
NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY,

as Lessor

AND

THE NEW YORK TIMES COMPANY

as Lessee

LEASE AGREEMENT

Dated as of December 1, 2001

The New York Times Company Project

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement"), made and entered into as of December 1, 2001, by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, party of the first part (the "Agency"), having its principal office at 110 William Street, New York, New York, and **THE NEW YORK TIMES COMPANY**, a corporation organized and existing under and by virtue of the laws of the State of New York (the "Lessee"), party of the second part, having an office at 229 West 43rd Street, New York, New York (capitalized terms used in the WHEREAS recitals to this Agreement but not defined therein shall have the meanings assigned to such terms in Section 1.1 hereof):

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Act the Agency was established for the benefit of The City of New York (the "City") and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and certain of its affiliates to induce the Lessee and such affiliates to (i) improve, install and maintain certain space leased by the Lessee and/or one or more of its affiliates in the building to be constructed at Site 8 South in the 42nd Street Redevelopment Area in New York, New York (the "Facility Realty Location"), and (ii) equip and outfit the Facility Realty Location or the floors leased to or owned by the Lessee or an Eligible Affiliate in those certain buildings located at 122 East 42nd Street, 229 West 43rd Street, 311 West 43rd Street, 122 Fifth Avenue, 1133 Sixth Avenue, 500-512 Seventh Avenue or 841 Broadway, New York, New York or 4725 34th Street, Long Island City, New York, all for the purpose of providing offices for the primary news gathering and executive editorial functions in connection with *The New York Times* and related operations of the Lessee and Eligible Affiliates (the "Project"); and

WHEREAS, in connection with the renovation and improving of the Facility Realty, the Agency intends to grant the Lessee financial assistance in the form of sales tax exemptions; and

WHEREAS, pursuant to the Ground Lease, 42nd St. Development Project, Inc. will lease Site 8 South in the 42nd Street Redevelopment Area to the Prime Landlord; and

WHEREAS, pursuant to the Prime Lease, the Prime Landlord will lease the Facility Realty to the Company; and

WHEREAS, the Company will sublet the Facility Realty to the Agency pursuant to the Company Lease; and

WHEREAS, pursuant to this Lease Agreement, the Facility Realty is to be further subleased by the Agency to the Lessee for use by the Lessee and by Eligible Affiliates in conducting the Company Business; and

WHEREAS, the Project Personalty will be separately leased by the Agency to the Lessee pursuant to the Equipment Lease Agreement; and

WHEREAS, Agency financial assistance and related Agency benefits are necessary to provide employment in, and beneficial for the economy of, the City and are reasonably necessary to induce the Lessee to proceed with the Project; and

WHEREAS, simultaneously with the execution of this Lease Agreement, the Agency and the Lessee have entered into the Project Agreement, pursuant to which the Lessee has undertaken certain obligations, covenants and agreements with the Agency; and

WHEREAS, by a resolution adopted on October 23, 2001, the Agency has authorized the execution and delivery of this Lease Agreement and the other Project Documents;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State of New York or of The City of New York, and neither the State of New York nor The City of New York shall be liable on any such obligation so incurred, but any such obligation shall be payable solely out of the amounts jointly and severally payable by the Lessee under the Lease Agreement):

ARTICLE I
Definitions and Representations

Section 1.1. Definitions. Terms not otherwise defined herein shall have the same meanings as used in the Project Agreement or in the Equipment Lease Agreement as each is hereinbelow defined. The following terms shall have the meanings specified in this Lease Agreement:

Act shall mean, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York), as amended, and Chapter 1082 of the 1974 Laws of New York, as amended.

Additional Facility Realty shall have the meaning ascribed thereto in Section 6.14 hereof.

An Affiliate of a Person shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term "control" (including the related terms "controlled by" and "under common control with") means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, (ii) the ownership, either directly or indirectly, of 51% of the voting stock or other equity interest of such Person, and (iii) the possession, directly or indirectly, of the power to make decisions regarding the hiring, firing, compensating and promoting of the employees of such Person, subject to applicable collective bargaining agreements.

Agency shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agreement shall mean this Lease Agreement, dated as of December 1, 2001, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Lessee, an officer of the Lessee authorized by the Lessee to carry out the acts and duties of an Authorized Representative under any Project Document; provided, however, that in each case for which a certification or other statement of

fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Business Day shall mean any day which shall not be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close.

City shall mean The City of New York.

Company shall mean NYT Real Estate Company LLC, a New York limited liability company, and its successors and assigns under the Prime Lease and the Company Lease.

Company Business shall mean the primary news gathering and executive editorial functions in connection with *The New York Times* and related operations of the Lessee and Eligible Affiliates.

Company Lease shall mean the Company Lease Agreement, dated as of even date herewith, between the Company and the Agency relative to the Facility Realty, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Eligible Affiliate shall mean, to the extent a Person has employees and offices within the City, a Person which is "controlled" by the Company. "Control" of a Person shall exist only when all three of the following criteria are met: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, (ii) the ownership, directly or indirectly, of fifty-one percent (51%) or more of the voting stock or other equity or ownership interest of such Person, and (iii) the possession, directly or indirectly, of the power to make decisions regarding the hiring, firing, compensating and promoting of the employees of such Person, subject to applicable collective bargaining agreements.

Equipment Lease Agreement shall mean the Equipment Lease Agreement, dated as of even date herewith, between the Agency and the Lessee, and shall include any and all amendments thereof and supplements thereto.

Event of Default shall have the meaning specified in Section 7.1 hereof.

Facility Realty shall mean those certain premises described in the Description of Facility Realty in the appendices attached hereto and to the Company Lease, and which on the Facility Realty Commencement Date will be subject to the Prime Lease, together with all structures, foundations, related facilities, fixtures (other than trade fixtures) and improvements now or at any time made or situated thereon (including the Tenant Improvements made pursuant to Section 2.1 hereof), and all replacements, improvements, extensions, substitutions, restorations,

repairs or additions thereto, subject, however, to the provisions of Sections 5.1, 6.13, 6.14, 7.2 and 9.2 hereof providing for the addition and release of portions of the Project Building.

Federal Bankruptcy Code shall mean the Bankruptcy Reform Act of 1978, as amended (constituting Title 11, United States Code, as amended).

Force Majeure shall have the meaning specified in Section 9.2 hereof.

Independent Accountant shall mean (x) any of the "Big Five" accounting firms, or (y) an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved in writing by the Agency (such approval not to be unreasonably withheld or delayed).

Lease Commencement Date shall mean December 21, 2001.

Legal Requirements shall have the meaning specified in Section 4.6 hereof.

Lessee shall mean The New York Times Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and its permitted successors and assigns pursuant to Section 6.1, 6.15 or 9.2 hereof.

Liens shall have the meaning specified in Section 6.6(a) hereof.

Loss Event shall have the meaning specified in Section 5.1(a) hereof.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount from any such proceeds, award, compensation or damages less all reasonable expenses (including reasonable attorneys' fees, reasonable adjusters' fees and other reasonable expenses of the Agency) incurred in the collection thereof.

Non-Qualified User shall mean any Person other than the Lessee or Eligible Affiliates who shall use or occupy any of the Facility Realty (whether by lease, license or otherwise).

Opinion of Counsel shall mean a written opinion of counsel who may (except as otherwise expressly provided in this Agreement) be counsel for the Lessee or the Agency, as the case may be, and, if such counsel shall not be an in-house counsel of the Lessee, who shall be reasonably acceptable to the Agency.

Organized Crime Figure shall mean any Person (A) who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) who, directly or indirectly controls, is controlled by, or is under common control

with, a Person who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of the Agency, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the City, having actual knowledge that such Person meets the criteria set forth in clauses (A) or (B) above of this definition, entered into a contract and is then doing business with such Person.

Permitted Encumbrances shall mean, as of any particular time,

- (i) the Ground Lease, the Prime Lease, the Company Lease and this Agreement;
- (ii) any mortgages now or hereafter granted by the Prime Landlord in the Facility Realty;
- (iii) any liens granted by the Lessee in Tenant Improvements to secure the financing thereof;
- (iv) liens for real estate taxes, assessments, levies and other governmental charges and impositions, and any liens for water and sewer rents and taxes, each to the extent not yet due and payable, or not payable under the Prime Lease by the Lessee;
- (v) such minor defects; irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility Realty and as do not, either singly or in the aggregate, materially impair the use of the property affected thereby for the purpose for which it was leased by the Lessee;
- (vi) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable or if payment is being contested, all if and to the extent permitted by Section 6.6 hereof;
- (vii) all title exceptions to which the Facility Realty is subject;
- (viii) any mechanic's lien imposed on the Project Building and which arises from work performed for the Prime Landlord or for any tenant of the Project Building other than the Lessee, or any judgment lien imposed on the Project Building and which arises from a judgment against the Prime Landlord or against any tenant of the Project Building other than the Lessee, or any lien of any nature whatsoever which is

imposed on the Project Building and which is not the responsibility of the Lessee to remove, bond or dispose of; and

(ix) all liens, encumbrances and matters to which the Prime Lease is now or hereafter shall be made subordinate.

Person shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or other legal entity.

Prime Landlord shall mean The New York Times Building LLC, and its successors and assigns under the Ground Lease and the Prime Lease.

Prime Lease shall mean that certain Agreement of Sublease (NYT), dated as of December 12, 2001, between the Prime Landlord and the Company, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Prohibited Person shall mean:

(i) any Person (1) that is in default, after notice and beyond any applicable cure period, of such Person's obligations under any material written agreement with the City, the State or any of their instrumentalities, or (2) that directly controls, is controlled by, or is under common control with a Person that is in default, after notice and beyond any applicable cure period, of such Person's obligations under any material written agreement with the City, the State or any of their instrumentalities, unless, in each instance, such default or breach either (x) has been waived in writing by the City, the State or any of their instrumentalities as the case may be or (y) is being disputed in a court of law, administrative proceeding, arbitration or other forum or (z) is cured within thirty (30) days after a determination and notice to the Lessee from the Agency that such Person is a Prohibited Person as a result of such default;

(ii) any Person that is an Organized Crime Figure;

(iii) any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof;

(iv) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects or the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders

of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended;

(v) any Person that is in default in the payment to the City of any real estate taxes, sewer rents or water charges totaling more than \$10,000, unless such default is then being contested in good faith in accordance with applicable Legal Requirements or unless such default is cured within thirty (30) days after a determination and notice to the Lessee from the Agency that such Person is a Prohibited Person as a result of such default; or

(vi) any Person (1) that has solely owned, at any time during the 3-year period immediately preceding a determination of whether such Person is a Prohibited Person, any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative Code of the City, or (2) that, directly or indirectly controls, is controlled by, or is under common control with a person that has owned, at any time in the 3-year period immediately preceding a determination of whether such Person is a Prohibited Person, any property which, while in the ownership of such person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such person pursuant to the Administrative Code of the City.

Project shall mean (x) the renovation and improving of the Facility Realty, including the making of all Tenant Improvements, for use and occupancy by the Lessee and/or Eligible Affiliates for use in the Company Business, and (y) the acquisition, equipping, furnishing, leasing, repair, replacement and maintenance of machinery, equipment, trade fixtures, furniture, furnishings and other items of tangible movable personalty, each to the extent used by the Lessee and/or Eligible Affiliates at Project Personalty Locations, including the Facility Realty, for use in the Company Business.

Project Agreement shall mean the Project Agreement, dated as of even date herewith, between the Agency and the Lessee, and shall include any and all modifications thereof and amendments thereto hereafter made in accordance therewith.

