavoidable Delays) proceed diligently to Restore any remaining part of the Buildings not so taken so that the latter shall be a complete, operable, self-contained architectural unit in good condition and repair. All plans and specifications and materials for such Restoration affecting the exterior of the Buildings shall be subject to Landlord's prior approval and all of the foregoing shall be subject to Landlord's review and approval for substantial conformity with the Master Development Plan and the Design Guidelines. Such plans and specifications shall become the sole and absolute

property of the Landlord if for any reason this Lease shall be terminated. In the event of any taking pursuant to this Section 8.03, the entire award for or attributable to the Land, considered as unimproved and unencumbered by this Lease, shall be first paid to Landlord, and the balance of the award, if any, shall be paid in trust to Tenant (provided that if the Master Lease requires payment in trust to Landlord, such balance shall be paid as provided therein) for application to the cost of Restoration of the part of the Buildings not so taken. Such Restoration shall be done in accordance with and subject to the provisions of Article 7. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 7. Any balance of the award remaining after completion of the Restoration shall be retained by Tenant. Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 8.04. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that:

(a) if the taking is for a period not extending beyond the Term and if such award or payment is made less frequently than in monthly installments, the same shall be paid to and held by Landlord as a fund which Landlord shall apply from time to time to the payment of Rental, except that, if such taking results in changes or alterations in the Buildings which would necessitate an expenditure to Restore such Buildings to their former condition, then, a portion of such award or payment considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of the Restoration shall be applied and paid over to Tenant toward the Restoration of such Buildings to their former condition, substantially in the same manner and subject to the same conditions as provided in Section 8.03; and any portion of such award or payment which shall not be required pursuant to this Section 8.04(a) to be applied to the Restoration of the Buildings or to the payment of Rental until the end of the Term (or, if the taking is for a period terminating prior to the end of the Term, until the end of such period), shall be paid to Tenant; or

(b) if the taking is for a period extending beyond the Term, such award or payment shall

be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to Landlord and applied in accordance with the provisions of Section 8.04(a), provided, however, that the amount of any award or payment allowed or retained for the Restoration of the Buildings and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to such Restoration.

Section 8.05. In case of any governmental action, not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, this Lease shall continue in full force and effect without reduction or abatement of Rental and the award shall be paid to Landlord.

Section 8.06. 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 8.07. Landlord and Tenant 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 8.08. Notwithstanding anything to the contrary contained in this Article 8, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant including any Equipment and for relocation expenses of Tenant, and all awards and damages in respect thereof shall belong to Tenant, 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, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 8.

ARTICLE 9

ASSIGNMENT, SUBLETTING, ETC.

Neither this Lease nor any interest of Tenant in this Lease, shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise, nor shall Tenant sublet the Premises or any part thereof or, except as otherwise specifically provided herein, permit the

Premises or any part thereof to be used or occupied by anyone other than Tenant, nor shall Tenant mortgage, pledge, encumber or otherwise hypothecate this Lease or the Premises or any part thereof in any manner whatsoever, without the consent of Landlord in each case, which consent may be withheld by Landlord for any reason whatsoever. Notwithstanding the foregoing, (a) Tenant may permit the Premises or any part thereof to be used occasionally by groups or entities allowed to use school space in New York City in accordance with applicable Requirements, and (b) Tenant may at any time during the term of this Lease assign its interest in this Lease to The Board of Education of The City of New York or any agency which may at any time be a successor agency to Tenant.

ARTICLE 10

CONSTRUCTION AND OWNERSHIP OF BUILDINGS AND EQUIPMENT

Section 10.01 Generally. Tenant, using a reputable and responsible contractor or construction manager approved by Landlord, which approval shall not be unreasonably withheld, shall promptly commence (subject to Unavoidable Delays) on or before the Construction Commencement Date and (subject to Unavoidable Delays) diligently construct the Building in accordance with the Requirements, Master Development Plan, the Design Guidelines, the Construction Documents, the Proposal and the applicable provisions of this Lease. Notwithstanding the foregoing and anything to the contrary in this Article 10 or elsewhere in this Lease, the elements of the Environmental Guidelines applicable to the construction of the Building and the operation thereof shall be only as set forth in the “Agreed-upon Sustainable Measures” column of Exhibit C hereto. Tenant shall as soon as practicable obtain from New York City and all other Governmental Authorities all permits, consents, certificates and approvals required to commence construction of the Building. At the request of Tenant, Landlord, at no cost or expense to it, shall within ten (10) days of Tenant’s request, execute and deliver any documents or instruments reasonably required to obtain such permits, consents, certificates and approvals, provided such documents or instruments do not impose any liability or obligation on Landlord. Tenant shall not undertake Commencement of Construction unless and until (i) Tenant shall have obtained as aforesaid, and delivered to Landlord copies of all necessary permits, consents, certificates and approvals for such construction from all Governmental Authorities which are required to have been obtained prior to Commencement of

Construction, (ii) Landlord shall have reviewed the Construction Documents in the manner provided herein and shall have determined that they conform to the Master Development Plan, the Design Guideline and the Proposal and Landlord has given notice thereof to Tenant, (iii) Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals thereof, in accordance with Section 10.03(a), and (iv) Landlord shall have approved a plan submitted by Tenant for financing the construction of the Building. Tenant shall obtain such other permits, consents, certificates and approvals as may be required from time to time to continue and complete the construction of the Building. At the request of either Landlord or Tenant, made at any time after Commencement of Construction, Landlord and Tenant shall execute a certification setting forth the Construction Commencement Date. In the event the parties shall be unable to agree on such date, such dispute shall be resolved by arbitration pursuant to Article 34.

Section 10.02. Approval Process; Landlord's Space; Certain Requirements.

(a) Tenant and Landlord acknowledge that Tenant has submitted to Landlord, and Landlord has approved, final contract plans and specifications for the Building prepared by the Architect, entitled PS 276M, 100% Construction Document Submission," Volumes 1 and 2, dated February 21, 2008. Such plans and specifications, as the same may be changed from time to time by Tenant, to the extent that changes required to be approved by Landlord, are so approved by Landlord as hereinafter provided, are hereinafter referred to as the "Construction Documents".

(b) In the event that Tenant shall desire to modify the Construction Documents with respect to, or in a manner which will in any way affect, any aspect of the exterior of the Building or which will result in a change in the height, bulk or setback of the Building or which in any other manner affects compliance with the Master Development Plan or the Design Guidelines or the Proposal, Tenant shall submit the proposed modifications to Landlord for approval prior to making or implementing any such modification. All modifications shall be identified in reasonable detail. Notwithstanding the foregoing, Tenant shall not be required to submit to Landlord modifications of the Construction Documents which affect solely the interior of the Building and do not affect the Green Building Systems, Landlord

shall review the proposed changes to determine whether or not they (i) conform to the Master Development Plan, the Design Guidelines and the Proposal, and (ii) provide for design, finishes and materials with respect to the exterior of the Building which are comparable in quality to those provided for in the Construction Documents. If Landlord determines that they do so conform and provide, Landlord shall notify Tenant to that effect. If Landlord determines that the Construction Documents, as so revised, do not conform to the Master Development Plan, the Design Guidelines or the Proposal or provide for such design, finishes and materials, Landlord shall so notify Tenant, specifying in reasonable detail those respects in which they do not so conform or provide, and Tenant shall revise the same to meet Landlord's objections and shall resubmit them to Landlord for review within fifteen (15) Business Days of the date of notice from Landlord to Tenant that they do not so conform or provide or such longer period as Landlord in its reasonable judgment may approve. Each review by Landlord shall be carried out within fifteen (15) Business Days of the date of submission of the proposed changes or the Construction Documents, as so revised, by Tenant, as the case may be (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) Business Day period, it shall be deemed to have determined that the proposed changes are satisfactory). Landlord shall not disapprove items in the Construction Documents that Landlord has previously specifically determined to be satisfactory, provided same have not been changed by Tenant.

(c) Notwithstanding the provisions of Section 10.02(b), if, after the Commencement of Construction, Tenant makes a good faith determination that any proposed modification which requires Landlord's approval under Section 10.02(b) is of a minor or insubstantial nature, Tenant may so advise the then existing project manager designated by Landlord ("Landlord's Project Manager") (delivering to him or her a written statement setting forth the proposed modification and the basis for Tenant's determination and simultaneously delivering copies of said statement to Landlord's President and Chief Executive Officer and Director, Planning and Design). Landlord's Project Manager shall, in writing, before the expiration of the fifth full Business Day after the receipt of said advice, either (i) notify Tenant of approval of said proposed modification or (ii) notify Tenant that Tenant is required to submit the proposed modification to Landlord as provided in Section 10.02(b). 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 10.02(c) shall require Landlord to notify Tenant of Landlord's determination earlier than the expiration of the fifteen (15) Business Day period set forth in Section 10.02(b) with respect to such modification, provided, however, that if Landlord's Project Manager shall not have notified Tenant of either (i) or (ii) above within the five (5) Business Day period set forth above, Landlord shall be deemed to have approved the proposed modification.

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

(e) In addition to the documents referred to in Section 10.01 and this Section 10.02, Tenant shall, at least thirty (30) Business Days prior to ordering the same for incorporation into the Building, submit to Landlord samples of all materials to be used on the exterior of the Building, including windows, and the same shall be subject to Landlord's approval for conformity to the Design Guidelines, the Master Development Plan and the Construction Documents; provided, however, that where Landlord has previously approved a sample, Tenant need not resubmit such item for approval unless the actual material varies from the sample (not including minor variations in natural conditions within the identified sample). If Landlord shall have failed to object to any of such materials within fifteen (15) Business Days after its receipt of such materials, it shall be deemed to have approved such materials. 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 at its sole cost and expense to have its field personnel or other designees attend Tenant's job and/or safety meetings. No such observation or attendance by Landlord's personnel or designees shall impose upon Landlord any responsibility for any failure by Tenant to observe applicable Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the Requirements and the provisions of this Lease.

(f) Tenant acknowledges that the maximum buildable site area shall not exceed 24,825 square feet and that the maximum permissible “floor area,” as such term is defined in the Zoning Resolution of the City of New York (“Zoning Floor Area”), for the Land shall be 142,600 square feet as computed in accordance with Section 12-10 of the Zoning Resolution. Tenant may elect to utilize less than such maximum permissible Zoning Floor Area.

(g) All development rights to Zoning Floor Area not utilized in the initial construction of the Building are retained by Landlord.

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

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

(j) Whenever any Section of this Article 10 or any other provision of this Lease (i) requires that the Building, any plans or specifications, any Capital Improvement, repair or Restoration comply with the Master Development Plan and/or the Design Guidelines, such Section or provision shall be deemed to require that the Building, such plans or specifications, Capital Improvement, repair or Restoration, as applicable, also comply with the Proposal; (ii) requires that Landlord review any plans or specifications for conformance to the Master Development Plan and/or the Design Guidelines, Landlord shall also review same for conformance to the Proposal; or (iii) provides that under certain circumstances, Landlord shall be deemed to have determined that plans and specifications conform to the Master Development

Plan and/or the Design Guidelines, then, under such circumstances Landlord shall be deemed to have determined that such plans and specifications also conform to the Proposal in each case, irrespective of whether or not the Proposal is referred to in such Section or provision.

Section 10.03. Insurance.

(a) Commencing on the Commencement Date, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect with respect to the Premises, until Commencement of Construction, insurance coverage of the types and in the minimum limits set forth in subsections (i) and (ii) of this Section 10.03(a). Not later than two (2) Business Days prior to the Commencement of Construction, Tenant shall provide, or cause to be provided, and thereafter shall keep or cause to be kept in full force and effect with respect to the Premises, until Substantial Completion of the Building, the following:

(i) general liability insurance, naming Tenant as named insured and, as additional insureds, Landlord, Master Landlord and the Battery Park City Parks Conservancy, such insurance to insure against liability for bodily injury and death and for property damage in an amount not less than Twenty-Five Million Dollars (\$25,000,000) combined single limit, such insurance to include operations-premises liability, broad form contractual liability (designating the indemnity provisions of the Construction Agreements and this Lease);

(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 Twenty-five Million Dollars (\$25,000,000) combined single limit;

(iii) workers' compensation insurance providing statutory New York State benefits for all persons employed in connection with the construction at the Premises and employer's liability insurance in an amount not less than that required by New York State law and;

(iv) special form builder's risk insurance written on a one hundred percent (100%) of completed value (non-reporting), naming, to the extent of their respective insurable interests in the Premises, Tenant as named insured, and, as additional insureds, Landlord, Master Landlord, and any contractor or construction manager engaged by Tenant. In addition, such insurance (A) shall contain an acknowledgment by the insurance company that its rights of subrogation have been waived with respect to Landlord and Master Landlord and an endorsement stating that "permission is granted to complete and occupy", (B) if any storage location situated off the Premises is used, shall include coverage for the full insurable value of all materials and equipment on or about any such storage location intended for use with respect to the Premises, and (C) if materials, equipment, machinery or supplies to be used in connection with construction are shipped to the job site from places in the contiguous United States, the District of Columbia or Canada, the all-risk builders risk insurance will provide transit coverage.

b) No construction shall be commenced until Tenant shall have delivered to Landlord the certificates of the policies of insurance as required by this Section 10.03.

(c) To the extent applicable, Tenant shall comply with the provisions of Section 7.02 hereof with respect to the policies required by this Section 10.03.

