

Message

**From:** Jeff McConney [jmconney@trumporg.com]  
**Sent:** 4/10/2015 3:15:52 PM  
**To:** 'Jack Weisselberg' [Jack.Weisselberg@laddercapital.com]  
**CC:** Allen Weisselberg [weisselberg@trumporg.com]  
**Subject:** FW: 40 Wall Street Ground Lease  
**Attachments:** 20100720103907533.tif

Jack,

Attached is the 4th loan modification along with a summary which talk about how to compute the FMV rent a few years from now. :)

Let me know if you need anything else.

Jeff

Jeffrey S. McConney  
Senior Vice President/Controller  
725 Fifth Avenue | New York, NY | 10022  
p. 212.715.7231 | f. 212.832.5396  
jmconney@trumporg.com | Trump.com

-----Original Message-----

**From:** Cammie Artusa  
**Sent:** Tuesday, July 20, 2010 10:42 AM  
**To:** Jeff McConney  
**Subject:** 40 Wall Street Ground Lease

Attached herewith is a scanned copy of the following items:

1. Resume of the 4th Modification of Ground Lease on 40 Wall Street.
2. Fourth Modification of Lease dated December 31, 2007
3. Amended and Restated 40 Wall Street Ground Lease dated November 30, 1995.

Sincerely,

Cammie Artusa  
The Trump Organization  
725 Fifth Avenue, 26th Floor  
New York, N.Y. 10022  
Ph: 212-715-7216  
Fx: 212-935-0141  
cartusa@trumporg.com

-----Original Message-----

**From:** Cammie Artusa [mailto:cartusa@trumporg.com]  
**Sent:** Tuesday, July 20, 2010 10:39 AM  
**To:** Cammie Artusa  
**Subject:**

This E-mail was sent from "RNP015C5B" (Aficio MP C4000).

Scan Date: 07.20.2010 10:39:07 (-0400)

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**PX-635**

Index No. 452564/2022 (AFE)



**RESUME OF 4<sup>TH</sup> MODIFICATION OF GROUND LEASE ON 40 WALL STREET, NYC**

**Note:** This resume represents a brief summary of many of the important provisions of the 4<sup>th</sup> Modification of Lease. Do not rely solely on this document itself but refer to the actual Lease document for the full text.

**Date of Modification:** As of December 31, 2007

**Landlord:** 40 Wall Limited Partnership and New Scandic Wall Limited Partnership

**Tenant:** 40 Wall Street LLC

**Identification of Original Ground Lease and Prior Modifications:**

A) The original ground lease is dated 11/30/95 between Nautilus Real Estate, Inc. and Scandic Wall Limited Partnership as Landlords and 40 Wall Street Development Associates LLC as Tenant.

B) The 1<sup>st</sup> Modification is dated as of 5/1/1997 and involved rent reduction through 11/29/1998.

C) The 2<sup>nd</sup> Modification is dated 11/24/1998 and it modified rent reductions through 11/29/1999.

D) The 3<sup>rd</sup> Modification is dated 7/29/2002 and it modified the notice provisions of the lease.

**Provisions of 4<sup>th</sup> Modification:**

1) Revised Section 2.01 of the Lease to modify the net rental in accordance with Schedule A annexed hereto.

2) Revised Section 2.05 A to provide for rent valuation as of 1/1/2033 at the greater of (a) 6% the then value of the land considered as vacant and unimproved but with the right to construct a 900,000 square foot building for (x) office purposes and (y) ground floor retail space or other retail space in the building which existed after 1/1/2028 or (b) 85% of the then rental.

Section B of this paragraph also revises the date of the subsequent valuation to 1/1/2058 and every 25 years thereafter.

**Lease Renewals:** Paragraph 3 extends the lease renewals available to 10/31/2206.

**Condominium Conversion Right:** Paragraph 4 eliminates the Tenant's condominium conversion rights which it had under Section 27.09.

**Alley Easement:** By separate letter the owners of 30 Wall Street agree to grant a perpetual easement to Tenant giving Tenant the right to maintain in the 8' alley the existing underground HVAC equipment.

<b>Schedule A Rentals:</b>	<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rental</u>
	1/1/2008 – 12/31/2012	\$1,500,000.00	\$125,000.00
	1/1/2013 – 12/31/2017	\$1,650,000.00	\$137,500.00
	1/1/2018 – 12/31/2019	\$1,815,000.00	\$151,250.00
	1/1/2020 – 12/31/2022	\$2,315,000.00	\$192,916.67
	1/1/2023 – 12/31/2027	\$2,546,500.00	\$212,208.33
	1/1/2028 – 12/31/2032	\$2,801,150.00	\$233,429.16
	From and after 1/1/2033	As determined in accordance with Section 2.05.	



ORIGINAL

**FOURTH MODIFICATION OF LEASE**

AGREEMENT made as of the 31st day of December 2007, by and between 40 WALL LIMITED PARTNERSHIP, and NEW SCANDIC WALL LIMITED PARTNERSHIP having an office address c/o Walter J. Hinneberg GMBH & Co. KG, Ballindamm 17, 20095 Hamburg, Germany (collectively referred to as "Landlord"), and 40 WALL STREET LLC having an office at 725 Fifth Avenue, New York, New York 10022 ("Tenant").

**STATEMENT OF FACTS**

By agreement dated as of November 30, 1995 (the "Original Lease"), by and between NAUTILUS REAL ESTATE, INC. and SCANDIC WALL LIMITED PARTNERSHIP, as Landlord, and 40 WALL DEVELOPMENT ASSOCIATES LLC, as Tenant, said parties executed an amended and restated lease relating to the Building known as 40 Wall Street, New York, New York 10005.

The Original Lease was modified by the following agreements:

1. The First Modification of Lease dated as of May 1, 1997 (the "First Modification", by and between NAUTILUS REAL ESTATE INC. and SCANDIC WALL LIMITED PARTNERSHIP, as Landlord, and 40 WALL DEVELOPMENT ASSOCIATES LLC, as Tenant.
2. The Second Modification of Lease dated November 24, 1998 (the "Second Modification"), by and between NAUTILUS REAL ESTATE INC. and SCANDIC WALL LIMITED PARTNERSHIP, as Landlord, and 40 WALL STREET LLC, as Tenant.
3. The Third Modification of Lease dated July 29, 2002 (the "Third Modification"), by and between 40 WALL LIMITED PARTNERSHIP and SCANDIC WALL LIMITED PARTNERSHIP, as Landlord, and 40 WALL STREET LLC, as Tenant.

The Original Lease as modified by the First Modification, the Second Modification, and the Third Modifications is hereinafter referred to as (the "Lease").

By mesne assignments, Landlord has acquired all of the rights, title and interests of NAUTILUS REAL ESTATE INC. and SCANDIC WALL LIMITED PARTNERSHIP in the Lease. By mesne assignments, Tenant has acquired all of the rights, title and interests of 40 WALL DEVELOPMENT ASSOCIATES LLC in the lease.

Effective as of January 1, 2008, Landlord and Tenant have agreed to modify the Lease upon the terms, covenants and conditions herein contained.

NOW THEREFORE, in consideration of one dollar each to the other in hand paid and other good and valuable consideration it is agreed as follows:

1. Section 2.01 of the Lease is hereby deleted and the following inserted in lieu thereof:

“Section 2.01. Tenant covenants and agrees to pay to Landlord, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, c/o Walter J. Hinneberg, GMBH & Co. KG, Ballindamm 17, Hamburg, Germany, Attention: Christian Hinneberg, or at such other place as Landlord may from time to time specify by notice given pursuant to Section 22.01 and to the attention of such officer or other person as Landlord may by like notice from time to time designate, during the term, a net rental as set forth on Schedule A annexed to the Fourth Modification of Lease dated as of December 31, 2007.

Such net annual rental (hereinafter called the “net rent”) shall be in addition to all other payments to be made by the Tenant as hereinafter provided and shall be paid in equal monthly installments, each in advance on the first day of each calendar month during the term of this Lease.”

2. Section 2.05 of the Lease is hereby deleted and the following inserted in lieu thereof:

“Section 2.05. A. Landlord may, by written notice to Tenant during the six months prior to January 1, 2033, require a valuation as of January 1, 2033 of the Land (considered as vacant and unimproved (but without deduction for any estimated or assumed costs of demolition of then existing improvements), but with the right to construct 900,000 square foot building thereon for (a) office purposes, and (b) retail (i) where legally permissible on the ground floor and (ii) elsewhere in the Building where it existed at any time during the five (5) year period prior to the applicable date of valuation, and otherwise free and clear of all liens and encumbrances (hereinafter referred to as the “Value”). The determination of the



Value shall be accomplished by agreement between Landlord and Tenant, or if such agreement is not reached by February 15, 2033, then by arbitration in the manner set forth in Article 25. Anything to the contrary in Section 2.01 notwithstanding, as of January 1, 2033, the net rent provided for in Section 2.01 shall be an annual amount equal to six (6%) percentum of the Value or eighty-five (85%) per cent of the net rent payable pursuant to Section 2.01 in the immediately preceding twelve (12) month period, whichever shall be the greater. In the event that the Value has not been determined hereunder on or before January 1, 2033, Tenant shall pay net rent to Landlord at the annual rate of the net rent payable in the preceding twelve (12) month period, and upon the determination of the new net rent, Tenant shall promptly pay to Landlord the amount of any underpayment, or Landlord shall promptly refund the amount of any overpayment, of net rent for the period commencing on January 1, 2033, and Tenant shall thereafter pay net rent at the rate per annum prescribed in the preceding sentence.

Section 2.05.B. Landlord may, by written notice to Tenant during the six months prior to January 1, 2058, require a determination of the Value as of January 1, 2058. The determination of the Value shall be accomplished by agreement between Landlord and Tenant, or if such agreement is not reached by February 15, 2058, then by arbitration in the manner set forth in Article 25. Anything to the contrary in Section 2.01 notwithstanding, as of January 1, 2058, the net rent provided for in Section 2.01 shall be an annual amount equal to six (6%) percentum of the Value or eighty-five (85%) per cent of the net rent payable pursuant to Section 2.01 in the immediately preceding twelve (12) month period, whichever shall be greater. In the event that the Value has not been determined hereunder on or before January 1, 2058, Tenant shall pay net rent to Landlord at the annual rate of the net rent payable in the preceding twelve (12) month period, and upon the determination of the new net rent, Tenant shall promptly pay to Landlord the amount of any underpayment, or Landlord shall promptly refund the amount of any overpayment, of net rent for the period commencing on January 1, 2058, and Tenant shall

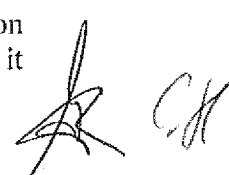
Handwritten signature and initials, possibly 'C.H.' or similar, in the bottom right corner of the page.

thereafter pay net rent at the rate per annum prescribed in the preceding sentence.

Section 2.05. C. There shall be a determination of the Value every twenty-five years thereafter (i.e., 2083, 2108, etc.), subject to the exercise of all renewal options as provided in Article 26 of this Lease) as of January 1 in each of such years, and the net rent payable pursuant to Section 2.01 for the ensuing 25-year period shall be an annual amount equal to six (6%) percentum of said Value or the net rent payable pursuant to Section 2.01 in the immediately preceding twelve-month period, whichever shall be the greater. Each determination of Value and adjustments of net rent shall be made in the same manner as provided in subsection A, above."

3. Article 26 of the Lease is hereby deleted and the following is inserted in lieu thereof:

"Article 26 – Renewal Terms: Provided that no Event of Default shall have occurred and be continuing after (i) Landlord shall have given Tenant a second and successive notice of default in addition to the notice provided in paragraph (a) or (b) of Section 19.01 hereof (which second and successive notice shall not be given earlier than the expiration of the period provided for in said paragraph (a) or (b) and shall not constitute the notice provided for in the paragraph immediately following paragraph (f) of Section 19.01), and (ii) the expiration of a period after such additional notice equal to (A) 10 days in the case of a default in the payment of net rent or additional rent or (B) 30 days in the case of any other default (or in the case of a default not susceptible of being cured with due diligence within 30 days, such 30-day period shall be extended as long as Tenant shall have commenced to cure such default within such 30 day period and shall thereafter diligently prosecute the same to completion), then Tenant shall have the option, to be exercised not later than October 31, 2057 to renew the term of this lease for an additional sixty-seven and one-half (67 and ½ years, to commence on May 1, 2059 and expire on October 31, 2126, by giving written notice to Landlord of the exercise of such renewal option. If Tenant shall have exercised the renewal option contained in the immediately preceding sentence, it

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

shall have a second renewal option for a period of eighty (80) years and two (2) months, to commence on November 1, 2126 and expire on December 31, 2206, to be exercised by giving written notice to Landlord not later than April 30, 2125. Each renewal term shall be on all of the terms and conditions as are contained in this lease, except that Tenant shall have no further right to renew after the second renewal term.”

4. Section 27.09 of the Lease is hereby deleted in its entirety.
5. In consideration of the elimination of Section 27.09 of the Lease Landlord and Tenant agree that if in the future, Tenant is of the opinion that the area and times favor the construction of residential units which may be condominium units and Tenant desires to create a residential condominium for the sale of units to the public, Tenant may propose revision of the Lease to permit the conversion to condominium ownership for the sale of such residential units; provided, however, that in no event shall Landlord have any obligation to agree with or take any action to effectuate such condominium conversion, and Landlord's determination to permit any such conversion shall be at Landlord's sole and unfettered discretion.
6. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same agreement.
7. Except as herein expressly modified, all the other terms, covenants and conditions of the Lease shall remain in full force and effect and binding upon the parties hereto.


[Signatures on next page]

Two handwritten signatures are present. The one on the left is a stylized signature with a large loop, and the one on the right is a more cursive signature.


IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

LANDLORD:

40 WALL LIMITED PARTNERSHIP

By:   
Name: C. HIXNERBERG  
Title: PRESIDENT

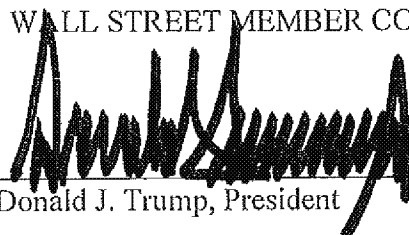
NEW SCANDIC WALL LIMITED PARTNERSHIP

By:   
Name: S. VON REINARD  
Title: VICE PRESIDENT

TENANT:

40 WALL STREET LLC

By: 40 WALL STREET MEMBER CORP.

By:   
Donald J. Trump, President

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, personally appeared \_\_\_\_\_, 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 on behalf of which the individual(s) acted, executed the instrument.

---

*Notary Public*

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, personally appeared \_\_\_\_\_, 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 on behalf of which the individual(s) acted, executed the instrument.

---

*Notary Public*

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, personally appeared \_\_\_\_\_, 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 on behalf of which the individual(s) acted, executed the instrument.

---

*Notary Public*

SCHEDULE A

RENTALS

<u>Period</u>	<u>Annual Rental</u>	<u>Monthly Rental</u>
1/1/2008 – 12/31/2012	\$1,500,000.00	\$125,000.00
1/1/2013 – 12/31/2017	\$1,650,000.00	\$137,500.00
1/1/2018 – 12/31/2019	\$1,815,000.00	\$151,250.00
1/1/2020 – 12/31/2022	\$2,315,000.00	\$192,916.67
1/1/2023 – 12/31/2027	\$2,546,500.00	\$212,208.33
1/1/2028 – 12/31/2032	\$2,801,150.00	\$233,429.16
From and after 1/1/2033	As determined in accordance with Section 2.05. <i>CK</i>	



Copy of  
Amended & restated  
lease d/tc 11/30/95  
As executed

---

AMENDED AND RESTATED LEASE

BETWEEN

NAUTILUS REAL ESTATE INC. AND SCANDIC WALL LIMITED PARTNERSHIP,  
AS LANDLORD

AND

40 WALL DEVELOPMENT ASSOCIATES LLC,  
AS TENANT

---

40 Wall Street  
New York, New York 10005

Dated as of November 30, 1995

The Land affected by the within instrument lies in Block 43,  
Section 1, on the Land Map of the County of New York

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Exhibits

Exhibit A - Description of the Land

Exhibit B - Description of the Lease

Exhibit C - Non-Disturbance, Subordination and Attornment Agreement

THIS AGREEMENT dated as of the 30th day of November, 1995, between NAUTILUS REAL ESTATE INC., a New York corporation, and SCANDIC WALL LIMITED PARTNERSHIP, a New York limited partnership (hereinafter collectively called "Landlord"), having an address c/o Percy R. Pyne, 555 Madison Avenue, New York, New York 10022, and 40 WALL DEVELOPMENT ASSOCIATES LLC, a New York limited liability company ("Tenant") having an address at 725 Fifth Avenue, New York, New York 10022.

W I T N E S S E T H

WHEREAS,

(1) Landlord is the owner of the undivided fee estate in the land (the "Land") more particularly described on Exhibit A annexed hereto and made a part hereof, and the building and other improvements (the "Building") located on the Land;

(2) Tenant is the owner and holder of the leasehold estate created by that certain lease, as theretofore combined, consolidated, modified and amended, more particularly described on Exhibit B annexed hereto and made a part hereof (collectively, the "Original Lease"); and

(3) The Landlord and Tenant are now desirous of modifying, amending and restating in full the Original Lease.

NOW, THEREFORE, in consideration of the premises, the parties hereby mutually covenant and agree that the Original Lease as heretofore combined, consolidated, modified and amended shall henceforth be combined, consolidated, modified, amended, restated, superseded and replaced in its entirety and shall read as follows:

THIS AMENDED AND RESTATED LEASE, dated as of the 30th day of November, 1995, between NAUTILUS REAL ESTATE INC., a New York corporation, and SCANDIC WALL LIMITED PARTNERSHIP, a New York limited partnership (hereinafter collectively called "Landlord"), having an address c/o Percy R. Pyne, 555 Madison Avenue, New York, New York 10022, and 40 WALL DEVELOPMENT ASSOCIATES LLC, a New York limited liability company ("Tenant"), having an address at 725 Fifth Avenue, New York, New York 10022.

W I T N E S S E T H :

ARTICLE 1

DEFINITIONS, DEMISE AND TERM

That for purposes of this lease, unless the context otherwise requires:

(a) the term "Demised Premises" shall mean the real property in the Borough of Manhattan, City and State of New York, with the buildings and improvements now and hereafter erected thereon, as more particularly bounded and described on Exhibit A annexed hereto and made a part hereof;

(b) the term "Tenant" shall mean the tenant named herein, and from and after any valid assignment of the whole of tenant's interest in this lease pursuant to the provisions hereof, shall mean only the assignee thereof;

(c) the term "Landlord" shall mean only the owner for the time being of the Demised Premises;

(d) the term "subtenant" shall mean any tenant or licensee of any space in the Demised Premises (other than Tenant); the term "sublease" shall mean any lease (other than this lease) or other agreement for the use and occupancy of any such space; the term "subrent" shall mean any rent or other charge for such use or occupancy under a sublease; the term "existing sublease" shall mean any sublease existing on November 30, 1995; and the term "future sublease" shall mean any sublease made after said date;

(e) the term "Leasehold Mortgagee" shall mean the holder of a mortgage on this lease or the trustee under a deed of trust of this lease, and the term "Leasehold Mortgage" shall mean any such mortgage or deed of trust;

(f) the term "Building" shall mean the structure located on the land on the date of the commencement of the term of this lease and any restoration or replacement thereof pursuant to the provisions hereof.

That Landlord, for and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant, its successors and assigns, to be paid, kept and performed, does hereby demise and lease to Tenant, and Tenant does hereby take and hire from Landlord, the Demised Premises.

TO HAVE AND TO HOLD the same subject only to the matters set forth on Exhibit A, unto Tenant, and, subject to the provisions hereof, its successors and assigns, for a term which will expire on April 30, 2059, unless this lease shall sooner terminate or be renewed or extended as hereinafter provided.

This lease is made upon the following covenants, agreements, terms, provisions, conditions and limitations, all of which Landlord and Tenant covenant and agree to perform and observe:

## ARTICLE 2

### RENT

SECTION 2.01 Tenant covenants and agrees to pay to Landlord, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, at 555 Madison Avenue, New York, New York 10022 Attn: Percy R. Pyne, or at such other place as Landlord may from time to time specify by notice given pursuant to Section 22.01 and to the attention of such officer or other person as Landlord may by like notice from time to time designate, during the term, a net rental of One Million Five Hundred Thousand Dollars (\$1,500,000) per annum.

Such net annual rental (hereinafter called the "net rent") shall be in addition to all other payments to be made by the Tenant as hereinafter provided and shall be paid in equal monthly installments of One Hundred Twenty-Five Thousand Dollars (\$125,000), each in advance on the first day of each calendar month during the term of this lease.

Provided that no Event of Default shall have occurred and be continuing after (i) Landlord shall have given Tenant a second and successive notice of default in addition to the notice provided in paragraph (a) or (b) of Section 19.01 hereof (which second and successive notice shall be given no earlier than the expiration of the period provided for in said paragraph (a) or (b) and shall not constitute the notice provided for in the paragraph immediately following paragraph (f) of Section 19.01), and (ii) the expiration of a period after such additional notice equal to (A) 10 days in the case of a default in the payment of net rent or additional rent or (B) 30 days in the case of any other default (or in the case of a default not susceptible of being cured with due diligence within 30 days, such 30-day period shall be extended as long as Tenant shall have commenced to cure such default within such 30-day period and shall thereafter diligently prosecute the same to completion), then Tenant shall be entitled to an annual credit against the net rent payable to Landlord pursuant to this Section 2.01 in the amounts of: (a) One Million Five Hundred Thousand (\$1,500,000) Dollars for the period from November 30, 1995 to and including November 29, 1996; (b) One Million Five Hundred Thousand (\$1,500,000) Dollars for the period from November 30, 1996 to and including November 29, 1997; (c) Seven Hundred and Fifty Thousand (\$750,000) for the period from November 30, 1997 to November 29, 1998; and (d) Six Hundred and Fifty Thousand (\$650,000) Dollars for the period from November 30, 1998 to November 29, 1999. Each annual credit shall be taken in equal monthly installments over the period for which such credit shall have been given.

