

event of such non-payment, Landlord may, without notice to Tenant, discontinue the performance of Tenant's Initial Work ~~and/or Additional 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 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~~ additional work (if any) pursuant to this Paragraph shall be deemed a delay caused by Tenant.

---> (L is open for discussion) [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 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 occupancy by Tenant.

Tenant's Initial Work shall include all permits necessary to legalize the Demised Premises, the alterations and improvements specified herein and to comply with all requirements, rules, laws, regulations and orders of Federal, State and local authorities and of any board of fire underwriters having jurisdiction over the Demised Premises or the Real Property, including, without limitation, as of date of substantial completion, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"). With respect to the ADA and regulations promulgated during the Term, Landlord shall comply with and perform the Landlord's obligations, if any, imposed upon owners of office buildings as a class including all common areas that service the Demised Premises in and around the Building. Tenant shall comply with and perform all obligations arising from Tenant's specific manner of use of the Demised Premises and any alterations performed by Tenant. Subject to Landlord's right to contest, Landlord shall remove all violations which may be placed against the Demised Premises, except those violations caused by Tenant's acts, omissions or breach of the terms of this Lease.

## **ARTICLE 8**

### **REAL ESTATE TAXES, ASSESSMENTS, WATER RATES,**

### **SEWER RENTS, ARREARS**

(A) If Landlord shall become the fee owner of the Real Property, Landlord shall pay all real estate taxes, assessments, water rates and sewer rents (if any) levied against said Building and Land for the tax lot where the Demised Premises is located or that may be liens thereon. Upon request, Landlord shall provide Tenant with receipted bills, payment receipts or other back-up information reasonably satisfactory to Tenant evidencing Landlord's payment thereof

within five (5) business days after Tenant shall give notice to Landlord requesting such evidence of payment.

(B) Additionally, if Landlord ~~as fee owner~~, is in any other arrears on the Land, Building and/or Demised Premises, including but not limited to rents, mortgage payments and other payments or obligations payable to the City of New York, then Tenant may apply any rent due or that may become due and payable under this Lease to the payment of such arrears and as long as such arrears are unpaid, no action or proceeding may be maintained by Landlord against Tenant for nonpayment of rent.

*(Pilot payable to The Port Authority)*  
*(including payments referred to in paragraph (A) of this Article 8)*

#### ARTICLE 9

#### LANDLORD'S SERVICES

(A) Landlord, at Landlord's expense, shall furnish heat to the peripheral heat units in the Demised Premises and ventilation and condenser water to the Building air conditioning equipment located on the floor of the Demised Premises ("HVAC"), through the Building systems, for reasonably comfortable occupancy of the Demised Premises, from 8:00 A.M. to

6:00 P.M. ("business hours") on business days. If Tenant shall install supplemental air conditioning in the Demised Premises, solely to the extent the building risers and tower have

available capacity, Landlord shall furnish condenser water therefor and Tenant shall pay

Landlord's then established reasonable charges in connection therewith as additional rent within

five (5) business days after demand. The term "business days", as used in this Lease, shall mean

all days except Saturdays, Sundays and the days observed by the Federal or the New York State

or City governments as legal holidays and such other days as shall be designated as holidays by

*Self: Is this  
 applicable  
 to backup  
 i/c as part  
 of Tenant's  
 initial work?  
 to we have  
 to pay Landlord  
 additional  
 charges?*

the applicable operating engineers union contract or building service employees union contract. Landlord and Tenant shall operate the HVAC equipment in accordance with their design criteria; provided, however, that Landlord may reduce such level of operation in accordance with a recognized energy or water conservation program, guidelines, regulations or recommendations promulgated by any Federal, State, City or other governmental or quasi-governmental bureau, board, department, agency, office, commission or other subdivision thereof or the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. or any successor thereto

or other organization serving a similar function. The air conditioning equipment within and servicing the Demised Premises shall be operated, maintained, repaired and replaced by Landlord

at Tenant's sole cost and expense and upon expiration of the Term, shall be surrendered to Landlord in working order and repair. At all times during the Term, Landlord acting for Tenant and at Tenant's expense, shall contract with the air conditioning contractor designated by Landlord for the performance of such maintenance and repairs. The electricity used to operate the HVAC equipment shall be connected at Tenant's expense to Tenant's electric meter and shall be paid by Tenant as provided in Article 10 hereof. Landlord will, during business hours of business days, at its expense, operate and maintain the Building condenser water tower and the riser(s) to each floor of the Demised Premises, subject to recoupment under Article 4. If Tenant shall require Building condenser water "after hours" (as hereinafter defined), Landlord shall furnish such after hours service upon reasonable advance notice from Tenant's designated representative, and Tenant shall pay Landlord's then established reasonable charges