(d) To the extent that the insurance coverages required pursuant to this Section 10.03 duplicate those required by Article 6 hereof, Tenant shall not be required to maintain such coverages in duplicate, but in each instance the more extensive coverage shall be maintained.

(e) Tenant shall, prior to Commencement of Construction, obtain or cause to be obtained, and furnish to Landlord with respect to each contractor and subcontractor having a contract (or multiple contracts) providing for payments of \$1,000,000.00 or more in the aggregate performance and payment bonds in form and by a surety reasonably satisfactory to Landlord naming such contractor or subcontractor as obligor and Landlord, Tenant and each Mortgagee as co-obligees, each in a penal sum equal to the amount of such contractor's or subcontractor's contract.

Section 10.04. Timing. Construction of the Building shall be (a) commenced on or prior to the Construction Commencement Date and prosecuted by Tenant with all reasonable diligence and without interruption, in each case however subject to Unavoidable Delays, and (b) Substantially Completed by Tenant in a good and workerlike manner in accordance with the approved Construction Documents, the Master Development Plan and the Design Guidelines, no later than seven hundred and thirty days after the Construction Commencement Date as such date may be extended for Unavoidable Delays (the "Scheduled Completion Date"). Upon and as a condition to the occurrence of Substantial Completion of the Building, Tenant shall furnish Landlord with (i) true copies of the TCO for all the space in the Building and (ii) a survey prepared and sealed by a registered surveyor showing the Building and all easements and other matters of record relating to the Premises, certified by such surveyor to Tenant, Landlord, each Mortgagee, and to any title company which shall have insured or committed to insure the Premises, and bearing the certification of such surveyor that the Building is within the property lines of the Land and do not encroach upon any easement or violate any restriction of record. "Substantial Completion of the Building" or "Substantially Completed" shall mean (i) substantial completion of all construction work on the space in the Building and substantial completion of all construction work on all exterior portions of the Building, (ii) the delivery to Landlord of true copies of the TCO for all the space in the Building and (iii) the delivery to Landlord of a statement in writing from the Architect that the construction has been performed substantially in accordance with the approved Construction Documents, the Master Development Plan, and the Design Guidelines and certifying the Zoning Floor Area of the Building as constructed. Notwithstanding anything herein contained to the contrary, if Tenant shall be diligently and in good faith attempting to obtain a TCO (which attempt shall include, but not be limited to, the reasonable expenditure of monies) but shall have failed to deliver the TCO on or before the Scheduled Completion Date as a result of the failure of the Department of Buildings of New York City, or successor body of similar function, to issue the same, such failure shall not constitute a Default or Event of Default hereunder provided the Architect certifies in writing to Landlord that Tenant has completed all work necessary to obtain such TCO, and provided that Tenant continues to diligently and in good faith pursue obtaining same (it being agreed, however, that in no event shall Tenant permit or suffer any occupancy any portion of the Building unless and until Tenant shall have obtained and delivered to Landlord a TCO). In any event, Tenant

shall deliver a true copy of such TCO to Landlord promptly upon their issuance. Within one hundred twenty (120) days after Substantial Completion, Tenant shall provide Landlord with a complete set of “as built” plans for the Building prepared by the Architect and accompanied by a written statement by the Architect that the “as built” plans are complete and correct. Within thirty-six (36) months after the date of Substantial Completion of the Building, Tenant shall furnish Landlord with permanent Certificate(s) of Occupancy for all space in the Building duly issued by the New York City Department of Buildings.

Section 10.05. Job Materials.

(a) The materials to be incorporated in the Building at any time during the Term shall, upon purchase of same and payment therefor, 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 vest in Landlord, provided, however, that (i) Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials or other Person in connection with the purchase of any such materials, (ii) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to such materials and Building, (iii) Landlord shall have no obligation with respect to the storage or care of such materials or the Building, and (iv) all materials to be incorporated in the Building shall, immediately upon the purchase of same and payment therefor, be deemed to be leased to Tenant pursuant to this Lease. Provided no Default in the payment of Rental (whether or not notice of such Default has been delivered to Tenant) and no other Default as to which notice shall have been given shall have occurred and be continuing, any refunds, credits or other proceeds that may be obtained in respect of such materials shall be paid to Tenant within fifteen (15) Business Days following Landlord’s receipt thereof.

(b) Construction Agreements shall include the following provision:
“[contractor] [subcontractor] [materialman] hereby agrees that immediately upon the purchase and payment therefor, 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, 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 shall not be liable in any manner for payment or otherwise to [contractor] [subcontractor] [materialman] in connection with the purchase of any such materials and Battery Park City Authority shall have no obligation to pay any compensation to [contractor] [subcontractor] [materialman] by reason of such materials becoming the sole property of Battery Park City Authority.”

Section 10.06. Signage. Tenant may furnish and install, for so long as permitted by the Design Guidelines, project signage, designed, of a size and with such text as shall be reasonably satisfactory to, Landlord, located on the Premises in a manner reasonably satisfactory to Landlord and Tenant. Tenant also shall extend to Landlord and any of its designee(s) the privilege of being featured participants in ground-breaking and opening ceremonies to be held at such time and in such manner as Landlord and Tenant shall agree.

Section 10.07. Fill. Tenant shall remove from the Project Area all fill excavated from the Land and shall dispose of such fill in accordance with all applicable Requirements.

Section 10.08. Coordination. 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, and those incident to the construction of Landlord’s Civic Facilities and civic facilities in other portions of the Project Area. The staging area for construction shall be limited to the area to be designated and agreed upon by Landlord and Tenant. 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; provided, however, that delay caused by construction activities of Landlord or Master Landlord shall be construed to be Unavoidable Delay. In addition, Tenant shall (i) cause any and all work which Tenant is required to or does perform on, under or adjacent to any portion of any street situated in whole or in part in the Project Area to be performed in accordance with all applicable Requirements and in a manner which does not wrongfully obstruct or hinder ingress to or egress from any portion of the Project Area, (ii) not cause, permit or suffer the storage of construction

materials or the placement of vehicles not then being operated in connection with construction activities on any portion of any such street, except as may be permitted by applicable Requirements, (iii) undertake its construction activities in accordance with normal New York City construction rules and (iv) promptly repair or, if required by Landlord, replace any portion of Landlord's Civic Facilities damaged by the act or omission of Tenant or any agent, contractor or employee of Tenant, any such repair or replacement, as the case may be, to be performed 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. In the event Tenant shall have failed to promptly repair or replace such portion of Landlord's Civic Facilities as hereinabove provided after notice by Landlord and subject to Unavoidable Delay, Landlord shall have the right to do so at Tenant's expense and Tenant shall, within forty-five (45) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord. In the event Tenant shall fail to promptly comply with the provisions of subparagraph (ii) of this Section 10.08, Landlord shall have the right after notice to Tenant to remove such construction materials or vehicles at Tenant's expense and Tenant shall, within ten (10) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord. Landlord shall have the right, but shall not be obligated, to erect a perimeter fence enclosing the Premises, provided such fence shall permit construction access to the Premises. In the event Landlord erects such a fence, Tenant shall not interfere with same and, if the fence shall be damaged by the act or omission of Tenant or any agent, contractor or employee of Tenant, Tenant shall promptly repair or, if required by Landlord, replace the damaged portion in the manner provided in the immediately preceding clause (iv). At the request of Landlord, Tenant shall promptly enclose the Land with an 8-foot high chain-mesh or wooden fence so as to separate the Premises from the remainder of the Project Area. During construction, Tenant shall maintain Tenant's fence in good condition and shall have the right to temporarily remove and relocate the fence as may be required to permit construction access to the Premises provided the fence shall at all times remain within the boundaries of the Land. Upon Substantial Completion of the Building, Tenant shall remove Tenant's fence and, if constructed, Landlord shall remove its fence from around the Premises. Subject to applicable Requirements, Tenant shall have the right to remove Tenant's fence at an earlier.

Section 10.09. Labor.

(a) Tenant shall cause its contractors and all other workers at the Premises connected with Tenant's construction to work harmoniously with each other, and with the other contractors and workers in the Project Area, and Tenant shall not engage in, permit or suffer, any conduct which may disrupt such harmonious relationship. Tenant shall use its best efforts to cause its contractors to minimize any interference with the use, occupancy and enjoyment of the Project Area by other occupants thereof.

(b) Tenant shall install fencing as required and as determined and directed by Landlord to protect existing trees.

Section 10.10. Construction Activities. Tenant shall construct the Building in a manner which does not interfere with, delay or impede the activities of Landlord, its contractors, and other contractors and developers within the Project Area. If, in Landlord's reasonable judgment, Tenant shall fail to comply with its obligations under this Section 10.10, Landlord may, in addition to any other remedies it may have hereunder, order Tenant (and Tenant's contractors and other Persons connected with Tenant's construction within the Project Area) to cease those activities which Landlord believes interfere with, delay or impede Landlord or such other contractors or developers and Tenant shall promptly cease such activities. No delay or other loss or hindrance of Tenant arising from any such order by Landlord or from the actions or omissions of any other such contractor or developer shall form the basis for any claim by Tenant against Landlord or excuse Tenant from the full and timely performance of its obligations under this Lease except as otherwise expressly set forth in this Lease in connection with the construction of the Building.

Section 10.11 Wages. All persons employed by Tenant with respect to construction of the Building shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 10.12. Environmental Guidelines. Tenant acknowledges that the incorporation of environmentally responsible building methods and systems into the Building pursuant to Exhibit C hereto are important goals of Landlord, and are thus material obligations of Tenant under this Lease. Consequently, Tenant and Landlord hereby agree as follows with respect thereto:

(a) Except as expressly set forth in this clause (a) and Section 10.01 above, the Building shall be constructed and maintained in a manner consistent with the Proposal, including, without limitation, those elements of the Proposal addressing compliance with the Environmental Guidelines. Except as provided in the preceding sentence, Tenant shall have the right to deviate from those elements of the Proposal addressing compliance with the Environmental Guidelines provided the following conditions have been satisfied: (a) Tenant shall submit to Landlord an explanation in reasonable detail explaining the reason for the proposed deviation from the Proposal, including the advantages and disadvantages of adopting the modification; and (c) Landlord shall have consented to such deviation from the Proposal, which consent may be withheld in Landlord's sole, but good faith, discretion.

(b) Prior to the tenth (10th) day of each calendar month prior to the Completion of the Building, and after Completion of the Building within thirty (30) days after Landlord's request from time to time, Tenant shall deliver to Landlord a progress report in form reasonably approved by Landlord, certified by the Environmental Consultant, which shall describe in reasonable detail what measures Tenant is taking (x) in order to comply with each of the Environmental Guidelines, including, without limitation, Article 3 thereof (Conserving Material and Resources).

(c) On a bi-weekly (i.e., once every two weeks) basis prior to the Completion of the Building, and after Completion of the Building upon Landlord's request from time to time, Tenant shall meet at the offices of Landlord in order to discuss Tenant's compliance with the Environmental Guidelines (as limited pursuant to the provisions of this Lease) and construction relating thereto. Prior to Completion of the Building and for a period not to exceed one (1) year following the Completion of the Building, Tenant shall use reasonable efforts to cause Tenant's Architect, the Environmental Consultant and Tenant's general contractor to attend the meetings referred to in this Section 10.12(c) but the failure of any one or more of said parties to attend any said meeting shall not constitute a Default under this Lease.

(d) Because the compliance with the Environmental Guidelines represents the employment of innovative building practices which are appreciably ahead of current standards and practice, Tenant acknowledges that the information learned from the design, construction, equipping, maintenance and operation of the components of the Building designed to comply

with the Environmental Guidelines (“Green Building Systems”) will be of great benefit to the building industry and the general public. Consequently, Tenant agrees that:

(i) within 10 days after Landlord’s request therefor it will provide Landlord with any and all information relating to the Green Building Systems in a useable and understandable format, including, without limitation, information pertaining to construction costs and associated professional fees as well as the information required to be collected pursuant to Article 4 of the Environmental Guidelines;

(ii) any such information provided by Tenant or otherwise relating to the Green Building Systems may be used and/or disseminated by Landlord in connection with promotional or educational materials, in connection with the development of present and future building sites and in any other manner reasonably intended to provide information concerning environmentally responsible and sustainable construction practices; and

(iii) at Landlord’s request, made at least thirty (30) days prior to the date that Tenant’s cooperation and/or participation is required, Tenant will cooperate and/or participate with Landlord in any demonstrations, promotional and/or educational materials, presentations or similar materials or events relating to the Green Building Systems.

(e) Tenant shall make all of its contractors and subcontractors aware of the Environmental Guidelines and the provisions of this Section 10.12 that are applicable to such contractors and subcontractors and shall be fully responsible for causing compliance therewith by all parties working on or in connection with the Building.

Section 10.13 Certain Green Building Systems

(a) Landlord and Tenant agree that certain components of Green Building Systems which exceed the construction standards of Tenant will be purchased and installed in the Building only if the associated cost(s) thereof are paid by Landlord as provided in this Section 10.13. Landlord and Tenant acknowledge that the components consist of the following: (i) photovoltaic equipment ; (ii) lobby signage for display of photovoltaic output ; and (iii) an exterior green screen , all as such components are specified in Exhibit C hereof.