SECTION 2.02 It is the purpose and intent of Landlord and Tenant that the net rent shall be net to Landlord, so that this lease shall yield, net, to Landlord, the net rent specified in Section 2.01 hereof in each year during the term of this lease during which net rent shall be due and that all costs, expenses and charges of every kind and nature relating to the Demised Premises (except the taxes of Landlord referred to in Section 3.02 of Article 3 hereof and any payments on account of interest or principal under any mortgage or deed of trust which shall be a lien on the fee of the Demised Premises) which may arise or become due during or out of the term of this lease shall be paid by Tenant, and that Landlord shall be indemnified and saved harmless by Tenant from and against the same.

SECTION 2.03 The net rent shall be paid to Landlord without notice or demand and without abatement, deduction or set-off, except as otherwise expressly provided in this lease.

SECTION 2.04 Tenant will pay, as additional rent, and (except as may be otherwise expressly provided in this lease) without notice, abatement, deduction or set-off, all sums, Impositions (as defined in Article 3 hereof), costs, expenses and other payments which Tenant in any of the provisions of this lease assumes or agrees to pay, and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of the net rent.

SECTION 2.05 A. Landlord may, by written notice to Tenant during the six months prior to January 1, 2020, require a valuation as of January 1, 2020 of the Land (considered as vacant and unimproved (without deduction for any estimated or assumed costs of demolition of then existing improvements), but with the right to construct 1,100,000 square feet of building thereon, and free and clear of all liens and encumbrances) (hereinafter referred to as the "Value"). The determination of the Value shall be accomplished by agreement between Landlord and Tenant, or if such agreement is not reached by February 15, 2020, then by arbitration in the manner set forth in Article 25. Anything to the contrary in Section 2.01 notwithstanding, as of May 1, 2020, the net rent provided for in Section 2.01 shall be an annual amount equal to six (6%) percentum of the Value or eighty-five (85%) per cent of the net rent payable pursuant to Section 2.01 in the immediately preceding twelve (12) month period, whichever shall be the greater. In the event that the Value has not been determined hereunder on or before May 1, 2020, Tenant shall pay net rent to Landlord at the annual rate of the net rent payable in the preceding twelve (12) month period, and upon the determination of the new net rent, Tenant shall promptly pay to Landlord the amount of any underpayment, or Landlord shall promptly refund the amount of any overpayment, of net rent for the period commencing on May 1, 2020, and Tenant shall thereafter pay net rent at the rate per annum prescribed in the preceding sentence.

B. Landlord may, by written notice to Tenant during the six months prior to January 1, 2035, require a determination of the Value as of January 1, 2035. The determination of the Value shall be accomplished by agreement between Landlord and Tenant, or if such agreement is not reached by February 15, 2035, then by arbitration in the manner set forth in Article 25. Anything to the contrary in Section 2.01 notwithstanding, as of May 1, 2035, the net rent provided for in Section 2.01 shall be an annual amount equal to six (6%) percentum of the Value or eighty-five (85%) per cent of the net rent payable pursuant to Section 2.01 in the immediately preceding twelve (12) month period, whichever shall be greater. In the event that the Value has not been determined hereunder on or before May 1, 2035, Tenant shall pay net rent to Landlord at the annual rate of the net rent payable in the preceding twelve (12) month period; and upon the determination of the new net rent, Tenant shall promptly pay to Landlord the amount of any underpayment, or Landlord shall promptly refund the amount of any overpayment, of net rent for the period commencing on May 1, 2035, and Tenant shall thereafter pay net rent at the rate per annum prescribed in the preceding sentence.

C. There shall be a determination of the Value every twenty-five years thereafter (i.e., 2060, 2085, 2110, 2135, 2160 and 2185, subject to the exercise of all renewal options as provided

in Article 26 of this lease) as of January 1 in each of such years, and the net rent payable pursuant to Section 2.01 for the ensuing 25-year period shall be an annual amount equal to six (6%) percentum of said Value or the net rent payable pursuant to Section 2.01 in the twelve-month period ending April 30, 2059, whichever shall be the greater. Each determination of Value and adjustment of net rent shall be made in the same manner as provided in subsection B. above.

### ARTICLE 3

#### PAYMENT OF IMPOSITIONS

SECTION 3.01 Tenant shall pay (except as hereinafter in Sections 3.02, 3.03 and 3.08 provided), before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the non-payment thereof, all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time prior to or during the term of this lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, (i) the Demised Premises or any part thereof or any appurtenances thereto, (ii) the rent, income or other payments received by Tenant or anyone claiming by, through or under Tenant, (iii) any use or occupation of the Demised Premises, (iv) such franchises as may be appurtenant to the use of the Demised Premises and (v) this transaction, or any document to which Tenant is a party, creating or transferring an interest or estate in the Demised Premises (all such taxes, assessments, water and sewer rents, transit taxes, rates and charges, charges for public utilities, excises, levies, license fees and other governmental charges being hereinafter referred to as "Impositions," and any of the same being hereinafter referred to as an "Imposition"); provided, however, that

(a) if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments as may become due during the term of this lease as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto, provided, however, that the amount of all installments of any such Imposition which Tenant has elected to pay in installments, which are to become due and payable after the expiration of the term of this lease, shall be paid on or before the date which shall be one year immediately prior to the date of such expiration or on such later date if such Imposition is levied thereafter; and

(b) any Imposition other than Impositions which have been converted into installment payments by Tenant, as referred to in paragraph (a) of this Section 3.01 relating to a fiscal period of the taxing authority, a part of which period is included within the term of this lease and a part



of which is included in a period of time after the expiration of the term of this lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Demised Premises, or shall become payable, during the term of this lease) be adjusted between Landlord and Tenant as of the expiration of the term of this lease, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time before the expiration of the term of this lease bears to such fiscal period, and Landlord shall pay the remainder thereof, provided, however, that if Tenant shall be in default in the performance of any of Tenant's covenants, agreements and undertakings in this lease provided, then to the extent of the amount of any such default, Tenant shall not be entitled to receive an apportionment.

SECTION 3.02 Nothing herein contained shall require Tenant to pay municipal, state or federal income taxes assessed against Landlord, municipal, state, or federal capital levy, estate, succession, inheritance or transfer taxes of Landlord, or corporation franchise taxes imposed upon any corporate owner of the fee of the Demised Premises; provided, however, that if at any time during the term of this lease the methods of taxation prevailing at the commencement of the term hereof shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed, (i) a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rents received therefrom, or (ii) a tax, assessment, levy (including but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the Demised Premises and imposed upon Landlord, or (iii) a license fee measured by the rent payable by Tenant under this lease, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, to the extent that such Impositions would be payable if the Demised Premises were the only property of Landlord subject to such Impositions, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.

SECTION 3.03 Tenant, upon request of Landlord, will furnish Landlord, within 15 days after receipt from the taxing authorities, official receipts of the appropriate taxing authority or, within 45 days after the date when any Imposition would become delinquent (if official receipts have not yet been received), other evidence (e.g., cancelled checks) satisfactory to Landlord in its reasonable judgment, evidencing the payment thereof.

Landlord may, subject to the provisions of Section 18.03 of this lease, by written notice, require Tenant to deposit with Landlord ten (10) days before the same would otherwise be payable pursuant to Section 3.01 hereof, the amount of any Impositions to be paid by Tenant pursuant to said Section 3.01 from and after the date of delivery of such notice, and Landlord may thereafter by notice, from time to time, as to Impositions subsequently becoming payable require Tenant to pay such Impositions directly as in Section 3.01 provided or deposit the same with Landlord as in this Section 3.03 above provided.

Any deposit so received by Landlord shall be held by Landlord in a fiduciary capacity and Landlord shall apply same to the payment of the Impositions in respect of which such deposit was made on or before the date such Imposition would become delinquent and shall furnish Tenant, within 15 days after receipt from the taxing authorities, official receipts of the appropriate taxing authority or, within 45 days after such Impositions would become delinquent (if official receipts have not yet been received), other evidence (e.g., cancelled checks) satisfactory to Tenant in its reasonable judgment, evidencing the payment thereof.

SECTION 3.04. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith in its own name or if necessary in the name of Landlord. Tenant may defer payment of such Imposition unless such deferral would cause the Demised Premises or any part thereof to be in danger of being sold, forfeited or otherwise lost, in which event Tenant shall promptly pay such deferred Imposition. In the event Tenant shall defer payment of any Imposition, Tenant shall first deposit with Landlord the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Demised Premises or any part thereof in such proceedings, or shall furnish to Landlord security reasonably satisfactory to Landlord sufficient to cover said amount, interest, penalties and charges.

Upon the termination of any such proceedings, Tenant shall pay, or may direct Landlord to pay out of such deposits, the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith, and, upon such payment, Landlord shall return the balance of the amount, if any, deposited with it with respect to such Imposition as aforesaid, together with all interest accrued thereon. If, at any time during the continuance of such proceedings, Landlord in its reasonable judgment shall deem the amount deposited as aforesaid insufficient, Tenant shall, upon demand, make an additional deposit of such sum as Landlord reasonably may request, and upon failure of Tenant so to do, the amount theretofore deposited may be applied by Landlord to the payment, removal and discharge of such Imposition, and the interest and penalties in connection therewith and any costs, fees or other liability accruing in any such proceedings, and the balance, if any, shall be returned to Tenant.

Tenant shall have the right to seek a reduction in the valuation of the Demised Premises assessed for tax purposes and to prosecute any such action or proceeding in its own name, provided, however, if Tenant defers payment of any Imposition in connection with any such proceeding Tenant shall comply with the terms of the first paragraph of this Section 3.04. Landlord shall have the right to seek a reduction in the valuation of the Demised Premises assessed for tax purposes and to prosecute any action or proceeding theretofore commenced by Tenant, if such assessed valuation or valuations shall relate or pertain, in whole or in part, to any period subsequent to the term of this lease. To the extent to which any tax refund payable as a result of any proceeding to review the said assessed valuation which Landlord or Tenant may

institute, or payable by reason of compromise or settlement of any such proceeding, may be based upon a payment made by anyone other than Landlord and shall not relate or pertain to a period subject to apportionment between Landlord and Tenant, Tenant shall be authorized to collect the same, provided, however, that Tenant shall reimburse Landlord forthwith for a share of the reasonable expenses and fees incurred by Landlord in connection therewith, in the proportion that the Tenant's share of the refund bears to the total refund.

SECTION 3.05 Landlord shall not be required to join in any proceedings referred to in Section 3.04 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord or any owner of the Demised Premises, in which event Landlord shall join in such proceedings or permit the same to be brought in its name. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant will indemnify and save harmless Landlord from any such costs and expenses. Except as otherwise provided in this lease, Tenant shall be entitled to any refund of any Imposition and penalties or interest thereon received by Landlord which have been paid by Tenant, or which have been paid by Landlord but previously reimbursed in full by Tenant.

SECTION 3.06 The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition of 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.

SECTION 3.07 Landlord appoints Tenant the attorney-in-fact of Landlord for the purpose of making all payments to be made by Tenant pursuant to any of the provisions of this lease to persons or entities other than Landlord. In case any person or entity to whom any sum is directly payable by Tenant under any of the provisions of this lease shall refuse to accept payment of such sum from Tenant, Tenant shall thereupon give written notice of such fact to Landlord and shall pay such sum directly to Landlord at its office set forth above, or at such other place as Landlord may from time to time specify by notice given pursuant to Section 22.01 and to the attention of such officer or other person as Landlord may by like notice from time to time designate to Tenant, and Landlord shall thereupon pay such sum to such person or entity.

SECTION 3.08 Notwithstanding any of the foregoing provisions of this Article 3, all real estate taxes, water charges and sewer rents and all interest and penalties thereon affecting the Demised Premises shall be paid within 90 days after the last date on which the same may be paid without interest or penalty, until November 30, 1999, after which all real estate taxes, water charges and sewer rents affecting the Demised Premises shall be paid on or before the last day the same may be paid without interest or penalties accruing thereon.

## ARTICLE 4

### SURRENDER

SECTION 4.01 On the last day of the term hereof or upon any earlier termination of this lease, or upon any re-entry by Landlord upon the Demised Premises pursuant to Article 19 hereof, Tenant shall surrender the Demised Premises or remaining portions pursuant to Section 27.09, together with all fixtures and articles of personal property attached thereto, into the possession and use of Landlord without delay and, subject to the provisions of Section 15.03 hereof, in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings and occupancies other than subleases permitted by this lease and any existing subleases and free and clear of all liens and encumbrances other than those, if any, permitted by this lease or created or consented to by Landlord.

SECTION 4.02 Where furnished by or at the expense of any subtenant, furniture, trade fixtures and business equipment (not constituting part of the Demised Premises) may be removed by Tenant or by such subtenant at or prior to the expiration of its sublease, provided, however, that Tenant shall with due diligence, and without expense to Landlord, cause the Building to be promptly restored to its condition prior to such removal and cause any injury due to such removal to be promptly repaired.

SECTION 4.03 Any personal property of Tenant or any subtenant which shall remain in the Building after the expiration or sooner termination of this lease or any sublease and the removal of Tenant or any such subtenant from the Building, may, at the option of Landlord be deemed to have been abandoned by Tenant or any such subtenant and either may be retained by Landlord as its property or be disposed of without accountability in such manner as Landlord may see fit.

SECTION 4.04 Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any subtenant.

SECTION 4.05 The provisions of this Article 4 shall survive any expiration or sooner termination of this lease.

## ARTICLE 5

### INSURANCE

SECTION 5.01 Tenant, at its sole cost and expense, shall keep the Building insured during the term of this lease, under building and personal property coverage, against loss or damage by fire, lightning, windstorm, hail, explosion, riot and civil commotion, aircraft and vehicles and smoke, and all other available extended coverage (and, as to windstorm and hail,

with provisions for deduction of not more than an amount equal to the product of \$250,000 times a fraction, the numerator of which shall be the Index (as defined in Article 27 hereof) in effect for the month of November in the then current year and the denominator of which shall be the Index in effect for the month of November, 1995) in an amount sufficient to prevent Landlord or Tenant from being a co-insurer within the terms of the policy or policies in question and in no event less than 100% of the replacement value of the Building exclusive of the cost of foundations, excavations, and footings below the lowest basement floor, without any deduction being made for depreciation, to the extent such insurance is then available in New York for similar properties. Such replacement value shall be determined from time to time, but not more frequently than once in any 24 consecutive calendar months, at the request of Landlord, by one of the insurers or, at the option of Landlord, by an appraiser, architect or contractor who shall be mutually and reasonably acceptable to Landlord and Tenant. No omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation hereunder, and any such determination to the contrary notwithstanding, Landlord may require Tenant to furnish additional insurance of the nature in this Section 5.01 above specified at any time that Landlord deems such insurance to be inadequate, subject to Tenant's right of arbitration contained in Section 5.06 hereof.

SECTION 5.02 Tenant, at its sole cost and expense, shall maintain:

(a) commercial general liability and umbrella liability insurance against claims for bodily injury, death or property damage, occurring thereon, in or about the Demised Premises or the elevators or any escalator therein and on, in or about the adjoining streets, property and passageways, such insurance to afford minimum protection, during the term of this lease, in such amounts as are carried from time to time by owners or net lessees of similar properties similarly located in the City of New York which coverage may be maintained under one or more policies, including, without limitation, one or more umbrella or excess liability policies;

(b) commercial general liability insurance, provided the Building contains equipment of the nature ordinarily covered by such a policy, and, if requested by Landlord, plate glass insurance;

(c) war risk insurance upon the Building as and when such insurance is obtainable from the United States of America, or of any agency or instrumentality thereof, in an amount equal to the lesser of the full replacement value thereof or the maximum amount of such insurance obtainable;

(d) rent insurance against loss of net rent, Impositions and insurance premiums with respect to the Demised Premises for a period of eighteen months due to the risks referred to in Section 5.01 (including those embraced by available extended coverage) but in any event in an amount sufficient to prevent Tenant from being a co-insurer within the terms of the policy or policies in question; and Tenant hereby assigns to Landlord so much of its interest in the proceeds of such rent insurance so that, in the event the Building shall be damaged to the extent

of an amount equal to or more than the product of \$2,000,000 times a fraction, the numerator of which shall be the Index in effect for the month immediately preceding the date of occurrence of such damage and the denominator of which shall be the Index in effect for the month of November, 1995, there shall be paid to Landlord or, at Tenant's option, the depository designated pursuant to Section 18.03(e) hereof, to hold on deposit so much of the proceeds of such rent insurance, to the extent of the recovery, as shall in the aggregate equal the net rent and Impositions and insurance premiums for 18 months, which amount shall be applied by Landlord or, at Tenant's option, the depository designated pursuant to Section 18.03(e) hereof, on account of the payment of such net rent and Impositions and insurance premiums until the restoration of the Building, at which time, provided Tenant is not then in default after notice and the expiration of any cure period, the balance, if any, of such deposit shall be returned by Landlord to Tenant; and

(e) such other insurance, and in such amounts, as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of building, its construction, use and occupancy.

Tenant shall not violate or permit to be violated any of the conditions or provisions of any policy provided for in Section 5.01 or 5.02 and Tenant shall so perform and satisfy the requirements of the companies writing such policies that at all times companies meeting the standards set forth in Section 5.04 hereof shall be willing to write and/or to continue such insurance.

SECTION 5.03 Tenant may effect for its own account any insurance not required under the provisions of this lease, but any insurance effected by Tenant on the Building, whether or not required under this Article 5, shall name Landlord, Tenant and any Leasehold Mortgagee as their respective interests may appear and shall be subject to all other provisions of this Article 5 and of Article 15 hereof. Tenant shall promptly notify Landlord of the issuance of any such insurance.

SECTION 5.04 All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurers which are licensed to do business in the State of New York, are rated at least A-X by Best's (or any like organization, if Best's is no longer in business). Except with respect to insurance furnished under subdivisions (b) and (e) of Section 5.02, it is further agreed that the aggregate limit of liability underwritten by any insurer in conformance with the provisions of this lease shall not exceed 10% of that insurer's surplus to policyholders. Upon the execution of this lease, and thereafter not less than 30 days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, originals of the policies (or, in the case of general public liability insurance, certificates of the insurers reasonably satisfactory to Landlord) bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord, or if any Leasehold Mortgagee shall require that the original

policies be deposited with it, Tenant shall furnish to Landlord duplicate (to the extent the insurance company will issue same) or certified copies of such insurance policies. Each policy of insurance procured pursuant to Section 5.01 and subdivision (d) of Section 5.02 hereof shall contain, if obtainable, either (a) a waiver by the insurer of the right of subrogation against any subtenant for negligence of such subtenant, or (b) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy.

SECTION 5.05 All policies of insurance provided for in Sections 5.01 and 5.02 hereof shall evidence the insured status of Landlord using an ISO endorsement CG 20 11, or such endorsement form as is then applicable in replacement of such endorsement. Such policies may also name Tenant and any Leasehold Mortgagee as their interests may appear, and may be made payable, subject to the provisions of this lease, to any Leasehold Mortgagee and any fee mortgagee, as their interests may appear, pursuant to a standard mortgagee clause. The loss, if any, under any policies provided for in such Section 5.01 and in paragraphs (c) and (e) of Section 5.02 shall be adjusted with the insurance companies (a) by Tenant, in the case of any particular casualty resulting in damage or destruction not exceeding in the aggregate an amount equal to the product of \$2,000,000 times a fraction, the numerator of which shall be the Index in effect for the month immediately preceding the date of occurrence of such damage and the denominator of which shall be the Index in effect for the month of November, 1995, or (b) by Landlord, Tenant, the Leasehold Mortgagee having the greatest secured unpaid principal balance of the two most senior Leasehold Mortgagees and any fee mortgagee, in the case of any particular casualty resulting in damage or destruction exceeding such amount. The proceeds of any such insurance, as so adjusted, shall be payable:

(i) to Tenant in the case of any particular casualty resulting in damage or destruction not exceeding in the aggregate, an amount equal to the product of \$2,000,000 times a fraction, the numerator of which shall be the Index in effect for the month immediately preceding the date of occurrence of such damage and the denominator of which shall be the Index in effect for the month of November, 1995, or

(ii) to Landlord or at Tenant's option, to a depository designated under Section 18.03(e) as insurance trustee for the purposes set forth in Article 15, in the case of any particular casualty resulting in damage or destruction exceeding, in the aggregate, the aforesaid amount.

All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall contain (if obtainable) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company so to pay the amount, of any loss sustained and an agreement by the insurer that such policy shall not be cancelled without at least 10 days' prior written notice to Landlord, any Leasehold Mortgagee, and to the fee mortgagee, if any.

SECTION 5.06 If, at any time during the term of this lease, Landlord shall request that the amount of liability insurance provided by Tenant, as required by Section 5.02 and paragraph (f) of Section 9.01 hereof, or the amount of insurance required pursuant to a determination under Section 5.01 hereof, be increased on the ground that such coverage is inadequate properly to protect the interest of Landlord, or if Landlord shall require other insurance pursuant to the provisions of paragraph (e) of Section 5.02, and Tenant shall refuse to comply with any such request or requirement, the dispute shall be submitted to arbitration as provided in Article 25 hereof. Tenant shall thereafter carry the amount, and such kind, of insurance as determined by such arbitration to be adequate, but in no event shall the amount of public liability insurance be less than the amounts specified in Section 5.02 and in paragraph (f) of Section 9.01 hereof, or the amount of insurance under Section 5.01 hereof be less than the amount set by determination made pursuant to said Section 5.01.

