

ARTICLE 5

LANDLORD'S INTEREST IN PREMISES

Landlord warrants and represents that it is the owner of the leasehold estate demised under the Underlying Lease and is empowered and authorized to lease said premises as provided herein.

ARTICLE 6

LAYOUT AND FINISH

(A) Landlord ~~has prepared~~ shall prepare a final plan or final set of plans (which said final plan or final set of plans, as the case may be, is hereinafter called the "Final Plans") based upon the preliminary plans and scope of work ("Preliminary Plans") which are annexed hereto as Exhibit ____ (or listed on said Exhibit ____) ~~sufficient for the construction and finishing of the Demised Premises. The~~ The Final Plans must (i) engineering and architecturally complete; (ii) be coordinated with existing Building conditions and facilities; (iii) conform to all applicable codes and requirements (including but not limited to terms and conditions in the professional services requirement document prepared by DRES, i.e., "Guide for Design Consultant"; (iv) clearly distinguish Tenant's Initial Work (hereinafter defined) from Tenant's alterations, if any; (v) be coordinated and based on the Preliminary Plans; and (vi) incorporate and elaborate on the Phasing Plan, in order to create a complete set of construction documents. The Final Plans must be filed by Landlord with all governmental authorities having jurisdiction. The Preliminary Plans have been approved by Tenant. Landlord and Tenant hereby approves ~~has approved~~ (i) Swanke, Hayden, Connell, Ltd. as the

on it
Is this a Phasing Plan?
correct?

architects (the "Architect") and ~~the fees of the Architect and (ii)~~ _____ as
 subconsultant ("Consultant") for technical support and the fees of the Consultant. their Scope of
Services annexed hereto and made a part hereof as Exhibit *(letter agreement must be signed by LC)*

In accordance with the Final Plans, Landlord, at Landlord's initial expense, subject to Landlord's Maximum Contribution (as hereinafter defined in Paragraph (I) of this Article) and except as otherwise expressly specified in this Lease, will cause its designated contractor to make and complete in and to the Demised Premises the work and installations (herein called "Tenant's Initial Work") specified in the ~~Plans~~.

Final Plans.

The
Landlord shall cause said Architect to arrange for preparation of ~~initial~~ Final Plans
and delivery of same to DRES and the Port Authority and other regulatory agencies (if any)
which require said submission. DRES will review and either approve or disapprove the
Final Plans, which approval shall not be unreasonably withheld, conditioned or delayed
within five (5) days after receipt by DRES. In the event DRES shall not approve such Final
Plans it shall indicate in writing in reasonable detail the corrections required before such
approval can be furnished. Thereafter, Landlord shall resubmit revised Final plans within
ten (10) business days and DRES shall approve or disapprove such revised drawings and
indicate whatever corrections it requires within five (5) days after receipt thereof, following
which Landlord shall within five (5) business days of its receipt of corrections required by
DRES fully complete the revision of the Final Plans based on the requested corrections and
furnish DRES with a complete set thereof for its approval, which approval shall not be
unreasonably withheld, conditioned or delayed.

(B) The term "Work Cost" as used in this Article shall mean the actual cost to Landlord of furnishing and installing Tenant's Initial Work as shown on the Plans. ~~The parties agree that all bidding has been completed and Tenant has approved a Work Cost of~~ \$_____, which sum includes all costs (hard and soft) to complete Final Plans and shall consist of all costs and expenses (excluding construction loan interest and related financing costs) charged to Landlord for:

- on attached Exhibit —
- (a) the approved Architect's fees for the services required for Tenant's Initial Work shown on the Plans; requested by DRES, which are set forth ~~above~~ and any additional Architects fees' for major modifications or increases in the scope of the Architect's services to the extent requested and authorized in writing signed by DRES.
 - (b) the performance of all terms of Tenant's Initial Work in accordance with the Final Plans; and
 - (c) one (1) general contractor's general conditions and one (1) contractor's over-head and profit to the extent indicated in contractor's bid only; Landlord shall not be entitled to be paid an administrative or management fee for the performance of Tenant's Initial Work. There shall be no double payment by Tenant of any items included in the Tenant's Work Cost, including any components of overhead and profit and general contractors' fees.