Project Building shall mean that certain building to be constructed on Site 8 South in the 42nd Street Redevelopment Area, New York, New York, and any substitutions, additions, repairs or improvements thereto.

Project Documents shall have the meaning ascribed thereto in the Project Agreement.

Project Personalty shall mean, collectively, the Facility Equipment, the Leased Personalty and the Maintenance Contracts.

Project Property shall mean, collectively, the Facility Realty and the Project Personalty.

Project Property Registry shall mean the registry maintained by the Agency at its office of all the Facility Equipment, the Leased Personalty, the Maintenance Contracts and the Tenant Improvements, as such registry shall be modified, amended or supplemented from time to time in accordance with Section 3.4 of the Project Agreement.

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption which the Agency shall make available to the Lessee in accordance with and substantially in the form set forth in the appendices to the Project Agreement, as the same may be amended and restated.

State shall mean the State of New York.

Tenant Improvements shall mean all improvements, additions, renovations, system upgrades, fixtures, alterations or modifications to any of the space comprising the Facility Realty for use by the Lessee and Eligible Affiliates, which is not property of the Prime Landlord under the Prime Lease and for which sales tax exemptions shall have been taken pursuant to the Sales Tax Letter.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of the execution and delivery of this Agreement.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 1.3. Representations and Warranties by Agency. The Agency makes the following representations and warranties to the Lessee as of the Lease Commencement Date:

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws

of the State, and is authorized and empowered to enter into and effectuate the transactions contemplated on its part in this Agreement and in each other Project Document to which it is a party and has taken all requisite action to carry out its obligations hereunder and thereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement and each other Project Document to which it is a party.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which it is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on its part and will not violate any provision of law (including the Act), any order of any court or agency of government, or its bylaws, or any material indenture, material agreement or other material instrument to which it is a party or by which it or any of its property is subject to or bound, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any such material indenture, material agreement or other material instrument.

(c) Assuming due and proper execution hereof and thereof by the Lessee, this Agreement and each other Project Document to which it is a party each constitutes the Agency's legal, valid and binding obligation enforceable against it in accordance with its terms, except as such validity, binding effect and enforceability may be limited by (and subject to) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally from time to time in effect and general principles of equity.

(d) There is no action or proceeding, other than West 41st Street Facility LLC v. The City of New York, et al. (Index #01/122765, Supreme Court, County of New York), of which the Agency has notice, pending by or against the Agency by or before any court or administrative agency that might adversely affect its ability to perform its obligations under this Agreement and under each other Project Document to which it is a party, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the date hereof in connection with the execution and delivery of this Agreement and of each other Project Document to which it is a party or in connection with the performance of its obligations hereunder and thereunder have been obtained.

Section 1.4. Findings by Agency. The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby finds and determines that the providing of financial assistance to the Lessee in connection with the Project is reasonably necessary to induce the Lessee to proceed with the Project and to preserve the competitive position of the Lessee in its industry.

Section 1.5. Representations and Warranties by Lessee. The Lessee makes the following representations and warranties to the Agency as of the Lease Commencement Date:

(a) The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is a party. The Lessee is duly qualified to do business in every jurisdiction in which the failure to so qualify would have a material adverse effect upon its affairs, properties, assets or condition (financial or otherwise).

(b) The execution, delivery and performance of this Agreement and each other Project Document to which it is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on the part of the Lessee and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or bylaws of the Lessee, or any material indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any such material indenture, agreement or other instrument.

(c) The assistance of the Agency in the providing of financial assistance in connection with the Project is reasonably necessary to induce the Lessee to proceed with the Project and to preserve the competitive position of the Lessee in its industry.

(d) The Tenant Improvements to be made to the Facility Realty are included within the definition of "project" under the Act.

(e) Assuming due and proper execution and delivery hereof and thereof by the Agency, each of this Agreement and each other Project Document to which it is a party constitutes the legal, valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms, except as such validity, binding effect and enforceability may be limited by (and subject to) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally from time to time in effect and general principles of equity.

(f) The Tenant Improvements to be made to the Facility Realty will not cause the Facility Realty to be in violation of any applicable Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(g) There is no action or proceeding pending by or against the Lessee by or before any court or administrative agency, other than West 41st Street Realty LLC v. The City of New York, et al. (Index #01/122765, Supreme Court, County of New York), that might materially and adversely affect the ability of the Lessee to perform its obligations under this Agreement or under any other Project Document to which it is a party and all authorizations,

consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and of each other Project Document to which it is a party or in connection with the performance of the obligations of the Lessee hereunder and thereunder have been obtained.

(h) No sales tax exemptions will be claimed by the Lessee under the Sales Tax Letter for any leasehold improvements or renovations other than with respect to the Facility Realty.

(i) The Project will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Lessee or any Eligible Affiliate from a location outside of the City but within the State to within the City, or in the abandonment of one or more of such plants or facilities of the Lessee or any Eligible Affiliate located outside of the City but within the State.

(j) No portion of the Facility Realty (and no sales or use tax exemption will be made available therefor under the Sales Tax Letter) will be primarily used in making retail sales to customers who personally visit the Facility Realty. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law; or (ii) sales of a service to such customers.

(k) The Project is included within the definition of "project" under the Act.

(l) The Lessee intends to operate the Facility Realty in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

ARTICLE II The Project

Section 2.1. The Project. (a) The Lessee will, on behalf of the Agency, on and after the Facility Realty Commencement Date and from time to time thereafter and in the ordinary course of its business, proceed with the making of Tenant Improvements to the Facility Realty, all to be effected in accordance with this Agreement, the Prime Lease, the Sales Tax Letter and the Project Agreement. All contractors, materialmen, vendors, suppliers and other Persons furnishing labor, services or materials for or in connection with the Tenant Improvements shall be selected by the Lessee.

(b) The Lessee shall be responsible for the payment of (i) all of the costs and expenses in connection with the preparation of any instruments of lease of the Facility Realty to the Agency, and the delivery of any such instruments and documents and their filing and recording, if required, (ii) all taxes and charges, if any, payable in connection with the leasehold conveyance effected pursuant to the Company Lease, or attributable to periods prior to the term of the Company Lease and this Agreement, and (iii) shipping and delivery charges and all other reasonable expenses or claims incurred by or on behalf of the Lessee in connection with the Tenant Improvements.

(c) At the request of the Agency to the Lessee, the Lessee shall provide such additional information and clarifications concerning any portion of the Tenant Improvements effected hereunder as shall be reasonably requested by the Agency for the purpose of confirming the Lessee's compliance with this Agreement or any other Project Document.

(d) The Lessee will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the effectuation by the Lessee of the Tenant Improvements and the operation of the Facility Realty, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance required to be maintained hereunder and under the Prime Lease with respect to the Facility Realty. The Lessee will further obtain or cause to be obtained all necessary permits, authorizations and licenses from appropriate authorities, authorizing the operation and use of the Facility Realty for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency promptly upon the Agency's request therefor.

(e) The Lessee shall take such action and institute such proceedings, and enforce such warranties, as shall be reasonably necessary to cause all contractors and material suppliers to complete their contracts in accordance with the terms of said contracts (subject to the independent right of the Lessee, in the exercise of its good faith business judgment, to waive or modify performance in whole or in part by any such contractor or supplier). The Agency will reasonably cooperate in any such action, proceeding or arbitration, at the Lessee's sole cost and expense, provided that the Agency shall not be required to take any action it does not deem to be

reasonable. Any amounts recovered by way of damages, credits, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, shall be paid to the Lessee.

(f) Title to, or a valid leasehold interest in, all materials and other property intended to be incorporated or installed as Tenant Improvements and as part of the Facility Realty shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first; provided, however, it is the intention of the parties that all rights to depreciation, tax credits and all other income tax benefits shall vest in and inure solely to the Lessee, and the Agency, at the request and at the sole cost and expense of the Lessee, will use reasonable efforts to cooperate with the Lessee to confirm such rights. The Agency makes no representation or warranty to the Lessee as to the availability of any such depreciation, tax credits or other income tax benefits. The Lessee shall take all action reasonably necessary to protect such title of, or leasehold interest in, the Agency in the Tenant Improvements against claims of any third parties.

(g) Concurrently with the execution of this Agreement, the Agency shall make the Sales Tax Letter available to the Lessee.

Section 2.2. Commitment to Project. The Lessee will, from time to time and in the ordinary course of its business, proceed with the Tenant Improvements to the Facility Realty, and such work will be effected in a first-class workmanlike manner, all on behalf of and as agent for the Agency, and all in accordance with the Sales Tax Letter, the Project Agreement, the Prime Lease and this Agreement. The costs of the Tenant Improvements shall be paid from funds of the Lessee, funds of the Prime Landlord provided to the Lessee, or borrowed funds otherwise made available to the Lessee. In the event that borrowed moneys are not sufficient to pay the costs necessary to complete the Tenant Improvements in full, the Lessee shall pay or cause to be paid that portion of such costs of the Tenant Improvements as may be in excess of the moneys derived from such borrowing and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the payments to be made under this Agreement or the Project Agreement.

Section 2.3. Municipal Violations Search. On or before the Facility Realty Commencement Date, the Lessee will obtain municipal violations searches from a title insurance company reasonably acceptable to the Agency with respect to the Agency's leasehold interest in the Facility Realty; Chicago Title Insurance Company and Fidelity National Title Insurance Company of New York are hereby approved by the Agency. The Agency makes no representation or warranty that it has been vested with or continues to have a valid leasehold interest in the Facility Realty.

Section 2.4. Limitation on Tenant Improvements. The Lessee agrees that the Sales Tax Letter will not be made available with respect to facilities or property that are primarily used in making retail sales to customers who personally visit such facilities which facilities constitute more than one third of the total project cost. For purposes of this paragraph, retail sales

shall mean: (i) sales by a registered vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law; or (ii) sales of a service to such customers.

ARTICLE III

Sublease of the Facility Realty and Rental Provisions

Section 3.1. Sublease of the Facility Realty. The Agency hereby subleases to the Lessee, and the Lessee hereby subleases from the Agency, as of the Facility Realty Commencement Date, the Facility Realty, upon and subject to the terms and conditions herein set forth. The Lessee shall, subject to the provisions of Sections 5.1, 6.1, 6.13, 6.14 and 9.2 of this Agreement, at all times during the term of this Agreement use and operate the Facility Realty as a qualified "project" for the operation of the Company Business in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Agreement. The Lessee shall not use or operate the Facility Realty or allow the Facility Realty or any part thereof to be used or operated for any unlawful purpose or in a manner which may constitute a nuisance, public or private, or make void or voidable any insurance required hereunder then in force with respect thereto.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Lease Commencement Date and expire on the earliest of (i) midnight, New York City time on June 30, 2030, (ii) the expiration of the Prime Lease, (iii) the expiration or earlier termination of the Company Lease, (iv) the assignment by the Lessee of all or substantially all of its interest in the Prime Lease to a Person as shall not constitute an Eligible Affiliate, (v) the termination or rescission of the Ground Lease or the Prime Lease, other than pursuant to Section 6.15 hereof, or (vi) such earlier date as this Agreement shall be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts such possession of the Facility Realty as the Agency has or may have therein.

Section 3.3. Rental Provisions. (a) Base Rent. The Lessee shall pay base rent to the Agency, without demand or notice, on the Lease Commencement Date in the amount of \$1.00, which shall constitute the entire amount of base rent payable hereunder, the receipt of which by the Agency is hereby acknowledged.

(b) Additional Rent. Throughout the term of this Agreement, the Lessee shall pay to the Agency any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, additional rent.