(currently \$ ? ) within 5 business days after demand.

(B) If Tenant shall require heating service at any time other than during business

hours on business days ("after hours"), Landlord shall furnish the same upon advance notice from Tenant, given prior to 2:00 P.M. on any business day on which Tenant requires such after hours heat or if Tenant shall desire heat on a day other than a business day, Landlord shall furnish the same upon advance notice from Tenant given prior to 2:00 P.M. on the last business day prior to such non-business day, <sup>or in the event of an emergency, ~~without advance notice~~</sup> and Tenant shall pay Landlord's cost therefor as additional rent within five (5) business days after demand. If any other tenant shall request and receive heat after hours at the same time as Tenant, only an equitably prorated portion of the charge therefor shall be allocated to Tenant.

(C) Landlord shall not be responsible if the normal operation of the Building HVAC system shall fail to provide service in accordance with the requirements of this Lease in any portions of the Demised Premises (a) which shall have an electrical demand in excess of 3-1/2 watts per rentable square foot of the Demised Premises for all purposes (including lighting and power) or which shall have a human occupancy factor in excess of one person per 100 rentable square feet of the Demised Premises, or (b) because of any arrangement of partitioning or the making of any other Tenant's alterations or the installation and operation of machines and equipment. In the event Landlord has consented to such Tenant's alterations, or machines and equipment, Landlord, at Tenant's expense, shall make such changes in the HVAC system, including the ductwork, as Tenant may require, but only with Landlord's prior consent and in accordance with the terms of Article 11. Tenant shall cooperate fully with Landlord at all times and abide by all regulations and requirements which Landlord may reasonably prescribe for the proper functioning and protection of the HVAC system.

(D) Commencing on the date Tenant shall occupy the Demised Premises for the

conduct of business. Landlord, at its expense, shall provide public elevator service, passenger and freight, by elevators serving the floor on which the Demised Premises are situated during regular hours of business days, and shall have at least one passenger elevator subject to call at all ~~other~~ <sup>twenty four (24) hours per day, seven (7) days per week.</sup> times, subject however to Landlord's right to stop or interrupt such elevator service pursuant to the provisions of Paragraph (H) hereof.

(E) Landlord, at its expense, shall cause the Demised Premises to be cleaned in accordance with the cleaning specifications annexed hereto as **Exhibit**     . <sup>Diff: Do we have this exhibit?</sup> Tenant shall pay to Landlord <sup>within 20 business days after written</sup> on demand the costs incurred by Landlord for (a) extra cleaning work in the Demised Premises required because of (i) misuse or neglect on the part of Tenant or its employees, invitees or visitors, (ii) use of portions of the Demised Premises for preparation, serving or consumption of food or beverages, data processing or reproducing operations, trading areas, lavatories or toilets (other than Building lavatories or toilets) or other special purposes requiring greater or more difficult cleaning work than office areas, (iii) unusual quantity of interior glass surfaces, (iv) non-Building standard materials, equipment, fixtures or finishes installed by Tenant or at its request, and (b) removal from the Demised Premises and the Building of so much of any refuse and rubbish of Tenant as shall exceed that ordinarily accumulated daily in the routine of business office occupancy. Landlord, its cleaning contractor and their employees shall have access to the Demised Premises and the free use of light, power and water in the Demised Premises as reasonably required for the purpose of cleaning the Demised Premises in accordance with Landlord's obligations hereunder. Additional cleaning required by Tenant shall be performed at Tenant's expense by the cleaning contractor, if any, for the Building.