SECTION 5.07 Upon the expiration of this lease, the unearned premiums upon any such transferable insurance policies lodged with Landlord by Tenant shall be apportioned, provided that if Tenant shall then be in default in the performance of any of Tenant's covenants, agreements and undertakings in this lease, then to the extent of the amount of any such default, Tenant shall not be entitled to receive an apportionment.

SECTION 5.08 Any insurance provided for in this Article 5 may be effected by a policy or policies of blanket insurance, provided, however, that the amount of the total insurance allocated to the Demised Premises shall be such as to furnish in protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects, any such policy or policies shall comply with the other provisions of this lease, except that no such policy shall be submitted to Landlord less than 30 days prior to expiration of an existing policy. In any such case it shall not be necessary to deliver the original of any such blanket policy to Landlord, but Landlord shall be furnished with a certificate of such policy reasonably acceptable to Landlord or a duplicate (to the extent the insurance company will issue same) or certified copy of such policy.

## ARTICLE 6

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

SECTION 6.01 If Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article 3 hereof, or to pay for or maintain any of the insurance policies provided for in Article 5 hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, then Landlord, after 30 days' notice to Tenant (or, in case of any emergency, on such notice, or without notice as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):



- (a) pay such Imposition, or
- (b) pay for and maintain such insurance policies, or
- (c) make any other payment or perform any other act on Tenant's part to be made or performed as in this lease provided,

as the case may be, and may enter upon the Demised Premises for the purpose and take all such action thereon as may be necessary therefor, subject to the provisions of Section 13.01 hereof.

SECTION 6.02 All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act (together with interest thereon at the rate of .10% per annum from the respective dates of Landlord's making of each such payment or paying of each such cost and expense) shall constitute additional rent payable by Tenant under this lease and shall be paid by Tenant to Landlord on demand, and 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 in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent only of any deficiency in the insurance required by the provisions of this lease), damages, costs and expenses of suit suffered or incurred by reason of damage to, or destruction of, the Demised Premises, occurring during any period when Tenant shall have failed or neglected to provide insurance as aforesaid. However, any amount so recovered by Landlord for damages to the Demised Premises shall be subject to the provisions of Article 15 hereof.

## ARTICLE 7

### SERVICES TO AND REPAIRS AND MAINTENANCE OF THE DEMISED PREMISES

SECTION 7.01 During the term of this lease, Tenant, subject to unavoidable delays (as hereinafter defined), will furnish services to subtenants of the Building, which as to the nature, character, quality and quantity thereof, are of the standard which is appropriate for buildings of similar construction and class and will take good care of the Building (including the fixtures and facilities therein), and the sidewalks, driveways and curbs adjoining the Building and will maintain and keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. When used in this Article 7, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs made by Tenant shall be equal in quality and class to the original work. For purposes of this lease, "unavoidable delays" shall mean delays due to strikes, lock-outs, acts of God, inability to obtain

labor or materials, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or similar causes beyond the reasonable control of Tenant.

SECTION 7.02 The necessity for and adequacy of services and repairs to the Building pursuant to Section 7.01 hereof shall be measured by the standard which is appropriate for buildings of similar construction and class.

SECTION 7.03 Tenant shall maintain all portions of the Building and the adjacent sidewalks, driveways and curbs in a clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions.

SECTION 7.04 Landlord shall not be required to furnish any services or facilities, or to make any repairs or alterations, in or to the Building.

SECTION 7.05 Tenant shall complete (i) the installation of existing replacement windows located at the Demised Premises within one year after November 30, 1995 and (ii) elevator repairs at the Demised Premises within two years after November 30, 1995 to (x) 75% of the elevators existing on November 30, 1995 in the event Tenant elects to renovate the Building as an office building or (y) in the event Tenant elects to renovate the Building as a residential/commercial building, only those elevators deemed by Tenant to be necessary to operate the Building.

SECTION 7.06 Notwithstanding the foregoing, Tenant shall not be deemed to be in default of its obligations to maintain and repair the Demised Premises if, during the three year period ending on November 30, 1998 (which three year period shall be extended by no more than two additional years until the substantial completion of a renovation of the Building if on November 30, 1998 such renovation is being diligently prosecuted but is not yet substantially complete), Tenant shall elect not to repair portions of the Demised Premises (including, without limitation, any building systems) which it intends to alter, renovate or replace during the course of any permitted alterations (including, without limitation, any alteration or renovation necessary in connection with either the initial re-leasing of the Demised Premises to residential, commercial and/or retail tenants or the conversion of portions of the Demised Premises to residential, commercial and/or retail use); provided, however, that Tenant shall at all times maintain the Demised Premises in a safe and insurable condition.

## ARTICLE 8

### COMPLIANCE WITH LAWS, ORDINANCES, ETC.

SECTION 8.01 During the term of this lease, Tenant, at its sole cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions,

boards and officers, any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Demised Premises and the sidewalks, curbs and vaults adjoining the Demised Premises or to the use or manner of use of the Demised Premises, whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over the streets adjacent to the Demised Premises, or onto or over other property contiguous or adjacent thereto.

SECTION 8.02 Tenant shall have the right to contest by appropriate proceedings diligently conducted in good faith, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 8.01 hereof. If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrance of any lien, charge or liability of any kind against the Demised Premises or Tenant's leasehold interest therein and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding. If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless, with the prior written consent of Landlord (such consent not to be unreasonably withheld or delayed), may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord (or to a depository permitted under Section 18.03(a) hereof if such security is cash or the equivalent), against any loss or injury by reason of contest or delay, and (ii) prosecutes the contest with due diligence.

Landlord shall not be required to join in any proceeding referred to in this Section unless the provisions of any applicable law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord, in which event Landlord shall join in such proceedings or permit the same to be brought in its name. Tenant may delegate the right to bring any such proceeding to any person or entity having an interest in the Demised Premises or any part thereof.

## ARTICLE 9

### CHANGES, ALTERATIONS AND NEW BUILDING

SECTION 9.01 Tenant shall have the right at any time and from time to time during the term of this lease to make, at its cost and expense, changes, alterations, renovations, restorations, improvements or rebuildings in or of the Land and Building, subject, however, in all cases to the following:

(a) The consent of Landlord to any change, alteration, renovation, restoration, improvement or rebuilding shall not be required, but nothing herein contained shall release or relieve Tenant from the obligations otherwise imposed upon Tenant pursuant to Section 9.01(c) of this lease. The consent of Landlord to any demolition of the Building shall be required, but shall not be unreasonably withheld or delayed. In the event of any dispute as to whether Landlord has unreasonably withheld or delayed its consent to any demolition, such issue shall be resolved as provided in Article 25 hereof.

(b) No change or alteration shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction. Landlord shall join in the application for such permits or authorizations whenever such action is necessary, but without any liability or expense to Landlord.

(c) Not less than thirty (30) days prior to commencing any structural change or alteration (partition changes, additions or removals shall not be deemed structural), Tenant shall furnish Landlord with the plans and specifications therefor and a certificate of Tenant's licensed engineer or architect stating that it has reviewed the plans and specifications and that the proposed change or alteration will or will not, as the case may be, adversely affect the structural integrity of the Building and Landlord shall have the right, to be exercised by notice sent to Tenant within twenty (20) days after receipt of the plans and specifications, to object to such changes or alterations on the ground that such changes or alterations would adversely affect the structural integrity of the Building; provided, however, such objection shall be accompanied by a letter of a licensed engineer or architect identifying how such changes or alterations adversely affect the structural integrity of the Building. Tenant's architect or engineer and Landlord's architect or engineer will proceed promptly to attempt to resolve their differences and if they fail promptly to resolve such differences, any dispute shall be resolved in the manner provided in Article 25 of this lease. The failure of Landlord to object to the proposed change or alteration by Tenant within the twenty (20) day period provided above shall be deemed to be a waiver of Landlord's right to object to such proposed change or alteration.

(d) Any change or alteration shall be made promptly and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body hereafter exercising functions similar to those of any of the foregoing.

(e) The cost of any such change or alterations shall be paid in a timely manner so that the Demised Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Demised Premises.

(f) Worker's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Landlord, Tenant or the Demised Premises, and commercial general liability and umbrella liability insurance for the mutual benefit of Tenant and Landlord with limits of not less than \$500,000 in the event of bodily injury to one person and not less than \$2,000,000 in the event of bodily injury to any number of persons in any one accident, and with limits of not less than \$150,000 for property damage, shall be maintained or caused to be maintained by Tenant at Tenant's sole cost and expense at all times when any work is in process in connection with any change or alteration. All such insurance shall be in a company or companies satisfying the requirements of Section 5.04 of this lease, and all policies or certificates therefor, issued by the respective insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment shall be delivered to Landlord. The dollar amounts of the insurance limits set forth in this paragraph (f) shall be adjusted on December 1 of each year so that each said amount shall be equal to the product of \$500,000, \$2,000,000 or \$150,000, as the case may be, multiplied by a fraction the numerator of which shall be the Index in effect for October of the year in question and the denominator of which shall be the Index in effect for the month of November, 1995, provided, however, the dollar amounts of worker's compensation insurance required in respect of any particular alteration, renovation, rebuilding or the like shall be the dollar amounts in effect hereunder at the commencement of such work.

(g) If the estimated cost of any change or alteration (other than changes or alterations performed at the request or direction of a subtenant who has agreed to pay for such cost), as estimated by Tenant's licensed engineer or architect in its reasonable judgment, shall be in excess of an amount equal to the product of \$2,000,000 times a fraction, the numerator of which shall be the Index in effect for the month immediately preceding the intended commencement date of such change or alteration, and the denominator of which shall be the Index in effect for the month of November, 1995, Tenant, before commencement of work, at Tenant's sole cost and expense, shall furnish to Landlord, at Tenant's option, either (x) a surety company performance bond, issued by a surety company reasonably acceptable to Landlord, in an amount at least equal to the estimated cost of such change or alteration, guaranteeing the payment for and performance of such change or alteration within a reasonable time, free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale, and other charges (other than any Leasehold Mortgages), and in accordance with the plans and specifications, if any, delivered to Landlord (and any bond or guarantee delivered by Tenant to its then most senior Leasehold Mortgagee with respect to such change or alteration shall be deemed to satisfy the requirement of this subsection (g)); provided, however, that any such bond or guarantee provides for dual payees which will be Landlord and the most senior Leasehold Mortgagee, with the most senior Leasehold Mortgagee having the prior right to the benefits of such bond or guarantee), (y) a loan commitment issued by an Institution (as defined in Section 18.02 of this lease) in an amount at least equal to the estimated cost of such change or alteration, provided that such loan commitment shall be assignable to and assumable by Landlord at Landlord's option; or (z) other security reasonably satisfactory to Landlord which may include, without limitation, the obligation, guarantee or similar undertaking of an equity member, partner or shareholder of Tenant having the financial

ability to complete such change or alteration as reasonably determined by Landlord. No performance bond or other security shall be required except to the extent that such estimated cost exceeds the amounts deposited pursuant to Section 15.02 or available for the purpose pursuant to Section 16.04 of this lease in connection with an alteration or other change resulting from a casualty or condemnation.

(h) If such a change or alteration shall be a structural change or alteration, Tenant shall pay to Landlord the reasonable fees and expenses of any architect or engineer selected by Landlord to review the plans and specifications.

(i) No change or alteration shall, without the prior written consent of the Landlord, when completed, tie in or connect the Demised Premises with any other building on adjoining property, unless such tie in or connection existed on the date hereof.

## ARTICLE 10

### DISCHARGE OF LIENS

SECTION 10.01 Tenant will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge (levied on account of any Imposition or any mechanic's, laborer's or materialman's lien or any conditional sale, title retention agreement or chattel mortgage, or otherwise) which might be or become a lien, encumbrance or charge upon the Demised Premises or any part thereof or Landlord's income therefrom, having any priority or preference over or ranking on a parity with the estate, rights and interest of Landlord in the Demised Premises or any part thereof or Landlord's income therefrom and Tenant will not suffer any other matter or thing whereby the estate, rights and interest of Landlord in the Demised Premises or any part thereof might be impaired; provided that any Imposition may, after the same becomes a lien on the Demised Premises, be paid or contested in accordance with Article 3 hereof, and any mechanics, laborer's or materialman's lien may be discharged in accordance with Section 10.02 hereof.

SECTION 10.02 If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Demised Premises or any part thereof, Tenant, within 60 days after notice of the filing thereof, will 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 within the period aforesaid, 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. Any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of 10% per annum from the respective dates of Landlord's making of the payment or incurring of the cost and expense shall constitute

additional rent payable by Tenant under this lease and shall be paid by Tenant to Landlord on demand.

SECTION 10.03 Notwithstanding the foregoing, Tenant shall not be required to discharge any mechanic's, laborer's or materialman's lien existing against the Demised Premises as of November 30, 1995 until the earlier of (i) two years from such date or (ii) not later than thirty days prior to any scheduled foreclosure sale of the Demised Premises by reason of the obtaining of judgment by the holder of such lien.

SECTION 10.04 Nothing in this lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Demised 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 any materials that would give rise to the filing of any lien against Landlord's interest in the Demised Premises or any part thereof.

## ARTICLE 11

### USE OF PROPERTY

SECTION 11.01 Tenant may use the Demised Premises for any lawful uses. Tenant will not use or allow the Demised Premises or any part thereof to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the Demised Premises or any part thereof and will not suffer any act to be done or any condition to exist on the Demised Premises or any part thereof or any article to be brought thereon, which may be dangerous, unless safe-guarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

SECTION 11.02 Tenant will not do or suffer any waste or damage, disfigurement or injury to the Building or any part thereof.

## ARTICLE 12

### SEAMEN'S LEASE

SECTION 12.01 Tenant has acquired the interest of lessee in a lease dated October 20, 1954, between The Seamen's Bank for Savings, as lessor, and Forty Wall Street Building, Inc., as lessee, recorded in the Office of the Register of The City of New York, New York

County, New York on December 17, 1959, in Liber 5100 of Conveyances at page 278, which lease was amended by agreement dated December 10, 1959, recorded in said Register's Office on December 17, 1959, in Liber 5100 of Conveyances at page 293, said lease as amended being hereinafter referred to as the "Seamen's Lease." Tenant covenants and agrees to perform all of the lessee's obligations thereunder and not to assign, mortgage or make any modification or amendment thereof or enter into any cancellation agreement with respect thereto without the prior written consent of Landlord first had and received, and to notify Landlord of any notice of default with respect to such lease that Tenant shall receive from the lessor thereunder. Notwithstanding anything to the contrary contained in this Section 12.01, Landlord's consent to an assignment, mortgage, sale, transfer, pledge, hypothecation or other disposition of the Seamen's Lease shall not be required if same is in conjunction with an assignment, mortgage, sale, transfer, pledge, hypothecation or other disposition, as the case may be, of this lease. If the term or any renewal term of the Seamen's Lease shall expire at any time while the term of this lease shall be in force and effect, Tenant shall give to the lessor under the Seamen's Lease timely notice of the renewal thereof pursuant to Paragraph (2) thereof.

SECTION 12.02 If Tenant shall at any time fail to perform any of its obligations under the Seamen's Lease, then Landlord, after 20 days notice to Tenant (or without notice in case of an emergency) and without waiving or releasing Tenant from any obligations of Tenant contained in this Article 12, may (but shall be under no obligation to do so) pay any amount or perform any act on Tenant's part to be performed, as in the Seamen's Lease provided, and may enter upon the premises covered by the Seamen's Lease for the purpose of curing any default or performing any obligation contained in such lease.

SECTION 12.03 All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such acts, as in Section 12.02 contemplated, together with interest thereon at the rate of 10% per annum from the respective dates of Landlord's making of any such payment or paying any such costs and expenses, shall constitute additional rent payable by Tenant under this lease, and shall be paid by Tenant to Landlord on demand.

SECTION 12.04 Subject to the rights of any Leasehold Mortgagee, Landlord may at any time make demand upon Tenant for and Tenant will deliver to Landlord a full assignment to Landlord of Tenant's interest in the Seamen's Lease and Tenant shall perform any and all acts on the assignor's part required to be performed pursuant to the Seamen's Lease to make such assignment valid and binding upon the lessor under the Seamen's Lease, said assignment to become effective upon the termination of this lease by Landlord following an Event of Default hereunder, provided that if said assignment shall be made and shall become effective as aforesaid and a new lease shall be granted by Landlord (including, but not limited to, a new lease pursuant to Section 18.05 hereof), Landlord shall assign the tenant's interest in the Seamen's Lease to the tenant under such new lease simultaneously with the delivery of such new lease, to the end that the relationship of Landlord and the tenant under such new lease with respect to the Seamen's Lease shall be the same as the relationship of the parties hereto with respect to the Seamen's



Lease. In connection with any such assignment, Landlord shall, without cost or expense to Landlord, cooperate with said new tenant in obtaining such consent of the lessor under the Seamen's Lease as may be necessary to make such assignment valid and binding and said new tenant (as Tenant) shall, upon demand, reassign the Seamen's Lease to Landlord in accordance with and subject to the terms and conditions of this Section 12.04. No such assignment shall relieve Tenant of its obligation to continue performing all of the terms, covenants and conditions of the Seamen's Lease on the lessee's part to be performed. In addition to any and all rights of Landlord contained hereunder, Landlord shall, in the event of demand made by Landlord pursuant to this Section 12.04 and Tenant's failure to assign as required, have the right of specific performance with respect to assignment of the Seamen's Lease the same as though Landlord and Tenant had entered into a contract for the sale of said lease to Landlord by Tenant.

SECTION 12.05 Notwithstanding anything to the contrary contained in this Article 12, if at any time the space demised under the Seamen's Lease, or the equipment therein, shall no longer be necessary for the proper support or operation of the Building, Tenant shall have no further obligations under this lease with respect to the Seamen's Lease and shall not be required to obtain Landlord's approval to the termination of same.

## ARTICLE 13

### ENTRY ON PROPERTY BY LANDLORD, ETC.

SECTION 13.01 Tenant will permit Landlord and its authorized representatives to enter the Demised Premises at all reasonable times after reasonable prior notice to Tenant, except in the case of emergency, for the purpose of (a) inspecting the same and (b) making any necessary repairs thereto and performing any other work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such other work within 30 days after notice from Landlord (or if such repairs or work cannot with due diligence be completed within 30 days, then if Tenant fails to promptly commence and diligently proceed with such repairs or work). Nothing herein shall imply any duty upon the part of Landlord to do any such work; and performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord may, during the progress of any such work in the Demised Premises, keep and store therein or elsewhere upon the Demised Premises all necessary materials, tools, supplies and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Tenant or any subtenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into or through the Demised Premises during the course thereof and the obligations of Tenant under this lease shall not be affected thereby, provided that Landlord shall use reasonable efforts to minimize interference with the operation of the business of Tenant and all subtenants in the making of such repairs or the performance of such work.

SECTION 13.02 Landlord shall have the right to enter the Demised Premises at all reasonable times during usual business hours after reasonable prior notice to Tenant for the purpose of showing the same to prospective purchasers or mortgagees, and, at any time within 2 years prior to the expiration of the term of this lease, for the purpose of showing the same to prospective tenants.

## ARTICLE 14

### INDEMNIFICATION OF LANDLORD

SECTION 14.01 Tenant will indemnify and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' and attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term of this lease (but excluding any of the same resulting from the gross negligence or willful misconduct of Landlord or any employee, agent or contractor of Landlord):

- (a) any work or thing done in, on or about the Demised Premises or any part thereof;
- (b) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Demised Premises or any part thereof or any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;
- (c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, licensees or invitees;
- (d) any accident, injury or damage to any person or property occurring in, on or about the Demised Premises or any part thereof or any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto;
- (e) any failure by 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; or
- (f) any tax attributable to the execution, delivery or recording of this lease or any modification hereof.

In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant upon written notice from Landlord will at Tenant's expense resist or defend such action or proceeding by counsel approved by Landlord in writing, such approval not to be unreasonably withheld or delayed. Counsel selected by Tenant's insurer shall be deemed to have been approved by Landlord.

## ARTICLE 15.

### DAMAGE OR DESTRUCTION

SECTION 15.01 In case of casualty to the Building resulting in damage or destruction exceeding an amount equal to the product of \$2,000,000 times a fraction, the numerator of which shall be the Index in effect for the calendar month immediately preceding such casualty and the denominator of which shall be the Index in effect for the month of November, 1995, Tenant shall promptly give written notice thereof to Landlord. Regardless of the amount of any such damage or destruction, Tenant shall at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace, rebuild or alter the Building as nearly as possible to its value, condition and character immediately prior to such damage or destruction, with such changes or alterations as may be permitted pursuant to Article 9 hereof, in a manner in conformity with the provisions of Article 9 hereof. Such restoration, repairs, replacements, rebuilding or alterations shall be commenced promptly and prosecuted with reasonable diligence.

SECTION 15.02 Insurance proceeds received by Landlord or any insurance trustee designated pursuant to Section 18.03(e) hereof, on account of such damage or destruction, less the actual cost, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be applied by Landlord or such insurance trustee to pay or reimburse Tenant for the payment of the cost of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs or for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding or alterations are hereinafter collectively referred to as "restoration"), and shall be paid out from time to time as such restoration progresses upon the written request of Tenant which shall be accompanied by the following:

(1) A certificate signed by Tenant, dated not more than 30 days prior to such request, setting forth the following:

(A) That the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the restoration therein specified, the names and addresses of such persons, a brief description of such services and materials, the several amounts so paid or due to each of said persons in respect thereof, that no part of such expenditures has been or is being made the basis, in any previous or other then pending request, for the withdrawal of insurance money or has been paid out of any other proceeds of insurance received by Tenant, and that the sum then requested does not exceed the value of the services and materials described in the certificate.

