

**AGREEMENT OF LEASE**

**between**

**STAHL 401 FIFTH LLC,**

**Owner**

**and**

**NEP IMAGE GROUP, LLC**

**Tenant**

**Entire 7th and 8th Floors  
401 Fifth Avenue  
New York, New York**

**Endnotes to Standard Form of Office Lease dated as of November 14 2003  
by and between Stahl 401 Fifth LLC and NEP Image Group LLC**

The provisions below are inserted into and are a part of the above described Lease. The number references are to the numbered insert set forth on the printed form.

1. which consent shall not be unreasonably withheld or delayed
2. which approval shall not be unreasonably withheld or delayed
3. or bonded
4. forty-five (45)
5. Owner agrees, upon obtaining actual knowledge or notice thereof, to promptly notify Tenant in writing of any such non-compliance by Tenant with respect to this Article which may give rise to any of the penalties or other payments described in this Article.
6. or willful misconduct
7. unless caused by or due to the negligence of Owner, its agents, servants or employees
8. as quickly as reasonably practicable under the circumstances
9. such that Tenant cannot reasonably be expected to conduct business in the Demised Premises (including due to lack of access thereto)
10. such that Tenant cannot reasonably be expected to conduct business in the Demised Premises (including due to lack of access thereto)
11. the date of the casualty
12. ten (10)
13. upon reasonable advance notice
14. and do not materially interfere with the conduct of Tenant's business
15. by reason of emergency or if required by law or if Tenant has vacated the Demised Premises
16. ten (10)
17. provided same does not unreasonably and materially interfere with the Tenant's conduct of its business in the Demised Premises

18. reasonable
19. general cleaning services for the lobby, stairwells, and elevators of the building
20. contract directly for and pay directly a Building-approved carter
21. reasonable
22. thirty(30)
23. Notwithstanding the foregoing, Owner shall not enforce any rule or regulation as against Tenant in a discriminatory manner. In the event of any conflict between such rules and regulations and any other provision of this lease, such other provisions of this lease shall control.
24. Owner shall not provide window cleaning services to the windows located on the 8<sup>th</sup> floor, and Owner shall, at Owner's sole discretion, provide window cleaning services to the windows on the 7<sup>th</sup> floor at such time as is determined by and convenient to Owner.
25. The exercise of such right by Owner shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under this lease, or impose any liability upon Owner or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

**Rider To Lease Dated November 14, 2003,  
Between Stahl 401 Fifth LLC, Owner,  
and NEP Image Group, LLC, Tenant.**

37. Conflicts. In the event of any conflict between any of the provisions of this Rider and any of the provisions, printed or typewritten, of the printed portion of this lease, the provisions of this Rider shall control.

38. Demised Premises (a) The premises demised under this lease ("demised premises" or "premises") consists of the entire seventh floor and the entire eighth floor in the building known as 401 Fifth Avenue, in the Borough of Manhattan, City of New York (the "Building"). Nothing contained in this lease shall be deemed a representation by Owner as to the size or configuration of the premises or any portion thereof.

39. As Is; Owner's Work. Tenant hereby acknowledges that Tenant is in occupancy of the demised premises under an existing lease that will expire on November 30, 2003, and Tenant is fully aware of the condition of the demised premises and the Building and the suitability of the demised premises for Tenant's use and business. Notwithstanding any provision of this lease to the contrary, Owner shall deliver and Tenant shall accept possession of the demised premises "AS IS" on the date hereof and Owner shall have no obligation to furnish, render or supply any work, labor, services, equipment, materials, decorations, furniture or fixtures to make the demised premises ready or suitable for Tenant's use or occupancy. Owner shall comply with all laws affecting the Building to the extent that it is not Tenant's obligation under this lease or such laws to comply with such laws and to the extent Owner's non-compliance with such laws would have a material adverse effect on Tenant's business.

40. Fixed Rent. The annual fixed rent ("Fixed Rent") shall be \$1,196,097.50 per annum. In addition to all other payments of rent and additional rent, and all other increases, under this lease, the Fixed Rent shall be increased by two percent (2%) per annum on the first day of December of each year commencing on December 1, 2004.

41. Real Estate Taxes. (a) For the purpose of this Article:

(i) The term "Taxes" shall mean (1) the real estate taxes, vault charges, assessments and special assessments and other governmental charges imposed on the Building and/or the land on which the Building is erected (including BID Charges, as hereinafter defined) and (2) any expenses incurred by Owner in contesting the same (excluding any fees incurred by Owner in successfully reducing the Base Tax if such reduction results in an increased Tax Payment, as hereinafter defined, for Tenant in any Tax Year, as hereinafter defined, pursuant to Paragraph 41(d) hereof). If at any time during the term of this lease the methods of taxation prevailing on the date hereof shall be altered so that in lieu of, or as an addition to, or as a substitute for, the whole or any part of such real estate taxes, vault charges, assessments and special assessments now imposed on real estate, there shall be levied, assessed and imposed (x) a tax, assessment, levy, imposition, license, fee, or charge wholly or partially as

a capital levy or otherwise on the rents received therefrom, or (y) any other additional or substitute tax, assessment, levy, imposition, fee or charge, then all such taxes, assessments, levies, impositions, fees or charges shall be deemed to be included within the term "Taxes" for the purposes hereof.