Notwithstanding the preceding , Tenant shall have the option, exercisable upon not less

for so long as may be necessary, by reason of accidents, emergencies, strikes or the making of repairs or changes which Landlord is required by this Lease or by law to make or in good faith deems necessary, by reason of difficulty in securing proper supplies of fuel, steam, water, electricity, labor or supplies, or by reason of any other cause beyond Landlord's reasonable control.

*Landlord shall use ~~best~~ <sup>best</sup> efforts to avoid interference with Tenant's use of the Demised Premises during such times Tenant is dealing with an emergency situation, and ~~Landlord shall~~ notwithstanding anything to the contrary, after notice to LL by Tenant*

#### ARTICLE 10

*PASNT? Must be revised if DCA's determines "PASNT" rates are cheaper*

#### ELECTRICITY

*Being reviewed by DCA's*

(A) (a) The Building will be equipped with risers, feeders and wiring so as to furnish electric service (connected load) to the Demised Premises of 6 watts per rentable square foot of the Demised Premises for lighting and power, excluding power to service the Building air conditioning equipment and hot water heater located on the floor of the Demised Premises. Additionally, a meter system (or other measuring devices) will be furnished and installed by Landlord, at Landlord's cost, to measure the amount of "Usage" solely to the Demised Premises. Where more than one meter measures the amount of Usage, Usage through each meter shall be billed in the aggregate with coincidental demand in accordance with the provisions of this Article 10;

(b) Any additional risers, feeders or other equipment or service proper or necessary to supply Tenant's electrical requirements above the service set forth in subdivision (a), will, upon written request of Tenant, be installed by Landlord, at the sole cost and expense of Tenant, if in Landlord's sole judgment, the same are necessary and will not cause permanent damage or injury to the Building or the Demised Premises or cause or create a dangerous or

## ARTICLE 11

### ALTERATIONS BY TENANT

Tenant may make non-structural interior alterations, decorations, installations, additions and improvements in and to the Demised Premises and may erect signs therein or thereon.

Notwithstanding the foregoing, Tenant shall make no alterations, additions or improvements which (i) affect the mechanical, electrical or other systems of the Building, or (ii) are structural or (iii) affect the exterior or lobby or service areas of the Building, without Landlord's written consent. In making any such alterations, decorations, installations, additions or improvements, Tenant shall comply with all laws, rules, regulations of governmental authorities (including, the Port Authority) having jurisdiction and the New York Board of Fire Underwriters and Insurance Services Office and shall save Landlord harmless from any and all bills for labor performed and equipment, fixtures and materials furnished Tenant in connection therewith. The cost thereof

shall be promptly paid by Tenant so that the Building and the Demised Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied. Tenant's alterations shall be subject to the prior approval of Landlord, the Port Authority and

reimbursement to Landlord for its out-of-pocket costs of review. Fees of the Port Authority shall be paid by Tenant and Tenant shall not violate Landlord's union contracts affecting the Real Property. All property of whatever kind or nature in or on the Demised Premises owned, installed or paid for by Tenant shall be and remain the property of Tenant and upon the termination of this Lease, renewal, extension or holdover period, Tenant shall have the option of removing such property or of surrendering such property (including partition systems and/or

furniture located in the Demised Premises) to Landlord, in either event without any liability to Landlord. Tenant shall exercise its option by giving written notice to Landlord within thirty (30) days prior to the termination of this Lease, renewal, extension or holdover period. If Tenant shall fail to give such notice or shall fail to remove such property upon termination of this Lease, renewal, extension or holdover period, the property shall be deemed to be surrendered without any payment for removal owed to Landlord.

## **ARTICLE 12**

### **END OF TERM**

Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender the Demised Premises in good order and condition with ordinary wear and tear, and damage by the elements, including fire or other casualty, excepted.

## **ARTICLE 13**

### **REPAIRS**

Landlord shall make all interior, exterior and structural repairs, excluding such repairs necessitated by the <sup>intentional</sup> acts or negligence of Tenant or its invitees, but including maintenance, repair or replacement of the roof, windows and window glass, Building plumbing, and electrical systems, common areas, removal of graffiti from the exterior and interior of the Building and/or the Demised Premises, and all repairs needed because of Landlord's negligence or because of defective materials or workmanship in the construction and/or improvement by Landlord of the Demised Premises or of the Building of which they are a part. Landlord shall repair and maintain

any sidewalks, curbs and passageways adjoining and/or appurtenant to the Demised Premises in good, clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstruction.