(b) Landlord and Tenant agree that (i) the Construction Documents upon which Tenant has solicited bids for performance of the construction work necessary for Completion of the Building include the purchase and installation of components (i) – (iii) described in Section 10.13(a); and (ii) the total expense of same shall be deemed to be 2.444 per cent (.02444) of the total price of the successful bid for construction of the Building. Tenant shall be deemed to be authorized by Landlord to award such bid including such components (i) – (iii), and the expense thereof shall be paid by Landlord as herein provided, unless Tenant shall receive written notice from Landlord within seven (7) business days from the date Tenant shall have sent written notice to Landlord of the selection of the successful bidder and the total price, that it will decline to pay the within- specified percentage of such total price.

(c) Landlord shall transmit to Tenant the amount equal to the specified percentage of the total price for the Green Building System components described in Section 10.13(b) upon commencement of installation of said components. Such funding shall be segregated from Tenant's other accounts and funds in a separate account ("Landlord's Green Building System Components Cost Account").

(d) Tenant shall be responsible for review and approval of its contractor's payment requisitions for the cost of Green Building System components, and Tenant shall require that all such requisitions be fully documented by the contractor, including submission of the applicable contracts, invoices, books and records, and cancelled checks, etc., to substantiate the validity of its contractor's claim(s) for payment in accordance with the applicable contract. Upon the written request of Landlord, Tenant shall make available to Landlord for its inspection and review such applicable contracts, invoices, books and records, and cancelled checks, etc. Upon Tenant's approval of a payment requisition, as aforesaid, the applicable amount may be withdrawn by Tenant from Landlord's Green Building System Components Cost Account, which withdrawn amount shall be used to pay such requisition.

(e) If Tenant's contractor shall request an upward modification in the price of any of the Green Building System components described in this Section 10.13 pursuant to a contract change order, Tenant shall require that its contractor submit to Landlord and Tenant for their

review and approval, detailed information justifying the necessity therefor and the reasonableness of the amount of the additional cost for the component. If any such upward modification in the price of any of the Green Building System components shall be approved by Landlord and Tenant, a change order shall be issued therefore by Tenant and Landlord shall forthwith transfer the amount thereof to Tenant for deposit into Landlord's Green Building System Components Cost Account.

(f) Upon completion of the payments to Tenant's contractor described herein, Tenant shall forthwith transmit any remaining balance in the Green Building System Components Cost Account to Landlord.

Section 10.14 Maintenance of Green Building Systems Components Funded by Landlord

(a) Tenant shall not be responsible for maintenance, repair or replacement of the Green Building System components (i), (ii) and (iii) described in Section 10.13(a); provided, however, that Tenant may maintain component (iii) (the exterior green screen) as in its sole discretion it shall deem appropriate.

(b) Landlord shall maintain and repair or replace the Green Building System components (i) and (ii) described in Section 10.13(a) for a period of twenty-five (25) years commencing upon Substantial Completion of the Building.

(c) Tenant shall allow Landlord reasonable access to the Premises in order to perform the maintenance, repair and replacement described in the preceding subsection 10.14(b). Such maintenance shall be performed at such time(s) and in such manner as to be least disruptive to school operations.

(d) Landlord and Tenant shall confer during the year prior to the expiration of the twenty-five (25) year maintenance period concerning future maintenance of Green Building System components (i) and (ii) described above).

10.15. Application of this Article. All of the provisions of this Article 10 are intended to apply with respect to the initial construction of the Building and maintenance of Green Building

System components funded by Landlord. However, the following provisions of this Article shall apply to all Capital Improvements and Restorations: Sections 10.02 (g), (h), (i) and (j), Section 10.03 (subject to any qualifications set forth in Article 12), Sections 10.05 (a) and (b), Section 10.07, Section 10.08, Section 10.09, Section 10.10, Section 10.11 and Section 10.12.

ARTICLE 11

REPAIRS

Section 11.01. Tenant shall take good care of the Premises, including, without limitation, roofs, foundations and appurtenances thereto, all Equipment, all sidewalks, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), sidewalk hoists, water, sewer and gas connections, pipes and mains which are located on or service the Premises (unless the City of New York or a public utility company is obligated to maintain or repair same), and shall put, keep and maintain the Premises in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, provided, however that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 7 and 8 hereof. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 11.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with (a) all Requirements of Governmental Authorities (including, but not limited to, Local Law No. 5, 1973, as amended), (b) the New York Board of Fire Underwriters or any successor thereto, and (c) the Building Code of New York City, as then in force.

Section 11.02. Tenant shall keep clean and free from dirt, snow, ice, rubbish, defacement, obstructions and encumbrances, the sidewalks, grounds, chutes and sidewalk hoists comprising, in front of, or adjacent to, the Premises.

Section 11.03. 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, nor to demolish, any buildings. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises. Tenant shall not clean nor require, permit, suffer nor allow any window in the Premises to be cleaned from the outside in violation of the Labor Law or of the rules of the Industrial Board or other state, county or municipal department, board or body having jurisdiction.

ARTICLE 12

CHANGES, ALTERATIONS AND ADDITIONS

Section 12.01. Tenant shall not demolish, replace or materially alter the Building, or any part thereof, or make any addition thereto, whether voluntarily or in connection with repairs or Restorations 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 12.02.

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

(b) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Unavoidable Delays) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) the Master Development Plan, the Design Guidelines and, if required pursuant to Section 12.02(a) or (b), the plans and specifications for such Capital Improvement as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, and (iv) all other Requirements.

(c) If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 12.02. (a) In the event that (i) the estimated cost of any proposed Capital Improvement shall exceed Two Hundred and Fifty Thousand Dollars (\$250,000) (as such amount shall be increased as provided in Section 6.02(d)), either individually or in the aggregate with other Capital Improvements constructed in any twelve (12) month period during the Term or (ii) any portion of the Capital Improvement involves structural work or work involving the exterior of the Buildings or a change in the height, bulk or setback of the Buildings from the height, bulk or setback existing immediately prior to the Capital Improvement or in any other matter relates to the Master Development Plan or the Design Guidelines, Tenant shall furnish to Landlord, at least thirty (30) Business Days prior to commencement of the proposed Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or a registered architect approved by Landlord, which approval shall not be unreasonably withheld; all such plans and specifications and materials for the Capital Improvement affecting the exterior of the Building shall be subject to Landlord's prior approval and all of the foregoing to be subject to Landlord's review and approval for conformity with the Master Development Plan and the Design Guidelines. Such plans and specifications shall become the sole and absolute property of Landlord if for any reason this Lease shall be terminated. Each review by Landlord shall be carried out within fifteen (15) Business Days of the delivery of the plans and specifications 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 plans and specifications are satisfactory.

(b) In the event that Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Sections 12.02(a) with respect to, or which will in any way affect, any aspect of the exterior of the Building or the height, bulk or setback thereof or

which will affect compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect solely the interior of the Buildings. Landlord shall review the proposed changes to determine whether or not they (i) conform to the Master Development Plan and the Design Guidelines and (ii) provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes 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 fifteen (15) Business Days after Landlord shall have so advised Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each review by Landlord shall be carried out within fifteen (15) 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 12.03. All Capital Improvements (i) costing more than \$500,000.00 (and not constituting repair of existing improvements) or (ii) being of the kind referred to in Section 12.02(a)(ii) shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld. Within ninety (90) days of completion of any such Capital Improvement, Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement, together with a permanent Certificate of Occupancy therefor issued by the New York City Department of Buildings, to the extent a modification thereof was required.

ARTICLE 13
REQUIREMENTS OF PUBLIC AUTHORITIES AND
OF INSURANCE UNDERWRITERS AND POLICIES;
COMPLIANCE WITH MASTER LEASE

Section 13.01. Tenant promptly shall comply with any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders (collectively, "Requirements") without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable Fire Rating Bureau or other body exercising similar functions, affecting the Premises or any street, avenue or sidewalk dedicated to the City comprising a part or in front thereof or any vault in or under the same, or requiring the removal of any encroachment, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, 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. Notwithstanding the foregoing, Tenant shall not be required to comply with Requirements of Landlord except (i) as otherwise expressly provided in this Lease or (ii) Requirements of New York City acting solely in its capacity as a Governmental Authority. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 13.02. Tenant shall have the right to contest the validity of any Requirements or the application thereof. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably 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. Notwithstanding the foregoing, Tenant promptly shall comply with any such Requirements and compliance shall not be deferred if such non-compliance shall result in the imminent loss or forfeiture of the Premises, or any part thereof or if Landlord shall be in danger of being subject to civil or criminal liability or penalty by reason of non-compliance therewith. Landlord shall cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it

being understood, however, that Landlord shall not be subject to any liability or the payment of any costs or expense in connection with any proceeding brought by Tenant.

Section 13.03. Tenant shall not (to the extent reasonably within Tenant's control) cause or create or permit to exist or occur any condition or event relating to the Premises which would, with or without notice or passage of time, result in an event of default under the Master Lease. Tenant shall perform all of Landlord's obligations as tenant under the Master Lease, as of the date hereof, relating to the maintenance and operation of the Premises unless, in accordance with the terms of this Lease, Landlord is specifically obligated to perform any such obligation. For purposes of determining the obligations under the Master Lease relating to the Premises, the Buildings shall be deemed a "Civic Facility" (as defined in the Master Lease) which is dedicated to and accepted by the City of New York. Landlord represents that (1) the terms, covenants and conditions of this Lease do not conflict with those of the Master Lease, and (2) performance by Tenant of its obligations hereunder will satisfy the obligations of Landlord as tenant under the Master Lease with respect to the Premises.

ARTICLE 14

EQUIPMENT

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

ARTICLE 15

DISCHARGE OF LIENS; BONDS

Section 15.01. Subject to the provisions of Section 15.02 hereof, except as otherwise expressly provided herein, Tenant shall not create or permit to be created as a result of the acts or omissions of Tenant, or any agent, employee, licensee or invitee of Tenant, any lien, encumbrance or charge upon the Premises or any part thereof, or the Project Area or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired.

Section 15.02. If any mechanic's, laborer's or material man's lien (other than a lien arising out of any work performed by Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 15.01 against the Premises or any part thereof or the Project Area or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant, within ninety (90) 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 thirty (30) days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute Rental and shall be paid by Tenant to Landlord within thirty (30) days after demand. Notwithstanding the foregoing provisions of this Section 15.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and Landlord in its reasonable judgment has determined that the existence of such lien is not likely to result in any foreclosure or civil or criminal penalties.

Section 15.03. Nothing contained in this Lease 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 material man for the performance of any labor or the furnishing of any, materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord.

Section 15.04. 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 16

NO REPRESENTATIONS BY LANDLORD

Except as otherwise expressly set forth in this Lease, no representations, statements or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Land, the Project Area, the status of title thereof, the physical condition thereof, including, without limitation, the landfill portions thereof, the zoning or other laws, regulations, rules and orders applicable thereto, or the use that may be made of the Land, that Tenant has relied on no such representations, statements or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Land.

ARTICLE 17

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 17.01. Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of the Buildings (including, but not limited to, any of the common areas within the Buildings, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord, its officers, agents, employees or licensees, nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the Project Area other than the Premises, or of any agent, representative, employee, contractor or servant of such other tenant.

Section 17.02. Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property

of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord, its officers, agents, employees or licensees.

Section 17.03. In addition to the provisions of - Sections 17.01 and 17.02, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the Project Area, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto.

ARTICLE 18

INDEMNIFICATION

Section 18.01. Tenant, to the fullest extent permitted by law, shall indemnify and save Landlord, and the State of New York and their agents, directors, officers and employees (collectively, the "Landlord –Indemnitees"), harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of (i) any act or omission of any student while such student is on the Premises, or (ii) any act or omission of any invitee, licensee, or any employee, agent or contractor of Tenant, upon the Premises, or (iii) Tenant knowingly permitting any act or omission of any invitee, licensee, or any employee, agent, contractor or student elsewhere in the Project Area, or by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or wrongful act of any of the Indemnitees:

- (a) any work or thing done in or on the Premises or any part thereof;

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

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

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

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

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

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

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

(i) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Articles 4, 13 and 26 hereof.

Section 18.02. Landlord, to the fullest extent permitted by law, shall indemnify and save Tenant, and the New York City School Construction Authority and their agents, directors, officers and employees (collectively, the "Tenant - Indemnitees"), harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Tenant - Indemnitees by reason of (i) any act or omission of any invitee, licensee, or any employee, agent or contractor of Landlord, upon the Premises, or (iii) Landlord knowingly permitting any act or omission of any invitee, licensee, or any employee, agent, contractor elsewhere in the Project Area, or by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or wrongful act of any of the Tenant - Indemnitees:

- (a) any work or thing done in or on the Premises or any part thereof;
- (b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part of the Premises or adjacent thereto, provided such indemnity with regard to streets, alleys, sidewalks, curbs, vaults, passageways and other space is limited to an alteration, repair, condition, or maintenance of any street, alley, sidewalk, curb, vault, passageway or other space done or performed by Landlord or any agent, contractor, servant or employee of Landlord or which Landlord is obligated to do or perform;
- (c) any negligent or tortious act or failure to act (or act which is alleged to be negligent or tortious) within the Project Area on the part of Landlord or any agent, contractor, servant or employee of Landlord;
- (d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, or on about any sidewalk or vault;
- (e) any failure on the part of Landlord to perform or comply with any of

the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(f) any lien or claim which may have arisen out of any act of Landlord or any agent, contractor, servant or employee of Landlord against or on the Premises or any other portion of the Project Area, or any lien or claim created or permitted to be created by Landlord in respect of the Premises against any assets of, or funds appropriated to any of the Tenant -

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 Tenant - Indemnitees with respect thereto;

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

Section 18.03. The obligations of Landlord and Tenant under this Article 18 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 18.04. 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 Landlord Indemnitees in Section 18.01, then, upon prompt notice, Tenant shall resist or defend such claim, action or proceeding (in such Landlord 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 be deemed given if such counsel is the Corporation Counsel of New York City. In such event, Tenant shall control all decisions in respect of the litigation and settlement of such claims. 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 18.01 shall not apply to any settlement separately agreed to by Landlord without the consent of the Corporation Counsel of New York City.