(ii) The term "Base Tax Year" shall mean the Tax Year ending June 30, 2004.

(iii) The term "Base Tax" shall mean the Taxes for the Base Tax Year.

(iii) The term "BID Charges" shall mean business improvement district charges imposed on the Building and/or the land on which the Building is erected, and any expenses incurred by Owner in contesting the same.

(iv) The term "Tax Year" shall mean the period of 12 calendar months beginning July 1st.

(v) The term "Tenant's Share" shall mean 25 percent.

(b) If the Taxes for any Tax Year shall exceed the Base Tax, Tenant shall pay for such Tax Year an amount ("Tax Payment") equal to Tenant's Share of such excess. If the real estate fiscal tax year of the City of New York shall be changed during the term of this lease, any Taxes for a real estate fiscal tax year, a part of which is included within a particular Tax Year and a part of which is not so included, shall be apportioned on the basis of the number of days in the real estate fiscal tax year included in the particular Tax Year for the purpose of making the computations under this Article. If a Tax Year begins before the commencement of the term of this lease or ends after the expiration or termination of the term of this lease, the Tax Payment therefor shall be prorated to correspond to that portion of such Tax Year occurring within the term of this lease.

(c) The Tax Payment shall be payable by Tenant within 30 days after receipt of a demand from Owner, which demand shall be accompanied by Owner's computation of the Tax Payment. Notwithstanding the foregoing, at Owner's option, to be exercised at any time during the term of this lease upon ten days' notice to Tenant, Tenant shall pay on the first day of each month, on account of the Tax Payment for the next Tax Year, an amount equal to one-twelfth of the Tax Payment for such Tax Year, as reasonably estimated by Owner. If the aggregate payments on account of the Tax Payment in any Tax Year shall exceed the Tax Payment for that Tax Year, the excess shall, at Owner's option, either be credited against subsequent payments under this Article or promptly refunded to Tenant; and if the Tax Payment for any Tax Year shall exceed the aggregate payments on account of the Tax Payment, the excess shall be promptly paid by Tenant.

(d) If the Base Tax is reduced as a result of an appropriate proceeding or otherwise, Owner shall adjust the amount of each Tax Payment previously made, and Tenant shall pay the amount of the adjustment on the next rent installment date immediately following receipt of a demand therefor from Owner setting forth the amount of the adjustment. If in any Tax Year the Building or the land is entitled to any abatement of or exemption from or discount to Taxes (or any assessment or rate which comprises Taxes), such abatement, exemption, or discount shall not be taken into account in determining Tenant's Tax Payment for that Tax Year, but the Tax Payment shall be based on the amounts which would have been payable without the abatement or exemption.

(e) If Owner shall receive a refund of Taxes for any Tax Year, Owner shall pay to Tenant Tenant's Share of the net refund (after deducting from such total refund the costs and expenses of obtaining same which have not previously been included in Taxes under this lease); but (i) such payment to Tenant shall not exceed Tenant's Tax Payment actually paid for such Tax Year and (ii) if Tenant is then in default in the payment of any fixed rent or additional rent, Owner shall first apply that refund to the defaulted payments.

(f) Owner's computation of the Tax Payment shall be conclusive and binding upon Tenant unless within thirty days after the receipt of notice thereof Tenant shall notify Owner that it disputes its correctness, specifying the particular respects in which the computation is claimed to be incorrect. Pending the resolution of such dispute, Tenant shall, without prejudice to its rights, pay the amount determined by Owner to be due. If the dispute shall be determined in Tenant's favor, Owner shall (at its option) either promptly refund to Tenant the amount of such excess or permit Tenant to credit the amount of such excess against subsequent payments of rent.

42. Electric Energy. (a) Notwithstanding any provision of this lease to the contrary, Owner shall have no obligation to supply to Tenant or the demised premises any electric energy, and Owner shall have no liability to Tenant or any other party claiming through Tenant with respect to the quality, quantity, or nature of electric energy and service provided to the demised premises. Further, without incurring any obligation or liability to Tenant or any other party claiming through Tenant with respect to the electric energy supplied to the demised premises, Owner advises Tenant that to the extent Tenant has sensitive electrical equipment in the demised premises necessary for Tenant's business, Tenant should run all such equipment through an uninterruptible power supply or power conditioning system. Tenant shall, at Tenant's expense, make all arrangements for electric energy to be furnished to the demised premises, including, without limitation, the furnishing, installing and maintaining of all current transformers, meters and other components of the electric energy system on the "load side" within or servicing the demised premises. Tenant shall not be responsible for installing and maintaining electric energy components on the "line side," but to the extent Tenant requires the supply, installation, maintenance, repair and/or replacement of an electric energy component on the "line side" (collectively, "Electrical Work"), Owner shall have no responsibility therefor, and Tenant shall make arrangements directly with Tenant's electric energy supplier for any such Electrical Work, provided that the Electrical Work shall have no effect on Owner or any other