Landlord is not responsible for making any repairs to Tenant's Initial Work, Tenant's installations, alterations, additions or improvements, except if due to Landlord's <sup>intentional</sup> acts or negligence.

In the event Landlord fails to fulfill its obligations, Tenant may, in addition to its other remedies, give written notice to Landlord specifying the repairs required by Tenant and Landlord shall commence performance of such work within three (3) business days after the giving of such notice and diligently proceed to complete said work.

Anything to the contrary notwithstanding, in the event the repairs to be performed by the Landlord are required to correct a hazardous condition or to end an emergency which renders the premises unsuitable for the use set forth herein (excluding fire or casualty), Tenant shall give Landlord, its agent, superintendent or the person designated to receive such notice, immediate notice in writing, personally or by certified mail, and Landlord, within 5 business days of receiving said notice, shall commence the repairs and diligently proceed with continuity to complete said work. In the event Landlord fails to commence and complete said work after said notice, as aforesaid, Tenant may, as agent for the Landlord, perform same and deduct the reasonable cost thereof from any rent due or that may become due and payable under this Lease.

In the event Tenant is unable to use any part or all of the Demised Premises because of Landlord's failure to perform such work as set forth in the two preceding paragraphs hereof, the rent shall be reduced, during such period, proportionately to the diminution in space resulting from such failure.

\* 24 hrs if notice received on a business day and 36 hrs on all other occasion

Tenant shall make such ordinary and nonstructural interior repairs as necessary for its occupancy or request Landlord, at Tenant's expense to perform such repairs..

# **ARTICLE 14**

## **CONDEMNATION**

If the whole of the Demised Premises shall be taken in condemnation, this Lease shall terminate upon the vesting of title in the condemnor and all rent and other charges paid or payable by Tenant shall be apportioned as of the date of vesting of title in such condemnation proceeding.

If less than all but more than <sup>20%</sup>~~50%~~ of the useable area of the Demised Premises shall be so taken in condemnation, then Tenant may either terminate this Lease as to the remainder of the premises on ten (10) days written notice to Landlord or remain in possession of the remaining portion of the premises under all of the terms, conditions and covenants of this Lease, except that the rent thereafter shall be apportioned and reduced from the date of each such partial taking to the amount equal to the product of the dollar amount of rent payable on such date and the number of square feet in the part remaining. The proceeds of any award for partial taking shall be applied by Landlord to the repair, restoration or replacement of the remaining premises, and if there be any deficiency, it shall be made up by Landlord, but if there be any surplus, it shall belong to the Landlord. Said repairs, restoration or replacement of the remaining premises shall be completed within nine (9) months of the aforesaid taking in condemnation, pursuant to plans and specifications approved by the ~~Department of (Agency)~~ Tenant. In the event said repairs, restoration or replacement are not completed within said <sup>six (6)</sup>~~nine (9)~~ month period, Tenant, in addition to any other remedy it may have, may terminate this Lease or perform said repairs, restoration and replacement and deduct the cost thereof from any rent which may be due and

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payable under this Lease.

Landlord shall be entitled to receive the entire award in any proceeding with respect to any taking provided for in this Article without deduction therefrom for any estate vested in Tenant by this Lease and Tenant shall receive no part of such award, except as hereinafter expressly provided in this Article. Tenant hereby expressly assigns to Landlord all of its right, title and interest in or to every such award. Notwithstanding anything herein to the contrary, Tenant may, at its sole cost and expense, make an independent claim with the condemning authority for Tenant's moving expenses, the value of Tenant's fixtures or Tenant's alterations which do not become part of the Building or property of the Landlord, provided however that Landlord's award is not thereby reduced or otherwise adversely affected.