Within ten (10) days after DRES's approval of the Final Plans, and prior to the commencement of the Tenant's Initial Work, Landlord shall submit to DRES Port Authority administrative approvals with respect to the Final Plans and completed DRES cost estimate forms (attached hereto as Exhibit _____). The cost estimate forms shall be completed by the bidders approved by DRES and Landlord and shall indicate in reasonable detail the proposed cost of Tenant's Initial Work after Landlord, (i) shall have obtained three (3) competitive bids, proof of which will be supplied to DRES, by three (3) subcontractors of

+ Landlord shall also not be entitled to be paid by Tenant for Landlord's attorney fees and expenses with regard to this Lease and The License Agreement dated _____ between Landlord and Tenant. Said License Agreement shall be terminated ~~automatically~~ with no ~~10~~

each trade pre-approved by DRES, of which Landlord or an affiliated entity may be one;
and (ii) shall have selected the lowest, responsible bidder, except that Landlord shall
designate sprinkler and fire alarm subcontractors.

DRES shall, within five (5) days of its receipt of Landlord's notice of the Work
Cost, approve or disapprove the Work Cost. If DRES disapproves, it will meet with
Landlord within five (5) days to determine an agreed upon cost. As part of the process
DRES will meet with the lowest bidder to resolve any discrepancies in unit prices and
quantities. In the event Landlord and DCAS are unable to resolve their differences and
agree upon the Tenant's Initial Work cost items, Landlord shall solicit bids from at least
three (3) new subcontractors designated by DCAS in which case the procedures and time
frames with respect to the bids shall apply to such additional bids and bidders. Within five
(5) business days from approval of the Tenant's Work Cost and prior to commencing
construction, Landlord will submit a copy of the work permit (or alternative document issued
by the Port Authority) to DRES. All subcontractors shall be approved by Landlord, have a
good reputation, be acceptable for the performance of such work in other first class office
buildings in Manhattan and meet Landlord's reasonable requirements for the Building.

The Work Cost shall be subject to audit by the Department of Citywide
Administrative Services and/or its authorized representative. Such costs may, in the
discretion of the Comptroller of the City of New York, also be post-audited by the
Comptroller.

(C) In all instances where Tenant is required to supply information or authorizations
with regard to ~~Tenant's~~ Tenant's Initial Work, Tenant shall supply the same within three (3)

business days after written request requested therefor by Landlord, except in such unusual case where more than three (3) business days shall be reasonably necessary due to the nature of such request but, Tenant shall promptly commence and diligently proceed to ^{supply} ~~supply~~ the same to Landlord.

(D) Except as provided in this Article, Landlord shall not be required to spend any money or to do any work to prepare the Demised Premises for Tenant's occupancy. ~~The specification of Tenant's Initial Work represents the limit of Landlord's responsibilities in connection with the preparation of the Demised Premises and except as so provided, Tenant shall take the Demised Premises "as-is". Any other improvements, alterations or additions shall be performed by Tenant, but subject to all of the terms, conditions and covenants of this Lease.~~

(E) Landlord makes no representation of the date on which it will Substantially Complete (hereinafter defined) Tenant's Initial Work, and Landlord shall be under no penalty or liability to Tenant whatsoever by reason of any delay in such performance and this Lease shall not be affected thereby, except as set forth in the last sentence of this Paragraph (E) and Paragraph (L). In no event shall the Expiration Date be postponed beyond January 31, 2018. Landlord agrees that it will use reasonable efforts to obtain contracts for the performance of the work required to be performed by it and to arrange to have all such work commenced without delay and prosecuted without unnecessary interruption until completion. Notwithstanding the preceding, Landlord shall use its best efforts (at no additional expense) to Substantially Complete the general office portion of Tenant's Initial Work within three (3) months after ~~full execution and unconditional delivery of this Lease by Landlord and Tenant~~ approval of the bids of all trades necessary for Substantial Completion (the "Target Date"). In the event (a) the general office

when shall non-general office space be completed?
~~Any~~ *Any* Non-general office space Target Date?

portion of Tenant's Initial Work shall not be Substantially Completed (as hereinafter defined) on

or prior to the Target Date not due to a Tenant delay (as set forth in this Article) or fault of