tenant in the Building or the quality, quantity, or nature of their electric energy. Owner shall not be liable to Tenant in damages or otherwise for any failure of Tenant to make arrangements for or to obtain any electric energy or for any failure or defect in the supply or character of electric energy furnished to the demised premises by reason of any requirement, act or omission of the public utility supplying the Building with electric energy or for any other reason not attributable to Owner. Tenant shall not be released or excused from the performance of any of its obligations under this lease for any such failure or for any interruption or curtailment of any electric energy, and no such failure, interruption or curtailment shall constitute a constructive or partial eviction. Tenant shall not overload any electric energy facility. Tenant, at its sole cost and expense, shall furnish and install all replacement lighting tubes, lamps, bulbs and ballasts required in the demised premises.

(b) Tenant shall pay directly to the utility companies or governmental units, promptly as and when due, all charges for electric energy used by Tenant or in connection with the demised premises. Tenant shall comply with the General Rules, Regulations, Terms and Conditions applicable to Service, Equipment, Wiring and Changes in Requirements in accordance with the requirements of the public utility supplying electric energy to the Building.

(c) Notwithstanding any provision of this lease to the contrary, Tenant shall, at Tenant's expense, maintain and promptly make all repairs, ordinary and extraordinary, to all components on the "load side" of the electric energy system within or servicing the demised premises, including, without limitation, all meters and current transformers. Currently, a portion of Tenant's electric service is provided by the Building. Owner shall, at Tenant's sole cost and expense: (i) divorce all of Tenant's electrical service from the Building-supplied electrical service such that Tenant shall obtain all of its service on a direct meter basis; (ii) separate the electric power used on the 7<sup>th</sup> and 8<sup>th</sup> floors from that used on the 5<sup>th</sup> and 6<sup>th</sup> floors such that the 7<sup>th</sup> and 8<sup>th</sup> floors shall receive electrical power from and only from the 1320 amp Con Edison rated service (East) (Con Edison meter # 6249595) and the 800 amp switch fed from the West Service (Con Edison meter # 6148642); and (iii) conduct all work described in Exhibit C which is attached hereto and incorporated herein. Prior to the commencement of the work to be done by Owner at Tenant's sole cost and expense as described in subsections (i), (ii), and (iii) above (such work to be defined as "Owner's Electrical Work"), Owner shall obtain three bids, including one from Inner City, a contractor that Tenant hereby represents is a Local 3 company, and the other two from Local 3 contractors of Owner's choosing, for all of Owner's Electrical Work. Owner shall employ the contractor of Tenant's choosing among the three bidding contractors to perform Owner's Electrical Work. On or before the commencement date of this lease, Owner shall disconnect all power not serving Tenant's premises or Tenant's equipment on the 7<sup>th</sup> and 8<sup>th</sup> floors from Tenant's electric meters on the 5<sup>th</sup> and 6<sup>th</sup> floors.

(d) Owner and Tenant acknowledge that they are both Con Edison customers, and they both agree to cooperate fully and coordinate with Con Edison and each other on all matters with respect to the Building and any electrical issues arising therein, and to implement on a timely and diligent basis any and all Con Edison service and/or vault rulings (or similar directives). Such directives or rulings may include, but are not limited to, any Con

Edison direction regarding from what source any additional or future power requirements or loads are to be taken. Owner shall, to the extent Owner receives such notification, notify Tenant in writing and supply any Con Edison ruling that changes the limitations on the East Service or advises that any customer other than Tenant draw electric power from the East Service. The term "Con Edison" as used herein shall mean Consolidated Edison Company of New York, Inc. and its successors, assigns, affiliates, partners, employees, agents, contractors, any parties controlling Con Edison, any parties controlled by Con Edison, and/or any party controlling the pipes and wires and any other components delivering electrical power to the Building.

(e) Owner shall, on or before the commencement date of this lease, in connection with the performance of Owner's Electrical Work, disconnect the current electric service to the chiller located on the roof and servicing the 6th floor (the "Chiller"). Owner shall refeed the electric service to the Chiller from a Building electric service (such work to be defined as the "Chiller Electrical Work"). Owner shall obtain three bids, including one from Inner City, and the other two from Local 3 contractors of Owner's choosing, for the Chiller Electrical Work. Owner shall employ the lowest-bidding contractor among the three bidding contractors to perform the Chiller Electrical Work. Owner and Tenant shall each pay one half of the Chiller Electrical Work.

(f) Upon Owner's request, Tenant shall provide, within ten days of any such request, copies of any and all electric bills sent to Tenant for its electrical usage in the Building.

43. Additional Rent. Notwithstanding any provision of this lease to the contrary, all sums of money, other than the fixed rent, as shall become due from and payable by Tenant to Owner under this lease shall be deemed to be additional rent.