## ARTICLE 15

### DESTRUCTION BY FIRE OR OTHER CASUALTY

If the whole of the Demised Premises is totally destroyed or damaged by fire or other casualty, or destroyed or damaged to such an extent that they are unsuitable or untenable for use for the purpose for which they are leased, then from the date of such damage or destruction the rent shall cease until such time as Landlord fully repairs and restores the same to suitable and tenantable condition ~~and HRA/Occupying Agency/DRES(excluding Long Lead Work) and~~ Tenant/DRES certifies in writing that the entire Demised Premises have been reoccupied by Tenant, such Certification not to be unreasonably withheld or, delayed or conditioned.

~~not Tenant~~  
Landlord may terminate this Lease by notice to Tenant within thirty (30) days from the date of such fire or other casualty, ~~provided Landlord terminates more than 50% of the remaining~~ <sup>at any time during the last — years of the</sup>

~~Lease term.~~ <sup>if damage occurs earlier, Tenant may</sup>  
~~provided a reputable engineer, obtained by~~  
~~Tenant, determines that the Demised Premises~~  
~~cannot be repaired within 270 days of the occurrence of the damage,~~  
~~using normal construction practice for similar type building and~~  
~~no additional time allowed for receipt of insurance proceeds.~~

leases in the Building. If no such notice is given, Landlord shall, ~~subject to receipt of insurance proceeds~~, within forty-five (45) days after such fire or other casualty, commence and diligently proceed with continuity to complete the repairs and restoration of the Demised Premises to their condition prior to said fire or casualty, suitable for use for the purpose for which the premises were leased. If Landlord fails to complete the restoration within two hundred and seventy (270) days after such commencement ~~or if the parties mutually agree within 30 days after the casualty that the damage cannot be repaired within 270 days of the occurrence~~, Tenant may terminate this Lease on ten (10) days written notice.

If the Demised Premises are partially damaged by fire or other casualty, Landlord shall,

~~subject to receipt of insurance proceeds~~, within forty-five (45) days after such fire or other casualty, commence and diligently proceed to complete the repairs and restoration of the Demised Premises to their condition prior to said fire or casualty. If Landlord fails to commence as aforesaid or to complete the same within one hundred twenty (120) days after such commencement, Tenant, in addition to any other remedy it may have, may perform such repairs and restoration and reimburse itself for the cost thereof from any rent due or which may become due under this Lease.

From the date of such partial damage to the date certified by HRA/Occupying Agency/DRES Tenant/DRES in writing that the entire premises have been restored, excluding Long Lead Work, Tenant shall pay rent for that part of the premises it is using during the alterations and repairs on a square foot basis in an amount equal to the product of the dollar amount of rent per square foot payable on such date and the number of square feet being occupied by Tenant.

should be omitted, as we agreed  
for Article 6 at meeting of 8-21-97

?

The time periods in this Article shall exclude Long Lead Work. The term "Long Lead Work" as used in this Lease shall mean any item of a repair to Tenant's Initial Work or Tenant's alterations to be made by Landlord pursuant to this Article 15 which item must be specifically manufactured or fabricated and is not a Building standard item commonly found in first class non-institutional office buildings in Manhattan, with the result that there will be a delay in its manufacture, fabrication, delivery or installation, notwithstanding that the order for same was given in due course, so that the item of repair in question delays the completion of the standard items of the repair even though the items of Long Lead Work in question are (1) ordered together with the other items required for the repair and (2) then installed or performed (after the manufacture or fabrication thereof) in order and sequence that such Long Lead Work and other items of repair are normally installed or performed in accordance with good construction practice.

who is  
responsible?

Tenant shall notify Landlord of the completion of any Tenant's alterations, and Specialty Alterations and of the cost thereof, and shall maintain adequate records with respect to same to facilitate the adjustment of any insurance claims with respect thereto. In addition, as a condition to Landlord's obligation to provide and maintain insurance covering any Specialty Alterations and to repair and restore such Specialty Alterations pursuant to the provisions of this Article, Tenant shall provide Landlord with a schedule of Specialty Alterations after their completion and certificates of the costs thereof. Tenant shall reimburse Landlord, as additional rent hereunder, ten (10) business days after demand for the amount of any insurance premiums paid or payable by Landlord which are specifically attributable to the cost of insuring any such Specialty Alterations. Tenant shall cooperate

Do we  
want to  
do this?

with Landlord and Landlord's insurance companies in the adjustment of any claims for any damage to the Building or such Tenant's alterations or Specialty Alterations. The term "Specialty Alterations" as used in this Lease shall mean alterations, installations, improvements, additions or other physical changes (other than decorations) in or about the Demised Premises consisting of kitchens, executive bathrooms, raised computer floors, vaults and other alterations of a similar character.