Section 18.05. If any claim, action or proceeding is made or brought against any of the Tenant - Indemnitees by reason of any event for which Landlord has agreed to indemnify the Tenant - Indemnitees in Section 18.02, then, upon prompt notice, Landlord shall resist or defend such claim, action or proceeding (in such Tenant - Indemnitee's name, if necessary) by the attorneys for Landlord's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Landlord) or (in all other instances) by such attorneys as Landlord shall select, and Tenant shall approve, which approval shall not be unreasonably withheld or delayed. In such event, Landlord shall control all decisions in respect of the litigation and settlement of such claims. In the event such claim, action or proceeding is covered by insurance and Landlord's insurer refuses to pay all or any portion of the fees and disbursements of any attorneys separately retained by Tenant, Tenant shall pay such fees and disbursements or such portion as shall not be paid by Landlord's insurer. The indemnification obligations imposed upon Landlord under Section 18.02 shall not apply to any settlement separately agreed to by Tenant without the consent of the Corporation Counsel of New York City.

Section 18.06. The provisions of this Article 18 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 19

RIGHT OF INSPECTION, ETC.

Section 19.01. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency, in which event Landlord shall reasonably attempt to notify Tenant prior to such entry) 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 the North Esplanade, and (d) making any necessary repairs to the Premises and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, except in any emergency (in which event Tenant shall have thirty (30) days within which to perform repairs), Landlord shall have given Tenant notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within one hundred eighty (180) days after the giving of such notice (subject to Unavoidable Delays), or if such repairs or such work cannot reasonably be completed during

such one hundred eighty (180) day period, to have commenced and be diligently pursuing the same (subject to Unavoidable Delays).

Section 19.02. Nothing in this Article 19 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Tenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Unavoidable Delays, and in such a manner as not to unreasonably interfere with the conduct of the School.

ARTICLE 20

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 20.01. Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform any obligation required to be performed by Tenant hereunder on Tenant's behalf after expiration of any applicable notice and grace periods.

Section 20.02. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation pursuant to Section 20.01, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within thirty (30) days after demand. Any payment or performance by Landlord pursuant to Section 20.01 shall not be nor be deemed to be a waiver or release of breach or Default of Tenant with respect thereto or of the right of

Landlord to terminate this Lease, institute summary proceedings or take such other action as may be permissible hereunder if an Event of Default by Tenant shall have occurred. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep insurance in force as aforesaid to the amount of the insurance premium or premiums not paid, but Landlord also shall be entitled to recover, as damages for such breach, the uninsured amount of any loss and damage and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of damage to or destruction of the Premises.

ARTICLE 21

NO ABATEMENT OF RENTAL

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

ARTICLE 22

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 22.01. Subject to the provisions of law and this Lease, Tenant shall occupy the Premises as a public school in accordance with the Certificate or Certificates of Occupancy for the Premises, the Master Development Plan and the Design Guidelines, and for no other use or purposes except as specified in this Lease.

Section 22.02. Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of the Certificates of Occupancy or of any governmental laws, ordinances, requirements, orders, directions, rules or regulations, or which may make void or voidable any insurance then in force on the Premises or, without Landlord's consent, for any use which requires a variance, waiver or special permit under the Zoning Resolution of New York City as then in effect. Tenant shall take, immediately upon the discovery of any such unpermitted,

unlawful, illegal or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance of such use. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to Article 20 (including, but not limited to, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost, expense or charge until the date of receipt of repayment by Landlord, shall be paid by Tenant to Landlord within ten (10) days after demand and shall constitute Rental under this Lease.

Section 22.03. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 23

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS,

REMEDIES, ETC.

Section 23.01. Each of the following events shall be an "Event of Default" hereunder:

- (a) if Tenant shall fail to pay any installment of Rental other than Base Rent, or any part thereof, when the same shall become due and payable and such failure shall continue for thirty (30) days after notice from Landlord to Tenant;
- (b) 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 (or such longer period as shall be expressly provided in this Lease) after notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period (or such longer period as shall be expressly provided in this Lease), in which case no Event of Default shall be deemed to exist as long as

Tenant shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion);if Tenant shall abandon the Premises;

(c) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered without Landlord's approval; or

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

Section 23.02.

(a) If any Event of Default shall occur and Landlord, at any time thereafter, at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than ten (10) days after the date of such notice, and if, on a date specified in such notice, Tenant shall have failed to cure the Default which was the basis for the Event of Default, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as of the date on which the Event of Default described above occurred or the date specified in the notice given pursuant to this Section 23.02(a), as if the same were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Premises.

(b) If this Lease shall be terminated as provided in Section 23.02(a), Landlord, may dispossess Tenant by summary proceedings or other judicial process.

Section 23.03 If this Lease shall be terminated as provided in Section 23.02(a) (a) or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 23.02(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; and

(b) Landlord may complete all obligations of Tenant and receive payment therefor in accordance with this Lease 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 Landlord pursuant to Articles 6, 7, or 8) without relieving Tenant of any liability-

under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (i) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (ii) second, pay to itself the reasonable cost and expense sustained in securing any new tenants and other occupants, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises, and (iii) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord; Landlord in no way shall be responsible or liable for any failure to relet the premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 23.04. No termination of this Lease pursuant to Section 23.02(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 23.02(b) and 23.03(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 23.05. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or other sums payable by Tenant to Landlord pursuant to this Article 23, 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 23.06. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (*unless such*

receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by judicial process, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 23.07. Neither Landlord nor Tenant waives 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.

Section 23.08. No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other than existing or subsequent breach thereof.

Section 23.09. In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed through applicable judicial process. To the extent permitted by law, Tenant

waives any requirement for the posting of bonds or other security in any such action.

Section 23.10. 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 23.11. Tenant shall pay to Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action of proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant also shall pay to Landlord all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, if and to the extent that Landlord shall prevail in any such action and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within thirty (30) days after demand by Landlord.

Section 23.12. Landlord shall pay to Tenant all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Tenant in any action of proceeding to which Tenant may be made a party by reason of any act or omission of Landlord. Landlord also shall pay to Tenant all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Tenant in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Tenant against Landlord on account of the provisions hereof, if and to the extent that Tenant shall prevail in any such action and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in

any proceeding brought by Tenant against Landlord on or under this Lease. All of the sums paid or obligations incurred by Tenant as aforesaid shall be paid by Landlord to Tenant within thirty (30) days after demand by Tenant.

ARTICLE 24

NOTICES

Section 24.01. 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, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request, consent, approval, or other communication with respect hereto or the Premises, each such notice, demand, request, consent, approval, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) if by Landlord, by delivery or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at IDCNY Center, 30-30 Thomson Avenue, Long Island City, New York, NY 11101—3045, Att: Executive Director, to The Board of Education, Division of School Facilities, 44-36 Vernon Boulevard, Long Island City, NY 11101, Att.: Senior Director, or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord as aforesaid; and (b) if by Tenant, by delivering or by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested, addressed to Landlord at One World Financial Center, New York, New York 10281, Att: President, or to such other address as Landlord may from time to time designate by notice given to Tenant as aforesaid (with a copy, given in-the manner provided above, addressed to the attention of Landlord's General Counsel, at the address set forth above or at such other address as Landlord may from time to time designate by notice to Tenant as aforesaid).

Section 24.02. Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed 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) upon receipt.

ARTICLE 25
CIVIC FACILITIES

Section 25.01..Civic Facilities Generally.

(a) The term “Civic Facilities” shall mean the following improvements located in the Project Area, all of which will be available to Tenant for its use and enjoyment in the same manner, and on the same terms and conditions as are applicable to tenants of other sites in the Project Area and to the general public:

- (i) Electrical, gas, and telephone mains;
- (ii) Water mains;
- (iii) Sanitary and storm sewers;
- (iv) Fire hydrants and Emergency Response Service (“ERS”) conduits and boxes;
- (v) Street lighting (conduit, cable, poles, fixtures and connections);
- (vi) Streets;
- (vii) Curbs;
- (viii) Temporary concrete sidewalks;
- (ix) Permanent sidewalks, including cobble strip and paving;
- (x) Landscaped esplanade, including appurtenances located within the pierhead line of the Project Area;
- (xi) Landscaped parks, public open areas and recreation areas, within the Project Area ;and
- (xii) Street trees.

Landlord and Tenant acknowledge that all those improvements other than those described in subparagraphs (ix) and (xii) have been completed, except that current specifications of the New York City Department of Transportation may require that street lighting be modified.

(b) The term “Tenant's Civic Facilities” shall mean the following portions of the Civic Facilities as may be more particularly described, referenced or enumerated in such specifications as Landlord may reasonably supply:

(i) permanent sidewalk, including cobble strip and paving, on streets adjacent to the Premises, as described above and in the Design Guidelines, including replacement curbs as required and permanent street lighting (conduit, boxes, cables, poles fixtures and connections) and any construction period lighting which may be required;

(ii) street trees in amounts and sizes to be installed in accordance with specifications to be supplied by Landlord.

(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.

25.02. Construction of Civic Facilities. Subject to Unavoidable Delays, Tenant shall commence and diligently complete on or before the Scheduled Completion Date, in accordance with the Construction Documents and the specifications reasonably supplied by Landlord, the construction or installation of Tenant's Civic Facilities, in each case, in a good and workmanlike manner and in compliance with normal New York City construction rules and all applicable Requirements. Tenant shall repair or reimburse Landlord within thirty (30) days after demand for the cost of any repair necessitated by any damage caused by Tenant to the streets or street lighting in the Project Areas such facilities existed as of the Commencement Date. Landlord shall complete paving of the adjacent roadbeds upon completion of curbs and other street work as described in Section 25.01 (b)(i) and (ii).

25.03. Maintenance of Civic Facilities. Landlord and Tenant each shall take good care of Landlord's Civic Facilities or Tenant's Civic Facilities, as the case may be, and shall keep and maintain the same in good and safe order and condition and free of accumulations of dirt, rubbish, snow and ice, and shall make all repairs (including structural repairs, restorations and

replacements necessary to maintain the same in first-class condition (collectively, "Maintenance Obligations"), except that (i) if Tenant installs temporary concrete sidewalks adjacent to the Premises, then Tenant shall perform Maintenance Obligations in respect of same and (ii) provided that Tenant previously has caused the street trees referred to in Section 25.01(b)(ii) to be installed in accordance with the requirements of this Article 25, from and after the first anniversary of the proper installation of such trees, Landlord shall perform Maintenance Obligations in respect of said street trees. The obligation of Landlord to perform Maintenance Obligations is expressly conditioned upon Tenant's compliance with Tenant's obligations under Section 25.05. The parties contemplate that, after the completion of construction pursuant to Section 25.02, Maintenance Obligations for the portion of the Civic Facilities described in subparagraph 25.01(a)(i) shall be performed by the appropriate utility or cable companies and for those portions of the Civic Facilities described in subparagraphs 25.01(a)(ii) - (vii) shall be performed by New York City. Notwithstanding the initial sentence of this Section 25.03, Maintenance Obligations on the part of Landlord in respect of any portion of the Civic Facilities described in subparagraphs 25.01(a) (i) - (vii) 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.

ARTICLE 26

STREET WIDENING

If at any time during the Term any proceedings are instituted or orders made by any Governmental Authority (other than Landlord acting solely in its capacity as Landlord and not as a Governmental Authority) for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises, or in the sidewalks, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), gutters, curbs or appurtenances, Tenant, with reasonable diligence (subject to Unavoidable Delays) shall comply with such requirements, and on Tenant's failure to do so, Landlord may comply with the same in accordance with the provisions of Article 20. Tenant shall be permitted to contest in good faith any proceeding or order for street widening instituted or made by any Governmental Authority. In no event shall Tenant permit Landlord

to become liable for any civil or criminal liability or penalty as a result of Tenant's failure to comply with reasonable diligence (subject to Unavoidable Delays) with any of the foregoing orders. Any widening or other enlargement of any such street and the award or damages in respect thereto shall be deemed a partial condemnation and be subject to the provisions of Article 8.

ARTICLE 27

SUBORDINATION; ATTORNMENT

Section 27.01. Landlord's interest in this Lease, as this Lease may be modified, amended or supplemented, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

Section 27.02. 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, and provided that at the time of such default or termination no default exists under this Lease which at such time would then permit Landlord to terminate this lease or exercise any summary remedy provided for herein, this Lease shall continue in full and effect upon all the terms and conditions herein for the balance of the Term, and Tenant will attorn to the then holder of the reversionary interest in the Premises demised by this Lease and will recognize such holder as Tenant's Landlord under this Lease. Tenant shall execute and deliver, at any time and from time to time, upon the request of the Landlord or of the Master Landlord any further instrument which may be reasonably necessary or appropriate to evidence such attornment. Tenant waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event any proceeding is brought by the Master Landlord to terminate the same, and agrees that this Lease shall not be affected in any way whatsoever by any such proceeding.