(c) Missed Payments. In the event the Lessee should fail to make or cause to be made any of the rental payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

Section 3.4. Obligation of Lessee Unconditional. The obligation of the Lessee to make the rental payments provided for in or under this Agreement and to maintain the Facility Realty in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person whatsoever. The Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee irrevocably waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement except as provided in this Agreement or, except as provided in this Agreement, to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder or under the Project Agreement.

ARTICLE IV
Maintenance, Taxes
and Insurance

Section 4.1. Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee (x) will keep or cause to be kept the Facility Realty in good and safe operating order and condition, ordinary wear and tear excepted, and (y) will make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure the operation of the Company Business by the Lessee and/or Eligible Affiliates at the Facility Realty, but such obligations of the Lessee under clause (y) above shall in no event be greater than the obligations imposed on the Company under the Prime Lease with respect thereto. All replacements, renewals and repairs shall be comparable in quality and class to the original work and be made and installed in compliance with all Legal Requirements including the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility Realty, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility Realty, or to furnish any utilities or services for the Facility Realty and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee shall have the right to make such alterations of, replacements of, repairs to and/or additions to the Facility Realty or any part thereof from time to time as it in its discretion may determine to be desirable, provided that (i) the operation of the Company Business by the Lessee and/or Eligible Affiliates at the Facility Realty is not materially impaired, (ii) such alterations, replacements, repairs and additions are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements, (iii) such alterations, replacements, repairs and additions are promptly and fully paid for by the Lessees in accordance with the terms of the applicable contract(s) or agreement(s) therefor, and in order that the Facility Realty shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) such alterations, replacements, repairs and additions do not change the nature of the Facility Realty so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated in the Act for use in the Company Business, (v) a leasehold interest therein shall be deemed to be vested in the Agency, and (vi) if required pursuant to the provisions of Section 4.1(e) hereof, the Lessee shall have furnished to the Agency a labor and materials payment bond, or other security, reasonably satisfactory to the Agency in accordance with said Section 4.1(e). All alterations, replacements, repairs and additions to the Facility Realty shall constitute a part of the Facility Realty, subject to this Agreement and the Company Lease, and the Lessee shall deliver or cause to be delivered to the Agency upon request appropriate documents as may be necessary to convey a leasehold interest in such property constituting Tenant Improvements to the Agency and to subject such property to this Agreement and the Company Lease, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility Realty or any part thereof, or the interest of the Lessee in the Facility Realty, this Agreement, the Company Lease or the Project Agreement, except for Permitted Encumbrances.

(d) The Lessee may, at its sole cost and expense, contest, by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any payment to a contractor installing Tenant Improvements or making renovations to the Facility Realty, if (1) neither the Facility Realty nor any material portion thereof, or any interest therein, would be in any danger of being sold, forfeited or lost, and (2) none of the Lessee, any Eligible Affiliate or the Agency would be in any danger of (x) any civil liability unless the Lessee shall have delivered prior written notice of such contest to the Agency and shall have provided such reasonable security to the Agency as the Agency may have requested of the Lessee (which security may consist of the posting of a surety or payment bond or other like security), or (y) any criminal liability.

(e) To the extent required by the New York State Finance Law §137, prior to executing any contract with any party for any improvement (as such term is defined in the New York Lien Law) in connection with the Facility Realty or the provision of any goods or services in connection therewith, and prior to authorizing any party to undertake such improvement (or the provision of such goods and services) without a contract, upon written request by the Agency, the Lessee shall deliver to the Agency a copy of the proposed contract therefor along with a bond, in compliance with State Finance Law §137 and otherwise reasonably satisfactory to the Agency, guaranteeing prompt payment of monies due all persons furnishing labor or materials for the contractor or his subcontractor in the prosecution of his work provided for in such contract. The Agency shall have no liability or responsibility for the cost of such bond(s).

(f) To the extent that the requirements of this Section 4.1 shall conflict with the requirements of the Ground Lease or the Prime Lease as they relate to the Facility Realty, the requirements of the Ground Lease and/or Prime Lease, as applicable, shall prevail, if and only if such requirements (i) do not violate the Act or other applicable law or (ii) cause the Project to cease to be a "project" under the Act.

Section 4.2. Removal of Tenant Improvements. The Lessee acknowledges that the Agency is providing certain sales and use tax exemptions and other benefits to the Lessee for the purpose of inducing the Lessee to proceed with the Project and the making of Tenant Improvements with respect to the Facility Realty and to comply with the covenants contained in this Agreement and the Project Agreement. The aforementioned benefits are being provided solely for the purpose of maintaining, expanding and upgrading, as the case may be, the operations of the Lessee and the Eligible Affiliates at the Facility Realty and not for the purpose of assisting any other facility or any other Person. To this end, the Lessee hereby represents, warrants and covenants to and with the Agency that none of the property constituting part of the Tenant Improvements or as may be acquired by the Lessee from time to time in the name of the Agency for installation or location at the Facility Realty but shall have not yet been delivered to

and installed at the Facility Realty will ever be acquired for any purpose other than for installation and use at or location in the Facility Realty by the Lessee and Eligible Affiliates for use in the Company Business nor will any of the Tenant Improvements ever be removed from the Facility Realty (either on a temporary or permanent basis) for utilization by any other facility by the Lessee, any Eligible Affiliate or any other Person.

Section 4.3. Taxes, Assessments and Charges. Except as provided below, the Lessee shall pay, when the same shall become due and payable, all taxes and assessments, general and specific (or payments in lieu of taxes), if any, levied and assessed upon or against the Facility Realty, this Agreement, the Company Lease, any estate or interest of the Agency or the Lessee in the Facility Realty, or the amounts payable hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments, Business Improvement District charges and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility Realty all of which are herein called "Impositions". The Agency shall have no responsibility for the payment of any Imposition. Nothing contained herein shall be deemed to require the Lessee to pay any amounts in excess of those required to be paid by the Lessee under the Prime Lease or the Ground Lease (which amounts shall be calculated as set forth in said documents), except if any such Imposition shall be levied or assessed upon this Agreement or the Company Lease or the amounts payable hereunder or under the Project Agreement. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance. The Lessee acknowledges that the provisions of section 412-a of the New York Real Property Tax Law and section 874 of the New York General Municipal Law do not entitle the Agency to exemption from water and sewer charges, special assessments and special ad valorem levies.

The Lessee may, at its sole cost and expense and in good faith, commence and prosecute proceedings to contest the amount or validity or application, in whole or in part, of any Imposition provided that (i) if the Lessee withholds payment, such proceeding shall suspend the execution or enforcement of any lien arising from the non-payment of such Imposition against this Agreement, the Company Lease, the Agency or the Lessee or against any of the amounts payable under this Agreement or under the Project Agreement, and (ii) none of the Lessee, any Eligible Affiliate or the Agency would be in any danger of (x) any civil liability unless the Lessee shall have delivered prior written notice of such contest to the Agency and shall have provided such reasonable security to the Agency as the Agency may have requested of the Lessee (which security may consist of the posting of a surety or payment bond or other like security), or (y) any criminal liability.

In the event the Facility Realty is exempt from Impositions solely due to the Agency's leasehold interest in the Facility Realty (other than State or City sales or use taxes, mortgage recording taxes and real property taxes intended to be exempted in accordance with the Sales Tax Letter, the Ground Lease or the Prime Lease), the Lessee shall pay all Impositions to

the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility Realty if the Lessee was the owner of record of the Facility Realty.

Section 4.4. Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of improvement, reconstruction or renovation of the Facility Realty, the Lessee shall maintain or cause to be maintained insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee, including, without limitation:

(i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Agency in a minimum amount of \$10,000,000 (or such greater amount as may then be required under the Prime Lease) aggregate coverage for personal injury and property damage;

(ii) Builders' All Risk Insurance or All Risks Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction, reconstruction or renovation of the Facility Realty, and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the Tenant Improvements and other property owned by the Lessee and located at the Facility Realty (the "Company Property") against loss or damage to the Facility Realty by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 80% of the actual replacement value of the Company Property and the Tenant Improvements as determined by a qualified insurance appraiser or insurer (selected by the Lessee), at the expense of the Lessee; any such insurance may provide that the insurer is not liable to the extent of commercially reasonable deductibles for a project of the size of the Project; provided, however, such property damage insurance coverage as shall satisfy the requirements of the Ground Lease and the Prime Lease shall be deemed to satisfy the requirements of this clause (ii) provided that the requirements of paragraphs (b) and (c) below are met;

(iii) Commercial general liability insurance in accordance with customary insurance practices for similar operations with respect to the Facility Realty and the business thereby conducted in a minimum amount of \$10,000,000 (or such greater amount as may then be required under the Prime Lease), which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding,

however, those obligations of the Lessee set forth in Section 6.2(a)(i) and (v) hereof and, to the extent not otherwise reasonably available at commercially reasonable rates, in Section 6.2(c) hereof), (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Eligible Affiliate thereof, provided, however, that at least \$500,000 is effected by a comprehensive liability insurance policy, and (C) shall not contain any provisions for a deductible amount in excess of commercially reasonable deductibles maintained by companies of similar size as the Lessee;

(iv) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or any contractor or subcontractor performing work with respect to the Facility Realty (the Lessees agreeing that they shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law); and

(v) Such other customary insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require; provided, however, such insurance coverage as shall satisfy the requirements of the Ground Lease and the Prime Lease shall be deemed to satisfy the requirements of this clause (v) provided that the requirements of paragraphs (b) and (c) below are met.

(b) All insurance required in Section 4.4(a) above shall be procured and maintained with financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and either (i) rated "VII/A-" or better by A.M. Best & Co., or (ii) approved by the Agency (such approval not be unreasonably withheld or delayed).

(c) Each of the policies evidencing the insurance required above to be obtained shall

(i) designate (except in the case of workers' compensation insurance) the Lessee and the Agency (and, if the Lessee so elects, the Prime Landlord) as additional insureds as their respective interests may appear;

(ii) provide that there shall be no recourse against the Agency for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its respective interest as such in the Facility Realty;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy;

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility Realty would, in the prudent management of its properties, require to be contained in policies or interim insurance contracts with respect to facilities similar to the Facility Realty owned or operated by it;

(viii) provide that all insurance proceeds with respect to loss or damage to the Tenant Improvements be endorsed and made payable to the Lessee (and, if the Prime Lease requires, the Prime Landlord) and shall name the Lessee (and, if the Prime Lease requires, the Prime Landlord) as the loss payee under the standard payee clause, which insurance proceeds shall be paid over to the Lessee (and, if the Prime Lease so requires, the Prime Landlord) as provided in Section 5.1 hereof; and

(ix) may be maintained as part of a blanket policy of insurance.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility Realty shall be paid and applied as provided in the Ground Lease and the Prime Lease.

(e) On the Facility Realty Commencement Date, the Lessee shall deliver or cause to be delivered to the Agency duplicate copies of insurance policies or certificates of insurance evidencing compliance with the insurance requirements of this Section 4.4. The Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) Upon each exercise by the Lessee in accordance with Section 6.14 hereof of its option to cause additional portions of the premises within the Project Building to be made subject to the Company Lease and this Agreement, the Lessee shall, on or prior to the addition

of such premises, cause such additional premises to be covered by the types of insurance required under this Section 4.4 as part of the Facility Realty.

(g) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.4. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.4 would or might be suspended or impaired.

(h) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESSES OR INTERESTS OF THE LESSEE.