*Don't we need LL to carry insurance for Tenant Initial Work?*  
*If not it may be too expensive to build.*  
*or This Lease*  
 Landlord will not carry insurance of any kind on Tenant's property or Tenant's alterations, and, except as provided by law or by reason of its fault or its breach of any of its obligations hereunder, Landlord shall not be obligated to repair any damage thereto or replace the same.  
~~The provisions of this Article shall be considered an express agreement governing any case of damage or destruction of the Demised Premises by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, providing for such a contingency in the absence of an express agreement, and any other law of like import, now or hereafter in force, shall have no application in such case.~~  
*The provisions of this paragraph don't apply to Tenant's Initial Work.*

*Landlord was supposed to set an estimate from their insurance people as to the additional premium to cover Tenant's Initial Work*  
**ARTICLE 16**  
**NO EMPLOYEE OF CITY HAS ANY INTEREST IN LEASE**

Landlord warrants and represents that no officer, agent, employee or representative of The City of New York has received any payment or other consideration for the making of this Lease and that no officer, agent, employee or representative of The City of New York has any interest, directly or indirectly, in this Lease or the proceeds thereof.

connection with the obtaining, continuing or renewing of financing, a superior lessor or superior mortgagee or a prospective superior lessor or prospective superior mortgagee shall request reasonable modifications of this Lease as a condition of such financing, Tenant will not unreasonably withhold its consent thereto, provided that such modifications do not materially and adversely either increase the obligations of Tenant hereunder or affect the rights of Tenant under this Lease.

(D) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act of omission to the holder of each superior mortgage and the lessor of each superior Lease whose name and address shall previously have been furnished to Tenant in writing, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such mortgage holder or lessor within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such holder or lessor shall have become entitled under such superior mortgage or superior lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided such holder or lessor shall with due diligence give Tenant written notice of intention to, and commence and continue to remedy such act or omission.

*Nothing in this Article 19 is intended to limit Tenant's right to terminate this Lease pursuant to Article 3 herein.*

(E) If the lessor of a superior lease or the holder of a superior mortgage shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure

engaged in a business and the Demised Premises, or the relevant part thereof, will be used in a manner which (i) is in keeping with the then standards of the Building, (ii) is limited to the use expressly permitted under this Lease, and (iii) will not violate any negative covenant as to use contained in any other lease of space in the Building;

(c) The proposed assignee or subtenant is a reputable person of good character and with sufficient financial worth considering the responsibility involved, and Landlord has been furnished with reasonable proof thereof;

(d) Neither (i) the proposed assignee or sublessee nor (ii) any person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or sublessee or any person who controls the proposed assignee or sublessee, is then an occupant of any part of the Building;

(e) The proposed assignee or sublessee is not a person with whom Landlord is then negotiating to lease space in the Building;

(f) The form of the proposed sublease shall be in form reasonably satisfactory to Landlord and shall comply with the applicable provisions of this Article;

(g) No subletting shall be for less than \_\_\_\_\_ contiguous rentable square feet and at no time shall there be more than \_\_\_\_\_ (\_\_\_\_) occupants, including Tenant, in the Demised Premises;

~~(h) The amount of the fixed and additional rent to be paid by the proposed subtenant is not less than the fixed rent and additional rent per rentable square foot at which Landlord is then offering to lease other space in the Building;~~

(i) Tenant shall reimburse Landlord on demand for any reasonable costs that may be incurred by

permits from or through the City or otherwise transacts business with the City.

1.6 (d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

1.7 In addition to and notwithstanding any other provision of this Agreement, the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment of other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by the Landlord, or affecting the performance of this Lease.