44. Survival. Any obligation of Owner or Tenant which by its nature or under the circumstances can only be, or by the provisions of this lease may be, performed after the expiration or earlier termination of this lease, and any liability for a payment which shall have accrued to or with respect to any period ending at the time of such expiration or termination, unless expressly otherwise provided in this lease, shall survive the expiration or earlier termination of this lease. No delay by Owner in rendering any bill or statement shall be deemed a waiver or release of Tenant's obligation to make the payment reflected on that bill or statement.

45. Certain Restrictions. (A) In addition to any other restrictions set forth in this lease, Tenant shall not (a) use any other area within or adjacent to the Building for the sale or display of any merchandise, for solicitations or demonstrations or for any other business, occupation, undertaking or activity, (b) store any trash or garbage in any area other than inside the demised premises (and Tenant shall, at Tenant's sole cost and expense, attend to the daily disposal of trash), (c) suffer, permit or commit any waste or any nuisance or other act or thing in the demised premises which may disturb any other tenant or occupant in the Building or permit any activity within or from the demised premises which, in Owner's reasonable judgment, is



obscene, pornographic or lewd, (d) permit music or any other sounds in the demised premises to be heard outside of the demised premises, (e) use or permit or suffer the use of any machines or equipment in the demised premises which cause vibration or noise that may be transmitted to or heard outside of the demised premises, (f) permit odors or fumes beyond the demised premises, (g) to the extent possible, permit its customers or delivery men to loiter immediately outside the demised premises or the Building, (h) place or install, or permit or suffer to be placed or installed, or maintain, any sign upon or outside the demised premises or the Building, nor shall Tenant place or maintain on the glass of any window or door of the demised premises, or inside the demised premises, any sign, decoration, lettering, advertising matter, display (which can be seen from outside the demised premises), shade or blind, or other thing of any kind, (i) park trucks or other delivery vehicles so as to interfere with the use of any driveways, walks or entrances, (j) place or install, or permit or suffer to be placed, installed or maintained, any awning, canopy, banner, flag, pennant, aerial, antenna or the like upon or outside the demised premises or the Building (except that, upon Owner's prior approval of the actual equipment to be placed on the roof and the location thereof, which approval shall not be unreasonably withheld, Tenant shall have the right to install in a Building-standard manner an antenna or satellite dish on the roof of the Building so as to receive "line of sight" reception), (k) use any portion of the demised premises for the conduct of any public auction, gathering, meeting or exhibition, the rendering of any health or related services, the conduct of a school, the conduct of any business which results in the presence of the general public in the demised premises, or in any other manner which, in Owner's reasonable opinion, creates excessive traffic or use of the Building services, except that Tenant shall be permitted to allow reasonable public access, which access shall be subject to Owner's reasonable approval, to its studio on the 8<sup>th</sup> floor for the purposes of taping live-audience productions subject to the provisions of Article 45(B) hereof, or (l) cause or permit, as the result of any intentional or unintentional act or omission on the part of Tenant, its agents, employees, tenants, subtenants or other occupants of the demised premises the release of Hazardous Substances (as defined in this Article) in or from any portion of the demised premises in violation of any Environmental Laws (as defined in this Article). Tenant shall indemnify, defend and hold harmless Owner, and its successors, assigns, and each of their partners, managers, employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, losses, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, reasonable attorneys' and consultants' fees and disbursements and investigation and laboratory fees arising out of, or in any way related to: (i) the presence, disposal, release or threat of release of any Hazardous Substance as a result of any act or omission of Tenant, its agents, employees, tenants, subtenants, invitees or other occupants of the demised premises, in or from or affecting the demised premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any of the events described in clause (i) above; (iii) any lawsuit brought or threatened, settlement reached or government order relating to any of the events described in clause (i) above; and (iv) any violations of laws, orders, regulations, requirements or demands or governmental authorities by Tenant. "Hazardous Substance" shall mean "solid waste" or "hazardous waste", "hazardous material", "hazardous substance", and "petroleum product" as defined in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous

Material Transportation Act, the Federal Water Pollution Control Act and the Superfund Amendments and Reauthorization Act of 1986, any laws relating to underground storage tanks, and any similar or successor federal law, state law or local statutes and ordinances and any rules, regulations and policies promulgated thereunder, as any of such federal, state and local statutes, ordinances and regulations may be amended from time to time (collectively, "Environmental Laws").

(B) At any and all times that Tenant permits a public audience of any size into the premises, Tenant shall ensure that a security person and an audience coordinator shall escort each audience member from the outside of the building through the lobby and to the 8th floor and from the 8th floor through the lobby and outside of the building. Further, to clarify Article 45(A)(k) above, Owner does not intend to interfere with Tenant's privilege under this lease to allow reasonable public access to the 8<sup>th</sup> Floor, but Owner does reserve the right to disallow such access to the extent that Owner reasonably believes that any public guests, visitors, or invitees of Tenant will (a) cause harm or damage to the Owner, the Building, the Building equipment or mechanical systems, any other tenant of the Building, or such tenant's property or equipment contained within the Building or (b) fail to comply with the rules and regulations of the Building regarding conduct and safety or provisions of this lease that are applicable to any such public guest, visitor, or invitee.