ARTICLE 28
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 shall afford to Landlord or, at Landlord's option, to the person or persons causing or authorized to cause such excavation the right upon thirty (30) days prior written notice to enter upon the Premises in a reasonable manner for the purpose of doing such work as may be necessary, without expense to Tenant, to preserve any of the walls or structures of the Buildings from injury or damage and to support the same by proper foundations, provided that (i) such work shall be done promptly, in a good and workmanlike manner and subject to all applicable Requirements, (ii) Tenant shall have an opportunity to review all available data relative to such excavation and have its representatives present during all such work and (iii) Tenant shall be indemnified by Landlord in the event Landlord performs such excavation, or such other person performing such excavation, as the case may be, against any injury or damage to the Buildings or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder.

ARTICLE 29
CERTIFICATES BY LANDLORD AND TENANT

Section 29.01. At any time and from time to time upon not less than twenty (20) days notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge.

Section 29.02. At any time and from time to time upon not less than ten (10) days notice

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

ARTICLE 30

CONSENTS AND APPROVALS

Section 30.01. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 30.02. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then (i) unless expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party within thirty (30) Business Days or such other period as expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted, and (ii) if upon notice that a consent or approval is denied, the notified party contests such denial in accordance with this Lease and a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 30.03. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval shall, in addition, not be unreasonably delayed.

Section 30.04. 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 31

SURRENDER AT END OF TERM; OPTION TO RENEW

Section 31.01. On the last day of the Term or upon any earlier termination of this Lease, or upon a repossession by Landlord upon the Premises pursuant to Article 23 hereof, Tenant shall well and truly surrender and deliver up to Landlord the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof, created by or consented to by Landlord or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 31.02. On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 23 hereof, Tenant shall deliver to Landlord 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 Buildings, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Buildings, together with a duly executed assignment thereof to Landlord, and any and all other documents of every kind and nature whatsoever relating to the construction, management and operation of the Premises.

Section 31.03. Any personal property of Tenant which shall remain on the Premises for sixty (60) days after the termination of this Lease and after the removal of Tenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage

occurring to any such property owned by Tenant.

Section 31.04. In the event that at any time during the Term of this Lease the term of the Master Lease shall be renewed or extended, Tenant shall have the option to extend the term of this Lease for an equivalent period of time less one (1) day. In the event the City of New York shall become the fee owner of the Project Area upon the expiration of the Master Lease, Tenant shall not be required to surrender and deliver up the Premises.

Section 31.05. The provisions of this Article 31 shall survive any termination of this Lease.

ARTICLE 32

ENTIRE AGREEMENT

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

ARTICLE 33

QUIET ENJOYMENT

Landlord covenants that, so long as this Lease remains in full force and effect, Tenant shall and may, subject to the terms and conditions of this Lease, peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except those encumbrances, liens or defects of title, created or suffered by Tenant and the Title Matters.

ARTICLE 34

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 party desiring arbitration shall appoint a

disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within thirty (30) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within thirty (30) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Article 34, shall be in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. The expenses of arbitration shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of and its own attorneys and the expenses of its own proof. Landlord and Tenants shall sign all documents and to do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. If the arbitration concerns any Capital Improvement or Restoration, then each of the arbitrators shall be a licensed professional engineer or registered architect having at least ten (10) years experience in the design of school buildings, and, to the extent applicable and consistent with this Article 34, such arbitration shall be conducted in accordance with the Construction Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function.

ARTICLE 35
INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 36
RECORDING OF MEMORANDUM

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

ARTICLE 38
MISCELLANEOUS

Section 38.01. 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 38.02. 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 38.03. 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 38.04. The liability of Landlord or of any Person who has at any time acted as

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

Section 38.05. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 38.06. Tenant shall store all refuse from the Premises off the streets in an enclosed area on the Premises, and in a manner reasonably satisfactory to Landlord and in accordance with the requirements of municipal and/or private sanitation services serving the Premises.

Section 38.07. This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 38.08. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 38.09. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 38.10. 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.

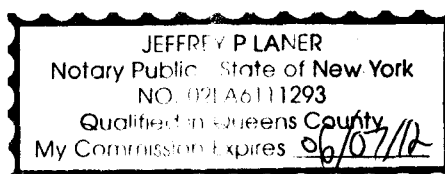
Section 38.11. All plans, drawings, specifications or models prepared in connection with

Acknowledgments

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

On the 18th day of June in the year 2008 before me, the undersigned, a Notary Public in and for said state, personally appeared James Cavanaugh, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jeffrey P. Laner
Signature of Notary Public



any Restoration or Capital Improvement, in the possession of and available to Tenant, shall become the sole and absolute property of Landlord upon the Expiration Date or any earlier termination of this Lease. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 38.14 shall survive the Expiration Date.

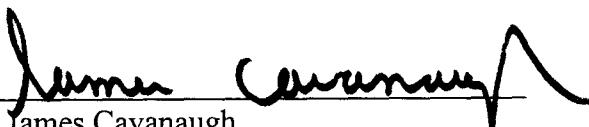
Section 38.12. All references in this Lease to "licensed professional engineer", "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York.

Section 38.13. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

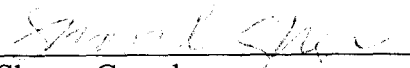
Section 38.14. The Request for Authorization to Lease of the Board of Education of the City of New York is attached hereto and incorporated herein as Exhibit D.

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

**BATTERY PARK CITY AUTHORITY
d/b/a HUGH L. CAREY BATTERY PARK
CITY AUTHORITY**

By: 
James Cavanaugh
President and CEO

**NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY**

By: 
Sharon Greenberger
President and CEO

UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT
(Within New York State)

STATE OF NY)
COUNTY OF Queens) SS.:

On this 26 day of June, in the year 2008, before me, the undersigned, personally appeared Sharon Greenberger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Sonia E. Sierra
SONIA E. SIERRA
Commissioner of Deeds
City of New York - No. 2-9738
Certificate Filed in Queens County
Commission Expires 12/31/11 2011

EXHIBIT A

THE LAND

All that certain lot of parcel of land, lying and being in the Borough of Manhattan, City of New York, 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 Second Place with the easterly line of Battery Place:

- 1) Running thence easterly, along the southerly line of Second Place, 213.98 ft. to the corner formed by the intersection of the westerly line of Marginal Street, Wharf or Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of Second Place;
- 2) Thence southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of $102^{\circ}-26'-10''$ on its westerly side with the preceding course, 232.76 ft. to the corner formed by the intersection of the northerly line of First Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;
- 3) Thence westerly, along the northerly line of First Place, forming an angle of $77^{\circ}-33'-50''$ on its northerly side with the preceding course, 233.52 ft. to the corner formed by the intersection of the easterly line of Battery Place with the northerly line of First Place;
- 4) Thence northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 ft. and a central angle of $13^{\circ}-45'-09''$, whose radial line forms an angle of $13^{\circ}-49'-17''$ on its southerly side with the preceding course, 199.94 ft. to the point or place of BEGINNING.

EXCEPTING THEREFROM the portion thereof more apticularly bounded and descibed as follows:

Beginning at a corner formed by the intersection of the southerly line of Second Place with the westerly line of Little West Street, being the northeasterly corner of the entire tract of lands of which the herein described is a part: thence

- 1) South $12^{\circ} 26' 10''$ East, along said line of Little West Street, 202.76 ft. to a corner formed by its intersection with the northerly line of First Place, being the southeasterly corner of said entire tract: thence
- 2) North $90^{\circ} 00' 00''$ West, along said northerly line of First Place, 102.40 feet to a point therein, distant South $90^{\circ} 00' 00''$ East, along said northerly line of First Place, 131.12 feet from the southwesterly corner of said entire tract, being the intersection of said northerly line of First Place with the easterly line of Battery Place; thence
- 3) North $12^{\circ} 26' 10''$ West, through and across the lands of Battery Park City Authority, parallel with and distant westerly 100.00 feet measured at right angles from the first course of lands herein described, 202.76 feet to a point on the aforesaid southerly line of Second Place, distant therein North $90^{\circ} 00' 00''$ East, 111.58 feet from the northwesterly corner of said entire tract, being the intersection of said easterly line of Battery Place with said southerly line of Second Place; thence
- 4) North $90^{\circ} 00' 00''$ East, along said southerly line of Second Place, 102.40 feet to the point and place of beginning.

EXHIBIT B

TITLE MATTERS

1. The Settlement Agreement as in effect on the date hereof.
2. The Master Lease as in effect on the date hereof.
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 New York State Urban Development Corporation and Battery Park City Authority, as supplemented by letter dated November 8, 1979, from the President and Chief Executive Officer of New York State Urban Development Corporation and Battery Park City Authority to the Mayor of the City of New York and as supplemented by 1986 Supplemental Memorandum of Understanding dated as of August 15, 1986 among the Governor of the State of New York, the Mayor the City of New York and Battery Park City Authority, and as amended by the Amendment to Memorandum of Understanding dated as of January 9, 1995 among the Governor of the State of New York, the Mayor of the City of New York and Battery Park City Authority.
4. The Purchase Option granted by New York State Urban Development Corporation, Battery Park City Authority, the BPC Development Corporation to the City of New York, dated June 6, 1980 and recorded June 11, 1980 in Reel 527 at page 153 in the Office of the City Register, New York County, as amended by Amendment to Option to Purchase dated August 15, 1986 and recorded October 22, 1986 in Reel 1133 at page 582 and Second Amendment to Option to Purchase dated May 18, 1990 between BPCA and the City of New York and recorded on May 30, 1990 in Reel 1697, page 294 in said Register's Office.
5. , Declaration of Zoning Lot Restrictions (Document Number 2005020302249001/City Register File 2005000083891) and Declaration of Zoning Lot and Ownership Statement (Document Number 2005020302249002/City Register File 2005000083892) recorded in the Office of the City Register on February 10, 2005.
6. Such state of facts as an accurate survey of the Premises would disclose as long as such facts do not render title unmarketable.
7. Declaration of Covenants and Restrictions made by Battery Park City Authority dated March 15, 1984, and recorded March 21, 1984, in Reel 776 at page 360, in the Office of the City Register, New York County.
8. Rights of the Federal Government to enter upon and take possession of lands, now or formerly lying below the high water mark of the Hudson River.

9. The City Map of the City of New York as modified by a Map Showing a Change in the City Map, dated January 15, 1987, corrected September 10, 1993 and certified by the Secretary to the City Planning Commission on November 5, 1995 and as the City Map may be otherwise modified.

10. Zoning and other laws and ordinances and governmental regulations, orders and requirements pertaining to the Premises.

11. Amendment and Restatement of Declaration of Restrictions, dated as of May 18, 1995, among Battery Park City Authority, WFC Tower A Company, Olympia & York Tower B Company, WFC Tower D Company, American Express Company, Merrill Lynch/WFC/L, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, and recorded May 31, 1995 in Reel 2211, page 1414 in the Office of the Register of The City of New York, New York County.

12. Mapping Agreement between the City of New York and BPCA made as of October 3, 1991.

13. Mapping Agreement, dated as of April 23, 1982, among BPC Development Corporation, Battery Park City Authority and The City of New York, and recorded October 27, 1982 in Reel 646, page 700, in the Office of the Register of The City of New York, New York County, as amended by Agreement, dated as of September 1, 1987, between Battery Park City Authority and The City of New York, and recorded September 12, 1988 in Reel 1463, page 634.