## ARTICLE 25

### SIGNIFICANT RELATED PARTY TRANSACTIONS

Landlord shall be required to disclose and notify Tenant of any transactions with significant related parties, including subsidiaries and affiliates of Landlord, the costs of which are charged to Tenant as <sup>additional rent</sup> rent, including, but not limited to, Base Year Operating Expenses (if CPI formula is used) overtime HVAC; and Tenant ~~Repairs Common Area Electricity~~ repairs. Landlord shall provide Tenant with written notice of such transactions upon submission of invoices for Rent or at the end of the calendar year in which the transactions to be billed as Rent were performed by significant related parties. When such transactions occur, prices of same must be in line with normal industry practice in New York City. Upon 5 days notice to Landlord and Landlord's failure to notify Tenant of such related party transactions shall result in a disallowance

of such costs that would otherwise be billed as rent. If such related party transactions occurred and were disclosed, but it is found by Tenant that the costs thereof exceed normal industry costs in an arms length third party transaction in New York City, then such excessive charges shall be disallowed. This Article ~~excludes management fees included in Operating Expenses.~~ *Be the party*

*acknowledge that \_\_\_\_\_ received a management fee as of the date of execution of this lease*  
**ARTICLE 26**  
**ASBESTOS**

~~(Language to be supplied following receipt of COSH Report)~~ If during the Term

hereof, the removal or encapsulation of asbestos or asbestos-containing materials determined to be present in the Demised Premises shall be required pursuant to any law, such removal or encapsulation shall be performed by Landlord to the extent required by such law, at  
at Landlord's expense; provided, however, that notwithstanding anything herein contained to the contrary, Tenant shall be solely responsible for the removal of any asbestos or asbestos-containing material, in accordance with then applicable laws installed or brought into the Building and/or the Demises Premises by or on behalf of Tenant or any party claiming through Tenant. Nothing contained in the preceding sentence shall be deemed to vest upon Tenant or any permitted occupant of the Demised Premises any right to install or bring into the Building or the Demised Premises any asbestos or asbestos-containing material.

## ARTICLE 27

### LANDLORD'S REPRESENTATIONS

Landlord hereby warrants that, to the best of its knowledge, it is not in default of any obligation to the City of New York, nor is Landlord, its officers, principals or stockholders a defendant in any action instituted by the City.

*During the term of this lease Landlord shall monitor and manage and, where necessary, abate (i.e. repair, remove, enclose, encapsulate and/or replace) any asbestos-containing materials (including, but not limited to, any such materials on boilers, pipes, ducts, breechings, tanks, spray on or other insulation, and any affected floor tiles, plaster and ceiling tiles in the Demised Premises)*

The partners or, if a corporate entity, officers and shareholders of the corporation, who currently own the leasehold estate of the Underlying Lease are as follows:

Any misrepresentation by Landlord with regard to this warranty shall constitute a basis for rescission of this Lease.

## **ARTICLE 28**

### **NO WAIVER**

The failure by Landlord or Tenant to insist, in one or more instances upon the full performance of any of the covenants, conditions or obligations of the other party shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by Landlord or Tenant to or of any act requiring such consent or approval shall not be construed to waive or render unnecessary consent or approval to or of any subsequent similar act. No provision of this Lease shall be deemed to have been waived by Tenant or Landlord unless such waiver be in writing signed by the party against whom it is to be charged.

## **ARTICLE 29**

### **BROKERAGE**

Landlord and Tenant represent to the other that neither has dealt with any broker in connection with this Lease other than CB COMMERCIAL REAL ESTATE GROUP, INC. ("Broker"). Landlord shall pay any commission owing to the Broker. Tenant and Landlord hereby indemnify and hold each other harmless against all loss, damage liability, cost and expense of any nature (including <sup>excluding</sup> ~~reasonable~~ attorney's fees and disbursements) based on any claim by any party other than the Broker with whom such indemnifying party has dealt for a commission or

Tenant shall take any action in furtherance of or authorizing any of the foregoing; or if Tenant shall call a meeting of, or propose any form of arrangement, composition, extension or adjustment with, its creditors holding a majority in amount of Tenant's outstanding indebtedness; or