(C) Except as otherwise specifically set forth in this lease, Tenant expressly covenants and agrees not to use the demised premises in a manner which would materially impair or tend to materially impair any of the Building services or materially impair or tend to materially impair or interfere with the use of any of the other areas of the Building by any of the other tenants or occupants or the Building or tend to materially impair the reputations of the Building or Owner. Tenant covenants that no waste or damages shall be committed upon or to the demised premises. Tenant expressly covenants and agrees that the terms of this provision shall specifically apply to any and all deliveries to and shipments from Tenant and to all visitors, guests, employees, customers, licensees, contractors, subcontractors, agents, affiliates, directors, officers, shareholders, members, and partners of Tenant. Owner acknowledges that Tenant intends to use the demised premises as, among other things, a television studio and video and audio production and post-production facility. Tenant agrees that it shall not use (and acknowledges that Owner does hereby strictly prohibit the use of) the studio and production facilities for the broadcast or production of pornographic material, sex shows, advertisement of escort, phone sex or massage services, or any similar programming (collectively, "sexually-oriented programming") which is not, as of the date of this lease, commonly broadcast on major network television. Owner is not attempting to censor individual broadcasts which may deal with sensitive topics commonly found on national television in December 2003. If Owner reasonably believes that Tenant is in violation of this provision, Owner shall so notify Tenant in writing, setting forth the specific incident(s) comprising the violation. If Tenant does not cease any such violation within ten (10) days, Tenant shall be in default hereunder. The foregoing ten (10) day period shall be in lieu of, and not in addition to, the fifteen (15) day notice provided for in Article 17 of this lease. The terms of this Article shall also specifically prohibit (i) the display, sale and/or rental of prerecorded "X-rated" videocassette tapes, (ii) any window advertising, (iii)

the use of banners, and (iv) the distribution of handbills on the east side of Fifth Avenue between 37<sup>th</sup> and 36<sup>th</sup> Streets or the south side of East 37<sup>th</sup> street between Fifth and Madison Avenues.

(D) Lobby Attendant; Crowd Control. (i) Owner shall provide an attendant to the Building's ground floor lobby during business days from 7:00 A.M. through 9:30 P.M., on Saturdays from 9:00 A.M. through 5:00 P.M., and on Sundays from 10:00 A.M. to 4:00 P.M. Tenant acknowledges that a Building lobby attendant shall be required after hours when the following takes place at times other than regular business hours:

- (1) during any period of construction, other than minor alterations;
- (2) during any time when the public is expected to be coming to the demised premises;
- (3) when the number of people in the demised premises is such that foot traffic makes it reasonable that a lobby attendant be in place.

Owner shall not be required to furnish a lobby attendant at any times ("Overtime Periods") other than the times specifically described in this lease for the provision of a lobby attendant unless Tenant delivers notice to the managing agent requesting a lobby attendant at least 48 hours prior to the time at which such overtime lobby attendant is requested, but Owner shall use reasonable efforts (without obligation to incur any additional cost) to arrange for a lobby attendant during Overtime Periods on such shorter notice as Tenant shall provide. If Owner provides a lobby attendant during Overtime Periods, Tenant shall pay to Owner Owner's then established rates, subject to increase, for providing such overtime lobby attendant, provided all other tenants in the Building are paying such rates. The current rate for an overtime lobby attendant is \$32.50 per hour, subject to increase.

Tenant acknowledges that, if more than 100 people are in the Building after hours as a result of Tenant's activities, Owner is required to have present a Fire Safety Director certified for the Building. Tenant shall bear the cost of any after-hours Fire Safety Director necessitated by Tenant's activities (at the rate of \$40.00 per hour regular time and \$60.00 per hour overtime, subject to increase), or provide a Fire Safety Director who shall be certified for the Building.

Notwithstanding anything to the contrary herein but subject to the requirements of this Article and this lease, Tenant shall have access to the demised premises 24 hours a day, seven days a week, 365 days a year during the term of this lease, and Owner shall provide keypad codes to Tenant to the Building for such access.

(ii) If at any time as a result of the business conducted, or any action taken by Tenant, in the demised premises, the number of people seeking entry to, or attracted to, or awaiting service at, the demised premises is greater than the Lobby or the demised premises can reasonably accommodate, with the result that those people who are not able to gain entry to or

receive service at the demised premises must wait outside the demised premises, Tenant shall make arrangements satisfactory to Owner for controlling those people inside the demised premises and those people who are waiting outside to maintain peaceful order and to ensure that the entrance to the demised premises, the entrance to the Building, and the business operations of other businesses on the blockfront on which the demised premises are located are not obstructed or misused by such people and that any inconvenience to Owner or any of said businesses is minimized and of temporary duration only. Without in any way limiting the generality of the foregoing, if it is reasonably foreseeable that the business or action of Tenant will produce or be likely to produce conditions such as those described in the preceding sentence, Tenant shall discuss the matter and its proposed method of crowd control with Owner beforehand to ensure that Owner is agreeable to the proposed business or action which will produce such conditions, and approves of the suggested method of crowd control. If Owner is of the reasonable opinion that further or other steps must be taken to ensure proper crowd control, Tenant shall, at Tenant's expense, forthwith take such steps as prescribed by the Owner.