Section 4.5. Advances by Agency. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement or under the Project Agreement, the Agency, after first notifying the Lessee of any such failure on its part and providing a period of ten days for the Lessee to cure such failure, may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder or thereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of amounts due hereunder or under any other Project Document shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.6. Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, any occupant, user or operator of the Facility Realty or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply, with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions; provided, however, that the Lessees need not comply with any of those Legal Requirements which (i) shall not relate to risks to either life or property, or (ii) the Prime Landlord is required under the terms of the Prime Lease to comply with so long as the Lessee is promptly and vigorously exercising good faith diligent efforts to enforce such compliance.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility Realty or any part thereof or interest therein being in any reasonable danger of being sold, forfeited or lost, and (ii) such contest shall not result in the Lessee, any Eligible Affiliate or the Agency being in any danger of (x) any civil liability for failure to comply therewith unless the Lessee shall have delivered prior written notice of such contest to the Agency and shall have provided such reasonable security to the Agency as the Agency may have requested of the Lessee (which security may consist of the posting of a surety or payment bond or other like security), or (y) any criminal liability for failure to comply therewith. If the Lessee shall contest any of the foregoing and so requests, the Agency shall, at the sole cost and expense of the Lessee, reasonably cooperate in such contest to the extent that such cooperation is necessitated by reason of the Agency's leasehold interest in the Facility Realty.

ARTICLE V
Damage, Destruction and Condemnation

Section 5.1. Damage, Destruction and Condemnation.

(a) In the event that at any time during the term of this Agreement the whole or part of the Facility Realty shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Prime Landlord and those authorized to exercise such right, or if the temporary use of the Facility Realty shall be so taken by condemnation or agreement (a "Loss Event"), the Agency shall have no obligation to rebuild, replace, repair or restore the Facility Realty, and the Lessee shall promptly give notice of such Loss Event to the Agency, generally describing the nature and extent thereof.

(b) If (i) the Facility Realty is damaged, rendered inaccessible, acquired or condemned as a result of a Loss Event such that (1) the Facility Realty is untenable, (2) the Prime Landlord does not restore the Facility Realty during the time period required in the Prime Lease or (3) the Prime Landlord or the Company terminates the Prime Lease in accordance with the terms thereof, or (ii) all or such material portion of the Project Building is damaged, destroyed, acquired or condemned as a result of a Loss Event and, as a result thereof, the Prime Landlord or the Company terminates the Prime Lease in accordance with the terms thereof, or (iii) a Loss Event shall occur such that the whole of the Facility Realty shall be acquired or condemned, then, in any of such events, within sixty (60) days of the termination of the Prime Lease, the Lessee shall deliver written notice of the same to the Agency, in which event this Agreement and the Company Lease shall terminate (subject to the survival of those provisions of this Agreement stated to survive the termination of this Agreement); provided, however, that if the termination of the Prime Lease is a result of the Company's exercise of its option to purchase the Facility Realty pursuant to the Prime Lease and/or the Ground Lease, this Agreement and the Company Lease shall not be terminated if the Company shall proceed to rebuild, replace, repair or restore the Facility Realty in a diligent manner to a condition of equivalent utility. Notwithstanding the foregoing, if the Company and the Prime Landlord shall determine, following a partial casualty or condemnation, to amend the Prime Lease to delete from the description of the property demised thereunder the damaged or condemned portion of the Facility Realty, and to continue the Prime Lease relative to the remainder of the Facility Realty, or the Prime Lease shall otherwise provide for its continuation, then the Lessee shall so notify the Agency promptly upon the making of such determination, and, provided that this Agreement shall not have been sooner terminated by reason of the occurrence and continuance of an Event of Default hereunder or otherwise, (A) the abandoned portion of the Facility Realty shall be released from this Agreement and the Company Lease but the remainder shall continue to be leased or subleased (as the case may be) under this Agreement and the Company Lease, (B) the Lessee shall cause the Company to promptly and diligently replace, repair or restore (or, if appropriate under the Prime Lease, cause the Prime Landlord to promptly and diligently replace, repair or restore) such remainder of the Facility Realty (but only to the extent that such remaining Facility Realty shall be functionally adequate or shall be capable of being restored to a tenantable condition) to

substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent utility, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and (C) the Lessee shall not by reason of payment of any such costs of replacement, repair or restoration be entitled to any reimbursement from the Agency, nor shall the amounts payable by the Lessee under this Agreement or under the Project Agreement be abated, postponed or reduced.

(c) Any rebuilding, replacements, repairs or restorations of the Facility Realty by the Lessee, the Company or the Prime Landlord, as the case may be, following a Loss Event shall

(i) automatically be deemed a part of the Facility Realty and leased to the Agency under the Company Lease (and to the extent such rebuilding, replacement, repair or restoration shall be with respect to Tenant Improvements, shall be owned by the Agency), and be subject to this Agreement and the Company Lease,

(ii) not change the nature of the Facility Realty as a qualified "project" as defined in and as contemplated by the Act, and

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for in accordance with the terms of the applicable contract(s) therefor.

(d) The Agency (at the sole cost and expense of the Lessee) and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of any claim or demand on account of any Loss Event, but the settlement, compromising, arbitration or adjustment of any such claim or demand shall be in the sole discretion of the Lessee.

(e) The Agency shall not be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed in, on or about the Facility Realty.

(f) The Lessee hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

ARTICLE VI
Particular Covenants

Section 6.1. Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement it will (i) maintain its existence, (ii) continue to be subject to service of process in the State and either be organized under the laws of the State, or under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets, (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, and (v) not become, nor permit an Eligible Affiliate to become, a Prohibited Person. Notwithstanding the provisions of the immediately preceding sentence, the Lessee may, however, without violating the foregoing, but upon prior written notice to the Agency, consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if (I) the Lessee is the surviving, resulting or transferee entity, as the case may be, or (II) in the event that the Lessee is not the surviving, resulting or transferee entity, as the case may be, such entity (A) is a solvent entity subject to service of process in the State and either organized under the laws of the State or organized under the laws of any other state of the United States and duly qualified to do business in the State, (B) is not, nor is it an Affiliate of, a Prohibited Person, (C) following the transaction is primarily engaged at the Project Personalty Locations in the Company Business, (D) assumes in writing all of the obligations of the Lessee contained in this Agreement and the other Project Documents to which the Lessee is a party, (E) in the opinion of an Independent Accountant delivered to the Agency, has a net worth (as determined by the Independent Accountant in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to the lesser of (x) that of the Lessee immediately prior to such merger, consolidation, sale or transfer or (y) \$300 million.

The Lessee further covenants and agrees that at all times during the term of this Agreement, it is and will continue to be duly qualified to do business in the State, and any entity succeeding to the rights of the Lessee under this Agreement shall be and continue to be duly qualified to do business in the State.

Section 6.2. Indemnity. (a) The Lessee shall at all times protect and hold the Agency harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, costs, expenses (including, without limitation, reasonable attorney's fees and court costs) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than losses arising from the gross negligence or willful misconduct of the Agency, arising upon or about or in connection with the Project Building or the Facility Realty or any portion of either thereof or resulting from, arising out of, or in any way connected with (i) the Tenant Improvements made or to be made to the Facility Realty, (ii) any defects (whether latent or patent) in the Project Building or the Facility

Realty or any portion of either thereof, (iii) the planning, design, site preparation, maintenance, repair, replacement, restoration, renovation, improvement, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project Building or the Facility Realty or any portion of either thereof, (iv) the effecting of any work done with respect to the Facility Realty or the Project Building or any portion of either thereof, (v) this Agreement or any other Project Document, or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby, or (vi) any violation of or failure to comply (whether on the part of the Lessee, the Prime Landlord or any other Person) with any Legal Requirement with respect to the use and occupancy of the Project Building or the Facility Realty or any portion of either thereof; provided, however, the indemnification by the Lessee set forth above shall not extend to any claim arising with respect to any portion of the Project Building with respect to which the Agency shall have an interest which it does not derive from or in connection with the Project. Such indemnification set forth above shall be binding upon the Lessee for any and all claims, demands, expenses, liabilities and taxes set forth herein arising from the Inducement Date or at any time thereafter throughout the term of this Agreement, and shall survive the termination of this Agreement. The Agency shall not be liable for any damage or injury to the person or property of the Lessee or any Eligible Affiliate or their respective directors, officers, employees, agents or servants or persons under the control or supervision of the Lessee or such Eligible Affiliate, or any other Person who may be about the Facility Realty or the Project Building, due to any act or negligence of any Person other than for the gross negligence or willful misconduct of the Agency.

(b) The Lessee releases the Agency from, and agrees that the Agency shall not be liable for and agrees to indemnify and hold the Agency harmless against, any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by the Agency with respect to any of the matters set forth in subdivision (i) through (vi) of Section 6.2(a) hereof or at the direction of the Lessee or any Eligible Affiliate thereof with respect to any of such matters above referred to. The Agency shall promptly notify the Lessee in writing of any claim or action brought against the Agency in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility Realty in any manner which violates Federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the Lessee's knowledge, the Facility Realty does not contain any Hazardous Materials which are or have been used in any manner which violates Federal, State or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement,

handling, production or disposal of Hazardous Materials. Without limiting the foregoing, the Lessee shall not cause or permit the Facility Realty or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any tenant or subtenant of the Lessee, a release of Hazardous Materials onto the Facility Realty or any portion thereof or onto any other property from the Facility Realty. The Lessee shall comply with, and exercise good faith diligent efforts to ensure compliance by all tenants or subtenants of the Lessee at the Facility Realty, with all applicable Federal, State and local laws, ordinances, rules and regulations as may relate to the Facility Realty, whenever and by whomever triggered, and shall obtain and comply with, and exercise good faith diligent efforts to ensure that all tenants or subtenants of the Lessee at the Facility Realty obtain and comply with, any and all approvals, registrations or permits required thereunder. The Lessee shall (i) take such action as is necessary to clean up and/or encapsulate and/or remove all Hazardous Materials, on, from, or affecting the Facility Realty (x) in accordance with, and to the extent required by, all applicable Federal, State and local laws, ordinances, rules and regulations, and (y) in accordance with, and to the extent required by, the applicable orders and directives of all Federal, State and local governmental authorities, and (ii) defend, indemnify, and hold harmless the Agency from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, but in each case that relate to the Facility Realty; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials relating to the Facility Realty; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials arising from the Facility Realty, and/or (z) any violation of laws, orders, regulations, requirements or demands of governmental authorities, or any requirements of the Agency, which are based upon or in any way related to such Hazardous Materials arising from the Facility Realty including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Lessee may have to the Agency at common law, and the indemnifications, releases and hold harmless provisions set forth herein shall survive the termination of this Agreement.

(d) The indemnifications and protections set forth in this Section 6.2 shall be extended to the Agency's members, directors, officers, employees, agents and servants and persons under its control or supervision.

(e) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.4 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof, and with respect to Section 6.2(c) hereof, only to the extent such insurance is reasonably available at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the indemnifications, releases and hold harmless obligations of the Lessee contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Agency relating to the enforcement of the provisions herein specified.

(f) For the purposes of this Section 6.2, neither the Lessee nor any Eligible Affiliate thereof shall be deemed an employee, agent or servant of the Agency, or a person under the control or supervision of the Agency.