(b) if any case, proceeding or other action shall be commenced or instituted against Tenant, seeking to adjudicate Tenant a bankrupt or insolvent, or seeking an order for relief against Tenant as debtor, or reorganization, arrangement, composition, adjustment, winding-up, liquidation, dissolution or similar relief with respect to Tenant or its debts under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law (foreign or domestic), or seeking appointment of any trustee, receiver, examiner, assignee, sequestrator, custodian or liquidator or similar official of Tenant or of all or any part of Tenant's property, which either (i) results in the entry of an order for relief, adjudication of bankruptcy or insolvency or such an appointment or the issuance or entry of any other order having a similar effect or (ii) remains undismissed for a period of sixty (60) days; or if any case, proceeding or other action shall be commenced or instituted against Tenant seeking issuance of a warrant of execution, attachment, distraint or similar process against Tenant or any of Tenant's property which results in either (x) the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days after the entry thereof or (y) the taking or occupancy of the Demised Premises or an attempt to take or occupy the Demised Premises; or

(c) if Tenant shall default in the payment when due of any installment of fixed rent or in the payment when due of any additional rent, and any such default shall continue for a

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period of ~~three (3)~~ business days after notice by Landlord to Tenant that such rent is due; or

(d) if Tenant shall default in the performance of any term of this Lease on Tenant's part to be performed (other than the payment of fixed rent and additional rent) and Tenant shall fail to remedy such default as soon as practicable and in any event within fifteen (15) days after notice by Landlord to Tenant of such default, or if such default is of such a nature that it can be remedied, but cannot be completely remedied within said period of fifteen (15) days, if Tenant shall not (x) promptly upon the giving by Landlord of such notice, advise Landlord of Tenant's intention to institute all steps necessary to remedy such situation, (y) promptly institute and thereafter diligently prosecute to completion all steps necessary to remedy the same, and (z) complete such remedy within a reasonable time after the date of the giving of said notice by Landlord and in any event prior to such time as would either (i) subject Landlord, Landlord's agents, superior lessor or superior mortgagee to prosecution for a crime or (ii) cause a default under the Underlying Lease or the superior mortgage; or

(e) if any event shall occur or any contingency shall arise whereby this Lease or the estate hereby granted or the unexpired balance of the Term would, by operation of law or otherwise, devolve upon or pass to any person other than Tenant except as is expressly permitted under Article 20; or

(f) if the Demised Premises shall become abandoned (and the fact that any of Tenant's property remains in the Demised Premises shall not constitute evidence that Tenant has not abandoned the Demised Premises) or if Tenant shall fail to take occupancy of the Demised Premises, or a floor thereof, as the case may be, within one hundred eighty (180) days after the Commencement Date; or

(g) if Tenant shall default in the performance of any term, covenant, agreement or condition on Tenant's part to be observed or performed under any other Lease with Landlord of space in the Building and such default shall continue beyond the grace period, if any, set forth in such other lease for the remedying of such default, then in any of said events Landlord may give to Tenant notice of intention to terminate this Lease and to end the Term and the estate hereby granted at the expiration of <sup>14</sup> ~~three (3)~~ days from the date of the giving of such notice, and, in the event such notice is given, this Lease and the Term and estate hereby granted (whether or not the Term shall have commenced) shall terminate upon the expiration of said three <sup>14</sup> ~~(3)~~ days with the same effect as if that day were the Expiration Date, but Tenant shall remain liable as provided in Article 32.

(B) Nothing in Paragraph (A) shall be deemed to require Landlord to give the notices therein provided for prior to the commencement of a summary proceeding for non-payment of rent or a plenary action for the recovery of rent on account of any default in the payment of the same, it being intended that such notices are for the sole purpose of creating a conditional limitation hereunder pursuant to which this Lease shall terminate and if Tenant thereafter remains in possession or occupancy, it shall become a holdover tenant.

(C) If the Demised Premises shall at any time be or become vacant, deserted or abandoned or if Tenant shall be in default beyond any applicable grace period provided in Paragraph (A), then, in any such event, Landlord may without notice refuse to provide overtime services unless Tenant has made arrangements for advance payment acceptable to Landlord.

(D) If, at any time (a) Tenant shall be comprised of two or more persons, or (b) there is a guarantor of any of Tenant's obligations under this Lease, or (c) Tenant's interest in this