(B) That, except for the amount, if any, stated (pursuant to the foregoing subclause (1) (A)) in such certificate to be due for services or materials, there is no outstanding indebtedness known to the persons signing such certificate, after due inquiry, which is then due for labor, wages, materials, supplies or services in connection with such restoration.

(C) That the cost, as estimated by the persons signing such certificate, of the restoration required to be done subsequent to the date of such certificate in order to complete the same, does not exceed the insurance money, plus any amount deposited by Tenant to defray such cost and remaining in the hands of Landlord or such insurance trustee, or the amount of any loan commitment or other security acceptable to Landlord in its reasonable judgment, after payment of the sum requested in such certificate.

(2) A title company or official search, or other evidence satisfactory to Landlord or insurance trustee showing that there has not been filed with respect to the Demised Premises, any vendor's, contractor's, mechanic's, laborer's or materialman's statutory or similar lien which (A) has not been bonded or discharged of record, or (B) will not be discharged upon payment of the sum requested in such certificate.

The certificate required by clause (1) of this Section 15.02 shall be signed also by the architect and/or engineer in charge of the restoration, who shall be selected by Tenant and approved in writing by Landlord (which approval Landlord shall not unreasonably withhold or delay).

Upon compliance with the foregoing provisions of this Section 15.02, Landlord or such insurance trustee shall, out of such insurance money, pay or cause to be paid to Tenant or the persons named (pursuant to subclause (1) (A) of this Section 15.02) in such certificate the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be.

If the insurance money at the time available for the purpose, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be insufficient to pay the entire cost of such restoration, Tenant will pay the deficiency.

Upon receipt by Landlord or such insurance trustee of evidence of the character required by clauses (1) and (2) of Section 15.02 that the restoration has been substantially completed and paid for in full and that there are no liens of the character referred to therein, any balance of the insurance money held by Landlord or the insurance trustee selected by Tenant hereunder shall be paid to Tenant.

Notwithstanding the foregoing, if the insurance proceeds received by Landlord or any insurance trustee pursuant to Section 18.03(e) hereof do not exceed the amount described in Section 5.05(i) of this lease, then Landlord or any such insurance trustee shall disburse said

insurance proceeds to Tenant in a lump sum immediately upon receipt, and without any requirement to comply with (1) and (2) above.

SECTION 15.03 If, within three (3) years prior to the expiration of the term of this lease, the Building shall be damaged or destroyed by fire or otherwise, and the estimated cost of restoration exceeds an amount equal to the product of \$2,000,000 times a fraction, the numerator of which shall be the Index in effect for the calendar month immediately preceding such casualty and the denominator of which shall be the Index in effect for the month of November, 1995, Tenant shall have the option of terminating this lease by written notice to Landlord given within 30 days after such destruction or damage, accompanied by payment to Landlord of the net rent and all additional rent and other charges payable by Tenant under this lease to the date of such termination. In such event Tenant shall have no obligation to restore, repair, replace or rebuild the Building and shall not be entitled to any portion of the insurance money including any rent insurance, all of which shall become the property of Landlord, except that so much of the proceeds of rent insurance as shall cover loss of rental income up to the date of termination, and so much of the proceeds of property insurance as shall cover Tenant's personal property which would not revert to Landlord upon the termination of this lease, shall belong to Tenant, and Tenant shall assign to Landlord the insurance proceeds to which Landlord is entitled under this Section 15.03.

SECTION 15.04 Except as provided in Section 15.03 hereof, no destruction of or damage to the Demised Premises or any part thereof by fire or any other casualty shall terminate or permit Tenant to surrender this lease or shall relieve Tenant from its liability to pay the full net rent and additional rent and other charges payable under this lease except to the extent that net rent and additional rent shall be paid by the application thereto by Landlord of the proceeds of rent insurance pursuant to Paragraph (d) of Section 5.02, or from any of its other obligations under this lease, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this lease or the Demised Premises or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage.

## ARTICLE 16

### CONDEMNATION

SECTION 16.01 In the event that the Demised Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between Landlord, Tenant, and those authorized to exercise such right, Landlord or, at Tenant's option, a depository designated by Tenant pursuant to Section 18.03(e) hereof, shall be entitled to initially collect from any condemnor the entire award that may be made in any such proceeding, without deduction therefrom for any estate hereby vested in or owned by Tenant, provided that the same shall be disbursed and paid out as in this Article 16 hereinafter provided.

Tenant agrees to execute any and all further documents that may be required in order to facilitate collection by Landlord or the depositary of any and all such awards. Tenant, Landlord, the Leasehold Mortgagee having the greatest secured unpaid principal balance of the two most senior Leasehold Mortgagees and any person or entity having an interest in Tenant's share of the award, in cooperation with Landlord, shall have the right to participate in any condemnation proceedings or agreement as aforesaid for the purpose of protecting Landlord's, the Leasehold Mortgagee's or Tenant's interest in such award.

SECTION 16.02 If at any time during the term of this lease title to the whole or substantially all of the Demised Premises shall be taken by the exercise of the right of condemnation or eminent domain or by agreement between Landlord, Tenant, and those authorized to exercise such right, this lease shall terminate and expire on the date of such taking and the net rent provided to be paid by Tenant shall be apportioned and paid to the date of such taking. In such event, prepaid Impositions will be apportioned only to the extent refunds thereof are actually collected by Landlord, and, if uncollected, Landlord will assign to Tenant any claim to recover such prepaid Impositions. For the purposes of this Section "substantially all of the Demised Premises" shall be deemed to have been taken if the portion of the Demised Premises not so taken, and taking into consideration the amount of the net award available for such purpose, cannot be so repaired or reconstructed as to constitute a complete, rentable structure capable of producing a proportionately fair and reasonable net annual income, after the payment of all operating expenses thereof, the net rent, as the same may be reduced as a result of such taking, additional rent and other charges herein reserved and after performance of all covenants, agreements, terms and provisions herein and by law provided to be performed and paid by Tenant. The determination as to what constitutes a fair and reasonable net annual income shall be governed by the average net annual income produced by the property during the five year period immediately preceding such taking. As used above, the term "operating expenses" shall be deemed to exclude depreciation, income taxes, franchise taxes, interest and amortization on any Leasehold Mortgage.

SECTION 16.03 In the event of the taking of the whole or substantially all of the Demised Premises, the proceeds of any award received by Landlord for land, buildings, improvements and damages upon any such taking, shall be paid as follows and in the following order of priority:

(a) First, to each of the parties on account of their respective reasonable costs of collection of the award; second, to Landlord, the sum of \$12,000,000, which sum shall be increased (but never decreased) by the same percentage increase in the net annual rent when determined at each determination of Value, as provided in Section 2.05 of this lease; third, to the holders of all Leasehold Mortgages, in order of their seniority, the outstanding amount of their respective Leasehold Mortgages; fourth, to Tenant to the extent that the then depreciated value of any improvements to the Demised Premises made by Tenant shall exceed the amount paid to the holders of Leasehold Mortgages; then, the balance shall be divided between Landlord and

Tenant in accordance with the value attributed to their respective interests after giving effect to the sums paid to Landlord and the holders of all Leasehold Mortgages.

(b) If the value of the unexpired portion of Tenant's leasehold estate referred to in paragraph (a) of this Section 16.03 shall be determined in the proceeding pursuant to which the Demised Premises shall have been taken, the value so determined shall be conclusive upon Landlord and Tenant. If such value shall not have been separately determined in such proceeding, such value shall be fixed by agreement between Landlord and Tenant or by appraisal pursuant to the provisions of Article 25 of this lease.

SECTION 16.04 If at any time during the term of this lease title to less than the whole or substantially all of the Demised Premises shall be taken as aforesaid, all of the award or awards collected by Landlord or the depositary designated pursuant to Section 18.03(e) of this lease shall be held by Landlord or, at Tenant's option, by the depositary designated pursuant to Section 18.03(e) hereof, and applied and paid over toward the cost of demolition, repair and restoration, substantially in the same manner and subject to the same conditions as those provided in Section 15.02 hereof with respect to insurance and other monies. Any balance remaining in the hands of Landlord or the depositary, after payment of such costs of demolition, repair and restoration as aforementioned, shall be retained by Landlord and the net rent adjusted as provided in Section 16.05. In the event that the costs of such demolition, repairs and restoration shall exceed the net amount collected by Landlord or the depositary, Tenant shall pay the deficiency.

SECTION 16.05 Except as herein otherwise specifically provided, if title to less than the whole or substantially all of the Demised Premises shall be taken as aforesaid, this lease shall continue, but the net rent thereafter payable by Tenant shall be apportioned and reduced from the date of each such partial taking by an amount equal to 6% per annum of any net award or awards ultimately received and retained by Landlord. Any net rent becoming due and payable hereunder between the date of any such partial taking and the date of determination of the amount of the rent reduction, if any, to be made in respect hereof shall be paid at the rate theretofore payable hereunder; provided, however, that after such determination Landlord, within 10 days after request, shall pay to Tenant an amount equal to the amount by which any net rent theretofore paid by Tenant for such period shall exceed the amount of the net rent for such period as so reduced or Tenant, at its election, may deduct such amount from any subsequent installment or installments of net rent payable hereunder.

SECTION 16.06 Tenant shall not be entitled to share in any award or awards made in condemnation proceedings for consequential damages or for the taking of any appurtenances to the premises, vaults, areas or projections outside of the boundaries of lands owned by Landlord, or rights in, under or above the streets adjoining said lands, or the rights and benefits of light, air or access to said streets, or for the taking of space, or rights therein, below the surface of, or above, the Demised Premises, provided, however, that any award or compensation received by Landlord for any such taking shall be applied and paid over as provided in Section 16.04 toward the cost of such demolition, repair and restoration of the Building and the space

covered by the Seamen's Lease if applicable as shall be necessitated by such taking (provided, however, any award or compensation applied to the restoration of any space covered by the Seamen's Lease shall be derived from the taking of space covered by the Seamen's Lease) and any balance remaining in the hands of Landlord shall be retained by Landlord, and the net rent shall be reduced and apportioned in the same manner as provided in Section 16.05 with respect to the balance of the net award therein referred to.

SECTION 16.07 If the temporary use of the whole or any part of the Demised Premises shall be taken 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, the term of this lease shall not be reduced or affected in any way, Tenant shall continue to pay in full the net rent, additional rent and other charges herein reserved, without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payment made for such use provided, however, that

(a) if the taking is for a period not extending beyond the term of this lease and if such award or payment is made in a lump sum, then a portion thereof equal to the net rent and estimated Impositions payable during the term of such temporary taking shall be paid to and held by Landlord or, at Tenant's option, a depository designated pursuant to Section 18.03(e) hereof, as a fund which Landlord or such depository shall apply from time to time to the payment of net rent and Impositions due from Tenant under the terms of this lease, except that, if such taking results in changes or alterations in the Building which would necessitate an expenditure to restore the Building to its former condition, then a portion of such award or payment estimated by Tenant, in its reasonable judgment, as appropriate to cover the expenses of such restoration, subject, however, to the approval of Landlord, which approval shall not be unreasonably withheld or delayed, shall not be applied to such payments but instead shall be applied and paid over toward the restoration of the Building to its former condition, substantially in the same manner and subject to the same conditions as those provided in Section 15.02 hereof with respect to insurance and other monies, or

(b) if the taking is for a period extending beyond the term of this lease, such award or payment shall be apportioned between Landlord and Tenant as of the stated expiration date of such term; Tenant's share thereof shall, if paid in a lump sum, be paid and applied in accordance with the provisions of paragraph (a) of this Section, provided, however, that the amount of any award or payment allowed or retained for restoration of the Building, shall remain the property of Landlord if the lease shall expire prior to the commencement of restoration of the Building to its former condition. Tenant shall be entitled to receive at the close of each year of any such taking, any surplus remaining of said award or awards, after making provision for all payments required pursuant to paragraphs (a) and (b) of this Section.

SECTION 16.08 In the case of any taking covered by the provisions of this Article, Landlord and Tenant shall be entitled to reimbursement from any award or awards of all



reasonable costs, fees and expenses incurred in the determination and collection of any such awards, prior to the disbursement of any other portions of such award.

SECTION 16.09 In the event of any dispute between Landlord and Tenant as to whether or not substantially all of the Demised Premises shall have been taken, such matter shall be determined as provided in Article 25 hereof.

## ARTICLE 17

### VAULT SPACE

SECTION 17.01 Vaults and areas, if any, now or hereafter built extending beyond the building line of the Demised Premises are not included within the Demised Premises, but Tenant may occupy and use the same during the term of this lease, subject to such laws, permits, rules and regulations as may be imposed by appropriate governmental authorities with respect thereto.

SECTION 17.02 No revocation on the part of any governmental department or authority of any license or permit to maintain and use any such vault shall in any way affect this lease or the amount of the rent or any other charge payable by Tenant hereunder. If any such license or permit shall be revoked, Tenant will, at its sole cost and expense, do and perform all such work as may be necessary to comply with any order revoking the same.

## ARTICLE 18

### MORTGAGES, ASSIGNMENTS, SUBLEASES AND TRANSFERS OF TENANT'S INTEREST

SECTION 18.01 Tenant, and its successors and assigns, shall have the unrestricted right, at any time after having satisfied each and every provision of Paragraph 3A, B and C (relating to Default Waiver and Moratorium) of the Third Supplement to Agreement and Third Amended Lease, dated as of November 30, 1995, between Landlord and Tenant and from time to time thereafter, without Landlord's consent, to assign this lease and its leasehold estate hereunder, including but not limited in any respect to Tenant's rights pursuant to Section 23.04, Article 26 and Section 27.09 hereof, and to transfer its interest in the Land and Building, or any interest therein in whole or in part. No such assignment or transfer shall be deemed effective until there shall have been given to Landlord duly executed counterparts thereof, or copies thereof certified by the assignor or transferrer to be true, together with an assumption of all of Tenant's obligations accruing under the Lease after the effective date of the assignment. No assignment or transfer shall release or relieve Tenant from any of its obligations hereunder accruing prior to

the effective date of such assignment, but all liabilities and obligations on the part of the assignor or transferor accruing after the effective date of such assignment shall terminate.

SECTION 18.02 Tenant and its successors and assigns shall have the unrestricted right at any time and from time to time, without Landlord's consent, to mortgage, pledge or hypothecate this lease, to execute and deliver one or more mortgages or a deeds of trust encumbering this lease and to assign, pledge or hypothecate Tenant's interest in any subleases and subrents (subject to the provisions of Section 18.08 hereof) as security for any such mortgage(s), pledge(s), hypothecation(s) or deed(s) of trust directly to, or to an agent or trustee for the benefit of, any one or more of the following: (a) a savings bank, commercial bank, trust or insurance company, college, university, pension fund, employees' profit sharing trust or any other monetary or lending institution permitted to make leasehold mortgage loans in the State of New York, (b) any corporation or other entity which at the time of making such leasehold mortgage is regularly engaged in providing or owning real estate mortgage loans and/or investments and is nationally or regionally recognized as such (e.g., Nomura Securities and Starwood Capital, as of the date hereof), (c) any trustee under any indenture for the benefit of holders of participations or other interests in a securitized mortgage(s) or deed(s) of trust and/or the notes or obligations secured thereby, (d) any real estate investment trust or (e) any corporation or other entity which is controlled by, controls or is under common control with any of the foregoing. Any one or more of the foregoing permitted mortgagees (or agent or trustee therefor) is hereinafter referred to as an "Institution," and a Leasehold Mortgagee which is an Institution is hereinafter referred to as an "Institutional Leasehold Mortgagee." Any agent or trustee for an Institutional Leasehold Mortgagee must itself be an Institution (except that an individual may be a trustee under a deed of trust) or an entity regularly engaged in the business of acting as a trustee in order for the holder of the Leasehold Mortgage to be an Institutional Leasehold Mortgagee. In connection with an assignment of this lease as in Section 18.01 of this Article 18 provided, Tenant may take back a purchase money Leasehold Mortgage as part of the consideration for such assignment whether or not the holder thereof is an Institution. Notwithstanding anything to the contrary contained in this lease, no Leasehold Mortgagee shall be required to be an Institution.

No Leasehold Mortgage shall be binding upon Landlord in the enforcement of its rights and remedies herein and by law provided, unless and until an executed counterpart thereof or copy thereof certified by Tenant or the holder of such Leasehold Mortgage shall have been delivered to Landlord.

Anything in this lease to the contrary notwithstanding, Tenant may not grant any new or additional Leasehold Mortgage if, as a result of the same, the then unpaid principal balance of all Leasehold Mortgages, including any purchase money mortgages permitted pursuant to this Section 18.02, would exceed an amount equal to 85% of the then fair market value of the leasehold estate as determined by an M. A. I. appraiser selected by the prospective Leasehold Mortgagee. In the event of any leasehold financing in order to finance any reconstruction, replacement, refitting or capital improvement of the Building, the fair market value of the

leasehold estate, for the purposes of this paragraph, shall be based upon such value following completion of such work.

Each Leasehold Mortgage shall provide that (x) all interest that is calculated based on the outstanding principal sum from time to time, (y) the current income, either net or gross, from the Building or (z) any release amounts due from the sale of commercial or residential condominium units at the Building shall be paid not less frequently than quarter-annually (and such interest or consideration shall accrue for periods no longer than quarter-annual periods). In accordance with the foregoing, a Leasehold Mortgage shall not secure zero coupon debt. Nothing herein contained shall preclude a Leasehold Mortgage from providing for additional consideration in the nature of a participation in the proceeds of a refinancing or sale of the leasehold estate or the appreciation of such leasehold estate or other consideration which is not calculated based on the outstanding principal balance from time to time, but in no event shall any such consideration be considered for purposes of determining whether a Leasehold Mortgage exceeds 85% of the fair market value of the leasehold estate.

No instrument entered into under the provisions of this Section 18.02 shall be deemed to be an assignment of this lease so as to require, in order to be effective, the assumption of the obligations on the assignor's part to be performed under this lease as provided in Section 18.01 hereof, except as provided in Section 18.05.

SECTION 18.03 (a) Notwithstanding anything to the contrary contained in this lease, no bond, escrow deposit or other security shall be required to be furnished or made pursuant to any of the provisions of this lease which would otherwise require bonds, escrow deposits or other security to be made or furnished by Tenant, if and for so long as (i) (x) Tenant is a bank, trust company, insurance company, college, university, pension fund, employees' profit sharing trust or any monetary or lending institution (having a net worth of at least \$50,000,000) permitted to make leasehold mortgages in the State of New York, or (y) an entity or person which is financially solvent as reasonably determined by Landlord (each of the foregoing a "Special Institution") or a Special Institution agrees to perform the obligation under this lease requiring same or make payment of the sum due under this lease, or (ii) Tenant has furnished a bond (which provides for dual obligees which will be Landlord and the Leasehold Mortgagee having the largest principal balance outstanding with such Leasehold Mortgagee having the prior right to the benefits of such bond subject to the provisions of this paragraph (a)), escrow deposit or other security in connection with such matter, in an amount at least equal to that required under this lease, to a Leasehold Mortgagee and such Leasehold Mortgagee has agreed to use the proceeds thereof solely to pay the obligations of Tenant with respect to which such bond, escrow deposit or other security was furnished.

(b) Landlord agrees that any mortgage on its fee interest in the Land and the Building will be subject to this lease and any new lease granted pursuant to Section 18.05 hereof and any amendments, modifications, extensions or renewals of lease, and that any future mortgages, pledges, hypothecations or deeds of trust on such fee interest shall so expressly provide. The

foregoing provision shall be self-operative and no other documentation shall be required in order to effectuate the same. Tenant agrees that Landlord shall not be required to encumber its fee position in connection with, or join in the execution of, any Leasehold Mortgage. No Leasehold Mortgage shall be or become a lien against the fee estate of Landlord, except that a Leasehold Mortgage may encumber Tenant's right to acquire up to 10% of the square foot area of the Land pursuant to Section 27.09 of this lease in connection with the conversion of the Demised Premises to condominium ownership.

(c) In the event Tenant for any reason shall fail within the time periods provided in this lease, or shall not be entitled, to exercise any right to renew or extend the term of this lease for any renewal or extended term as herein provided, or to purchase the Demised Premises or any part thereof or any interest therein, Landlord shall notify all Leasehold Mortgagees that Tenant has failed as aforesaid, or is not entitled, to exercise such right, option or privilege, as the case may be, and each of such Leasehold Mortgagees shall have the right, for a period of thirty (30) days after the receipt of such notice (and, in the case of the exercise of any such renewal or extension option, the term of this lease shall be deemed to be and shall be automatically extended for a period ending on the 31st day after receipt of such notice by the Leasehold Mortgagee if this lease would otherwise terminate or expire before the end of such 31 day period), to exercise such right, option or privilege upon the same terms and conditions and with the same effect as though the same had been exercised by Tenant as in this lease set forth. If more than one Leasehold Mortgagee shall exercise the right or election provided for in this paragraph, Landlord shall accept the exercise by the most senior Leasehold Mortgagee exercising such right or election, and the election of any Leasehold Mortgagee whose Leasehold Mortgage is subordinate in lien thereto shall be null and void and of no force and effect. Notwithstanding the foregoing, if there exists an Event of Default at any time a Leasehold Mortgagee would have the right to exercise any renewal, extension or purchase option hereunder, such Leasehold Mortgagee shall have a period of thirty (30) days after the lapse of the cure period allowed to Tenant under this lease, including, without limitation, the periods allowed pursuant to Section 2.01 and Article 26 hereof, (and the term of this lease shall be deemed to be and shall be automatically extended for a period ending on the 31st day after the lapse of said cure period if this lease would otherwise terminate or expire before the end of such 31 day period), to exercise such right, option or privilege upon the same terms and conditions and with the same effect as though the same had been exercised by Tenant. No Leasehold Mortgagee shall be deprived of its rights under this Section 18.03(c) if it shall exercise its rights within the time periods set forth in this Section 18.03(c) notwithstanding that such exercise may be later than the time period allowed to Tenant for the exercise of such right. Notwithstanding anything in this Section 18.03(c) to the contrary, Landlord shall notify the two most senior Leasehold Mortgagees, simultaneously with its notice to Tenant, of any offer for sale of the fee interest in the Demised Premises pursuant to Section 23.04 of this lease, but such Leasehold Mortgagees' time to accept such offer shall expire when Tenant's right to accept expires pursuant to Section 23.04.