Exhibit C

Sustainable Measures Matrix - NYC Green Schools Guide - Battery Park City Residential Environmental Guidelines, v. 2005

PS/IS 276, Battery Park City

Date: 13 June 2008

☐ Sustainable Measure to be Incorporated

☐ Feasibility to be Determined

☐ Not Feasible

☐ N/A Not Applicable

| | BCPA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|---|--|---|--|-----------------------|
| 1.0 | Energy Efficiency | | | | |
| 1.1 | Maximize Energy Efficiency | | | | |
| 1.1.1 | Increase by 30% over 2002 NYS Energy Code | <p>GSG A3.1-3.4 Optimize Energy Performance</p> <p>Energy cost reduction required by LL86 ranges from 20% savings to 30% savings depending on payback period of energy cost reduction measures.</p> <p>Per Local Law 86, energy conservation measures to increase savings beyond this should achieve payback within 7 years.</p> | <p>SCA typical schools are approximately 17% more efficient than code requirements. SCA GG schools achieve approximately 20%- 25% energy cost reduction for a school of this project's size.</p> <p>Project will maintain 30% energy cost reduction as a goal. DOE-2 analysis now shows energy cost reduction of 26.74%.</p> <p>SCA will provide a final comparison of actual energy cost compared to the DOE-2 analysis when one year's energy data is available. This will be done by analyzing the individual systems, as measured by the meters that are installed as part of the BMS system and comparing it to the DOE-2.</p> | | |
| 1.1.2 | Right-size mechanical equipment | GSG E4.1R HVAC System Sizing, Avoid Oversizing | Project will comply. | | |
| 1.1.3 | Motion sensors | <p>GSG Q5.1R Controllability of Systems, Design Requirement 7.2.1 Interior Lighting</p> <p>Occupancy sensors are provided at offices and storage spaces.</p> <p>SCA Standard lighting control system addresses light use in other spaces by including building wide shut off of all non-emergency lighting during hours when school is not in operation.</p> | <p>Project will comply.</p> <p>Occupancy sensors will be provided on a prototypical basis for classrooms and mechanical spaces (as well as per SCA standard at storage rooms and offices.)</p> <p>Standard system allows for lighting system shut-off when school is not in operation and for system to shut off on floors where custodian is not cleaning when school is not in session.</p> | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|------------------|---|----------------------------------|---|-----------------------|
| 1.1.4 | Master Switch | <p>GSG S5.1R Light Pollution Reduction Design Requirement 7.2.1 Interior Lighting</p> <p>School appropriate equivalent system is standard. SCA Standard lighting control system requires a centralized building wide shut off of all non-emergency lighting during hours when school is not in operation.</p> | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|--------|---|---|---|--|---|
| 1.1.5 | Double -glazed windows with low-E glass | GSG E3.1R Minimum Energy Performance Standard envelope requirements meet BPCA guideline requirements: glass U value= 0.30 (BPCA= 0.33). SHGC is 0.38 (BPCA= 0.37, essentially the same). Provision of .48 SHGC is based on availability of three vendors that can meet other SCA glazing requirements. | Project will comply. | | |
| 1.1.6 | Maximize insulation, backer rods, caulking. | GSG E3.1R Minimum Energy Performance SCA standards require that rigid insulation run continuously (interrupted only by the shelf angle) on the outside of the cold surface of the wall and slab. Typically a soft joint is placed under the wall. Previous SCA standard cavity wall construction has been modified to include R15 insulation within cavity. | Project will comply. Detailing and cost implications for this detail to be reviewed. Detail for the junction of the top-of-wall and slab requires caulking on the outside, before placing the insulation, and backer rod on the inside, with insulation in between. | | See Comments column for info |
| 1.1.7 | Optimize insulation of cavity wall construction | GSG E3.1R Minimum Energy Performance GSG revisions to SCA prior standards now call for 3" insulation, R15 (was 2") and air/vapor barrier. | Project will comply. | | |
| 1.1.8 | Continuity tests for air, thermal, and water barriers | Not part of SCA standards | Project will comply by providing additional staff resources and procedures for oversight of facade construction. BPCA has indicated this is an acceptable alternative to continuity/blower door test. | | Cost, estimated at \$125,000, to be borne by SCA. |
| 1.1.9 | "Energy Star" or equiv. equipment | Design Requirement 7.2.1 Interior Lighting Standards call for high efficiency fluorescent fixtures with T-8 triphosphor type lamps and solid state ballasts. PL lamps are specified in lieu of incandescent in high hats. Incandescent fixtures are limited to stage lighting applications or where dimming is required. | Project will comply. Energy Star's primary focus is residential equipment, non-residential light fixtures are not included. Items for schools for which Energy Star may include appropriate items include: exit signs, some commercial food service equipment, some HVAC equipment, some office equipment. | | |
| 1.1.10 | Only natural gas cook tops, ovens, ranges | SCA specifications call for gas fired equipment in Cafeteria kitchen. | Project will comply. | | |
| 1.1.11 | Thermal energy recovery systems | SCA standards call for energy recovery ventilators (ERV) on the 100% outside air decoupled units used in existing school projects where floor to floor heights are limited. | Heat recovery is being included for the auditorium space. For other spaces, SCA typically considers this system for projects that have a central outside air system, which the SCA does not feel is appropriate for this project (see item 2.1.2a). Use of energy recovery wheels increases the size, weight, complexity and cost of rooftop units, as well as the cost of automatic temperature controls. ERV provides more opportunities for system failure and require more maintenance. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|--------|--|--|---|--|---|
| 1.1.12 | Max. utilization of elec demand reduction | SCA standards for electrical and controls systems are detailed enough to allow for demand reduction and demand response technologies and strategies. SCA design requirement already uses a set point of 78 degrees for cooling. | Project will comply. | | |
| 1.1.13 | Alts to electric resistance humidification | GSG Q6.1R Thermal Comfort, Comply with ASHRAE 55-2004 SCA standards specify interior design conditions of 78 degrees F and 55% relative humidity which falls within ASHRAE 55 comfort zone requirements. | Not feasible. SCA has concerns about the level of maintenance required to prevent mold issues with humidification systems. SCA standards do not call for humidification since humidity has not been a problem historically. BPCA 7/12/07 letter acknowledged humidification system not recommended for this project. | | |
| 1.2 | Modeling Energy Perf. | | | | |
| 1.2.1 | DOE - 2.X Modeling | GSG A3.1-3.4 Optimize Energy Performance This credit provides for project specific modeling for atypical SCA projects. | Project will comply. Project specific DOE-2 modeling will be undertaken for this project because of its atypical physical configuration and to evaluate impact of special sustainable measures being incorporated prototypically. Modeling will begin following completion of schematic submission. | | |
| 1.2.2 | First Annual Building Report compares model w/actual | Not part of SCA Standards. Not a capital construction item. | Not feasible. While the SCA/DOE will not submit a "BPCA Annual Building Report" the SCA will coordinate with DOE to provide copy of post occupancy LL86 reporting required for the Mayors Office of Environmental Coordination. This report includes modelled and actual energy use information. | | |
| 1.2.3 | Install meters to eval EEMs | BMS system involves extensive metering and controls. | Project will comply. SCA and Design Team to review and coordinate extent of metering to evaluate any prototypical energy efficiency measures specific to this project. | | |
| 1.3 | Renewable, Green Power | | | | |
| 1.3.1 | Microturbines, fuel cell and/or bio fuel cogen | Not part of SCA Standards | Not feasible. The capital costs for applicable systems would be onerous for a public project. It would be difficult to maintain such systems within the DOE framework. BPCA acknowledged in 7/12/07 letter that that microturbines and fuel cells are feasible for this project. | | |
| 1.3.2 | PVs and/or wind power min. .75% base bldg energy (5% peak) | Not part of SCA Standards | Project will provide a 50kW system, funded by BPCA. BPCA agreed that .75% is prohibitive for a school, where all energy use is base building. As per BPCA guidelines, project to include PV system that provides a minimum of 48kw, which is equivalent to best residential buildings in BPC. SCA to incorporate into electric system. | Cost of PVs estimated at \$1,785,764 Cost estimated at \$81,020 for PV related signage. | Assumes a 50KW roof mounted array of high efficiency panels with no tracking function. Includes framing and support structure and lobby display graphics. PV array digital display in Lobby and/or other mutually agreeable location for maximum educational benefit. |

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| 1.3.3 | Specify equip. that accepts multiple fuel sources | Not part of SCA Standards | <p>Not feasible - equipment not available.</p> <p>The condensing boilers planned for this project use natural gas and are not available in a dual fuel (oil/gas) configuration. If methane gas became available in the future, the gas fired equipment could be adapted to this use. Use of methane would need to be approved by DoE who operate the schools.</p> | | |
| 1.3.4 | Best effort 5 year contract w/renewable energy providers for 25% base bldg power | Not part of SCA Standards | <p>Project will comply if it is included in NYC's Green Energy Program.</p> <p>DCAS and Mayors Office of Environmental Coordination (MOEC) are initiating public purchase of renewable energy attributes. Details of program being finalized. Project information to be submitted to MOEC once developed so project is in line for this program.</p> | | NYC DCAS and Mayor's Office of Environmental Coordination are developing details of this new program and determining whether there will be any cost to agencies using the renewable energy attributes. |
| 2.0 | Enhanced Indoor Environmental Quality | | | | |
| 2.1 | IEQ | | | | |
| 2.1.1 | Ventilation rates: ASHRAE 62.2 | GSG Q1.1R Minimum IAW Performance / Increased Ventilation, Meet minimum requirements of ASHRAE 62.1-2004 | Project will comply. | | |
| 2.1.2a | Central outside air system, humidified/dehumidified | GSG E3.1R Minimum Energy Performance | <p>Not feasible.</p> <p>Because of additional costs and space requirements this system is not a standard for SCA projects. IAQ benefit relate to control of delivery of required ventilation air. Circulation of air and germ spread is not the issue.</p> <p>SCA has concerns about the level of maintenance required to prevent mold issues with humidification systems.</p> <p>SCA standards do not call for humidification since humidity has not been a problem historically.</p> | | |
| 2.1.2b | Ducted ventilation supply air w/in each apt. so that fresh air is evenly distributed to each room, except the kitchen and bathroom. | | This is an apartment specific requirement, however SCA is meeting the intent of this credit - ventilation supply air is ducted to each classroom. | | |
| 2.1.2c | Ventilation supply air to corridors per applicable codes, with no exhaust to maintain positive pressurization relative to apartments and thus prevent odor and smoke migration from apartments to corridors. | N/A | <p>Not applicable.</p> <p>SCA standards call for ventilation per NYC Building Code which for schools requires separate classroom and corridor ventilation systems. Systems are balanced for neutral air pressure.</p> <p>As noted in BPCA guidelines, positive pressure in corridors is designed to limit transfer of smells/smoke from apartments to corridors, this is not a concern in schools.</p> | | |
| 2.1.3 | Filtration of air - particle and ozone | GSG Q1.1R Minimum IAW Performance / Increased Ventilation, Meet minimum requirements of ASHRAE 62.1-2004 | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|--------|---|---|--|--|---|
| 2.1.4 | Airtightness - seal all 6 sides to 1.25 sq in ELA | | <p>Not applicable.</p> <p>This is a residential apartment specific requirement. Classrooms do not require this level of isolation from each other. SCA standards call for negative pressure in copier rooms or other such potentially odorous areas.</p> <p>However, the airtightness of the facade is critical to control pollutants from entering the building as well as energy efficiency. The additional monies for supervision of wall sealing (See 1.18) will cover the sealing of the facade wall.</p> | | Cost of additional sealing 1 part of 1.18 above, and funded by SCA. |
| 2.1.5a | Bathroom exhaust min. of 20 cfm continuously | GSG Q1.1R Minimum IAW Performance Increased Ventilation, Meet minimum requirements of ASHRAE 62.1-2004 | Project will comply. | | |
| 2.1.5b | Exhaust hoods for all kitchens, ASHRAE 62 | GSG Q1.1R Minimum IAW Performance Increased Ventilation, Meet minimum requirements of ASHRAE 62.1-2004 | Project will comply. | | |
| 2.1.5c | Duct all exhaust w/full sheet metal linings | GSG Q1.1R Minimum IAW Performance Increased Ventilation, Meet minimum requirements of ASHRAE 62.1-2004 | Project will comply. | | |
| 2.1.6 | Walk-off grilles at interior of all entrances | GSG Q4.1R Indoor Chemical & Pollutant Source Control | Project will comply. | | |
| 2.1.7 | Humidity stabilization: 68F 30% RH winter, 76F 50% | <p>GSG Q6.1R Controllability of Systems, Thermal Comfort.</p> <p>SCA standards specify interior design conditions of 78 degrees F and 55% relative humidity which falls within ASHRAE 55 comfort zone requirements.</p> | <p>Not feasible.</p> <p>SCA has concerns about the level of maintenance required to prevent mold issues with humidification systems.</p> <p>SCA standards do not call for humidification since humidity has not been a problem historically.</p> <p>BPCA 7/12/07 letter acknowledged humidification system not recommended for this project.</p> | | |
| 2.1.8 | Thru-wall heating/cooling prohibited | | Project will comply. | | |
| 2.1.9 | No outside air ducts in garage/boiler room/trash room | | Project will comply. | | |
| | Not a BPCA guideline item | Wall board and Roof Deck Products Mold Resistance | Project will comply. | | |
| | Not a BPCA guideline item | Electric Ignition Stoves | Project will comply. | | |
| | Not a BPCA guideline item | Provide HEPA Vacuums | Project will comply. | | |
| 2.2 | Low-Emitting Materials | | | | |
| 2.2.1 | Products applied in the field | GSG Q3.3R Low Emitting Materials | Project will comply. | | |
| 2.2.2 | Carpet meet C&R Inst. Green Label Plus IEQ Test Program | GSG Q3.3R Low Emitting Materials, Carpet Systems | Project will comply. | | |
| 2.2.3 | Prohibit use of added urea-formaldehyde in comp. and wd | GSG Q3.4 Low Emitting Materials, Composite Wood and Agrifiber Products | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|--|--|--|---|-----------------------|
| 2.3 | Controllability | | | | |
| 2.3.1 | Provide apartments programmable controls for HVAC system with 7 day programmable thermostat with copy function and 4 programmable periods per day. | | While this is an apartment specific requirement, SCA is meeting the intent of this credit. SCA standards specify a central BMS system. Rooms have individual temperature controls and operable windows. This is the appropriate system for schools. | | |
| 2.3.2 | BMS | GSG E2.2R Energy Management System Controls, HVAC and hot water SCA standards include a BMS system for monitoring and control. | Project will comply. | | |
| 2.4 | Lighting & Daylighting | | | | |
| 2.4.1 | Natural light 30% over NYC Bldg. Code | GSG S1.3 Sustainable Site and Building Layout, addresses orientation and composition of building to take optimize use of daylight GSG Q7.1 Daylight & Views, Daylight 75% of Spaces GSG A5.2 Daylight in Classrooms, daylight modeling | Project will comply. This BPCA guideline references DOB standard that applies to residential spaces. NYS Department of Education and SCA standards call for substantial glazing appropriate to this building type. Critical daylighting issue for educational spaces is glare control which will be studied for this project with daylight modeling. For general reference note that if a classroom was assumed to be a habitable room as referenced in NYC Building Code, the SCA typical classroom layout complies with this requirement. | | |
| 2.4.2 | Min. Floor-to-ceiling height 8'6" | Standard classroom ceiling height is 10ft. | Project will comply. | | |
| | Not a BPCA guideline item | GSG Q7.3 Visual Performance, Artificial Direct-Indirect Lighting Provide pendant mounted glare free ambient lighting | Project will comply. | | |
| 2.5 | Indoor Pest Control | | | | |
| 2.5.1 | Integrated Pest Management Plan | | Project will comply. BPCA has contracted with an IPM specialist, Dr. Stephen Frantz, to review SCA's drawings to include best construction practices for pest management. SCA has incorporated suggestions into drawings. In terms of pest control after construction, the SCA is responsible for school design and construction. The DOE is responsible for building management and maintenance. SCA/design team will participate with BPCA/DOE in initial review of these operation and maintenance items in BPC Guidelines. SCA will act as liason with the DoE and BPCA on this issue. | | |
| 2.5.2 | Seal, caulk, repair to mitigate, metal sheeting, mesh | | Project will comply. Details to be reviewed for pest control measures consistent with this guideline item. Project has incorporated BPCA's standards created by Dr. Frantz where applicable and practical. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|---|------------------------------------|--|---|-----------------------|
| 2.5.3 | In-sink garbage disposal in all apt. kitchens | N/A | <p>Not applicable.</p> <p>SCA/DOE are considering pulper for cafeteria waste on prototypical basis for other projects.</p> <p>SCA will act as liaison with the DoE and BPCA to discuss issues of pulping, collection of food waste for pick-up by BPCA and possibility of use of paper trays for this school.</p> | | |
| | | | | | |