(E) Except as specifically provided otherwise in Article 45 Subsection C, any violations of this Article, which Tenant fails to cure within ten (10) days after notice by Owner (except emergencies), or, if the violation cannot be completely cured within said ten (10) day period, and Tenant shall not have diligently commenced curing such violation within such ten (10) day period, shall entitle but not obligate Owner to cure the same at Tenant's expense plus a five percent (5%) administrative fee. Further, Tenant will pay and hold Owner harmless for any liability or expense incurred by Owner due to Tenant's violation of this Article, including, but not limited to, fines, penalties, levies, interest, and reasonable legal fees.

46. Insurance. (a) Tenant, at its expense, shall maintain at all times during the term of this lease and at all times when Tenant is in possession (and cause its subtenants or any other person or entity occupying any portion of the demised premises by, through or under Tenant) at all times during the term of this lease and at all times when Tenant (or such other person or entity) is in possession of the demised premises (i) public liability insurance in respect of the demised premises and the conduct or operation of Tenant's business therein, with Owner and Owner's managing agent, if any, as additional named insureds, with a combined single limit of not less than \$6,000,000 and (ii) insurance (with commercially reasonable deductibles) covering all of Tenant's property, including, without limitation, Tenant's furniture, fixtures, machinery, equipment and other personal property and any property of third parties located in the demised premises ("Tenant's Property") against all risks and perils for physical loss and damage, including, without limitation, flood and earthquake, and including, without limitation, coverage for business interruption, in an amount equal to the greater of 100 percent of the full replacement value of Tenant's Property (as increased from time to time) and \$4,000,000, the policy for which shall, if obtainable (and subject to the payment of any additional premium by Owner as provided in Article 9), contain a clause providing that the release or waiver referred to in Article 9 shall not invalidate the insurance.

(b) Tenant shall deliver to Owner such policies or certificates of such policies (in form acceptable to Owner) prior to the commencement of the term of this lease (and

with respect to any insurance required by Owner pursuant to Article 3, prior to the commencement of any alteration). Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Owner and any additional named insureds such renewal policy or certificate at least twenty-five thirty (25) days before the expiration of any existing policy. All such policies (and all insurance required by Owner pursuant to Article 3) shall name as additional named insureds Owner, Owner's managing agent and any other persons or entities designated by Owner, shall be issued by companies reasonably satisfactory to Owner and all such policies shall contain a provision whereby the same cannot be cancelled or modified unless Owner and any additional named insureds are given at least thirty days' prior written notice of such cancellation or modification, including, without limitation, any cancellation resulting from the non-payment of premiums. Owner shall have the right, upon thirty days' notice to Tenant, at any time and from time to time to require Tenant to increase the amount of the insurance maintained by Tenant under this Article, as reasonably determined by Owner, provided that such amount shall not exceed the amount which is comparable to the amount then generally required of tenants in similar space in similar buildings in the general vicinity of the Building.

(c) Any reference in this lease to Tenant's contractors shall include, without limitation, all contractors, subcontractors, materialmen and others performing any work in the demised premises for Tenant (other than Tenant's employees), whether retained directly by Tenant or by any contractor.

47. Sale of Stock or Partnership Interests. If at any time Tenant shall be a corporation, partnership, limited liability company, or other entity, any transfer, by operation of law or otherwise, resulting in (a) the person or persons who shall have owned a majority of the legal or beneficial interests in Tenant immediately before such transfer ceasing to own a majority of such interest, or (b) a change of control of Tenant (where "control" means the power to direct the affairs of Tenant through equity ownership, by contract, or otherwise), shall be deemed to be an assignment of this lease as to which Owner's consent shall have been required.

48. Intentionally Omitted.

49. Arrears. If Tenant is in arrears in the payment of rent or additional rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Tenant agrees that Owner may apply any payments made by Tenant to any items Owner sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited.

50. Broker. Tenant represents to Owner that no broker other than Cushman & Wakefield, Inc. and Colliers ABR (the "Broker") was instrumental in consummating this lease and that Tenant had no conversations or negotiations with any broker other than the Broker concerning the leasing of the demised premises. The parties agree to indemnify, defend and hold harmless one another against and from any claims for any brokerage commissions or other

compensation which are made by any broker other than the Broker, and all costs, expenses and liabilities in connection therewith, including, without limitation, attorneys' fees and expenses, if such claims are based in whole or in part on dealings with the indemnifying party. Owner shall pay any commission due the Broker pursuant to a separate agreement between Owner and the Broker.

51. No Owner Liability. Owner, its members, partners, principals, officers, directors and employees, disclosed or undisclosed, shall have no personal liability under this lease. Tenant shall look only to Owner's interest in the land and the Building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Owner in the event of any default by Owner hereunder, and no other property or assets of Owner or its members, partners, principals, officers, directors and employees, disclosed or undisclosed, shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder or Tenant's use or occupancy of the demised premises. If Tenant shall acquire a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release such lien by executing and delivering to Owner any instrument, prepared by Owner, required for such lien to be released.