(d) Whenever there shall be a provision for arbitration or appraisal pursuant to any of the terms, covenants or conditions of this lease, the Leasehold Mortgagee having the greatest

unpaid principal balance of the two most senior Leasehold Mortgagees shall have the right to appear in such arbitration or appraisal proceedings and the most senior Leasehold Mortgagee shall have the right to act on Tenant's behalf therein and designate the arbitrator or appraiser who shall act or appear on behalf of Tenant hereunder. Tenant may assign its arbitration and appraisal rights under this lease to such Leasehold Mortgagee(s).

(e) Notwithstanding anything in this lease to the contrary, (i) the Leasehold Mortgagee having the greatest secured unpaid principal balance of the two most senior Leasehold Mortgagees shall have the right to participate in the adjustment of insurance claims and condemnation awards in respect of the Demised Premises, and (ii) all proceeds of insurance and any net award in condemnation which are permitted by the terms of this lease to be utilized by Tenant to rebuild, restore or repair the Demised Premises or any improvements thereon, shall be deposited with the most senior Leasehold Mortgagee if such Leasehold Mortgagee is a bank or trust company having a capital and surplus of not less than an amount equal to the product of \$100,000,000 times a fraction, the numerator of which shall be the Index in effect for the month immediately preceding the month in which the funds are deposited with the Qualified Bank and the denominator of which shall be the Index in effect for the month of November, 1995 (a "Qualified Bank"), and, if the most senior Leasehold Mortgagee is not a Qualified Bank, with a Qualified Bank, or in lieu thereof with a depository, mutually and reasonably acceptable to Landlord and Tenant to be disbursed by same in accordance with the provisions of Articles 15 and 16, respectively, of this lease.

(f) In no event shall an affiliate of Tenant, which affiliate operates under the direction of Donald J. Trump, be deemed to be the most senior Leasehold Mortgagee for purposes of this Article 18, unless such affiliate holds a purchase money mortgage following the sale by such Tenant of its leasehold estate to an unrelated third party in a bona fide transaction, in which case such affiliate may be the most senior Leasehold Mortgagee.

SECTION 18.04 If any Leasehold Mortgagee shall have given to Landlord a written notice, specifying the name and address of such mortgagee and stating that any required mortgage recording tax has been paid, Landlord shall thereafter give to such Leasehold Mortgagee a copy of each notice of default by Tenant (which notice shall specify the amounts and types of rent and additional rent in default and the nature of any non-monetary default) at the same time as and whenever any such notice of default shall thereafter be given by Landlord to Tenant, addressed to such Leasehold Mortgagee at the address last furnished to Landlord. If any Leasehold Mortgagee is a lending syndicate or shall consist of one or more participants, Landlord shall not be required to give more than one such notice which shall be to the lender designated as the lead lender or agent in the notice to Landlord, without copies to the participants. No such notice by Landlord to Tenant shall be deemed to have been given unless and until a copy thereof shall have been so given to each such Leasehold Mortgagee. Each such Leasehold Mortgagee shall have, after service of such notice upon it an additional seven business days, if such default be in the payment of any fixed rent or additional rent, or an additional 30 days for any other default, to remedy the default or cause the same to be remedied, as is given Tenant after service of such

notice upon it, provided, however, in the case of a non-monetary default which cannot in the exercise of diligence be cured within such additional 30 day period (and which is susceptible of cure by such Leasehold Mortgagee), such Leasehold Mortgagee need only commence to cure the default within such additional 30 day period and thereafter diligently prosecute the cure of such default, and, anything herein contained to the contrary notwithstanding, if such Leasehold Mortgagee shall have paid to Landlord all net rent and additional rent herein provided for which is then in default, and shall have complied or shall be engaged in the work of complying with all the other requirements of this lease, if any, then in default (and which are susceptible of cure by such Leasehold Mortgagee) with diligence and continuity, then and in such event Landlord shall not be entitled to and shall not take any action to effect a termination of this lease, to bring a proceeding to dispossess Tenant and/or other occupants of the Demised Premises or to re-enter the Demised Premises, provided, however, that this shall not in any way affect, diminish or impair the right of Landlord, subject to the provisions of this Article, to terminate this lease or to enforce any other remedy upon the non-payment of any sum thereafter payable by Tenant or upon any other subsequent default in the performance of any of the obligations of Tenant hereunder. Landlord will accept performance by any Leasehold Mortgagee who shall have notified Landlord of its name and address pursuant to this Section 18.04 of any covenant, condition, or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant. Where more than one Leasehold Mortgagee shall have a lien on this lease and the estate created hereby, Landlord shall allow more than one Leasehold Mortgagee to endeavor to cure or remedy any default by Tenant, provided that if one Leasehold Mortgagee shall commence the work and thereafter cease, any other Leasehold Mortgagee shall not be entitled to a period of more than the applicable cure period otherwise granted to a Leasehold Mortgagee pursuant to this Article.

#### SECTION 18.05

(a) For the purposes of this Article, no Event of Default shall be deemed to exist under Article 19 hereof in respect to the performance of work required to be performed, or of acts to be done (other than payments of net rent and additional rent), or of conditions to be remedied, if steps shall, in good faith, have been commenced promptly within the time periods set forth in Section 18.04 hereof to rectify the same (which are susceptible of cure by such Leasehold Mortgagee) and shall be prosecuted with diligence and continuity.

(b) Anything herein contained to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money, Landlord shall take no action to effect a termination of this lease, to bring a proceeding to dispossess Tenant and/or other occupants of the Demised Premises or to re-enter the Demised Premises without first giving to each Leasehold Mortgagee written notice thereof and a reasonable time thereafter within which either (i) to institute, prosecute and complete foreclosure proceedings or otherwise obtain possession of the mortgaged property (including possession by a receiver) and to cure such default after obtaining such possession, in the case of a default susceptible of being cured by such Leasehold Mortgagee, or (ii) to institute, prosecute and complete foreclosure

proceedings or otherwise acquire Tenant's interest under this lease with diligence in the case of a default not susceptible of being cured by such Leasehold Mortgagee or in the case of the occurrence of any of the events specified in paragraphs (c) or (d) of Section 19.01 hereof; provided, however, that: (x) such Leasehold Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such default shall have been cured; and, (y) nothing herein contained shall preclude Landlord, subject to the provisions of this Article, from exercising any rights or remedies under this lease with respect to any other default by Tenant during the pendency of such foreclosure proceedings. Any default by Tenant not susceptible of being cured by a Leasehold Mortgagee and/or the occurrence of any of the events specified in paragraphs (c) or (d) of Section 19.01 hereof, shall be deemed to have been waived by Landlord upon completion of such foreclosure proceedings or upon such acquisition of Tenant's interest in this lease, it being understood and agreed that such Leasehold Mortgagee, or its designee, or any purchaser in foreclosure proceedings (including, without limitation, a corporation or other entity formed by such Leasehold Mortgagee or by the holder or holders of the bonds or obligations secured by the Leasehold Mortgage) may become the legal owner and holder of this lease through such foreclosure proceedings or by assignment of this lease in lieu of foreclosure.

(c) In the event of the termination of this lease, prior to the expiration of the term, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to default of Tenant as referred to in Article 19 hereof, or any other default of Tenant, or if this lease shall be disaffirmed or rejected in any proceeding referred to in paragraphs (c) or (d) of Section 19.01 hereof, Landlord shall serve notice of such termination, or a copy of any notice of disaffirmance or rejection received by Landlord together with a statement of any and all sums which would at that time be due under this lease but for such termination (including disaffirmance or rejection), and of all other defaults, if any, under this lease then known to Landlord, on each Leasehold Mortgagee who shall have notified Landlord of its name and address pursuant to Section 18.04 hereof. Each such Leasehold Mortgagee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

Upon the written request of any such Leasehold Mortgagee within 30 days after service of such notice of termination, Landlord shall enter into a new lease of the Demised Premises with such Leasehold Mortgagee, or its designee, as follows:

(i) Such new lease shall be effective as at the date of termination of this lease, and shall be for the remainder of the term of this lease and at the rent and upon all the agreements, terms, covenants and conditions hereof (including, but not limited to, the provisions of Section 23.04, Article 26 and Section 27.09 hereof, but excluding requirements which are not applicable or which have already been fulfilled) and shall continue to maintain the same priority as this lease with regard to any mortgage, including any fee mortgage on the Land and Building or any part thereof or any other lien, charge or encumbrance thereon. Simultaneously with the execution of such new lease, the tenant named therein shall pay any and all sums which would at the time of the execution thereof be due under this lease but for such termination, and shall



pay all actual and reasonable expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Demised Premises, and the preparation, execution and delivery of such new lease. Upon the execution of such new lease and upon compliance by the tenant named therein with the immediately preceding sentence, Landlord shall allow to the tenant named therein and such tenant shall be entitled to an adjustment in the net rent thereafter due under the new lease in an amount equal to the net income derived from the Demised Premises during the period from the date of termination of this lease to the date of execution and delivery of such new lease.

(ii) Such new lease shall have a priority equal to this lease (and shall be superior to all rights, liens and interests intervening between the date of this lease and the date of the new lease created by or through the actions of Landlord) with regard to any mortgage, including any fee mortgage on the Land and the Building or any part thereof or any other lien, charge or encumbrance thereon. The provisions of the immediately preceding sentence shall be self-executing, but, upon request of the tenant under the new lease Landlord shall promptly execute and deliver or cause to be executed and delivered any such instruments in recordable form as are necessary to obtain such priority. Such new lease shall not be or be deemed to be any estoppel against Landlord by reason of any defaults which have not been cured under any prior lease or of any prior party named as tenant hereunder nor shall any new lease release or relieve the tenant named therein of any obligations to cure or remedy any and all defaults or failure to comply with such terms, conditions and covenants of such prior lease as are susceptible of being cured or complied with, as the case may be, by such new tenant.

(iii) Landlord shall not, during the period that the option contained in this subdivision (c) shall remain outstanding, (1) terminate any sublease for any space in the Building or (2) seek to recover possession of any such sublet space, except (in the case of either (1) or (2)) by reason of a default by any such subtenant under the terms, covenants or conditions on such subtenant's part to be performed or complied with pursuant to such sublease. In addition, the new lease shall be subject only to the same liens and encumbrances (other than the lien of any subordinate Leasehold Mortgage that does not attach to the new lease pursuant to subparagraphs (v) and (vi) below) having the same priority as the liens and encumbrances upon this lease immediately prior to its termination and subject to the rights of tenants in possession under subleases in effect at the time Landlord serves the notice of termination, disaffirmance or rejection on each Leasehold Mortgagee pursuant to this Section 18.05(c) and any new subleases that Landlord may enter into with any new subtenants, provided, however, that each such new sublease shall by its terms be subordinate to the new lease and that each such new sublease is arms length and at the then prevailing market rents and terms. Nothing contained in this subdivision (iii) shall be deemed a representation or warranty by Landlord except as to any new subleases entered into by Landlord.

(iv) Effective upon the commencement of the term of any new lease executed pursuant to this paragraph (c) of this Section, all subleases, concessions and licenses which theretofore may have been assigned and transferred to Landlord shall be assigned and transferred,



without recourse and without warranty as to the new tenant's right of possession as against Tenant or such subtenants or occupants under such subleases, concessions and licenses, by Landlord to the tenant under such new lease, and all moneys or instruments (e.g. letters of credit, certificates of deposit or the like) on deposit with Landlord hereunder, less any amounts expended by Landlord in connection with any work for which such funds were held, which Tenant would have been entitled to use but for the termination or expiration of this lease may be used by the tenant under such new lease for the purposes of and in accordance with the provisions of such new lease or such sublease. The tenant under such new lease shall indemnify Landlord against any claims of Tenant by reason of any such transfer.

(v) If the holders of more than one Leasehold Mortgage shall make written requests upon Landlord for a new lease in accordance with the provisions of this paragraph (c), the new lease shall be entered into pursuant to the request of the most junior Leasehold Mortgagee, provided such Leasehold Mortgagee shall (1) have made timely request for such new lease, (2) cure all defaults under all Leasehold Mortgages senior in lien, (3) deliver, at the time of the delivery of such request, a consent duly executed and acknowledged by each such senior Leasehold Mortgagee and stating that, to the best of such Leasehold Mortgagee's knowledge, no default then exists under such senior Leasehold Mortgage and setting forth the then unpaid principal balance and accrued interest due on such senior Leasehold Mortgage which shall be a lien upon the new lease and the leasehold estate created thereunder in accordance with the provisions of this Section 18.05 (c), (4) execute, acknowledge and deliver at the time of execution and delivery of the new lease a new Leasehold Mortgage (and a new assignment of leases and rents on the same terms and conditions as any separate assignment previously recorded in connection with such senior Leasehold Mortgage) to each of the holders of the senior Leasehold Mortgages having the same terms and conditions and securing the same amounts as such senior Leasehold Mortgage and (5) deliver to each holder of such senior Leasehold Mortgages, a title insurance policy from a reputable title company which is a member of the New York State Land Title Association in the amount of the then unpaid principal amount of such senior Leasehold Mortgage insuring that such new Leasehold Mortgage has the same priority of lien as existed prior to the termination of this lease. The certification, as of the date of the termination of this lease, as to the priorities of lien as between the Leasehold Mortgages by any title insurance company then a member of the American Land Title Association, shall be conclusively binding upon Landlord, Tenant and all Leasehold Mortgagees.

(vi) When a new lease is entered into with a Leasehold Mortgagee, or its designee (such holder or designee being herein called the "Acquiring Holder" and the leasehold mortgage of such Acquiring Holder being herein called the "Acquiring Holder's Leasehold Mortgage"), the liens on and estates and other interests in the Demised Premises or this lease of all persons holding directly or indirectly under or through Tenant (including the Acquiring Holder's Leasehold Mortgage), other than liens, estates and interests which are subordinate to the Acquiring Holder's Leasehold Mortgage, shall immediately and without documentation continue in effect, attach to the new lease and be reinstated as to each other to the same extent, and in the same manner, order and priority, as if (i) the new lease were this lease, (ii) this lease had not

been terminated and (iii) the Acquiring Holder had acquired the leasehold estate under this lease by assignment on the date the term of the new lease commences, provided, however, the Acquiring Holder shall execute, acknowledge as appropriate and/or deliver the instruments and documents required pursuant to subparagraph (v) above. For the purposes of the preceding sentences, each lien, estate or interest which could have been extinguished by the foreclosure of the Acquiring Holder's Leasehold Mortgage shall be deemed to be subordinate to the Acquiring Holder's Leasehold Mortgage and any such lien subordinate to Acquiring Holder's Leasehold Mortgage shall not attach to the new lease.

(vii) The new lease shall not be recorded, but at the request of either party, the parties shall execute, acknowledge and deliver a memorandum of lease in recordable form which either party may record.

(d) Any notice or other communication which Landlord shall desire or is required to give to or serve upon any Leasehold Mortgagee shall be in writing and shall be given in accordance with the provisions of Article 22 hereof, addressed to each such Leasehold Mortgagee at its respective address or at such other address as shall be designated by any such Leasehold Mortgagee by notice in writing given to Landlord in like manner.

Any notice or other communication which any Leasehold Mortgagee shall desire or is required to give to or serve upon Landlord shall be in writing and shall be given in accordance with the provisions of Article 22 hereof, addressed to Landlord at Landlord's address as set forth in this lease or, if Landlord shall have designated a different address by notice in writing given to any such Leasehold Mortgagee in like manner, then the notice by such Leasehold Mortgagee to Landlord shall only be directed to such last designated address.

(e) Nothing herein contained shall be deemed to require any Leasehold Mortgagee, unless specifically provided in this lease and then only in accordance with the specific provisions of this lease, to pay or perform any of the obligations of Tenant under this lease or otherwise be liable hereunder unless and until such Leasehold Mortgagee shall have succeeded to the interest of Tenant hereunder and then only as long as it remains the owner of Tenant's interest hereunder.

(f) No cancellation, abandonment, surrender, acceptance of surrender or modification of this lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee.

SECTION 18.06 Tenant shall have the right, at any time, and from time to time, without Landlord's consent to sublet portions of or all of the Demised Premises provided that each sublease shall be subject and subordinate to the rights of Landlord hereunder, and further provided that Tenant shall not have the right to sublet the Demised Premises as an entirety to any person, firm or corporation except for occupancy of at least 50% of the Demised Premises by such person, firm or corporation for its own use and not for further subletting to others.

SECTION 18.07 Tenant shall furnish Landlord with fully executed or photocopies of all subleases of space in the Demised Premises and with such information with respect thereto as Landlord may reasonably require. Tenant shall deliver to Landlord, in duplicate, within 90 days after the end of each fiscal year of Tenant a statement of income and expenses for such fiscal year, and a rent schedule showing all subleases and the duration of the respective terms thereof, with respect to the operation of the Demised Premises, which statement as to income and expense, shall be certified by an independent certified public accountant or by an independent firm of public accountants of recognized national standing, having its principal office in the State of New York, if and to the extent Tenant then engages a certified public accountant or firm of public accountants for such purpose, and if not, the same shall be certified by a principal of Tenant. Such statement shall be accompanied by a statement of an officer or principal of Tenant setting forth the names and addresses of stockholders in any corporation or general partners in any partnership or members of any limited liability company or other entity holding this lease showing the number of shares of stock owned by each stockholder of such corporation, or the respective interests of the partners or members in such partnership or other entity, as the case may be; provided, however, that, if at any time during the term of this lease any entity holding this lease is listed on any recognized Stock Exchange, then a list of its stockholders, partners or members, as the case may be, shall not be required. If more than one entity holds this lease, such statement shall be made by an officer or principal of each such entity.

SECTION 18.08 Tenant hereby assigns to Landlord all of its right, title and interest in and to all present and future subleases and all rents due and to become due thereunder, said assignment to become effective as of the date of the happening from time to time of an Event of Default and to continue in effect so long as such Event of Default shall remain uncured, subject, however, to the rights of any Leasehold Mortgagee to whom Tenant shall have assigned such subleases and rents so long as one or more Leasehold Mortgagees are complying with the cure provisions of Section 18.04 of this lease to the extent that the then current Event of Default is susceptible of cure by such Leasehold Mortgagee. After the effective date of such assignment, Landlord shall apply any net amount collected by it from subtenants to the rent or additional rent due under this lease. No collection of rent by Landlord from an assignee of this lease or from a subtenant shall constitute a waiver of any of the provisions of this Article 18 or an acceptance of the assignee or subtenant as a tenant or a release of Tenant from performance by Tenant of its obligations under this lease. In the event of the failure of any subtenant to pay subrent to Landlord pursuant to the foregoing assignment after the happening of an Event or Default, any such rent thereafter collected by Tenant, shall be deemed to constitute a trust fund for the benefit of Landlord.

Tenant shall not directly or indirectly collect or accept any payment of rent (other than additional rent or a security deposit) under any sublease for more than one month in advance of the date when the same shall become due, and such rent, in the case of any future sublease, shall be payable at least at one month intervals except that, in case of a sublease where the sublessor thereunder is required to make tenant changes or alterations at such sublessor's expense, such

sublessor may collect advance rent for an amount not in excess of one year's rent or the estimated cost of the work, whichever is less as security for the performance by such Tenant.

SECTION 18.09 Tenant assumes and shall be responsible for and liable to Landlord, for all acts and omissions on the part of any present or future subtenant, and any violation of any of the terms, provisions or conditions of this lease, whether by act or omission, by any subtenant shall constitute a violation by Tenant.

SECTION 18.10 Anything herein to the contrary notwithstanding, the terms and provisions of any Non-Disturbance, Subordination and Attornment Agreement ("NDA") entered into between Landlord and any subtenant of all or any portion of the Building shall govern the rights and obligations of Landlord and such subtenant. In the event of any conflict between such NDA and this lease, the terms and conditions of the NDA shall prevail.

(a) Tenant shall not modify (which term, for the purpose of this Section 18.10, shall include a termination, cancellation or surrender of a sublease) any commercial or retail sublease having an unexpired term (including renewal options) of 5 years or more or providing for a fixed subrent at the rate of \$250,000 or more per annum (or, if greater, an amount equal to the product of \$250,000 multiplied by a fraction the numerator of which shall be the Index in the month immediately preceding the month in which the sublease modification occurs and the denominator of which shall be the Index in effect for the month of November, 1995) during any year of the term thereof (any two or more subleases with the same person as subtenant being deemed to be a single sublease providing for a fixed subrent at the aggregate rate per annum specified in such subleases for the aggregate term of such subleases) so as to reduce the rent, shorten the term, or adversely affect in any other respect to any material extent the rights of the lessor thereunder, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord's consent shall not be required to any termination of any sublease (i) in the event of a default by the subtenant thereunder, (ii) in connection with the removal of subtenants which are in the Demised Premises on the date hereof, in order to facilitate renovations and alterations of the Demised Premises, or (iii) if Tenant shall replace such subtenant at an aggregate base rent and additional rent substantially equal to or greater than the aggregate base rent and additional rent payable by the subtenant pursuant to the terms of the sublease being terminated for a term at least equal to the unexpired term of the sublease then being terminated with a subtenant having a reasonably acceptable credit standing in no event less than that of the subtenant whose sublease is then being terminated. In addition, if Landlord shall not have entered into an NDA with the subtenant whose sublease is the subject of such modification, Landlord's consent shall not be required to any modification of such sublease. If Landlord shall have entered into an NDA with such subtenant, Landlord's consent shall not be required to any modification of any such sublease if such modification does not reduce the aggregate base rent and additional rent below the aggregate base rent and additional rent previously payable by the subtenant pursuant to the terms of such sublease, or reduce the remaining term of such sublease or materially increase the obligations of the sublessor thereunder.