(g) The Agency acknowledges and agrees that if any claim is made against or involving the indemnified parties or if any suit is commenced which names the indemnified parties as defendant(s) or co-defendant(s) or joins the indemnified parties as necessary party(ies), which in either case gives rise to the Lessee's indemnity as more fully provided in this Section 6.2, then, the Lessee's obligation to indemnify the indemnified parties and to hold the indemnified parties harmless from and against any such claim or liability as more fully provided in this Section 6.2 shall be fully satisfied if the Prime Landlord or the insurance carrier for the Prime Landlord pays any such claim or liability or undertakes and conducts the defense of any such suit and thereafter pays any such claim or liability, if any. The Agency further acknowledges and agrees that if any of the indemnified parties incurs any expense or is found liable in connection with any claim or suit (regardless of who conducts the defense of such claim or suit), and if such liability is the subject of the indemnity set forth in this Section 6.2, then, prior to and as a condition to the Lessee making any payment to the indemnified party(ies), the indemnified party(ies) shall assign to the Lessee any claim (or right or remedy) that it (or they) may have against any party (including the Prime Landlord under the Prime Lease) in respect of such claim, suit or expense (so that the Lessee shall succeed to any such claim, right or remedy).

Section 6.3. Compensation and Expenses of Agency. The Lessee shall pay the fees and reasonable costs and expenses (including legal, accounting and other administrative expenses) of the Agency together with any reasonable fees and disbursements incurred by the Agency's Project Counsel and General Counsel in performing services for the Agency in connection with this Agreement, the Company Lease, the Project Agreement, the Sales Tax Letter or any other Project Document.

Section 6.4. Non-Encumbering of Interest in Facility Realty. The Agency shall not encumber (other than Permitted Encumbrances) or assign its interest in the Facility Realty or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1, 6.13, 6.14, 7.2, 8.1 and 9.2 hereof, without the prior written consent of the Lessee and any purported encumbering without such consent shall be void.

Section 6.5. Annual Certificate. (a) Upon the written direction of the Agency, the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee certifying (i) that the insurance the Lessee maintains complies with the provisions of Section 4.4 of this Agreement, that such insurance has been in full force and effect at all times during the preceding fiscal year of the Lessee, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect, (ii) that the Agency has a valid leasehold interest in the Facility Realty and that all property constituting the Facility Realty is subject to the leasehold interest of the Company Lease and this Agreement, (iii) whether an "event of default" exists under the Prime Lease or written notice of an uncured default has been received by the Lessee under the Prime Lease, and (iv) whether the Lessee has availed itself of the benefits of the Sales Tax Letter in compliance with the requirements of the Sales Tax Letter and the Project Agreement. In addition, upon twenty (20) days prior request by the Agency, the Lessee will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Lessee as to whether any default shall exist on the part of the Lessee in those provisions of this Agreement or the Project Agreement as shall be the subject of the request (which request must be specific in nature), and if so, the details thereof and the action proposed to be taken by the Lessee to cure the same.

(b) The Lessee shall promptly notify the Agency of the occurrence and continuance of any Event of Default or any event which with notice and/or lapse of time would constitute an "event of default" under the Prime Lease or an Event of Default under this Agreement or any other Project Document of which it has actual notice or knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the Event of Default or default and the steps, if any, being taken to cure said Event of Default or default. If no steps have been taken, the Lessee shall state this fact in the notice.

Section 6.6. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility Realty or any part thereof or the interest therein of the Agency or the Lessee or against any of the rentals or other amounts payable under this Agreement, the Company Lease or the Project Agreement or the interest of the Lessee under this Agreement or under any other Project Document other than (w) Liens granted by the Lessee in Tenant Improvements to secure the financing or re-financing of the costs thereof, (x) to the extent payable by the Company under the Prime Lease, Liens for Impositions (as defined in Section 4.3 hereof) not yet payable, (y) Permitted Encumbrances, or (z) Liens being contested as permitted by Section

6.6(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency, and take all commercially reasonable action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge or bonding in full thereof and to remove (including by bonding) or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility Realty or the amounts payable under this Agreement or under any other Project Document.

(b) The Lessee may at its sole cost and expense contest, by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility Realty or any part thereof or interest therein, or in this Agreement, or in any of the rentals or other amounts payable under this Agreement or under any other Project Document, (2) neither the Facility Realty nor any interest therein would be in any danger of being sold, forfeited or lost, and (3) neither the Lessee or the Agency would be in any danger of (x) any civil liability for failure to comply therewith unless the Lessee shall have delivered prior written notice of such contest to the Agency and shall have provided such reasonable security to the Agency as the Agency may have requested of the Lessee (which security may consist of the posting of a surety or payment bond or other like security), or (y) any criminal liability for failure to comply therewith.

(c) At the written request of the Agency, the Lessee shall provide to the Agency all reasonable information as may be requested with respect to any Lien (as described in Section 6.6(a) hereof), the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Lessee in connection therewith.

Section 6.7. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that, subject to Permitted Encumbrances (and any other title matters), so long as the Lessee shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Lessee shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Facility Realty without molestation by or from the Agency or any Person claiming through the Agency. The Lessee covenants and agrees that the Agency shall have, hold and enjoy, during the term hereof, peaceful, quiet and an undisputed leasehold interest in the Facility Realty, and the Lessee (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.8. Further Assurances. The Lessee and the Agency will each do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Lessee, as the Agency or the Lessee deem reasonably necessary or advisable for the

implementation, effectuation, correction, confirmation or perfection of this Agreement and the other Project Documents.

Section 6.9. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY REALTY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY REALTY, OR THE SUITABILITY OF THE FACILITY REALTY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR ANY OTHER PERSON. NEITHER THE LESSEE NOR ANY PERSON OR AFFILIATE UNDER THE CONTROL OF THE LESSEE SHALL ASSERT A CLAIM AGAINST THE AGENCY ON THE BASIS THAT THE FACILITY REALTY IS NOT SUITABLE OR FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY AFFILIATE THEREOF OR OTHER PERSON UNDER THE CONTROL OF THE LESSEE FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE FACILITY REALTY OR THE USE OR MAINTENANCE OF ANY THEREOF OR THE FAILURE OF OPERATION OF ANY THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT OF ANY THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF ANY THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.10. Limitation of Tax Exemptions. The Lessee shall claim no tax exemptions under the Sales Tax Letter for any leasehold improvements or renovations other than with respect to the Tenant Improvement Locations.

Section 6.11. Enforcement of Rights Under Prime Lease Against Prime Landlord. The Lessee covenants and agrees that to the extent that the Prime Landlord is obligated to the Company under the Prime Lease to comply (or to cause tenants in the Project Building to comply) with Legal Requirements (the foregoing covenants of the Prime Landlord being the "Prime Landlord Covenants"), the Lessee shall cause the Company not to amend, waive or modify in any material respect, or permit the amendment, waiver or modification in any material respect of, any of the Prime Landlord Covenants without the prior written consent of the Agency (which consent will not be unreasonably withheld or delayed), and upon the written direction of the Agency, the Lessee shall promptly exercise good faith diligent efforts to cause the Company to enforce the Prime Landlord Covenants against the Prime Landlord.

Section 6.12. [Reserved]

Section 6.13. Release of Portions of the Facility Realty. (a) Upon receipt by the Agency of written notice from an Authorized Representative of the Lessee, describing any floor or partial floor of the Project Building comprising part of the Facility Realty and the date, which shall be a Business Day not sooner than thirty (30) days from the receipt by the Agency of such

notice, upon which such floor or partial floor of the Project Building comprising part of the Facility Realty is to be released from the leasehold estates of the Company Lease and of this Agreement, then, to the extent then permitted under applicable law, the Agency shall on the date indicated in such notice and at the sole cost and expense of the Lessee, enter into such amendments to the Company Lease and to this Agreement, and shall take such further action to effectuate such amendments as the Lessee may reasonably request, to effect or facilitate such release of the floor or partial floor.

(b) Subject to the provisions of Section 9.3(b) hereof, the Lessee shall have the right to have up to twenty percent (20%) of the aggregate rentable square feet of the Facility Realty used or occupied by Persons constituting Non-Qualified Users (whether by sublease, license or otherwise) (the "Sublet Space Limitation"), provided that no such use or occupancy would violate Agency Requirements. In the event that more than twenty percent (20%) of the aggregate rentable square feet of the Facility Realty shall be used or occupied by Persons constituting Non-Qualified Users (whether by sublease or otherwise), the Lessee shall promptly deliver written notice thereof to the Agency. Thereupon, the Agency in its sole discretion, may elect that this Agreement, the Company Lease and each other Project Document shall be terminated.

(c) Notwithstanding the foregoing, in the event the use or possession of any portion of the Facility Realty shall at any time be for a purpose or by a Person which is not a qualified "project" as defined in the Act, the Lessee shall promptly deliver written notice to such effect to the Agency, and the Lessee shall, upon receipt of written notice from the Agency to such effect, proceed with diligent good faith efforts to cause such use or possession to be for a purpose and by a Person within the definition of qualified "project" as defined in the Act, or failing that, to cause such portion of the Facility Realty so used or possessed to no longer be included in the leasehold estates of the Company Lease and of this Agreement. The Agency shall cooperate with the Lessee and execute such documents or other such instruments, at the sole cost and expense of the Lessee, as the Lessee shall reasonably request, to effect such release.

Section 6.14. Additional Facility Realty. The Lessee shall have the right, from time to time, to cause the Company to lease to the Agency pursuant to the Company Lease additional premises demised under the Prime Lease (the "Additional Facility Realty") and such Additional Facility Realty shall be made subject to the Company Lease and this Agreement, on the condition, however, that:

(i) at least thirty (30) days prior to the proposed letting, the Lessee shall have delivered to the Agency a certificate of an Authorized Representative of the Lessee stating the intention of the Lessee to effect such letting, and certifying (A) as to the Additional Facility Realty to be leased to the Agency and the proposed date of such letting which date shall be a Business Day (the "Additional Facility Realty Closing Date"); (B) as to the aggregate rentable square feet which such Additional Facility Realty comprises; (C) as to the aggregate rentable square feet of Facility Realty which the Agency would lease (as the case may be) after such letting; (D) that no Non-Qualified User shall be

occupying or using more than twenty percent (20%) of the Additional Facility Realty; (E) that the space comprising the Additional Facility Realty will either remain vacant or be occupied and used by the Lessee and/or other Eligible Affiliates in the Company Business; and (F) that no "event of default" exists under the Prime Lease and no Event of Default exists under this Agreement; and

(ii) on the Additional Facility Realty Closing Date, the Agency shall, in its discretion, amend the Company Lease to add to the description of premises a leasehold interest in the Additional Facility Realty from the Lessee pursuant to the Company Lease and the Agency shall receive, unless waived in writing by the Agency:

(A) an endorsement to the public liability and other insurance referred to in Section 4.4 hereof including such Additional Facility Realty within the property covered by such insurance;

(B) an updated leasehold title report (together with municipal searches) described in Section 2.3 hereof including the Additional Facility Realty within such report; provided, however, that such report shall not indicate any exceptions to title which would subject the Agency to liability and for which the Agency does not receive an indemnity satisfactory to the Agency; and

(C) a certificate of an Authorized Representative of the Lessee certifying, as of the Additional Facility Realty Closing Date, as true and correct the matters set forth in Section 6.14(i) above;

then, on the Additional Facility Realty Closing Date, if no "event of default" shall exist under the Prime Lease and no Event of Default shall exist under this Agreement or the Project Agreement, the Agency shall accept a leasehold interest in the Additional Facility Realty, and shall enter into an amendment to this Agreement and to the Company Lease to reflect the inclusion of the Additional Facility Realty in the Facility Realty leased under this Agreement, the Prime Lease and the Company Lease.