52. Interpretation. Irrespective of the place of execution or performance, this lease shall be governed by and construed in accordance with the law of the State of New York. If any provision of this lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this lease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. This lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this lease to be drafted. Each covenant, agreement, obligation or other provision of this lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this lease. All terms and words used in this lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

53. Owner's Consent. (a) If Tenant shall request Owner's approval or consent and Owner shall fail or refuse to give such consent or approval, Tenant shall not be entitled to any damages for any withholding or delay of such approval or consent by Owner, it being intended that Tenant's sole remedy shall be an action for injunction or specific performance and that such remedy shall be available only in those cases where Owner shall have expressly agreed in writing not to unreasonably withhold or delay its consent or approval or where as a matter of law Owner may not unreasonably withhold or delay its consent or approval.

54. Interest. In addition to any other remedies Owner may have under this lease, Tenant shall pay to Owner interest at the rate of the lower of (i) 15% per annum or (ii) the highest rate permitted by law on any rent or additional rent paid more than ten days after the

same is due, which interest shall be paid for the period commencing on the date such rent or additional rent was first due and ending on the date the same is paid.

55. Execution of Lease. Notwithstanding any provision of this lease, or any law or rule, to the contrary, or the execution of this lease by Tenant, this lease shall not bind Owner, nor shall Tenant be permitted the benefits of this lease, unless and until one or more counterparts of this lease are executed by Owner and delivered to Tenant.

56. Managing Agent. Any bill, statement, notice or communication given by Owner to Tenant in accordance with Article 28 may be signed and delivered by the managing agent of the Building with the same force and effect as if signed and delivered by Owner. Until Owner shall give notice to Tenant of a change, the managing agent of the Building shall be:

Colliers ABR, Inc  
40 East 52<sup>nd</sup> Street  
New York, New York 10022  
(212) 758-0800  
(212) 758-6190 (facsimile)

57. Security Interests. Tenant shall not grant or create, or permit to be created, any security interest in or lien upon any fixtures (other than Tenant's trade fixtures), installed or placed in the demised premises by Tenant or Owner; provided that the foregoing shall not restrict Tenant from granting any security interest in or lien upon any of Tenant's personal property, trade fixtures or equipment (other than Tenant's air conditioning equipment and other equipment characterized as fixtures under applicable law).

58. Certain Services. (a) Tenant, at Tenant's expense, shall cause all portions of the premises including those used for the storage, preparation, service or consumption of food or beverages to be cleaned daily in a manner satisfactory to Owner, and to be exterminated against infestation by vermin, rodents or roaches regularly and, in addition, whenever there shall be evidence of any infestation. Good Night Exterminating with an address at 64-51 Madison St., Ridgewood, NY 11385 is hereby approved as Tenant's extermination service so long as Good Night Exterminating continues to provide extermination services in a Building-standard manner, as determined by Owner in its reasonable judgment. Tenant shall not permit any person to enter the premises or the Building for the purpose of providing such extermination services, other than persons first approved by Owner, such approval not to be withheld unreasonably. Tenant shall, at its expense and on all business days, remove any garbage from the premises to the Building basement between the hours of 2 p.m. and 3 p.m., such time being subject to change at Owner's discretion. Owner will remove the garbage from the basement.

(b) There shall be one elevator available to transport freight on a "first come, first served" basis on business days from 8:00 A.M. to 5:00 P.M., and on a reservation, "first come, first served" basis from 5:00 P.M. to 8:00 A.M. on business days and at any time on days other than business days. Tenant shall pay Owner's standard hourly charges in

effect from time to time for Tenant's use of the freight elevator between the hours of 5:00 P.M. and 8:00 A.M. on business days and at any time on days other than business days. Owner's standard hourly charge in effect on the date hereof, subject to increase from time to time, is \$75.00 per hour. Notwithstanding anything herein to the contrary, all significant Tenant deliveries, determined as such in Owner's sole discretion, to or from the demised premises shall be made through the sidewalk elevators that shall be operated by Building personnel only and that shall be generally available during business hours. Notwithstanding the foregoing, overnight delivery companies shall not be required to use the sidewalk elevators if such delivery is made on a handtruck in the upright position; deliveries from a handtruck in the horizontal position must be made from the sidewalk elevators. After the Owner has completed all lobby and elevator renovations in the Building, all deliveries too large or heavy for the sidewalk elevators, determined as such in Owner's sole discretion, to and from the demised premises shall be made through the lobby elevators that shall be padded, and such deliveries may be made only from 5:00 P.M. to 8:00 A.M. on business days and at any time on days other than business days.

(c) Owner shall refurbish the interior of the remaining two elevator cabs that have not been refurbished in substantially the same manner as the other elevators have been refurbished within one year of the commencement date of this lease.