(b) If Landlord shall have entered into an NDA with a commercial or retail subtenant, and thereafter Tenant and subtenant shall modify such sublease, Landlord shall not unreasonably withhold or delay its consent to such modification. If Landlord withholds or delays its consent to such modification and Tenant believes Landlord has unreasonably withheld or delayed the same, Tenant may submit the dispute to arbitration as provided in Article 25 hereof and Landlord shall provide such consent if, in the arbitration proceeding, it is determined that Landlord was unreasonable in withholding or delaying such consent. In no event shall a subtenant or Tenant have any right to seek or obtain monetary damages against Landlord or against any of the assets of Landlord or against any partner, shareholder, officer, director or member of any entity which comprises Landlord for failure to grant or delay in granting such consent and Landlord's sole obligation or liability to such subtenant or Tenant therefor shall be to provide such consent. Without regard to the result of any such arbitration, Tenant shall pay all reasonable costs and expenses, including, without limitation, reasonable fees of counsel to Landlord, as shall be incurred by Landlord and Tenant in such arbitration proceeding. In the event that a sublease is modified by Tenant and subtenant and, for any reason whatsoever, consent to such modification is not granted by Landlord, the original NDA as to the original sublease shall remain in full force and effect but in no event shall Landlord be bound by such modification, nor shall such modification be enforceable against Landlord.

(c) Each future sublease shall also contain an agreement on the part of the subtenant to the effect that (i) such sublease shall not terminate or be terminable by the subtenant thereunder by reason of any termination of this lease by summary proceedings or otherwise, except that in case of the institution of any summary or other proceeding by Landlord, any sublease made after the date of this lease may be terminated if the subtenant thereunder is named by Landlord as a party, and served with process sufficient to recover possession of such space, in any such proceeding for possession of the Demised Premises or the space occupied by such subtenant, and a warrant or judgment for possession of such space is issued in such proceeding, and (ii) such subtenant shall attorn to Landlord if the sublease is not terminated by the service of process on such subtenant in any proceeding for recovery of possession of the Demised Premises or the space occupied by such subtenant in any proceeding for the termination of this lease.

(d) Landlord shall, upon request of Tenant, enter into an NDA among Landlord, Tenant and a subtenant in form and substance substantially similar to Exhibit C annexed hereto with any subtenant to whom, of the two most senior Leasehold Mortgagees, the Leasehold Mortgagee having the greatest dollar amount secured by its Leasehold Mortgage shall have granted an NDA. Each future sublease shall contain an agreement on the part of the subtenant to the effect that Landlord shall be given notice of any default on the part of the lessor under such sublease and shall have the right, but not the obligation, to cure such default within 10 days from the date of such notice in the event such default shall be a failure in the payment of money or 30 days from the date of such notice to cure any other default or if such default is not susceptible of being cured with due diligence within 30 days, the right to commence to cure such default within 30 days and diligently prosecute such cure to completion.

## ARTICLE 19

### CONDITIONAL LIMITATIONS - DEFAULT PROVISIONS

SECTION 19.01 If any one or more of the following events (herein sometimes called "Events of Default") shall happen:

(a) if default shall be made in the due and punctual payment of any net rent or additional rent payable under this lease (on account of Impositions or otherwise) or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of 20 days after written notice thereof from Landlord to Tenant; or

(b) if default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms or provisions contained in this lease, other than those referred to in the foregoing paragraph (a), and such default shall continue for a period of 60 days after written notice thereof from Landlord to Tenant, except that in connection with a default not susceptible of being cured with due diligence within 60 days, the time of Tenant within which to cure the same shall be extended for such time as may be necessary to cure the same with all diligence, provided Tenant commences promptly and proceeds diligently to cure the same and further provided that such period of time shall not be so extended as to subject Landlord to any criminal liability; or

(c) if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises or any interest of Tenant therein; or

(d) if within 60 days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within 60 days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises or any interest of Tenant therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within 60 days after the expiration of any such stay, such appointment shall not have been vacated; or

(e) if the Demised Premises shall be abandoned by Tenant (which term shall be deemed not to include any temporary vacating of the Building after the occurrence of a casualty

or temporary condemnation or during the course of any restoration, alteration, demolition or reconstruction); or

(f) if, without Landlord's prior written consent, subtenants, who are not then in default in the payment of rent or additional rent for which a proceeding is then pending, shall be included as parties in any foreclosure action for purposes of terminating or cutting off their subtenancies, unless permitted pursuant to Article 18 hereof;

then and in any such event Landlord at any time thereafter during the continuance of such Events of Default may give written notice to Tenant and to each Leasehold Mortgagee entitled to notice of default, specifying such Event or Events of Default and stating that this lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least 20 days after the giving of such notice; and upon the date specified in such notice, subject to the provisions of Section 19.04 hereof, this lease and the term hereby demised and all rights of Tenant under this lease shall expire and terminate.

Nothing in the immediately preceding paragraph shall be deemed to require Landlord to give the 20 day notice 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 of the defaults specified in clause (a), it being intended that such notice is for the purpose of creating a conditional limitation hereunder pursuant to which this lease shall terminate and Tenant shall become a hold-over tenant.

If, at any time during the term of this lease, this lease is owned by more than one corporation as Tenant, the provisions of paragraphs (c) and (d) hereof shall apply to each corporation.

Notwithstanding any of the other provisions of this Article 19, Landlord hereby waives all defaults existing as of November 30, 1995, on the part of Tenant or any prior tenant under this lease, whether or not written notice of default shall have been given.

SECTION 19.02 Upon any such expiration or termination of this lease, Tenant shall quit and peacefully surrender the Demised Premises to Landlord, and Landlord, upon or at any time after any such expiration or termination, may without further notice, enter upon and re-enter the Demised Premises and possess and repossess itself thereof, by summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and its property from the Demised Premises and may have, hold and enjoy the Demised Premises and the right to receive all rental income of and from the same.

SECTION 19.03 At any time or from time to time after any such expiration or termination, Landlord may re-let the Demised Premises or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this lease) and on such

conditions (which may include concessions or free rent) as Landlord, in its uncontrolled discretion, may determine and may collect and receive the rents therefor. Landlord shall in no way be responsible or liable for any failure to re-let the Demised Premises or any part thereof, or for any failure to collect any rent due upon any such re-letting.

SECTION 19.04 No such expiration or termination of this lease shall relieve Tenant of its liability and obligations under this lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Demised Premises or any part thereof shall have been re-let, Tenant shall pay to Landlord the net rent and all other charges required to be paid by Tenant up to the time of such expiration or termination of this lease, and thereafter Tenant, until the end of what would have been the term of this lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default,

(a) the equivalent of the amount of the net rent and the other rent and charges which would be payable under this lease by Tenant if this lease were still in effect, less

(b) the net proceeds of any re-letting effected pursuant to the provisions of Section 19.03 hereof, after deducting all Landlord's expenses in connection with such re-letting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such re-letting and/or

(c) the net proceeds received by Landlord from subtenants.

Tenant shall pay such current damages (herein called "deficiency") to Landlord monthly on the days on which the net rent would have been payable under this lease if this lease were still in effect, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same shall arise. At any time after any such expiration or termination, in lieu of collecting any further monthly deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the excess of the net rent and all additional rent reserved hereunder for the unexpired portion of the term demised over the then fair and reasonable rental value of the Demised Premises for the same period. In the computation of such damages the excess of any installment of rent becoming due hereunder after the date of termination over the fair and reasonable rental value of the Demised Premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of eight per cent (8%) per annum. If the Demised Premises or any part thereof be re-let by Landlord for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such re-letting shall prima facie be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of Landlord to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time



when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

SECTION 19.05 Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to re-enter provided for in any statute, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption or re-entry or re-possession or to restore the operation of this lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or re-possession by Landlord or in case of any expiration or termination of this lease, subject to the right of a Leasehold Mortgagee to obtain a new lease in strict accordance with the provisions of Section 18.05 hereof. Landlord and Tenant, so far as permitted by law, waive and will waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of said premises, or any claim of injury or damage. The terms "enter", "re-enter", "entry" or "re-entry", as used in this lease are not restricted to their technical legal meaning.

SECTION 19.06 No failure by 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 rent 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 shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

SECTION 19.07 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 right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this lease.

SECTION 19.08 Each right and remedy of Landlord provided for in this lease shall be cumulative and shall be in addition to every other right or remedy provided for in this lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this lease or now or hereafter existing at law or in equity or by statute or otherwise.

SECTION 19.09 Interest at the rate of 10% per annum shall accrue upon any net rent or additional rent payable under this lease during any period while the payment thereof by Tenant may be delayed for more than ten days after the due date of such payment.

## ARTICLE 20

### STATEMENTS

SECTION 20.01 At any time and from time to time, Landlord, on at least twenty days' prior written request by Tenant or any actual or prospective Leasehold Mortgagee or any prospective purchaser of Tenant's interest in this lease or any prospective subtenant of the entire Building, and Tenant, on at least twenty days' prior written request by Landlord or any actual or prospective fee mortgagee, will deliver to the party making such request a statement in writing certifying that this lease is unmodified and in full force and effect (or if there shall have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which the net rent and other charges have been paid and stating whether or not, to the best knowledge of the party executing such certificate, the party requesting such statement is in default in performance of any covenant, agreement or condition contained in this lease and, if so, specifying each such default of which the executing party may have knowledge and stating whether Tenant has exercised its option to renew or extend this lease under Article 26 of this lease.

## ARTICLE 21

### INVALIDITY OF PARTICULAR PROVISIONS

SECTION 21.01 If any term or provision of this lease or the application thereof to any person or circumstance 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 22

### NOTICES

SECTION 22.01 All notices, demands and requests required under this lease shall be in writing. All such notices, demands and requests shall be deemed to have been properly given if sent by United States registered mail or certified mail, return receipt requested, postage pre-paid, or by reputable courier guaranteeing overnight delivery and providing receipted evidence thereof, in either case addressed as hereinafter provided. All such notices, demands and requests mailed to Landlord shall be addressed to Landlord c/o The Pyne Companies, Ltd., 555 Madison Avenue, New York, N.Y. 10022, or at such other address in the City and State of New York (and addressed to the attention of such officer or other person) as Landlord may from time to time designate by written notice to Tenant, and a copy to Elihu Fier, Esq., Blum & Fier, P.C., 555 Madison Avenue, New York, New York 10022. Tenant shall notify any Leasehold Mortgagee of any address so designated by Landlord. All such notices, demands and requests mailed to Tenant shall be addressed to Tenant at 725 Fifth Avenue, New York, N.Y. 10022, Attention: Donald J. Trump, and a copy to Kramer, Levin, Naftalis, Nessen, Kamin & Frankel, 919 Third Avenue, New York, New York 10022 Attn: Jay A. Neveloff, Esq. or at such other address in the City and State of New York as Tenant may from time to time designate by written notice to Landlord. All such notices, demands and requests mailed to any Leasehold Mortgagee shall be addressed to such Leasehold Mortgagee at the address furnished to Landlord pursuant to the provisions of Article 18 hereof, or to such other address as such Leasehold Mortgagee may from time to time designate by written notice to Landlord.

SECTION 22.02 Notices, demands and requests which shall be served by registered mail or certified mail upon Landlord, Tenant and any Leasehold Mortgagee in the manner aforesaid, shall be deemed given three days after such notice, demand or request shall be mailed by United States registered mail or certified mail as aforesaid in any Post Office or Branch Post Office regularly maintained by the United States Government in the State of New York, or if served by overnight courier shall be deemed given upon receipt.

## ARTICLE 23

### CONDITION OF AND TITLE TO PROPERTY, RIGHT OF FIRST OFFER, QUIET ENJOYMENT

SECTION 23.01 Tenant represents and agrees that the Demised Premises, the title thereto, the sidewalks and structures adjoining the same, any subsurface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them now are, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord,

as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Demised Premises or any part thereof may be put.

SECTION 23.02 Landlord covenants and agrees that Tenant, upon paying the net rent and all additional rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this lease on its part to be observed and kept, shall quietly have and enjoy the Demised Premises during the term of this lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this lease.

SECTION 23.03 In case Landlord shall convey the Demised Premises, all liabilities and obligations on the part of Landlord under this lease accruing after such conveyance shall terminate upon such conveyance, and thereupon all such liabilities and obligations shall be binding upon the grantee; provided, however, that any funds held by Landlord hereunder which Tenant has an interest in hereunder shall be turned over to such grantee or, to the extent required by Section 18.03(e) hereof, to the insurance trustee or depositary provided for in said Section.

SECTION 23.04 At any time during the term of this lease, if Landlord shall determine to offer for sale all of the fee interest in the Demised Premises, Landlord shall first offer such fee interest to Tenant at the all-cash price at which Landlord would offer same to third parties. Tenant (or its designee) shall have the right to purchase the fee interest at the all-cash price offered to Tenant by giving notice to Landlord thereof within thirty (30) days after the date of the giving of notice of such offer by Landlord.

If Tenant shall fail to give such notice of acceptance to Landlord, or shall reject such offer, all of Tenant's rights pursuant to the provisions of this Section 23.04 shall expire on the 30th day after the giving of such notice by Landlord, time being of the essence with respect to such expiration, and Tenant shall have no further rights with respect to such specific offer, except as provided in the next succeeding paragraph of this Section. If Tenant shall accept such offer, then Landlord and Tenant (or its designee) shall close title to the fee interest in the Demised Premises at the price set forth in such offer, free and clear of all liens, claims and encumbrances created or suffered by Landlord other than this lease, within ninety (90) days after Tenant's acceptance of such offer.

If Tenant shall not accept the offer contained in the notice of Landlord and Landlord shall not close title to the fee interest with a bona fide third party, which shall be at an all-cash purchase price, within 270 days after the expiration of the period within which Tenant may accept such offer or the terms of the offer change so as to reduce the all-cash purchase price by more than 5% from the purchase price offered to Tenant, then the rights of Tenant under the first and second paragraph of this Section 23.04 shall be fully reinstated as if the first offer had not been made. If pursuant to the preceding sentence, Landlord shall have determined to sell its fee estate at an all-cash purchase price more than 5% less than that offered to Tenant pursuant to the provisions of the first paragraph of this Section 23.04, Landlord shall give notice to Tenant of

such intention and Tenant shall have a period of fifteen (15) days within which to give to Landlord notice of its intent to accept Landlord's offer to sell the fee estate in the Demised Premises to Tenant (or its designee) at the last stated price.

Any offer by Landlord to a third party to sell such fee interest shall be on an all-cash basis. If Landlord shall receive an offer, which Landlord intends to accept, from an unrelated third party to purchase such fee interest on a basis other than all cash, Landlord shall promptly give notice thereof to Tenant and Tenant shall have the right to purchase the fee interest on such offered basis by giving notice to Landlord thereof within thirty (30) days after the date of the giving of notice of such offer by Landlord, and thereafter the second and third paragraphs of this Section 23.04 shall apply.

The rights of Tenant pursuant to this Section 23.04 shall not apply to (1)(a) transfers ("Partial Fee Transfers") by Landlord of a partial fee interest in the Land and/or the Building or (b) transfers ("Partial Equity Transfers") of partnership, stock, joint venture, membership or other equity interests in any entity of which Landlord is comprised, directly or indirectly, unless the cumulative effect of any or all of such transfers of fee and/or other interests would result in a transfer of more than 50% of the direct or indirect interests in the Land and/or the Building from such ownership as comprised on November 30, 1995, or the ownership of a future Landlord as comprised immediately following the conveyance of the Land or Building to it, or (2) transfers of partnership, stock, joint venture or membership interests in any entity of which Landlord is directly or indirectly comprised as of November 30, 1995, or the ownership of a future Landlord as comprised immediately following the conveyance of the Land or Building to it, to and among the shareholders, partners, venturers or members, as the case may be, of the entities of which such Landlord is directly or indirectly comprised as of November 30, 1995 or immediately following the conveyance of the Land or Building, as the case may be, or to any spouse or lineal descendant or trust for the benefit of any one or more of them.

Anything in this Section 23.04 to the contrary notwithstanding: (i) no fee owner of any interest in the Land and/or Building nor any person or entity comprising Landlord shall bring any action for partition involving the Land and/or Building; and, (ii) no fee owner of any interest in the Land and/or Building and no owner of any equity interests in Landlord or in any entity directly or indirectly comprising Landlord shall make any Partial Fee Transfer or Partial Equity Transfer if the cumulative effect of such transfer, taken with all prior transfers of interests in the fee or equity of Landlord, would result in a transfer of more than 50% of the direct or indirect interests in the Land and/or Building or in Landlord or any entity comprising Landlord. There shall be excluded from any Partial Fee Transfers or Partial Equity Transfers, for the purpose of this Section 23.04, (x) transfers permitted pursuant to the provisions of subdivision (2) of the last sentence of the immediately preceding paragraph, (y) a transfer or conveyance pursuant to Section 27.09 of this lease; or (z) the conveyance from Nautilus Real Estate Inc. to 40 Wall Limited Partnership of its reversionary interest in the fee estate in the Land and Building as it exists as of the date of this lease. The provisions of this Section 23.04 shall enure to the benefit of and be binding upon each of Landlord and Tenant and their respective successors and assigns and the holder of any reversionary interest in the Land and/or Building.

## ARTICLE 24

### EXCAVATION AND SHORING

~~SECTION 24.01~~ If any excavation shall be made or contemplated to be made for building or other purposes upon property or streets adjacent to or nearby the Demised Premises, Tenant either

(a) shall afford to the person or persons causing or authorized to cause such excavation the right to enter upon the Demised Premises for the purpose of doing such work as such person or persons shall consider to be necessary to preserve any of the walls or structures of the Building from injury or damage and to support the same by proper foundations, or

(b) shall, at Tenant's expense (without hereby waiving any claims against the aforesaid person or persons) do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the Building from injury or damages and to support the same by proper foundations.

Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or indemnity or for suspension, diminution, abatement or reduction of rent under this lease.

## ARTICLE 25

### ARBITRATION AND APPRAISAL

SECTION 25.01 In the event of a dispute, prior to a Landlord Sale (as defined in Section 27.08(c) below), as to whether (a) Landlord has improperly withheld its consent or (b) any other action by Landlord is required to be taken and has not been taken or (c) Landlord has made an objection under this lease, pursuant to Section 9.01(c) of this lease or otherwise, or any other matter as to which this lease provides that the dispute is to be resolved in accordance with this subparagraph, such dispute shall be resolved as follows:

(i) Tenant shall notify Landlord in writing that Landlord has improperly withheld its consent or has made an improper objection or otherwise has failed to act as provided in this lease or otherwise is subject to this dispute resolution procedure and in such notice shall designate an individual licensed in New York State (if such individual's profession requires licensing) having not less than fifteen (15) years experience in real estate brokerage, appraisal, leasing and/or management, and, in connection with disputes arising under Section 9.01(c) hereof, in engineering or architecture, relating to office and/or mixed-use properties located within the Borough of Manhattan provided, however, in the case of a determination of Value in connection with Section 2.05 hereof, or determination of valuation for any other purpose, such individual shall be an M.A.I. (or equivalent if this designation is no longer available) appraiser with not less than fifteen (15) years experience in appraisal of real property of the type subject to dispute located in the Borough of Manhattan, to act on its behalf. Landlord shall then appoint a similarly qualified individual to act on its behalf by written notice given to Tenant not later than

ten (10) days thereafter. If Landlord shall have failed to appoint an individual within such ten (10) day period, such individual shall be appointed by the American Arbitration Association or its successor (the branch office of which is located in or closest to the City and State of New York), upon request of Tenant;

(ii) the two (2) individuals, appointed as above provided, shall appoint a third (3rd) individual, similarly qualified, by written notice given to both Landlord and Tenant, and if they fail to do so by written notice given within five (5) days after their appointment, such third (3rd) individual shall be appointed by the American Arbitration Association or its successor as provided above; and

(iii) the third individual, selected as aforesaid, shall render its decision within fifteen (15) days after being appointed, which decision shall be strictly limited to a determination of the question in dispute. The decision of such individual shall be in writing and, insofar as the same is in compliance with the provisions and conditions of this paragraph, the same shall be binding upon Landlord and Tenant. The third individual, in arriving at its decision, shall be entitled to consider all testimony and documentary evidence that may be presented at any hearing, as well as facts and data which it may discover by investigation and inquiry outside such hearings. If, for any reason whatsoever, a decision of the third individual shall not be rendered within fifteen (15) days after his or her appointment, then at any time thereafter before such decision shall have been rendered, Tenant may apply to the Supreme Court of the State of New York or to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, to determine the question in dispute consistently with the provisions of this lease. Except as provided in Section 18.10(b), the cost and expense of this dispute resolution procedure, and any subsequent judicial action or proceeding brought thereon or relating thereto, shall be borne by the party against whom the decision is rendered. Judgment upon the decision of the third individual may be entered in any court having jurisdiction thereof.