Section 6.15. Amendments of Project Documents. The Agency hereby acknowledges that upon completion of the Project Building, the Lessee may elect to convert the Company's leasehold interest in the Facility Realty to an ownership interest. In the event of such a conversion, the Agency agrees, to the extent then permitted under applicable law, and at the sole cost and expense of the Lessee, to enter into such amendments of the Project Documents as shall be reasonably necessary to reflect such changes in interest of the Company in the Facility Realty.

ARTICLE VII
Events of Default; Remedies

Section 7.1. Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee to pay any amount that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.2, 4.3, 4.4, 4.5, 4.6, 6.2, 6.3, 6.13, 6.14 or 9.2 (except with respect to assignments or transfers of this Agreement) hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(b) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Section 6.1 or 9.2 (as to transfers or assignments) hereof;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) hereof) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

(d) The Lessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) take any action for the purpose of effecting any of the foregoing, or (vii) be adjudicated a bankrupt or insolvent by any court of competent jurisdiction;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of its assets, (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Lessee shall be entered and continue unstayed and in effect, for a period of

ninety (90) days or (iv) the Lessee shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code or any order for relief against the Lessee shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made by or on behalf of the Lessee with the Lessee's knowledge thereof (i) in the application and related materials submitted to the Agency for approval of the Project or its financing, or (ii) herein, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or pursuant to any other Project Document, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made; or

(g) An "Event of Default" under the Project Agreement shall occur and be continuing.

Section 7.2. Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

(a) The Agency may terminate this Agreement, in which case this Agreement and all of the right, title and interest herein granted or vested in the Lessee shall cease and terminate (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of the term of this Agreement), unless prior to such termination all accrued and unpaid payments shall have been paid and all such defaults shall have been fully cured. No such termination of this Agreement shall relieve the Lessee of its liabilities and obligations under Section 6.2, 6.3, 7.6 or 9.11 hereof (or with respect to the payment of any amount due under this Agreement) and such liabilities and obligations shall survive any such termination; and

(b) The Agency may (i) bring an action for damages, injunction or specific performance, and/or (ii) convey all of the Agency's right, title and interest in the Facility Realty to the Lessee, suspend or terminate the Sales Tax Letter or not re-confirm the Sales Tax Letter on any annual confirmation date and/or require the Lessee to surrender the Sales Tax Letter to the Agency for cancellation, and/or (iii) take whatever action at law or in equity as may appear necessary or desirable to collect payment of amounts due under this Agreement, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement.

In the event that the Lessee fails to make any payment required under this Agreement, the payment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid and bear interest at the annual rate of eighteen percent (18%) per annum until the date payment is made.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from its obligations hereunder, all of which shall survive any such action.

Section 7.3. Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

Section 7.4. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the parties making such waiver. No course of dealing between the Agency and the Lessee or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

Section 7.5. Effect of Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or any other Project Document on account of any Event of Default hereunder or under any other Project Document shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.6. Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Agreement beyond any applicable grace or cure period during which the Lessee is diligently pursuing such cure, and the Agency should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE VIII
Termination of this Agreement

Section 8.1. Option to Terminate this Agreement. (a) The Lessee shall have the option to terminate this Agreement on any date during the term hereof by paying all payments due hereunder. The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee stating that the Lessee has elected to exercise its option to terminate this Agreement and the date on which such termination is to be made.

(b) The Lessee shall terminate this Agreement by paying all amounts due and payable under this Agreement, the Project Agreement and the other Project Documents (other than the Prime Lease) to which the Lessee is a party, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 6.2, 6.3 and 9.11 hereof (or with respect to the payment of any amount due under this Agreement).

(c) Upon termination of this Agreement, the Agency, upon the written request and at the sole cost and expense of the Lessee, shall execute such instruments as the Lessee may reasonably request to discharge this Agreement and the Company Lease with respect to the Facility Realty.

ARTICLE IX
Miscellaneous

Section 9.1. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the rental payments or other payments required under the terms hereof, or to comply with Section 4.2, 4.3, 4.4, 4.5, 4.6, 6.1, 6.2, 6.3, 6.12, 6.13, 6.14, 6.15 or 9.2 hereof), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. The settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

The Lessee shall promptly notify the Agency upon the occurrence of each force majeure, describing such force majeure and its effects in reasonable detail. The Lessee shall also promptly notify the Agency upon the termination of each such force majeure occurrence. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any force majeure and any of the contentions contained in any such notice received from the Lessee.

Section 9.2. Assignment or Sublease. (a) The Lessee shall not at any time assign or transfer this Agreement, or sublet all or part of the Facility Realty to any Person other than to an Eligible Affiliate, without in each case the prior written consent of the Agency (which consent may be unreasonably withheld); provided, that, in the event the Agency shall provide such consent, (i) the Lessee shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (ii) any assignee or transferee of the Lessee, or sublessee of all or substantially all of the Facility Realty, shall have executed and delivered to the Agency an instrument, in form for recording, in and by which the assignee, transferee or sublessee shall have assumed in writing and have agreed to keep and perform all of

the terms of this Agreement (and of each other Project Document to which the Lessee shall be a party) on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (iii) in the Opinion of Counsel, such assignment or transfer shall not cause the obligations of the Lessee for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Lessee shall be party, to cease to be legal, valid and binding on and enforceable against the Lessee, (iv) any assignee, transferee or sublessee shall utilize the Facility Realty as a qualified "project" as defined in the Act and for the general purposes specified in the recitals to this Agreement, (v) such assignment or transfer shall not violate any provision of this Agreement or any other Project Document, and (vi) such assignment or transfer shall in no way diminish or impair the Lessee's obligation to carry or cause to be carried the insurance required under Section 4.4 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment or transfer. The Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least seven (7) days prior to the date of execution thereof.

(b) Notwithstanding the foregoing, the Lessee shall have the right, without any change or reduction in the benefits afforded to the Lessee in the Project Agreement, to sublet (subject to the provisions of Section 6.13 hereof) portions of the Facility Realty to one or more Non-Qualified Users not in excess of the Sublet Space Limitation, provided in each case that (1) no such sublessee is a Prohibited Person, (2) the Lessee shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document or Project Document (Tenant Improvements) to which it shall be a party, (3) any sublessee shall utilize the Facility Realty as a qualified "project" as defined in the Act, and (4) prior to the entering into of such sublease, the Lessee shall have delivered to the Agency:

(i) a copy of the proposed sublease indicating the proposed term, all renewal options, and the amount of rentable square feet to be sublet,

(ii) the identity of the proposed subtenant and the identity of its principal officers, and, if not a publicly traded corporation, the identity of its principal stockholders, and the proposed use of the space to be sublet,

(iii) the precise location of the space to be sublet,

(iv) evidence reasonably satisfactory to the Agency that such sublease will not diminish or impair the obligation of the Lessee to carry the insurance required under Section 4.4 hereof, and that such insurance coverage shall in no manner be limited by such sublease, and

(v) evidence reasonably satisfactory to the Agency that such proposed sublease will not result in more than the Sublet Space Limitation being used or occupied by Non-Qualified Users.

In the event the Agency shall reasonably request additional information with respect to the proposed sublease or subtenant, the Lessee shall deliver such information to the Agency promptly after such request. In the event that any condition set forth above shall not be satisfied, the Lessee may, in accordance with Section 6.13 hereof, cause such proposed sublet space to be excluded from the Facility Realty leased (1) by the Lessee to the Agency pursuant to the Company Lease, and (2) by the Agency to the Lessee pursuant to this Agreement.

(c) Any consent by the Agency to any act of assignment or transfer of this Agreement, or sublease in whole or in part of the Facility Realty, shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Agency consent to any other or subsequent assignment or transfer of this Agreement, or sublease in whole or in part of the Facility Realty, or as modifying or limiting the rights of the Agency or the obligations of the Lessee under this Section 9.2.

Section 9.3. Notices. All notices, certificates, requests, approvals, consents or other communications hereunder shall be in writing and shall be sent by registered or certified United States mail, postage prepaid, or by hand delivery (receipt acknowledged), telefacsimile (receipt acknowledged) (or other medium of electronic communication), Federal Express or other nationally recognized overnight courier service, addressed:

(a) if to the Agency, to the Chairman, New York City Industrial Development Agency, 110 William Street, New York, New York 10038, with a copy to the Executive Director of the Agency at the same address; and

(b) if to the Lessee, to The New York Times Company, 229 West 43rd Street, New York, New York 10036, Attention: Vice President of Real Estate Development, with a copy to the General Counsel at the same address, with additional copies to Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attention: Ross F. Moskowitz, Esq., and Swidler Berlin Shereff Friedman, LLP, 405 Lexington Avenue, New York, New York 10174, Attention: Martin D. Polevoy, Esq.

The Agency and the Lessee may, by like notice, designate any further or different persons or addresses to which subsequent notices, certificates, requests, approvals, consents or other communications shall be sent. Any notice, certificate, requests, approvals, consents or other communication hereunder shall, except as may expressly be provided herein, (i) if delivered by hand or by Federal Express (or other nationally recognized overnight courier service) be deemed to have been delivered or given as of the date received or delivery rejected as indicated on the return receipt, or (ii) if delivered by mail, be deemed to have been received on the third day after mailing.

Section 9.4. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility Realty with respect to the subject matter hereof, other than any Project Document or other document being executed contemporaneously herewith.

Section 9.5. Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.6. Inspection of the Facility Realty. The Lessee will permit the Agency, or its duly authorized agents, at all reasonable times upon reasonable prior notice to enter upon the Facility Realty but solely for the purpose of (x) assuring that the Lessee is operating the Facility Realty, or is causing the Facility Realty to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, or (y) ascertaining, after reasonable belief by the Agency of the occurrence thereof, whether or not a Relocation Reduction (as defined in the Project Agreement), a Non-Relocation Reduction (also as defined in the Project Agreement) or a Headquarters or Designated Operations and Facilities (as defined in the Project Agreement) relocation has occurred; but not for any purpose of assuring the proper maintenance or repair of the Facility Realty as such latter obligation is and shall remain solely the obligation of the Lessee.

Section 9.7. Effective Date; Counterparts. This Agreement shall become effective upon its delivery. It may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.8. Binding Effect. This Agreement shall be binding upon the Agency and the Lessee and their respective successors and assigns, and inure to the benefit of the Agency and to no other Person.

Section 9.9. Law Governing. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State, without regard to conflict of law principles.

Section 9.10. Tax Credits and Deductions. It is the intention of the parties that any tax credit or comparable credit, and all deductions from income taxes attributable to the Facility Realty, which may ever be available accrue to the benefit of the Lessee and the Lessee shall, and the Agency upon advice of counsel (at the sole cost of the Lessee) may, make any election and take other action in accordance with the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereunder, as may be necessary to entitle the Lessee to have such benefit.

Section 9.11. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants

or conditions of this Agreement or the Facility Realty or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 9.12. Non-Discrimination. (a) At all times during the term of this Agreement, the Lessee shall comply with all federal, state and local laws relating to non-discrimination, and the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee and Affiliates at the Facility Realty are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex, and state that the Lessee is an equal opportunity employer.

(c) The Lessee shall furnish to the Agency all information reasonably required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

Section 9.13. No Recourse under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency.

All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee, and not of any shareholder, director, officer, employee or agent of the Lessee or any Eligible Affiliate in his individual capacity, and no recourse shall be had for any claim based thereon or hereunder against any shareholder, director, officer, employee or agent of the Lessee or any Eligible Affiliate.


Section 9.14. Requirements of Prime Lease. This Agreement is and shall be subject and subordinate in all respects to the Prime Lease and to all the matters to which the Prime Lease is subject and subordinate.