| | BCPA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|--------|---|---|----------------------------------|--|-----------------------|
| 2.6 | Construction IEQ Management | | | | |
| 2.6.1 | IEQ Management Plan for const. and pre-occupancy | GSG Q2.1R IAQ During Construction is based on SMACNA guidelines and these have been incorporated into S01550 IAQ Requirements | Project will comply. | | |
| 2.6.2a | Protection of ductwork and replace all filtration media pre-occupancy. | GSG Q2.1R IAQ During Construction is based on SMACNA guidelines and these have been incorporated into S01550 IAQ Requirements | Project will comply. | | |
| 2.6.2b | Monitoring of IAQ during const. as per SMACNA | GSG Q2.1R IAQ During Construction is based on SMACNA guidelines and these have been incorporated into S01550 IAQ Requirements. Standards and specifications call for building flush-out consistent with LEED requirements. | Project will comply. | | |
| 2.6.2c | Implementation of site sanitation and pest management during construction | SCA general conditions call for site sanitation measures. S01500 Temporary Facilities and Controls This specification section requires contractor to engage rodent/pest control contractor for duration of the project. | Project will comply. | | |
| | Acoustic Measures | | | | |
| | Not a BPCA guideline item | Minimum Acoustic Performance | Project will comply. | | |
| | Not a BPCA guideline item | Sound Isolation for Special Spaces | Project will comply. | | |
| 3.0 | Conserving Materials | | | | |
| 3.1 | Storage & Collection of Recyclables | | | | |
| 3.1.1 | Trash and recycling room on each floor | GSG M1.1R Storage & Collection of Recyclables. Central trash and recycling room would be provided at first floor. In a school collection of recyclables is a centralized task except at cafeteria. Blue paper recycling bins provided for classrooms and offices. Per NYC requirements materials to be recycled include: paper, glass, plastic, metal, milk and juice cartons. | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|--|--|----------------------------------|---|-----------------------|
| 3.1.2 | Separate disposal chutes or sorting bins | <p>GSG M1.1R Storage & Collection of Recyclables.</p> <p>Central trash and recycling room would be provided at first floor. In a school collection of recyclables is a centralized task except at cafeteria.</p> <p>Paper recycling at classrooms, offices and cafeteria are DOE standard.</p> | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|--|---|--|--|-----------------------|
| 3.1.3 | Holding areas air conditioned, sealed to pests | Requirement consistent with SCA standards. | Project will comply. | | |
| 3.2 | Construction Waste & Resource Reuse | | | | |
| 3.2.1 | Plan to divert and recycle a min. of 80% waste by weight. | GSG M1.6R Construction waste management, divert 75% from disposal | Project will comply by incorporating 80% target in project specifications. This goal may be targeted but not mandated. Vendors for these public projects must develop familiarity with requirements. | | |
| 3.2.2 | Monthly waste management log | Standard specification S01524 Construction Waste Management | Project will comply. | | |
| | Not a BPCA guideline item | Low Mercury Lighting, Reduce Mercury Waste | Project will comply. | | |
| 3.3 | Recycled Content | | | | |
| 3.3.1 | Post-consumer recycled + 1/2 pre-cons. = 12% min | Use materials with re-cycled content such that the sum of post-consumer recycled content plus 1/2 of the pre-consumer content constitutes at least 10% of the total value of materials in the project. The 10% target in GSG is based on requiring recycled content for a select set of materials. This was done to save cost and time and not unduly burden public contractors which provide documentation for each product specified. The 10% requirement is also based getting materials from the limited number of manufacturer's pre-approved for SCA projects. | Project will comply. Project will incorporate 12% target in project specifications and include additional recycled content materials beyond those in the SCA standards. | | |
| 3.3.2 | + fly ash = 15% + gran. Blast slag = 25% cement | SCA standard specifications call for recycled content in the concrete mix of 40% of the cementitious content. | Project will comply. | | |
| 3.4 | Local/Regional | | | | |
| 3.4.1 | Min. 50% materials w/in 500-mile (air) or 1,000 mile (rail or water) | Standards require reporting on regional content for a specific set of materials anticipated to contain regional content. The anticipated recycled content based on this documentation is 10% regional materials. | Not feasible. State contracting requirements prohibit the SCA from mandating regional content. The SCA specifications do require documentation for specific materials that are likely to have regional content with a goal that 10% of materials will be regional. Regional products will be sought for materials where design team selects products beyond SCA standards. | | |

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|-------|---|---|---|--|-----------------------|
| 3.5 | Renewable & Rapidly Renewable | | | | |
| 3.5.1 | Specify products made with renewable or rapidly renewable | Not part of SCA Standards | <p>Project will comply.</p> <p>SCA will incorporate renewable flooring materials for the multi-purpose room and auditorium.</p> <p>The DoE has to maintain school buildings based on a limited budget. School building is used by a much larger population than that of a residential or office facility. As a result of that materials specified for a school building are such that they can sustain a lot of abuse, and can be maintained easily with minimal effort and cost of maintenance. Rapidly renewable products may require a high level of maintenance and might have a lower life cycle.</p> | | |
| 3.6 | CFC Elimination | | | | |
| 3.6.1 | Prohibit use of CFC-based equipment | No CFC based Refrigerants used | Project will comply. | | |
| 3.6.2 | Avoid use of insulation mats w/chlorine-based production | Chlorine is used to manufacture isocyanurate as opposed to polyisocyanurate insulation. Isocyanurate insulation is not included in SCA standards. | Project will comply. | | |
| 3.7 | Alternative Transportation | | | | |
| 3.7.1 | Bike storage min. of 0.75 bikes/apt. | Provision of bike racks/storage is not part of the SCA standards. | <p>Project will comply.</p> <p>To make this requirement applicable to schools as opposed to apartments, the SCA would provide bike racks for 5% of full time equivalent staff. Provision of bike racks for students is an administrative concern. Racks would be sidewalk mounted and type as recommended by BPCA.</p> | | |
| 3.7.2 | If parking is to be provided provide 5% preferred parking spots for HPVs | NA | No parking to be provided. | | |
| 3.7.3 | Submit Plan defining scope of proposed compliance w/ alternative transportation goals | N/A | BPCA agrees to waive this requirement since no parking to be provided. All students and staff to use public transportation, which is readily available. | | |
| 3.8 | Certified Wood | | | | |
| 3.8.1 | Minimum of 35% certified wood | Not part of SCA Standards | <p>Not feasible.</p> <p>State Contracting law does not permit this to be required. While it could be given as an alternative, since certified wood is usually more expensive than non-certified, very minimal chance that contractors would select if given choice.</p> | | |
| 3.8.2 | Encourage tenants to utilize certified wood | N/A | <p>Not applicable.</p> <p>School will have no tenants. BPCA may coordinate with DoE/school to pursue educating school community about sustainable materials.</p> | | |
| 3.9 | Low-Pollution Fuels | | | | |
| 3.9.1 | Ultra-low sulfur diesel fuel or CNG for const. vehicles > 5tons | SCA would comply per Local Law 77 | Project will comply. | | |
| 3.9.2 | Equip above w/high perf. Engines and DOC filters | SCA would comply per Local Law 77 | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|--|------------------|------------------------------------|----------------------------------|---|-----------------------|
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| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|--------|--|---|--|--|--|
| 4.0 | Education, Operations and Maintenance | | | | |
| 4.1 | Education | | | | |
| 4.1.1 | Green construction training | Green Guide Requirements reviewed as part of contractor meetings. | <p>Feasibility of compliance to be determined during construction.</p> <p>Training is part of Pre-construction orientation (contract requirement for Contractor). Details of training to be reviewed to confirm if sustainable training could be incorporated into existing training.</p> | | |
| 4.1.2 | Green team leader | GSG A1.1R LEED Accredited Professional | Project will comply. | | |
| 4.1.3 | Tenant guide of green features | | <p>Project will comply.</p> <p>Design Team to provide summary of sustainable features for DoE/School use in developing educational materials.</p> <p>Green signage will be included throughout the building to inform teachers and students of green attributes of the building.</p> | \$75,000 | Cost to be incurred by SCA, with the exception of signage concerning energy savings by PV system. |
| 4.1.4 | BOM attends min 5 day training NEEP | N/A | <p>Not applicable.</p> <p>The SCA is responsible for school design and construction. The DoE is responsible for building management and maintenance. This is not an item that SCA can incorporate in design or construction documents. SCA will act as liaison with the DoE and BPCA on discussions of related items.</p> | | |
| 4.1.5 | Lobby display for green education or info online | Bulletin boards provided throughout school for educational purposes. School administration to determine postings and content. | <p>Project will comply.</p> <p>BPCA to provide PV output to be displayed in lobby or other agreed upon public space.</p> <p>SCA will provide additional Green educational signage throughout the building.</p> | | <p>PV display cost of \$45,000 to be funded by BPCA as part of 4.13 above.</p> <p>SCA to cover costs of other green signage throughout the building.</p> |
| 4.2 | Commissioning | | | | |
| 4.2.1 | Independent Commissioning Authority (ICA) | GSG E1.1R Enhanced Commissioning | Project will comply. | | |
| | | NYC Schools are commissioned through a group at the School Construction Authority which is independent of SCA Architecture and Engineering, SCA Project Management and the Design Team. | SCA to provide commissioning which exceeds requirements for fundamental and enhanced commissioning in LEED. SCA to conduct Whole Building Commissioning. | | |
| 4.2.2 | Commissioning Plan for all operating equipment | GSG E1.1R Enhanced Commissioning | Project will comply. | | |
| | | NYC Schools are commissioned with whole building commissioning. | | | |
| 4.2.3 | Incorporate commissioning reqs into construction docs | GSG E1.1R Enhanced Commissioning | Project will comply. | | |
| 4.2.4a | ICA reviews design prior to Const. Doc phase | GSG E1.1R Enhanced Commissioning | Project will comply. | | |
| 4.2.4b | ICA reviews prior to bidding | GSG E1.1R Enhanced Commissioning | Project will comply. | | |
| 4.2.4c | ICA reviews and verify contractor submittals | GSG E1.1R Enhanced Commissioning | Project will comply. | | |
| 4.2.4d | ICA provides developer w/commissioning report & approval | GSG E1.1R Enhanced Commissioning | Project will comply. | | |
| 4.2.4e | ICA reviews bldg operation w/O&M staff | GSG E1.1R Enhanced Commissioning | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|--|--|--|--|---|
| 4.3 | Building Systems Monitoring | | | | |
| 4.3.1 | Install system to track IEQ, energy performance/use | Q1.2R Air Flow Stations, Outside Air intakes SCA standards require collection and monitoring of outdoor intakes. SCA standard BMS system monitors energy performance and use. | Project will comply. | | |
| 4.3.2 | Air quality profile (formaldehyde, VOCs) | System Flush-out | Project will comply. Project will not submit an air quality profile but will comply with ambient air analysis requirements per the GSG/LEED/ASHRAE 62.1. Project will also meet construction IAQ requirements consistent with LEED-NC 2.2. | | |
| 4.4 | Maintenance Accountability | | | | |
| 4.4.1 | Maintenance Manual | Written manuals required but electronic maintenance manual not part of GSG commissioning requirement. | Option of provision of electronic manual to be reviewed for this project. SCA will act as liaison with the DSF and BPCA to discuss and develop appropriate maintenance manual. | | |
| 4.4.2 | Maintenance persons should participate in meetings | DOE personnel are part of the commissioning team | Project will comply. | | |
| 4.4.3 | Annual Building Performance Report | LL86 Phase IV reporting requires DoE to provide information on actual energy use at approximately 2 years after the completion of construction. (Phase III report by SCA at 10 months after completion of construction does not require provision of actual energy use) | SCA will analyze energy usage after one year of operation. However, as the construction agency only, the SCA cannot commit to ongoing annual reporting since it is not responsible for building once it is built. However, as per LL 86 requirements, building energy performance will be submitted at approximately 2 years after completion. SCA will act as liaison with the DSF and BPCA to discuss this issue. | | |
| 4.4.4 | Building must achieve LEED-EB certification every 5 yrs | Not part of SCA Standards | Not feasible. This would be a burden on the DoE particularly as SCA projects achieve certification through GSG system as opposed to LEED. SCA forwarded copy of Building Conditions Assessment Survey (BCAS) report format for BPCA to explain existing assessment system. | | |
| 5.0 | Water Conservation and Site Management | | | | |
| 5.1 | Storm Water Management | | | | |
| 5.1.1 | Provide for 2.4 inches rainwater to be collected/treated/reuse | Not part of SCA Standards | BPCA is investigating the collection of the building's stormwater and reuse for irrigation at adjacent parks. Cost would be borne by BPCA via a separate funding source. Schools do not have cooling towers to reuse the water. Only consistent option for reuse would be for toilet flushing, and due to dual piping, this would represent a substantial expense. Water use is significantly less than BPC residential projects because of typical low water usage in schools and high level of water use reduction in NYC schools. A system for select fixtures or irrigation would require holding tanks, a pumping system, backflow prevention devices, and a filtration system which would pose undue burden on DoE resources. | | If implemented, cost and implementation shall be via BPCA, not through the SCA construction. |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|---|---|--|--|-----------------------|
| 5.1.2 | Adopt BMP (EPA) for harvesting rainwater and reuse | | See Response to 5.1.1 above | | |
| 5.1.3 | Reclaimed water taps | | See Response to 5.1.1 above | | |
| 5.1.4 | Sediment and Erosion Control Plan (EPA832/R-92-005 Sept. 1991) | GSG S1.1R Construction Activity Pollution Prevention | Project will comply. | | |
| 5.2 | Water Use Reduction | | | | |
| 5.2.1 | 10% less potable than Energy Policy Act 1992 | GSG W2.3R Water Use Reduction, >40% Reduction over EPA 1992 Standards specify dual flush toilets, high efficiency urinals, aerated metered faucets, and low flow shower heads. | Project will comply. | | |
| 5.2.2 | Low water volume/conserving fixtures | GSG W2.3R Water Use Reduction, >40% Reduction over EPA 1992 Standards specify dual flush toilets, high efficiency urinals, aerated metered faucets, and low flow shower heads. | Project will comply. For this project SCA will use waterless urinals on a demonstration basis pending DoB and DoE approval. | | |
| 5.2.3 | Utilize non-potable drip irrigation systems (if applicable) | N/A | Not applicable. Project site will have not landscaping besides street trees which are typically not irrigated. | | |
| 5.3 | Innovative Water Technologies | | | | |
| 5.3.1 | Treat all wastewater and reuse | Not part of SCA Standards | Not feasible. BPCA agreed, since the actual amount of blackwater available in a school is much less than a residential building. An on-site "sewer treatment plant" in a school facility would add significant construction and maintenance costs to the project. The DoE would require additional staff, funding, licensing and training to maintain such facilities. Ongoing maintenance and operations are also an issue. | | |
| 5.3.2 | Ecology-based treatment processes for reclaimed water treatment | Not part of SCA Standards | Not feasible. See response above. | | |
| 5.3.3 | Reclaimed water for toilets, cooling water, irrigation, maintenance | Not part of SCA Standards | Not feasible. See response above. SCA projects do not typically use cooling towers. Even a small system for irrigation would require treatment that involving complexity, maintenance and risks that are not acceptable to SCA. | | |
| 5.3.4 | Minimize chemical use in maintenance of cooling towers | N/A | Not applicable. School projects typically do not have cooling towers. | | |
| 5.4 | Water Efficient & Responsible Landscaping | | | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|--|--|----------------------------------|---|-----------------------|
| 5.4.1 | 100% plantings: native / indigenous / adapted / req. low amounts water | GSG W1.1R Water Efficient Landscaping, Reduce by 50% | Project will comply. | | |