Tenant to perform its obligations under this Lease, and (b) Tenant shall not have taken possession

of any ~~portion~~ portion of the Demised Premises, then, the Rent Commencement Date shall be adjourned

one (1) day for each one (1) day after the Target Date that the general office portion of Tenant's

Initial Work shall have failed to have been so Substantially Completed. *Landlord shall diligently*

and continuously perform and ~~substantially complete~~ the remainder of
Tenant's Initial Work Tenant shall be permitted to enter into the Demised Premises for installation of

its machinery, furniture, equipment and fixtures and performance of its work, all as permitted by

this Lease prior to the Commencement Date at its sole risk, provided that such entry and work do

not interfere in any way with Landlord's performance of the work to be done by Landlord. At

any time during such period of prior entry, if Landlord notifies Tenant that Tenant's entry or

work is interfering with or delaying Landlord's performance of Tenant's Initial Work, Tenant

shall forthwith discontinue any further work and shall remove from the Demised Premises and

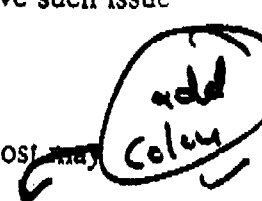
shall cause its workmen or contractors to remove therefrom, any equipment, materials or

installations which are the subject of Landlord's notice.

(G) Subject to the provisions of this Article 6 and Article 11, all work performed by Landlord, including the Building air conditioning installation, shall, upon installation, become Landlord's property and shall be surrendered at the expiration or sooner termination of the Term of this lease, in good condition, reasonable wear and tear excepted.

(H) (a) For the purposes of this Article, Tenant's Initial Work of the general office portion of the Demised Premises shall be deemed to be Substantially Completed when (i) all work is completed excepting minor details of construction or decoration which do not materially

adversely affect Tenant's use of the general office portion of the Demised Premises, including necessary sign-offs of The Port Authority, (or when all work (except as aforesaid) would have been completed but for delays caused by Tenant as provided in this Paragraph (H) or otherwise), and (ii) a certified air balancing report approved by Landlord's engineer as being in conformance with the Final Plans has been delivered to the Tenant. Tenant shall promptly submit to Landlord a "punch-list" of such minor unfinished work which punch-list items, undisputed by Landlord, will be diligently completed. Tenant shall periodically inspect Tenant's Initial Work and make any objections thereto, if called for, without delay, so as to mitigate changes, delays and costs. Landlord shall give Tenant notice ("Landlord's Completion Notice") of Substantial Completion on or promptly after the date of Substantial Completion, which notice shall include the items under (i) (Port Authority sign-offs) and (ii) above. Tenant shall certify or deny certification of Substantial Completion ("Certification") to Landlord within three (3) business days after receipt of Landlord's Completion Notice. Failure by Tenant to respond within said three (3) business day period, shall be deemed Certification by Tenant. If Tenant shall deny Certification, Tenant shall state in writing in reasonable detail the reasons for such denial but, in any event, Substantial Completion and the Commencement Date shall be deemed to have occurred on the date set forth in Landlord's Completion Notice, subject to the right of Tenant to have such issue resolved by Arbitration as provided in Paragraph J of this Article.

(b) Tenant specifically acknowledges and agrees that the Work Cost may  increase and there may be delay in completion of Tenant's Initial Work by reason of (i) subject to Paragraph (C) hereof, unreasonable delay or failure by Tenant in supplying information or giving authorizations; (ii) interference by Tenant or Tenant's contractors with the performance of

Tenant's Initial Work after notice to Tenant: (iii) additional work or changes or new materials requested by Tenant, it being agreed that Landlord's response to Tenant's request for additional work or changes or new materials shall include the cost thereof and estimated resulting delay time; or (iv) any resubmissions or revisions of Tenant's Plans (without regard to any time periods granted to Tenant hereunder for making such resubmissions or revisions). At Landlord's option, the Term of this Lease shall commence on the date on which Tenant's Initial Work of the general office portion of the Demised Premises would have been Substantially Completed if not for the occurrence of any such delays.