Section 9.15. No Third Party Beneficiaries. The Agency and the Lessee agree that all representations, warranties, covenants and agreements set forth in this Agreement shall be for the sole and exclusive benefit of the Agency and the Lessee and for no other Person (except as provided in Section 6.2(d) hereof with respect to members, directors, officers, employees, agents and servants of the Agency and persons under the Agency's control or supervision) whatsoever as a third party beneficiary hereunder.

Section 9.16. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be subscribed hereto by an authorized officer, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By 
Eric J. Deutsch
Executive Director

THE NEW YORK TIMES COMPANY

By _____
Name:
Title:

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be subscribed hereto by an authorized officer, all being done as of the year and day first above written.

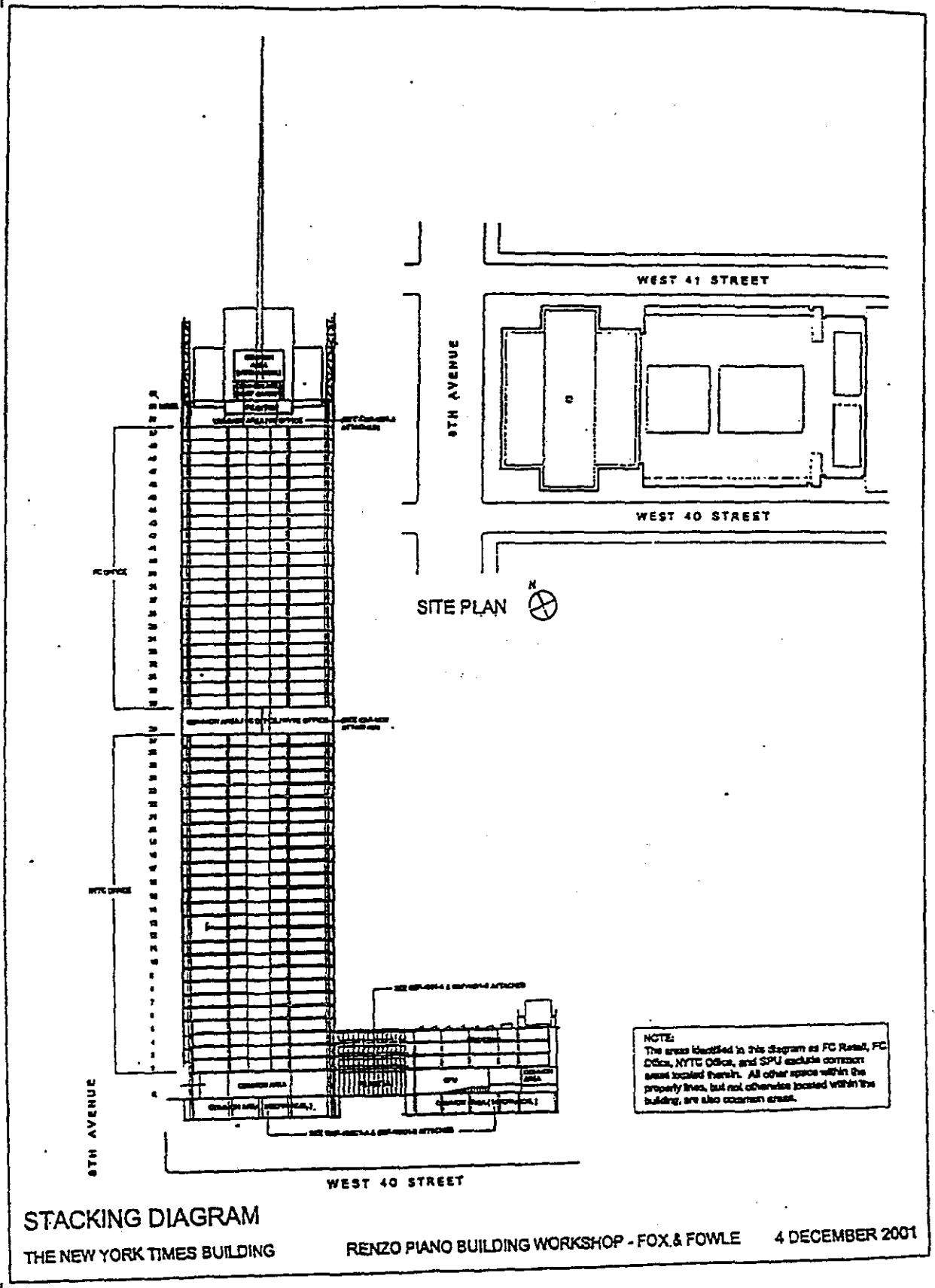
NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By _____
Eric J. Deutsch
Executive Director

THE NEW YORK TIMES COMPANY

By James C. Lesserson
Name: JAMES C. LESSERSON
Title: VICE PRESIDENT, FINANCE
AND CORPORATE DEVELOPMENT

DESCRIPTION OF FACILITY REALTY



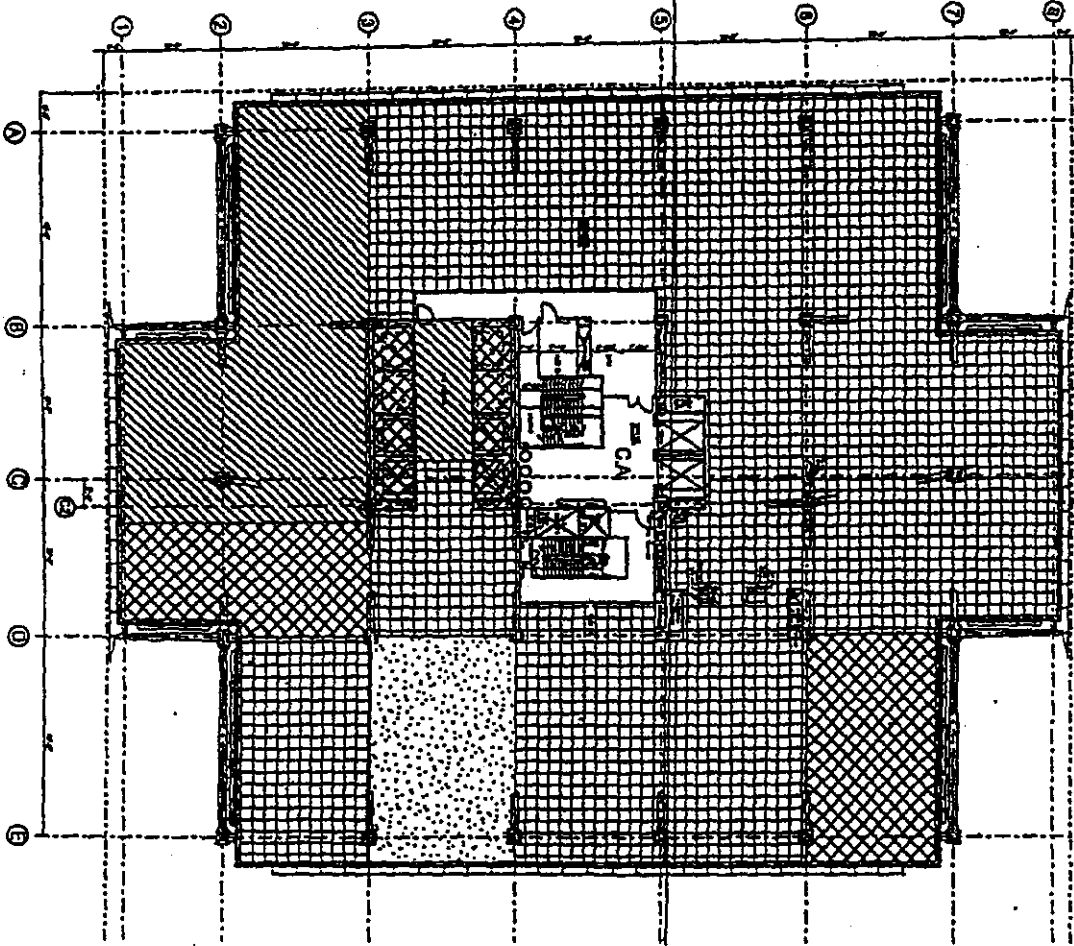
NOTE:
 The areas identified in this diagram as FC Rental, FC Office, NYTC Office, and SPU exclude common areas located therein. All other areas within the property lines, but not otherwise located within the building, are also common areas.








STACKING DIAGRAM

THE NEW YORK TIMES BUILDING

RENZO PIANO BUILDING WORKSHOP - FOX & FOWLE

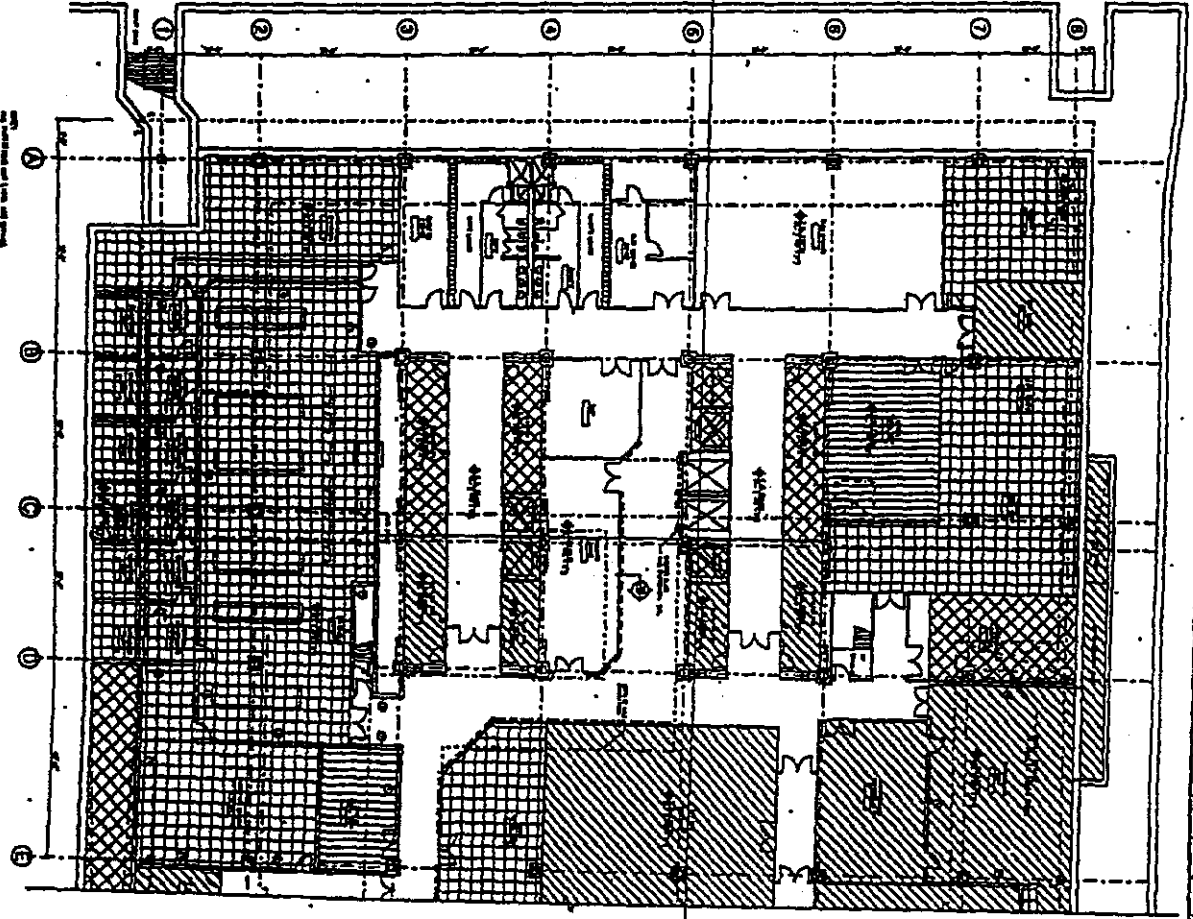
4 DECEMBER 2001



-  NYC OFFICES
-  FC OFFICE
-  SPU
-  COMMON AREA
-  PC RETAIL
-  COMMON AREA
-  ROOF GARDEN GROSS







PRELIMINARY-NOT FOR CONSTRUCTION

THE NEW YORK TIMES BUILDING
 150 NASSAU ST. NEW YORK, N.Y. 10038
 ARCHITECT: PERKINS+WILL
 ENGINEER: HOK
 CONTRACTOR: TAYLOR CORP.
 DATE: 10/15/88
 DRAWING NO.: GSF-1051-A