(iv) Following a Landlord Sale, Tenant may, at its option, either utilize the dispute resolution procedure provided in this Article 25 or pursue the remedies available to Tenant pursuant to this lease or at law in a court of competent jurisdiction.

## ARTICLE 26

### RENEWAL TERMS

Provided that no Event of Default shall have occurred and be continuing after (i) Landlord shall have given Tenant a second and successive notice of default in addition to the notice provided in paragraph (a) or (b) of Section 19.01 hereof (which second and successive notice shall not be given earlier than the expiration of the period provided for in said paragraph (a) or (b) and shall not constitute the notice provided for in the paragraph immediately following paragraph (f) of Section 19.01), and (ii) the expiration of a period after such additional notice

equal to (A) 10 days in the case of a default in the payment of net rent or additional rent or (B) 30 days in the case of any other default (or in the case of a default not susceptible of being cured with due diligence within 30 days, such 30-day period shall be extended as long as Tenant shall have commenced to cure such default within such 30 day period and shall thereafter diligently prosecute the same to completion), then Tenant shall have the option, to be exercised not later than October 31, 2057 to renew the term of this lease for an additional sixty-seven and one-half (67 and 1/2) years, to commence on May 1, 2059 and expire on October 31, 2126, by giving written notice to Landlord of the exercise of such renewal option. If Tenant shall have exercised the renewal option contained in the immediately preceding sentence, it shall have a second renewal option for a like period of sixty-seven and one-half (67 and 1/2) years, to commence on November 1, 2126 and expire on April 30, 2194, to be exercised by giving written notice to Landlord not later than April 30, 2125. Each renewal term shall be on all of the terms and conditions as are contained in this lease, except that Tenant shall have no further right to renew after the second renewal term.

## ARTICLE 27

### MISCELLANEOUS

SECTION 27.01 Without hereby limiting the effect of any specific provision of this lease of like or similar import, whenever under any provision of this lease expressly providing or requiring that a consent or approval shall not be unreasonably withheld, or that an act, forbearance, quantity, amount, sum of money, value, time limit or any other matter or thing shall be reasonable (or shall not be unreasonable), a dispute or disagreement shall arise between Landlord and Tenant as to whether or not the withholding of the consent or approval in question is unreasonable or as to whether or not the act, forbearance, quantity, amount, sum of money, value, time limit or other matter or thing in question is reasonable (or not unreasonable), such dispute or disagreement shall be settled by arbitration as provided in Article 25.

SECTION 27.02 All amounts deposited with Landlord shall be placed in an interest-bearing account or at the option of Tenant, be invested in U.S. Treasury bills or other similar investments. Tenant shall receive all interest paid on all amounts deposited.

SECTION 27.03 The captions of this lease and the table of contents preceding this lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this lease.

SECTION 27.04 It is the intention of the parties hereto that the estate acquired hereunder by Tenant shall not merge with or into any other estate, whether lesser or greater, in the Demised Premises now held or hereafter acquired by Tenant or by any disclosed or undisclosed principal of Tenant.



SECTION 27.05 This lease shall be construed and enforced in accordance with the laws of the State of New York, without giving effect to any principles of conflicts of laws.

SECTION 27.06 The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its legal representatives, successors and assigns, except as otherwise provided herein.

SECTION 27.07 This lease shall not be cancelled or further amended or modified, nor shall Landlord accept any surrender of this lease, without the written consent thereto of all Leasehold Mortgagees.

SECTION 27.08 (a) It is agreed by Landlord, for itself and its successors and assigns, that any money judgment secured by Landlord against Tenant shall be collectible only out of the assets of the holder of the Tenant's interest in this lease as of the date such claim arose. No partners, members, joint venturers, shareholders or owners of any other form of equity interest (any of the foregoing, an "Equity Holder") in any partnership, limited liability company, joint venture, corporation or other form of entity, whether or not now contemplated by law (any of the foregoing, an "Entity") which directly or indirectly comprises Tenant, shall be liable for any such money judgment except to the extent of each Equity Holder's then interest in the assets of the Entity, but only out of, and limited to, such interest in said assets and without recourse to any other assets of such Equity Holder, officer or director of Tenant, disclosed or undisclosed, and no other property or assets of any such Equity Holder, officer or director shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies under or with respect to this lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Demised Premises; provided, however, that Landlord shall be entitled to pursue any other remedy it may have against Tenant under this lease or otherwise. Nothing contained in this paragraph is intended or shall be construed to limit or preclude Landlord from suing for and recovering from the assets of Tenant or the assets of any Equity Holder of the then Tenant, money damages in respect of (i) the amount of any sublease rents collected by Tenant from subtenants which have received non-disturbance agreements from Landlord for more than thirty (30) days in advance of the date when due and not otherwise used in connection with the Demised Premises or (ii) any proceeds of any insurance policies carried with respect to the Demised Premises or any awards made in connection with any condemnation of the Demised Premises, which have been paid to Tenant and have not been applied in accordance with this lease.

(b) It is agreed by Tenant, for itself and its successors and assigns, that any money judgment secured by Tenant against Landlord shall be collectible only out of the Landlord's interest in the Land and Building (or the proceeds thereof) as of the date such claim arose. No Equity Holder in any Entity which directly or indirectly comprises Landlord shall be liable for any such money judgment except to the extent of such Equity Holder's then interest in the Land and Building (and proceeds thereof) and without recourse to any other assets of such Equity Holder and no other property or assets of Landlord or any Equity Holder or officer or director

of Landlord or entity comprising Landlord, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Tenant and Landlord hereunder or Landlord's use or occupancy of the Demised Premises.

(c) Except for a default in the payment of net rent or additional rent or a default in performing the obligations of Tenant under Sections 3.08 or 10.03 hereof, which shall be governed by Article 19 hereof, in the event of any threatened or actual breach of any of the terms, covenants or conditions of this lease by either party, the sole rights of the other party shall be an action to compel the defaulting party's performance or restrain the threatened or alleged breach of the terms, covenants and conditions of this lease or any one of them; provided, however, that if at any time Landlord named herein shall no longer own the Land and the Building, or there has occurred one or more sales or conveyances at any time or from time to time, of partial fee interests in the Land and/or Building or of the interests of the Equity Holders in any Entities of which Landlord is directly or indirectly comprised, such that the cumulative effect of any or all of such transfers of fee and/or other interests result in a transfer or more than 50% of the direct or indirect interests in the Land and/or Building from such ownership as comprised on November 30, 1995 (hereinafter referred to as a "Landlord Sale") (except as provided in the last sentence of the last paragraph of Section 23.04), the limitation on Tenant's rights to obtain money damages shall no longer apply and thereafter, recourse may be had by Tenant against any successor Landlord in the event of the breach of any of the terms, covenants or conditions of this lease, to the extent, however, only of such successor Landlord's estate and property in the Land and Building (or the proceeds thereof), and no other property or assets of such Landlord or any Equity Holder in any Entity comprising Landlord shall be subject to levy, execution or other enforcement procedure. In no event shall either party have personal liability (except as expressly set forth in Section 27.08(a) above) for monetary damages by reason of the breach or threatened breach of any of the terms, covenants or conditions of this lease, the sole remedy being as hereinabove set forth in this Section 27.08(c), except to the extent that this lease shall provide for other instruments guaranties or letters of credit securing the performance of any obligation which may be required or permitted under this lease. Notwithstanding the foregoing, upon termination of this lease pursuant to and in accordance with its terms, Landlord may commence a summary proceeding against Tenant for the sole purpose of regaining possession of the Demised Premises.

SECTION 27.09 (a) In the event of the conversion of the Demised Premises to condominium ownership by Tenant, in its sole discretion, including a portion thereof (which may not be less than 15% nor more than 76% of the Building) for residential purposes, Landlord will join in the Declaration of Condominium Ownership and the submission of the Land and Building as demised under this lease to a condominium regime and consent to the subordination of this lease to such Declaration. At the time of sale of each condominium unit, Landlord shall receive from Tenant an amount equal to the product obtained by multiplying the square footage of the unit (as stated in the Declaration of Condominium Ownership which is recorded with the New York City Register's Office) times \$24.00 (subject to adjustment as provided in paragraph (c))

below) and such Unit shall be released from this lease. At the time of such payment, the annual net rent under this lease shall be reduced by an amount equal to the product obtained by multiplying the percentage interest of the condominium unit sold (as provided in the Declaration of Condominium Ownership) by the annual net rent then payable pursuant to Article 2 of this lease.

(b) Landlord shall, upon request of Tenant and for a nominal consideration of an aggregate of \$1.00, convey to Tenant fee title to the land beneath all structural columns, supports and elevator shafts of the Building free and clear of all liens, claims and encumbrances created or suffered by Landlord (including, without limitation, mortgages created by Landlord or judgments against Landlord), but in no event shall Landlord be required to convey to Tenant more than 10% of the square foot area of the Land; provided, however, that simultaneously with such conveyance, Landlord and Tenant shall enter into a reciprocal easement agreement for access and building operation and for structural support in the event of any rebuilding or renovation of the Building, in form and substance reasonably acceptable to both Landlord and Tenant and Landlord shall take such other actions and execute such documents as are reasonably necessary to effectuate the conversion of the Demised Premises to condominium ownership including the residential use of a portion thereof. Such reciprocal easement agreement shall prohibit and Landlord and Tenant, for themselves, their personal representatives, successors and assigns do hereby waive any right to bring an action in partition with respect to fee title to the Land. In the event Landlord and Tenant are unable to agree upon such an easement agreement, as well as such other agreements as may be necessary in connection with such grant and conversion, the same shall be resolved using the dispute resolution procedure provided in Article 25 of this lease.

(c) On each date on which the net annual rental is to be increased by reappraisal pursuant to Section 2.05 of this lease, the \$24.00 amount referenced in paragraph (a) above shall be increased in the same proportion that the annual net rental has been increased by reason of such reappraisal over the annual net rental payable on the date immediately preceding the date of such reappraisal, if any increase shall be required by reason of such reappraisal, and the resulting number shall then be substituted in lieu of "\$24.00" referenced in paragraph (a). In no event shall the release price of \$24.00 per square foot be reduced.

SECTION 27.10 The term "Index," as used in this lease, shall mean the "Consumer Price Index Cities, All-Item Figures, For All Urban Consumers, N.Y., N.Y. - Northeastern, N.J." (1982-84=100), issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the computations to be made pursuant to this lease using the Index shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the Index shall cease to be published, then there shall be substituted for the Index such other index as Landlord and Tenant shall agree upon, and, if they are unable

to agree within 90 days after the Index ceases to be published, such matter shall be submitted to arbitration in accordance with the provisions of Article 25.

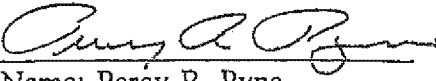
SECTION 27.11 Tenant may, without Landlord's consent and without having satisfied each and every provision of Section 3.08 and Sections 7.05 and 10.03 of this lease, assign this lease and its leasehold estate hereunder, including, but not limited in any respect to Tenant's rights pursuant to Section 23.04, Article 26 and Section 27.09 hereof, and to transfer its interest in the Land and Building, or any interest therein, in whole or part to any entity who or which is either an affiliate of Tenant or controlled by Donald J. Trump or Tenant. Notwithstanding any provision in this lease to the contrary, in the event that Tenant, without having satisfied each and every provision of Section 3.08, and Sections 7.05 and 10.03 of this lease, assigns its interest in this lease to any entity who or which is not either an affiliate of Tenant or controlled by Donald J. Trump or Tenant, it shall be a default under this lease and following the expiration of any applicable notice and cure periods, the provisions of this Amended and Restated Lease shall immediately and automatically terminate and be of no further force and effect and the Third Amended Lease, as amended through the Second Supplement described in Exhibit B hereto shall automatically be reinstated without the requirement for a further communication; provided, however, that the termination of this Amended and Restated Lease shall not alter or negate the remaining terms, conditions or provisions of any non-disturbance agreement which has been fully executed and unconditionally delivered prior to the time of such termination. The phrase "assigns its interest in this lease" as used in the second sentence of this Section 27.11 shall include any transfer of the interests in or issuance of new interests in Tenant such that the voting control of Tenant shall not be in an entity that, as of November 30, 1995 controls or is under common control with Tenant or is controlled by Tenant or Donald J. Trump. "Control" and its variations as used in this Section 27.11 refers to and means direct involvement in the day-to-day business affairs of the party to whom it refers.

SECTION 27.12 Upon request of either Landlord or Tenant, both Landlord and Tenant shall enter into, and the requesting party shall cause to be recorded, a memorandum of this lease. Any such memorandum may, at the request of Tenant, attach the provisions set forth in Article 18 of this lease.

IN WITNESS WHEREOF, Landlord, Tenant and the holder of a reversionary interest in the fee estate have duly executed this agreement the day and year first above written.

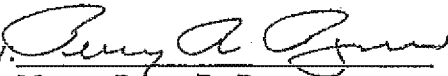
LANDLORD:

NAUTILUS REAL ESTATE, INC.

By:   
Name: Percy R. Pyne  
Title: Vice President

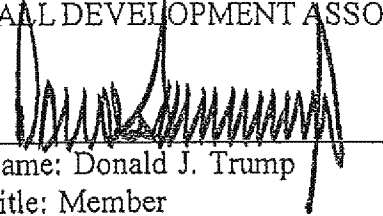
SCANDIC WALL LIMITED PARTNERSHIP

By: Scandic, Inc., General Partner

By:   
Name: Percy R. Pyne  
Title: Vice President

TENANT:

40 WALL DEVELOPMENT ASSOCIATES LLC

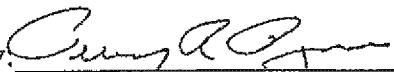
By:   
Name: Donald J. Trump  
Title: Member

AGREED TO:

HOLDER OF REVERSIONARY INTEREST:

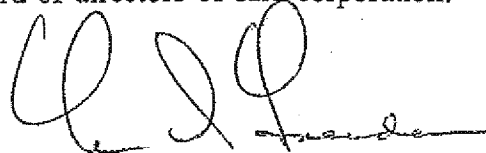
40 WALL LIMITED PARTNERSHIP

By: Atlantic Inc., its General Partner

By:   
Name: Percy R. Pyne  
Title: Vice President

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

On this 30 day of December, 1996, before me personally came Percy R. Pyne, to me known, who being by me duly sworn, did say that he resides at 96 Lambert Road, New Canaan, Connecticut; that he is the Vice President of NAUTILUS REAL ESTATE, INC., the corporation described in and which executed the foregoing instrument as Landlord; and that he signed said instrument by authority of the board of directors of said corporation.



Notary Public

NORMA I FOERDERER  
Notary Public, State of New York  
No. 31-4743494  
Qualified in New York County  
Commission Expires Sept. 30, 1997

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

On this 30 day of December, 1996, before me personally came Percy R. Pyne, to me known, who being by me duly sworn, did say that he resides at 96 Lambert Road, New Canaan, Connecticut; that he is the Vice President of Scandic, Inc., the corporation described in and which executed the foregoing instrument, which corporation is the General Partner of SCANDIC WALL LIMITED PARTNERSHIP, the partnership described in and which executed the foregoing instrument as Landlord; and that he executed the same as and for the act and deed of said partnership.



Notary Public

NORMA I FOERDERER  
Notary Public, State of New York  
No. 31-4743494  
Qualified in New York County  
Commission Expires Sept. 30, 1997

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

On this 20 day of December, 1996, before me personally came DONALD J. TRUMP, to me known, who being by me duly sworn, did say that he resides at 721 Fifth Avenue, New York, New York; that he is a member of 40 WALL DEVELOPMENT ASSOCIATES LLC, the New York limited liability company described in and which executed the foregoing instrument as Tenant; and that he has the authority to and did execute the foregoing instrument as the act and deed of said limited liability company.

Notary Public

NORMA I FOERDERER  
Notary Public, State of New York  
No. 31-4743494  
Qualified in New York County  
Commission Expires Sept. 30, 1997

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

On this 20 day of December, 1996, before me personally came Percy R. Pyne, to me known, who being by me duly sworn, did say that he resides at 96 Lambert Road, New Canaan, Connecticut; that he is the Vice President of Atlantic Inc., the corporation described in and which executed the foregoing instrument, which corporation is the General Partner of 40 WALL LIMITED PARTNERSHIP, the partnership described in and which executed the foregoing instrument as the holder of the reversionary interest; and that he executed the same as and for the act and deed of said partnership.

Notary Public

NORMA I FOERDERER  
Notary Public, State of New York  
No. 31-4743494  
Qualified in New York County  
Commission Expires Sept. 30, 1997

EXHIBIT A

ALL that plot of land in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Wall Street distant 70 feet 1 inch Westerly from the corner formed by the intersection of the said northerly side of Wall Street with the westerly side of William Street; running thence Northerly along a line which forms an angle of 87 degrees 05 minutes 15 seconds on its westerly side with said northerly side of Wall Street 123 feet and 1/4 of an inch;

thence Westerly along a line which forms an angle of 92 degrees 33 minutes 30 seconds on its southerly side with the last course 14 feet 2 1/2 inches;

thence Northerly along a line which forms an angle of 94 degrees 00 minutes 45 seconds on its easterly side with the last course 71 feet 7 1/2 inches to the southerly side of Pine Street;

thence Westerly along said southerly side of Pine Street 45 feet 9 3/4 inches to an angle in said southerly side of Pine Street;

thence continuing Westerly along said southerly side of Pine Street 163 feet 5 3/4 inches; thence Southerly along a line which forms an angle of 87 degrees 31 minutes 10 seconds on its easterly side with said southerly side of Pine Street, 74 feet 9 5/8 inches;

thence Easterly along a line which forms an angle of 91 degrees 19 minutes 10 seconds on its northerly side with the last course 40 feet 3 3/4 inches;

thence continuing Easterly along a line which forms an angle of 179 degrees 41 minutes 00 seconds on its northerly side with the last course 35 feet 4 inches;

thence Southerly along a line which forms an angle of 91 degrees 45 minutes 00 seconds on its westerly side with the last course 18 feet 4 1/4 inches;

thence continuing Southerly along a line which forms an angle of 180 degrees 38 minutes 50 seconds on its westerly side with the last course 102 feet 11 inches to the said northerly side of Wall Street;

thence Easterly along said northerly side of Wall Street 75 feet 1 1/4 inches to an angle in said northerly side of Wall Street;



thence continuing Easterly along said northerly side of Wall Street 74 feet 11 1/2 inches to the point or place of beginning.

TOGETHER with all the right, title and interest of the Landlord in and to any strips or gores of land adjoining the above described premises.

SUBJECT, however, to the following:

- (1) state of facts shown on the survey made by Charles J. Dearing, dated November 17, 1955, and redated by visual examination on June 12, 1996 by the Office of Earl B. Lovell-S.P. Belcher, Inc., and any additional state of facts which an inspection and more recent accurate survey would show;
- (2) Impositions (as defined in Article 3 hereof), accrued or unaccrued, fixed or not fixed;
- (3) revocable nature of any rights, easements, licenses or privileges to use vaults, areas, tunnels, ramps or structures under streets, avenues or sidewalks on which the Demised Premises abut;
- (4) consents or grants prior to the date of this amended and restated lease for the erection of any structures on, under or above said streets or avenues and grants, licenses or consents, if any, with respect to public utility lines and equipment;
- (5) [Intentionally Omitted];
- (6) building restrictions and regulations in resolution or ordinance adopted by Board of Estimate and Apportionment of the City of New York, on July 25, 1916, and the amendments and additions thereto, now in force;
- (7) present and future zoning laws, ordinances, resolutions and regulations of the City of New York and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions and bodies of any municipal, county, state or federal sovereigns now or hereafter having or acquiring jurisdiction of the Demised Premises and the use and improvement thereof;
- (8) revocable nature of the right, if any, to maintain marquees or signs, beyond the building lines;
- (9) the effect of all present and future municipal, state and federal laws, orders and regulations relating to subtenants, their rights and rentals to be charged for the use of the Demised Premises or any portion or portions thereof;

(10) violations of law, ordinances, orders or requirements that might be disclosed by an examination and inspection or search of the Demised Premises by any federal, state or municipal departments or authority having jurisdiction, as the same may exist on the date of this amended and restated lease;

(11) the condition and state of repair of the Demised Premises as the same were on the date of this amended and restated lease;

(12) any defects of title or encumbrances or encroachments, existing at the date of this amended and restated lease.

## EXHIBIT B

(a) Lease dated May 1, 1929 between President and Directors of the Manhattan Company, as lessor, and Forty Wall Street Corporation, as lessee, recorded in the Office of the Register of New York County, New York, on May 10, 1929 in Liber 3709 of Conveyances, at page 382, as amended by Agreement dated May 1, 1929 among President and Directors of the Manhattan Company, Neptune Realty Company, Codi Corporation, Adlin Corporation and Forty Wall Street Corporation, recorded in said Register's Office on May 10, 1929 in Liber 3709 of Conveyances, at page 376, covering real property located in the Borough of Manhattan, City, County and State of New York, known as and by the street numbers 40 and 42 Wall Street and 35, 37 and 39 Pine Street, which lease was assigned to Webb & Knapp, Inc., as tenant, by Forty Wall Street Building, Inc. (successor in interest to said Forty Wall Street Corporation) by assignment dated December 15, 1959, and recorded in said Register's Office on December 17, 1959, in Liber 5100 of Conveyances at page 304, and extended by agreement between The Chase Manhattan Bank, as successor to said President and Directors of the Manhattan Company, and Webb & Knapp, Inc., as tenant, recorded in said Register's Office on May 3, 1960 in Liber 5114 of Conveyances, at page 200.