(I) Notwithstanding anything contained to the contrary in this Lease, the total cost of Tenant's Initial Work which Landlord shall provide Tenant without charge and for installations performed prior to the Commencement Date shall be _____
 (\$ _____) DOLLARS ~~(TWO MILLION SIXTY-ONE THOUSAND SIX HUNDRED SEVENTY-FIVE (\$2,061,765.00) DOLLARS less all costs, expenses and fees pursuant to the Scope of Services provided for in Exhibit _____ hereto (said sum of \$2,061,675.00 as so reduced is herein called the "Landlord's Maximum Contribution"))~~. If the Work Cost shall exceed Landlord's Maximum Contribution, Tenant may accept Landlord's detailed estimate of such excess cost (including any resulting delay) only by countersigning and delivering same to Landlord within three (3) days after Landlord's rendition of such estimate. If the Work Cost shall exceed Landlord's Maximum Contribution, any amount up to a maximum of \$ _____ (the "Cap") will be paid by Tenant. If the Work Cost exceeds the Cap, Tenant shall promptly meet with Landlord to resolve the overage. Payment by Tenant of such cost in excess of Landlord's Maximum Contribution shall be made within 45 days after Substantial

Completion and receipt of an invoice from Landlord. Any payment by Tenant after said 45 days shall be made together with interest at 2 points over the Base Rate from date of Substantial Completion to date(s) of payment. Said payment by Tenant may exclude the undisputed value of punch list items, which amount shall be paid promptly by Tenant after completion by Landlord.

(J) Any dispute regarding the determination of Substantial Completion of Tenant's Initial Work and/or the Commencement Date shall be resolved by arbitration, in the manner by the rules and before the American Arbitration Association (or any successor organization) in New York County. The party desiring arbitration shall appoint as arbitrator on its behalf, a person having at least 10 years relevant experience and give notice written notice to the other party who shall, within 15 days thereafter, a second person having at least 10 years relevant experience and give written notice thereof to the first party. The arbitrators so appointed, shall within 15 days following the appointment of the second arbitrator appoint a third disinterested person having no less than 10 years relevant experience.

Said arbitrators shall, as promptly as possible (but in any event within 30 days following the appointment of the third arbitrator) determine the dispute by a majority of the arbitrators, whose decision shall be binding and conclusive upon the parties hereto. Each party shall bear its own fees and expenses of (i) its own attorneys and other experts and the arbitrator that it selected and (ii) be responsible for one-half the fees and expenses of the third arbitrator.

The arbitrators shall have no power to vary or modify any of the provisions of this Lease, and their powers and jurisdiction are limited accordingly. The decision of the arbitrators shall be binding upon the parties, and may be entered as a judgment in any court having jurisdiction thereover.

the work cost shall exceed the cap
(K) If ~~Tenant shall fail to make timely payment of any sums payable to Landlord pursuant to this Article~~, then, in addition to all other rights and remedies afforded Landlord in the event of such non-payment, Landlord may, ^{upon written notice} ~~without notice~~ to Tenant, discontinue the performance of Tenant's Initial Work, including any additional work (or any items thereof) until such time as Tenant makes payment to Landlord of all such past due sums and provides Landlord with ^{authorization for} adequate assurance of the timely payment of all additional sums which may or shall be payable by Tenant pursuant to this Article. Any delay resulting from the discontinuance of Tenant's Initial Work and/or additional work (if any) pursuant to this Paragraph shall be deemed a delay caused by Tenant.

(L) Notwithstanding the foregoing provisions of this Lease, in the event that Landlord fails to deliver possession of the Demised Premises prior to December 31, 1999 (through no Tenant delay as provided in Paragraph H or fault of Tenant to perform its obligations under this Lease) and subject to force majeure, Tenant shall have the right to terminate this Lease within the following ten (10) days by giving notice thereof to Landlord. Upon receipt of such notice by Landlord, all liability between the parties hereto shall be extinguished. The foregoing right of termination shall be Tenant's exclusive remedy with respect to the failure to deliver possession.

ARTICLE 7

CERTIFICATE OF OCCUPANCY: COMPLIANCE WITH LAWS

Landlord agrees to deliver to the Department of Citywide Administrative Services a Certificate of Occupancy or other sufficient indicia of legality for use of the premises for the purposes set forth in this Lease and same shall be a prerequisite to the official assumption of