SEE DRAWING OF THIS FLOOR FOR DETAILS

REVISED NOV. 20, 2001

-  COMMON AREA
-  RETAIL
-  COMMON AREA (MECH.)
-  SPU
-  FC OFFICE
-  NYC OFFICE

THE NEW YORK TIMES BUILDING

GENERAL CONTRACTOR: THE NEW YORK TIMES BUILDING

DATE: 11/20/01

SCALE: 1/8" = 1'-0"

PROJECT NO. 10001-A

DATE: 11/20/01

BY: [Signature]

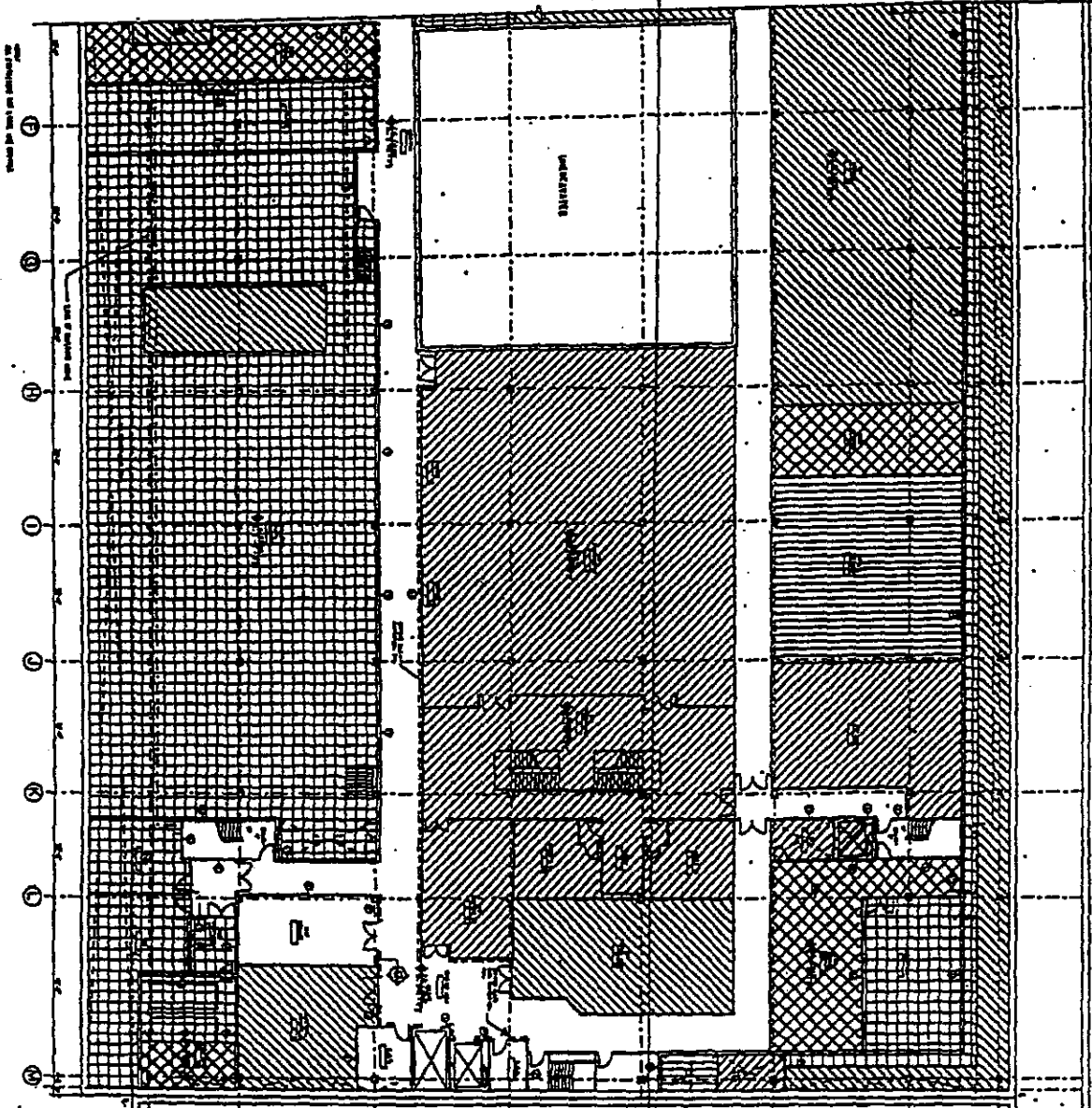
CHECKED: [Signature]

APPROVED: [Signature]







PRELIMINARY-NOT FOR CONSTRUCTION



NY
 100-10001-1
 CEILING FLOOR PLAN SYMBOL A



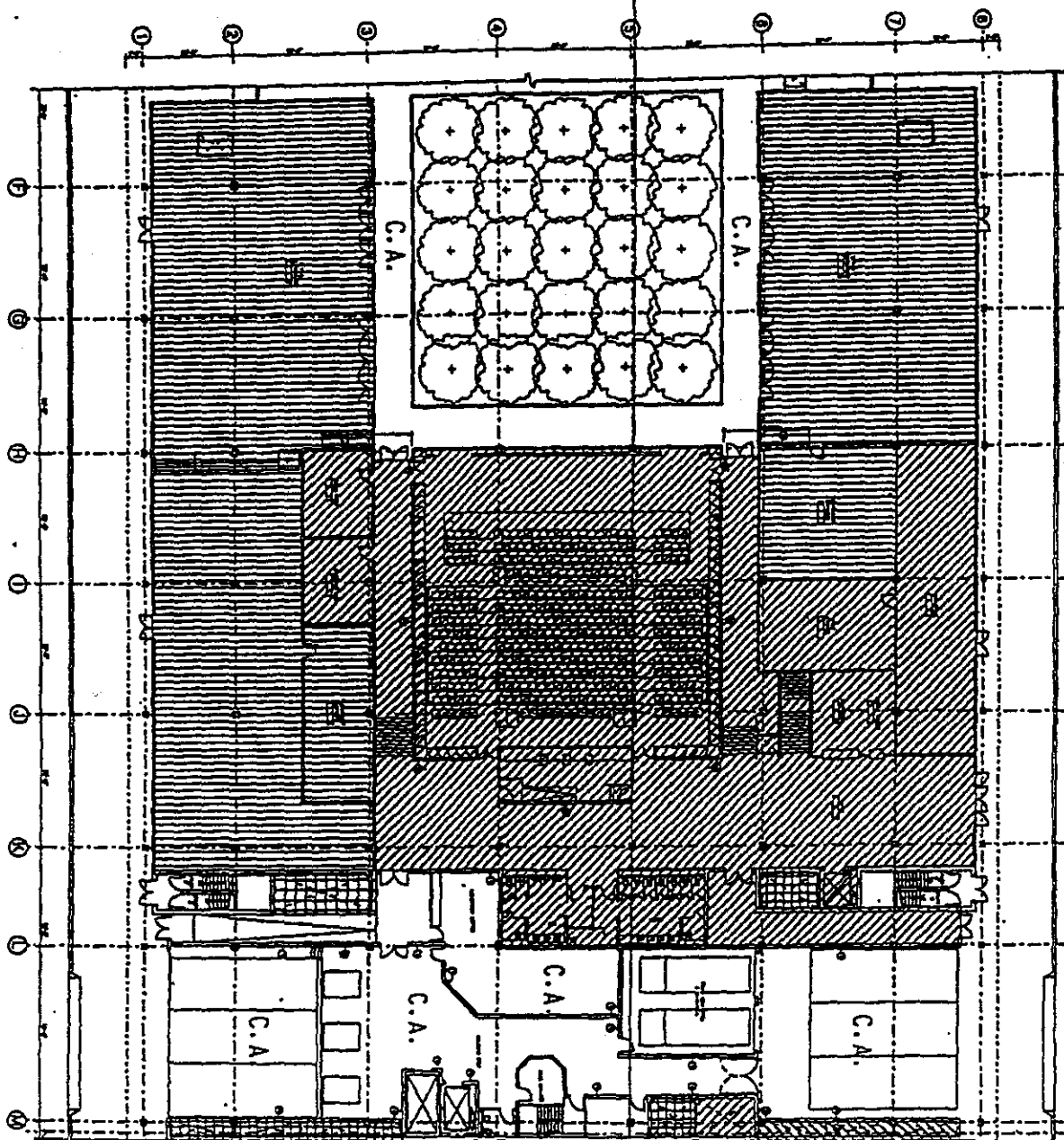
REVISED NOV. 24, 2003







-  NNTC OFFICE
-  FC OFFICE
-  SPU
-  COMMON AREA MECH.
-  RETAIL
-  COMMON AREA

GSP-10001-B

THE NEW YORK TIMES
 BUILDING
 OTHER INFORMATION:
 DATE: 10/15/03
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO.: 100-10001-1
 SHEET NO.: 100-10001-B

PRELIMINARY-NOT FOR CONSTRUCTION



-  NYTC OFFICES
-  FC OFFICES
-  SPU
-  COMMON AREA MECH.
-  FC RETAIL
-  COMMON AREA

THE NEW YORK TIMES BUILDINGS

GROUND FLOOR PLAN PARTIAL B

DATE: 11/11/88

BY: [Signature]

SCALE: 1/8" = 1'-0"

PROJECT NO. 99F-1001-B

1000 Broadway, New York, NY 10003

Architect: [Faint text]

Engineer: [Faint text]

Interior Designer: [Faint text]

Structural Engineer: [Faint text]

Mechanical Engineer: [Faint text]

Electrical Engineer: [Faint text]

Plumbing Engineer: [Faint text]

Fire Protection Engineer: [Faint text]

Acoustic Engineer: [Faint text]

Environmental Engineer: [Faint text]

Energy Engineer: [Faint text]

Transportation Engineer: [Faint text]

Other: [Faint text]

PRELIMINARY-NOT FOR CONSTRUCTION



THE LAND (§ 1.1(a)(cxxxv))

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

BEGINNING at the corner formed by the intersection of the northerly line of West 40th Street with the easterly line of 8th Avenue.

RUNNING THENCE northerly along said easterly line of 8th Avenue, 197 feet 6 inches to the corner formed by the intersection of the easterly side of 8th Avenue with the southerly line of West 41st Street;

THENCE easterly along said southerly line of West 41st Street, 400 feet;

THENCE southerly and parallel to said easterly line of 8th Avenue, 197 feet 6 inches to the northerly line of West 40th Street;

THENCE westerly along said northerly line of West 40th Street, 400 feet to the point or place of **BEGINNING**.

Being the property located at and known as Block 1012, Lots 1, 5, 8, 14, 53, 59, 61, 62, 63 and part of 15 on the Tax Assessment Map of the County of New York.