(b) Lease dated July 15, 1928 between Neptune Realty Company, Codi Corporation and Adlin Corporation, as lessors, and Thirty-Six Wall Street Corporation, as lessee, recorded in the Office of the Register of New York County, New York, on August 24, 1928 in Liber 3666 of Conveyances, at page 139, as amended by the said agreement dated May 1, 1929, recorded in Liber 3709 of Conveyances, at page 376, and as further amended and extended by agreement dated April 24, 1959 between 3991 Corporation and Forty Wall Street Building, Inc., recorded in said Register's Office on May 1, 1959, in Liber 5075 of Conveyances, at page 242, covering real property located in said Borough of Manhattan, City, County and State of New York, known as and by the street numbers 34 and 36 Wall Street and 31 and 33 Pine Street; which lease was assigned to Webb & Knapp, Inc., as tenant, by said Forty Wall Street Building, Inc. by assignment dated December 15, 1959 and recorded in said Register's Office on December 17, 1959, in Liber 5100 of Conveyances, at page 308, and further extended by agreement dated April 20, 1960, between said 3991 Corporation and Webb & Knapp, Inc. recorded in said Register's Office on April 21, 1960, in Liber 5113 of Conveyances, at page 201.

(c) Lease dated April 20, 1960, between Alf C. Stiansen, as lessor, and Webb & Knapp, Inc., as lessee, covering premises also in the said Borough and City known as and by the street numbers 38 Wall Street and 25, 27 and 29 Pine Street, which lease was recorded in said Register's Office on April 21, 1960, Liber 5113 of Conveyances, at page 207.

(d) The aforementioned three leases by an agreement dated the 28th day of April, 1960 (the "Agreement and Amended Lease") between Landlord and Webb & Knapp, Inc., recorded in said Register's Office on May 3, 1960, in Liber 5114 of Conveyances, at page 236, were combined, consolidated, modified and amended, said three leases as so combined,

consolidated, modified and amended being known and identifiable to the parties as the "Main Lease."

(e) By agreement made as of the first day of December, 1960, Webb & Knapp, Inc. assigned its interest as tenant under the Main Lease to Transatlantic Real Estate Corporation, which agreement was recorded in said Register's Office on December 6, 1960 in Liber 5134 of Conveyances at page 358.

(f) By agreement dated the 16th day of May 1961, between Landlord and Transatlantic Real Estate Corporation, recorded in said Register's Office on June 14, 1961 in Liber 5153 of Conveyances, at page 120, the said three leases above referred to were combined, consolidated, modified, and amended, said three leases as so, combined, consolidated, modified and amended being known and identifiable to the parties as the "Second Amended Lease."

(g) By agreement dated the 12th day of January, 1966, between Landlord and Transatlantic Real Estate Corporation, recorded in said Register's Office on February 28, 1966 in Liber 24 of Records, at page 369, the said Second Amended Lease was amended.

(h) By assignment dated the 24th day of February, 1966, the said Second Amended Lease as amended was assigned by Transatlantic Real Estate Corporation to Sally Nadel, which assignment was recorded in said Register's Office on February 28, 1966 in Liber 24 of Records at page 373.

(i) By assignment dated the 24th day of February, 1966, the said Second Amended Lease as amended was further assigned by Sally Nadel to Transatlantic Real Estate Corporation, which assignment was recorded in said Register's Office on February 28, 1966 in Liber 24 of Records at page 463.

(j) By agreement dated the 22nd day of April, 1966, between Landlord and Transatlantic Real Estate Corporation, recorded in said Register's Office on June 13, 1966 in Liber 67 of Records, at page 338, the said Second Amended Lease as amended was further amended.

(k) By assignment dated the 10th day of June, 1966, Transatlantic Real Estate Corporation further assigned the said Second Amended Lease as amended to L. R. Properties, Inc., which assignment was recorded in said Register's Office on June 13, 1966 in Liber 67 of Records, at page 348.

(l) By assignment dated the 10th day of June, 1966, L. R. Properties, Inc., further assigned the said Second Amended Lease as amended to Henry A. Loeb, Clifford W. Michael, and George V. Comfort, joint tenants with right of survivorship, which assignment was recorded on the 20th day of June, 1966 in said Register's Office in Liber 70 of Records, at page 374.

(m) The Second Amended Lease as so amended and assigned was further amended by that certain Agreement and Third Amended Lease (the "Third Amended Lease"), dated March 30, 1967, between Metropolitan Life Insurance Company, as landlord, and Henry A. Loeb, Clifford W. Michael and George V. Comfort, joint tenants with rights of survivorship, as tenant, which Third Amended Lease was recorded on the 17th day of April, 1967 in said Register's Office in Liber 171 of Records at page 164.

(n) Said Third Amended Lease was thereafter assigned by an instrument dated the 23rd of June, 1971, made by HENRY A. LOEB, CLIFFORD W. MICHAEL and GEORGE V. COMFORT, joint tenants with the right of survivorship, to SAMENE REALTY CORP., and recorded in said Register's Office on the 8th day of July, 1971, in Reel 209 at page 1910.

(o) Said Third Amended Lease was thereafter further assigned by an instrument dated the 1st day of July, 1971, made by SAMENE REALTY CORP. to HENRY A. LOEB, CLIFFORD W. MICHAEL and GEORGE V. COMFORT, as joint tenants with right of survivorship, and recorded in said Register's Office on the 8th day of July, 1971, in Reel 209 at page 1932.

(p) Said Third Amended Lease was thereafter further assigned by an instrument dated the 10th day of April, 1972, made by HENRY A. LOEB, CLIFFORD W. MICHAEL and GEORGE V. COMFORT, as joint tenants with right of survivorship, to RHODES PROPERTIES, INC., and recorded in said Register's Office, on the 13th day of April, 1972, in Reel 237 at page 164.

(q) Said Third Amended Lease was further amended by that certain First Supplement to Agreement and Third Amended Lease (the "First Supplement"), dated April 10, 1972, made by and between METROPOLITAN LIFE INSURANCE COMPANY, as Landlord, and RHODES PROPERTIES, INC., as Tenant, and recorded in said Register's Office on the 13th day of April, 1972, in Reel 237 at page 180.

(r) Said Third Amended Lease as so supplemented was thereafter assigned by an instrument dated the 12th day of April, 1972, made by RHODES PROPERTIES, INC., to HENRY A. LOEB, CLIFFORD W. MICHAEL and GEORGE V. COMFORT, joint tenants with right of survivorship, and recorded in said Register's Office on the 13th day of April, 1972, in Reel 237 at page 246.

(s) Said Third Amended Lease as so supplemented was thereafter assigned by an instrument dated the 30th day of December, 1982, made by HENRY A. LOEB, GEORGE V. COMFORT (the surviving Joint Tenants) and JOHN L. LOEB, HENRY A. LOEB, GEORGE V. COMFORT and CLIFFORD LLOYD BACHE MICHAEL, d/b/a 40 WALL ASSOCIATES, a joint venture to NYLAND (CF8) LTD., formerly known as GAINSVILLE N.V., a Netherlands-Antilles corporation, and recorded in said Register's Office on the 30th day of December, 1982, in Reel 658 at page 1127.

(t) Said Third Amended Lease and all of the Tenant's interests therein were thereafter transferred by an Assignment and Assumption of Agreement and Third Amended Lease dated the 30th day of November, 1989, made by ROMOLO J. IMUNDI, as U.S. Marshal pursuant to the action between Citibank, N.A., Plaintiff against Nyland (CF8) Ltd., et al., Defendants, 86 Civ. 9181 (WK) foreclosing a second leasehold mortgage and in pursuance of a final order of foreclosure and sale filed in the Office of the Clerk of the United States District Court for the Southern District of New York on December 23, 1988, to RESNICK 40 WALL ASSOCIATES, L.P., and recorded in said Register's Office on the 4th day of December, 1989, in Reel 1644 at page 279.

(u) Said Third Amended Lease as assigned, supplemented and so transferred was thereafter further supplemented, modified and amended by the Second Supplement to Agreement and Third Amended Lease dated the 30th day of November, 1989, made by and between NAUTILUS REAL ESTATE, INC., WALTER HINNEBERG, JR., ANITA HINNEBERG, CHRISTIAN HINNEBERG, JOACHIM FERDINAND VON GRUMME-DOUGLAS and STEPHANIE VON BISMARCK, collectively, as Landlord, and RESNICK 40 WALL ASSOCIATES, L.P., as Tenant, and recorded in said Register's Office on the 16th day of December, 1990, in Reel 1676 at page 1335.

(v) Said Third Amended Lease and all of the Tenant's interests therein were thereafter transferred by an Assignment and Assumption of Lease dated as of the 28th day of May, 1993, made by LESTER EVENS, ESQ., an individual and the Referee appointed by the Consent Judgment of Foreclosure and Sale made and entered by the New York Supreme Court, New York County, on April 12, 1993 in the action styled Citibank Real Estate, Inc. vs. Resnick 40 Wall Associates, L.P. and Jane and John Does 1-100, Index No. 1783/92 to KINSON PROPERTIES, INC., and recorded in said Register's Office on the 7th day of June, 1993, in Reel 1976 at page 1878.

(w) By Assignment and Assumption Agreement, dated as of November 30, 1995, Kinson Properties, Inc. further assigned the said Third Amended Lease as so amended to Tenant hereunder, which Agreement was recorded in said Register's Office on the 5th day of December, 1995 in Reel 2268 at page 1164.

(x) Said Third Amended Lease was further amended by that certain Third Supplement to Agreement and Third Amended Lease dated as of November 30, 1995, made by and between NAUTILUS REAL ESTATE, INC. and SCANDIC WALL LIMITED PARTNERSHIP, as Landlord, and 40 WALL DEVELOPMENT ASSOCIATES LLC, as Tenant, a memorandum of which was recorded in said Register's Office on the 5th day of December, 1995 in Reel 2268 at page 1174.

11/29/95

EXHIBIT C

FORM OF NON-DISTURBANCE, ATTORNMENT  
AND SUBORDINATION AGREEMENT

AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and among NAUTILUS REAL ESTATE INC., a New York corporation, SCANDIC WALL LIMITED PARTNERSHIP, a New York limited partnership, its successors and assigns (collectively, "Landlord") having an office c/o The Pyne Companies, Ltd., 555 Madison Avenue, New York, New York 10022, Attention: Percy R. Pyne, IV, and 40 WALL DEVELOPMENT ASSOCIATES, LLC, a New York limited liability company having an office at 725 Fifth Avenue, New York, New York 10022 ("Tenant"), and \_\_\_\_\_ having an address at \_\_\_\_\_ ("Subtenant")

W I T N E S S E T H:

WHEREAS, Landlord (as successor-in-interest to Metropolitan Life Insurance Company ("Metropolitan") and Tenant (as successor-in-interest to Henry A. Loeb, Clifford W. Michel and George V. Comfort), are parties to that certain Amended and Restated Lease dated November 30, 1995, (such lease, as the same may be modified and amended, the "Lease"), relating to that certain parcel of land and the improvements thereon, located at 40 Wall Street (the "Building") in the Borough of Manhattan, City, County and State of New York; and

WHEREAS, Tenant and Subtenant entered into a lease dated \_\_\_\_\_, \_\_\_\_\_ (the "Sublease"), pursuant to which Tenant leased to Subtenant certain premises consisting of [a portion of] the [entire] \_\_\_\_\_ floor of the Building, as shown on the plan annexed hereto as Exhibit A and made a part hereof (the "Premises"); and

WHEREAS, Tenant has requested that Landlord enter into a non-disturbance, attornment and subordination agreement with Subtenant as herein provided.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Tenant and Subtenant agree as follows:

1. Subordination. The Sublease and the leasehold estate created thereby is and shall be subject at all times and in all respects to the Lease (and any renewal, substitution, modification, extension or replacement thereof) and the leasehold estate created by the Lease.

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2. Nondisturbance. Subject to the provisions of Paragraphs 2(D) and 5 below, if there occurs a termination of the Lease as the result of a default by Tenant thereunder or by reason of any other occurrence, then, upon such termination and provided that at the time of such termination of the Lease no default by Subtenant exists under such Sublease which, at such time would permit the landlord thereunder to terminate the Sublease or to exercise any remedy for dispossession provided for therein, Landlord shall recognize Subtenant as the direct tenant of Landlord under the then executory terms and conditions of the Sublease; provided, however, that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(A) liable for any act or omission of any prior landlord under the Sublease (including, without limitation, the then defaulting landlord) except that Landlord shall be liable to render any service to be performed or rendered under the Sublease from and after the date on which the Lease has been terminated and Landlord shall have succeeded to the interest of Tenant as sublandlord under the Sublease, the nonperforming or nonrendering of which service, subject to the provisions of subparagraph (D) of this Paragraph 2 of this Agreement, would constitute a continuing default by the sublandlord under the Sublease (measured from the date of Landlord's succession as aforesaid);

(B) subject to any offsets or defenses that Subtenant may have against any prior landlord under the Sublease (including, without limitation, the then defaulting Tenant);

(C) bound by any payment of rent for more than the then current month of the term of the Sublease or any other payment (including, without limitation, any security deposit) that Tenant might have made to any prior sublandlord under the Sublease (including, without limitation, the then defaulting sublandlord) unless such sum has been transferred to Landlord;

(D) bound by any covenant to undertake or complete any construction of the Premises or the Building or any Building system or any portion of any of the foregoing (including, without limitation, work to be performed by the then defaulting sublandlord in connection with preparing the Premises or the Building for occupancy or refurbishment thereof); it being agreed that Landlord shall have no liability for the failure to furnish or for the inadequate or insufficient furnishing of any service, as described in subparagraph (A) of this Paragraph 2, where such failure or inadequacy or insufficiency is attributable to the failure of Tenant, as sublandlord or as Tenant under the Lease, as the case may be, to properly and completely renovate, install, refurbish or construct the Building to first class condition for its intended use as well as any Building system (including, without limitation, elevator, heating, ventilating and air conditioning, electrical and mechanical systems); provided, however, that in the event of such failure, inadequacy or insufficiency, Subtenant shall have only the rights set forth in subdivisions (ii) or (iii) of Paragraph 5 of this Agreement;

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(E) bound by any obligation to make any payment to Subtenant at any time, except to the extent that Subtenant shall be entitled to a refund or payment of any sums (i) paid to Landlord in excess of the amount actually due as rent or additional rent, or (ii) where a refund of such sums shall have been made by any third party to Landlord and Subtenant shall be entitled, pursuant to the terms of its Sublease, to all or a portion of such refund; or

(F) bound by any amendment, modification or replacement of the Sublease made after the date hereof without the written consent of Landlord, which consent shall not be unreasonably withheld or delayed. In the event that Tenant or Subtenant shall dispute the reasonableness of the refusal of Landlord to grant consent to such amendment, modification or replacement of the Sublease, the matter shall be determined by arbitration as provided in the arbitration provisions set forth as Exhibit 1 to this Agreement. In addition, Subtenant shall pay for all reasonable costs and expenses incurred by Landlord in connection with reviewing any such amendment, modification or replacement, including, without limitation, reasonable attorneys and consultant fees. Neither Tenant nor Subtenant shall be entitled to any damages for any withholding by Landlord of its consent, it being the intention that the sole remedy of Tenant and Subtenant shall be arbitration, and the award in such arbitration shall have the effect of a judgment of a court of competent jurisdiction for specific performance or an injunction.

3. Attornment. If there occurs a termination of the Lease pursuant to the provisions thereof, then Subtenant does hereby attorn to and recognize Landlord as its landlord, said attornment to be upon the then executory terms of the Sublease, but subject to the provisions of Paragraph 2 above. The aforesaid attornment shall be effective and self-operative without execution of any further instruments upon such termination, but Subtenant agrees to execute any instruments Landlord may reasonably request to evidence such attornment. Subtenant further agrees to attorn to and recognize as its sublandlord under its Sublease any person or entity who or which (i) shall succeed to the rights of Tenant as sublandlord under the Sublease or (ii) shall enter into a new lease with Landlord and to which the Sublease shall be assigned, and to look to such person or entity as its Sublandlord for all obligations on the part of the sublandlord to be performed from and after such succession or the execution and delivery of such new lease. Effective as of such succession or the delivery of such new lease and the assignment of the Sublease and without notice, all privity of estate and privity of contract shall cease as between Landlord and Subtenant and Landlord shall be fully released of any and all obligations of any nature or kind as landlord under the Sublease thereafter accruing, provided that such person or entity, as successor to Tenant or as holder of Tenant's interest in a new lease, shall assume the obligations as sublessor under the Sublease, subject to the provisions of subparagraph (D) of Paragraph 2 of this Agreement, from and after the effective date of such assumption.

4. Right to Cure. If any act or omission of Tenant would give Subtenant the right, either immediately or after the lapse of time, to (i) terminate the Sublease, (ii) claim a partial or total eviction (actual or constructive) or, (iii) reduce or abate rent or additional rent due

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thereunder or to credit or offset any amounts against present or future rent due or to become due under the Sublease, Subtenant shall not exercise any such right: until (a) Subtenant shall have given written notice of such act or omission to Tenant, any leasehold mortgagee of Tenant's interest in the Lease and Landlord, (b) Tenant and Tenant's leasehold mortgagee have failed to remedy such default within the time period stated in the Sublease for effecting such cure, and (c) a reasonable period (but in no event less than 30 days) for remedying such act or omission shall have elapsed following the later of: (x) the failure of Tenant and Tenant's leasehold mortgagee to remedy such default and (y) the date on which Landlord shall have become entitled under the Lease to remedy the same, and Landlord shall not, within such period, have elected to commence to remedy such act or omission or cause the same to be remedied.

5. Limitation of Liability. In the event Landlord shall succeed to the position of sublandlord under the Sublease, Subtenant agrees that, subject to the provisions of subparagraph D. of Paragraph 2 of this Agreement, its sole remedies in the event of a default by Landlord in the performance of the obligations on its part to be performed, as sublandlord under the Sublease shall be (i) an action for specific performance by Landlord of its obligations as sublessor, (ii) to declare constructive eviction and vacate the Premises, (iii) to bring an action in a court of competent jurisdiction seeking a reduction in rent by reason of the diminution in the rental value of the Premises without the services which Landlord is not providing, or (iv) to bring an action for damages against Landlord; provided, however, that in no event shall Subtenant have recourse other than to the estate of Landlord in the Land and Building (or the proceeds thereof) for the satisfaction of any monetary award of damages, and in no event shall Subtenant have any recourse or right to seek recourse for the satisfaction of any monetary award of damages against Landlord (other than its estate in the Land and Building, or the proceeds thereof, as set forth above) or against any of the other assets of Landlord or against any partner, shareholder, officer, director or member of any entity which comprises Landlord or against the assets of any such partner, shareholder, officer, director or member.

6. No Waiver. Neither this Agreement, not the Sublease, nor any acceptance of fixed minimum rent or additional rent by Landlord from Subtenant, shall operate to waive, modify, release or in any manner affect Tenant's liability under the Lease.

7. Notice. All notices, or other communications required or permitted hereunder shall be in writing and shall be personally delivered, delivered by overnight courier, or mailed by certified mail, postage prepaid, with return receipt requested and addressed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

LANDLORD:  
NAUTILUS REAL ESTATE INC.

By: \_\_\_\_\_

Name:  
Title:

SCANDIC WALL LIMITED PARTNERSHIP

By: Scandic, Inc.  
Its General Partner

By: \_\_\_\_\_  
Name:  
Title:

TENANT:  
40 WALL DEVELOPMENT ASSOCIATES LLC

By: \_\_\_\_\_  
Name:  
Title:

SUBTENANT:

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT 1 TO FORM OF NON-DISTURBANCE,  
ATTORNMENMENT AND SUBORDINATION AGREEMENT

In the event of a dispute as to whether Landlord has unreasonably withheld its consent to an amendment, modification or replacement of a Sublease, such dispute shall be resolved as follows:

(i) Tenant or Subtenant, as the case may be, shall notify Landlord in writing that Landlord has improperly withheld its consent and in such notice shall designate an individual having not less than fifteen (15) years experience in leasing and/or management of office and/or mixed-use properties located within the Borough of Manhattan to act on its behalf. Landlord shall then appoint a similarly qualified individual to act on its behalf by written notice given to Tenant or Subtenant (whichever gave Landlord notice of the dispute), as the case may be, not later than ten (10) days thereafter. If Landlord shall have failed to appoint an individual within such ten (10) day period, such individual shall be appointed by the American Arbitration Association or its successor (the branch office of which is located in or closest to the City and State of New York), upon request of Tenant or Subtenant, as the case may be;

(ii) the two (2) individuals, appointed as above provided, shall appoint a third (3rd) individual, similarly qualified, by written notice given to both Landlord and Tenant or Subtenant, as the case may be, and if they fail to do so by written notice given within five (5) days after their appointment, such third (3rd) individual shall be appointed by the American Arbitration Association or its successor as provided above; and

(iii) the third individual, selected as aforesaid, shall render its decision within fifteen (15) days after being appointed, which decision shall be strictly limited to a determination of the question in dispute. The decision of such individual shall be in writing and, insofar as the same is in compliance with the provisions and conditions of this paragraph, the same shall be binding upon Landlord, Tenant and Subtenant. The third individual, in arriving at its decision, shall be entitled to consider all testimony and documentary evidence that may be presented at any hearing, as well as facts and data which it may discover by investigation and inquiry outside such hearings. If, for any reason whatsoever, a decision of the third individual shall not be rendered within fifteen (15) days after its appointment, then at any time thereafter before such decision shall have been rendered, Tenant or Subtenant, as the case may be, may apply to the Supreme Court of the State of New York or

to any other court having jurisdiction and exercising the functions similar to those now exercised by such court, to determine the question in dispute consistently with the provisions of this Agreement. The cost and expense of this dispute resolution procedure, and any subsequent judicial action or proceeding brought thereon or relating thereto, shall be borne by Tenant, without regard to the decision rendered in such action or proceeding.