| | BPCA Requirement | NYC Green School Guide Requirement | Agreed Upon Sustainable Measures | Est Incremental Costs to be Paid by BPCA (see notes 1-3 above) | Cost Data/Assumptions |
|-------|---|---|---|--|---|
| 5.4.2 | Proper topsoil for organic maintenance practices | | Project will comply. SCA specifications will be revised to incorporate this requirement for this project. | | |
| 5.4.3 | Develop a landscape maintenance plan for sustainable practices for all landscape areas. | | If planting is included in the project, it will be sustained using sustainable practices. | | |
| 5.5 | Landscape & Roof Design to Reduce "Heat Islands" | | | | |
| 5.5.1 | 75% of all roof area over conditioned spaces and not used for mechanical equipment to be "green" roofs. | | Not feasible. The majority of non-mechanical roof areas are to be devoted to student recreation. The 3rd-floor play roof area would not be vegetated. The southwest corner of the building to have a green wall on the uppermost floor. | | |
| 5.5.2 | Remaining to use light-colored/high albedo w/SRI of 78 | GSG A2.1 Heat Island Effect, Roof SCA standards call for gravel complying with draft City Council Cool roof legislation. | Project to use high albedo pavement where feasible - for play roof a Solar Reflectance Index of 78 would create glare that is not suitable for student recreation. The PV array screens the high roof, almost no roof area will be left for this credit to apply to. Deflection of heat from PV array to be considered in selecting roofing material below PV array. | | |
| 5.5.3 | Provide street trees as per BPCA/BPCPC reqs. | SCA project to comply. | Project will comply. | | |
| 5.6 | Light Pollution Reduction | | | | |
| 5.6.1 | Angle of max candela not exit out through windows | GSG S5.1R Light Pollution Reduction incorporates same standards. | Project will comply. | | |
| 5.6.2 | Exterior lighting max. no > .60 footcandles and drop off to .01 w/in 15 ft. | GSG S5.1R Light Pollution Reduction incorporates same standards. | Project will comply. | | |
| o.1 | Outdoor Multi-purpose Space | Not part of SCA Standards | Planters and enclosure system will be included in this project with funding through BPCA. This project will include "Outdoor Multi-Purpose Space" with landscape areas and screened enclosure so that it can be used as an outdoor educational area accessory to the science room. A planted screen will provide enclosure and visual green presence at this corner. Options will be further investigated during design. | Cost estimate is \$131,800 | Cost to be borne by BPCA, Applicable Roof area = 1,550sf |

EXHIBIT D

REQUEST FOR APPROVAL OF A GROUND LEASE AGREEMENT FOR THE PREMISES TO BE LOCATED AT SITE 2B, SOUTH RESIDENTIAL NEIGHBORHOOD, BATTERY PARK CITY, BOROUGH OF MANHATTAN, FOR SCHOOL USE, DISTRICT 2

1. The New York City School Construction Authority (SCA) shall be requested to enter into a ground lease agreement (Lease) for a parcel of land (Block 16; Lot 40) located at Site 2(B), in the South Residential Neighborhood of Battery Park City, Manhattan (Premises). Thereafter, the SCA shall construct a school which will have approximately 117,000 square feet of interior space and a large play space to be located on the roofs of the newly constructed building. The new school will be used as a Primary/Intermediate (Pre-K-8) School for District 2, and for City-Wide Special Education (District 75). The term of the Lease shall commence beginning with delivery of vacant possession (Commencement Date) of the land and will expire on June 17, 2069, a period of approximately 61 years. The rent shall be \$1.00 per annum, payable on the Commencement Date, and in advance of the first day of each lease year;
2. The proposed facility will be Manhattan's first new school designed under the SCA's recently adopted Green Schools Guide, as further enhanced by the application of Battery Park City Authority's Green Guidelines, as provided in the Lease. Approximately 950 students will be served. Since the facility will cover the site, a large play space will be located at the third level on the roofs of the gymnasium and auditorium;
3. The Chancellor will accept the transfer of this Lease from the SCA and execute an assignment agreement with the SCA for such purpose whereby the DOE shall assume all rights and obligations of the SCA under such Lease, including all costs attendant thereto;
4. Pursuant to execution and approval of arrangements for the Lease and assignment agreement for the Premises, as stated above, the Executive Director for School Facilities shall perform such work therein as may be required for the health, safety and comfort of its occupants and for the proper maintenance and operation of the physical plant, subject to necessary approvals by the Chancellor, and the cost of such work shall be payable by the Tenant, subject to the terms of the Lease;
5. The Chancellor may execute other documents and/or agreements which may reasonably be required in connection with the quiet enjoyment of the Premises;
6. DOE policy, the Chancellor's Regulations on Conflicts of Interest and the City Charter provisions on conflicts of interest shall be incorporated by reference into the Lease.

EXPLANATION

Pursuant to Public Authorities Law, Section 1728, the SCA may acquire any interest in real property, and enter into agreements with the Department of Education (DOE) whereby the SCA will provide educational facilities to the DOE. This document requests the SCA to enter into a Lease with Battery Park City Authority (BPCA) pursuant to which Manhattan's first new school designed under the SCA's Green Schools Guide, as further enhanced by the application of BPCA's Green Guidelines as provided in the Lease, will be constructed by the SCA. BPCA will hold title to the school building. The new school facilities will provide space for approximately 950 students, Pre-Kindergarten – 8th Grade, and City-Wide Special Education (District 75). Rent will be \$1.00 per annum throughout the term. The Chancellor shall accept an assignment of the Lease from the SCA to the DOE, thereby expediting the procedures for obtaining the use of premises for the DOE.

The Premises to be leased is located at Site 2B, Battery Park City, will front on Battery Place, and be bounded by First Place to the south, Second Place to the north, and a new 30-story residential tower to the east. When completed, the school will include approximately 117,000 square feet of interior space, and cover the site; therefore, a large play space will be located at the third level on the roofs of the gymnasium and auditorium.

The cost for design and construction, including construction-related professional and technical services and expenses, will be approximately \$101,000,000. Acquisition expenses of approximately \$3,281,657 (relocation expenses of prior occupants) will be shared equally between Landlord and Tenant.

In accordance with the revised leasing procedures originally established by the BOE in November 1996, due diligence has previously been performed regarding the Landlord; and environmental quality of the Premises. The staff of SCA, on behalf of the DOE, has inspected the site and found it suitable for the above stated uses, and the financial terms are deemed to be fair and reasonable.

The following shall be the pertinent points of this Lease:

| | |
|-------------------|---|
| Premises Address: | Site 2B, Battery Park City New York, New York 10281 |
| Landlord: | Battery Park City Authority One World Financial Center New York, New York 10281 |
| Lease Term: | Approx. Sixty-One (61) Years (from Commencement Date through June 17 2069) |
| Premises: | Block 16, Lot 40 |

| | |
|---|--|
| Rental Per Annum: | \$1.00 |
| Annual Rent Commencement | Commencement Date and in Advance of each Lease Year |
| Acquisition Expense: | Relocation Expenses for Prior Occupants of premises of approximately \$3,281,657 to be Shared Equally by Landlord and Tenant |
| Alterations by: | Tenant |
| Architecture and Engineering: | Tenant |
| Project Management: | Tenant |
| Compliance with Americans with Disabilities Act: | Tenant |
| Certification of Absence of Friable Asbestos in Premises: | Tenant |
| Heat, Hot & Cold Water and HVAC by: | Tenant |
| Electricity and Gas by: | Tenant |
| Exterior, Structural and Roof Repairs, incl. Window Frames and Mechanisms by: | Tenant |
| Interior Repairs by: | Tenant |
| Water Charges & Sewer Charges by: | Tenant |
| Air Conditioning & Mechanical Ventilation by: | Tenant |
| Building Services, including Custodial, Cleaning and Security by: | Tenant |
| Service Contracts: | Tenant |

Any work in excess of \$15,000.00 over the approved funding level will not be undertaken at the Premises without prior notification to the Chancellor, subject to any other necessary approvals. The Executive Director of the Division of School Facilities certifies that the

necessary funds for the construction of the school facilities and for the rental costs have been approved by the Mayor's Office of Management and Budget.

The Executive Director of the Division of School Facilities and the General Counsel to the Chancellor certify that the terms of this lease comply with the requirements of Section 2554(6) of State Education Law, and Section 155.4 of Regulations of the Commissioner of Education, for eligibility for State Building Aid. Accordingly, the facility will receive a valid Certificate of Occupancy prior to actual occupancy; it will meet the requirements for access by individuals with disabilities in compliance with Commissioner's Regulations, Section 2002. It is further certified that the Chancellor of the Department of Education has taken proper procedural steps to authorize the lease; the initial lease term, not including any renewals thereof, does not exceed the period of probable usefulness that would be prescribed for such building or facility by the Local Finance Law if the building were owned by the school district; the lease shall be void and unenforceable if entered into in violation of General Municipal Law 801 or Section 410 of Chapter 700; and excludes from requests for State Aid reimbursement of expenditures for the costs of heat, electricity, water and other utilities, or the cost of maintenance or operation of the facility.