(d) The parties hereto acknowledge that the Tenant has a lease for the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> floors that will expire on November 30, 2003. Tenant will not continue to lease the 5<sup>th</sup> and 6<sup>th</sup> floors when this lease goes into effect, but Tenant has various services, including conduits, cables, risers, feeders, and materials (including, but not limited to, all electrical equipment and connectors) (collectively, the "Connecting Equipment") in the shafts, ducts, conduits, chases, utility closets and other facilities that run through and are located on the 5<sup>th</sup> and 6<sup>th</sup> floors, that service the 7<sup>th</sup> and 8<sup>th</sup> floors. The term Connecting Equipment as used herein shall not include Building plumbing and water supply equipment, connectors, or drains located on the 5<sup>th</sup> and 6<sup>th</sup> floors, or the HVAC equipment supplying HVAC services to the 7<sup>th</sup> floor. Tenant shall, prior to the commencement date of this lease tag all Connecting Equipment that runs, as of that date, through the 5<sup>th</sup> and 6<sup>th</sup> floors and that services the 7<sup>th</sup> and 8<sup>th</sup> floors so that Owner can proceed with the demolition of the 5<sup>th</sup> and 6<sup>th</sup> floors. Five business days after Tenant vacates the 5<sup>th</sup> and 6<sup>th</sup> floors (Tenant shall give notice to Owner on the date it has vacated such floor), Owner and Tenant shall conduct a walk through of the 5<sup>th</sup> and 6<sup>th</sup> floors to review and confirm the tagged Connecting Equipment. Within 30 days of such walk through, such time to be extended by Owner if additional time is necessary, Owner shall determine the portions of the Connecting Equipment, if any, that require repositioning. Notwithstanding anything herein to the contrary, Owner shall have the right, at Tenant's sole cost and expense, to reposition any Connecting Equipment located on the 5<sup>th</sup> and 6<sup>th</sup> floors during Owner's demolition and/or build-out of the 5<sup>th</sup> and 6<sup>th</sup> floors (such work to be defined as the "Connecting Equipment Work"), and in conducting the Connecting Equipment Work, Owner shall endeavor to schedule such work in a manner designed to minimize any interference with Tenant's operations. Notwithstanding the foregoing, Owner shall not have any obligation to schedule the Connecting Equipment Work to be done on an overtime or weekend basis, but if Tenant requests that the Connecting Equipment Work be done on an overtime or weekend basis, Owner shall conduct such work accordingly,



subject to the following sentence. In the event Tenant requests that the Connecting Equipment Work be done on an overtime or weekend basis, and as a result, Owner needs to conduct the repositioning of any Building equipment or system or any component thereof also on an overtime or weekend basis to coordinate with any Connecting Equipment Work, Tenant shall pay to Owner, within 30 days of the demand therefore, the incremental cost of such overtime work over the cost of such work if done during normal working hours.

(e) Owner acknowledges that Tenant has installed a freight hoist (the "Hoist") adjacent to the premises for the lifting and lowering of stage equipment to and from the premises. Tenant shall within thirty days of the commencement date of this lease (i) complete all work, if any, involved in the installation of the Hoist, including any and all items listed on the "punch list" to be provided from Owner to Tenant, (ii) provide Owner with proof of all municipal, elevator, and DOB (as hereinafter defined) inspections and final approvals of such work and the Hoist, and (iii) provide Owner with insurance, satisfactory to Owner and meeting the requirements of Article 46 hereof, to cover Tenant's or any other party's usage of the Hoist. Tenant shall schedule with Owner its usage of the Hoist and courtyard area, and the Hoist shall be operated only by Owner-approved licensed riggers, a copy of whose license shall be provided to Owner at the time of scheduling the Hoist use. Notwithstanding anything herein to the contrary, Tenant may use the lobby to bring items to and from the courtyard area only during the hours of 6 A.M. to 7 A.M. on business days and at any other time on non-business days. Tenant shall arrange and pay for a lobby attendant pursuant to Article 45(D) hereof during the Overtime Periods it uses the lobby to access the courtyard area and hoist. At no time shall Tenant's usage of the Hoist or the courtyard area impede Owner's access to the exterior of the Building or any Building equipment or mechanical systems.

(f) (i) With respect to the seventh (7<sup>th</sup>) floor only, notwithstanding any provision of this lease to the contrary, Owner shall furnish to the premises heating, ventilation and air-conditioning ("HVAC"), in accordance with the standards set forth in Exhibit A, on all business days from 8:00 A.M. to 5:00 P.M. Owner, throughout the term of this lease, shall have free access to all air-cooling, fan, ventilating and machine rooms and electrical closets and all other mechanical installations of Owner (collectively, the "Mechanical Areas"), including, but not limited to heating, aircooling, fan, ventilating, and machine rooms and electrical closets, and Tenant shall not construct partitions or other obstructions which may interfere with Owner's free access thereto or the moving of Owner's equipment to and from the Mechanical Areas. Neither Tenant nor its agents, employees, or contractors shall at any time enter the Mechanical Areas or tamper with, adjust, touch, or otherwise affect the Mechanical Areas. Tenant shall not install any supplementary or auxiliary HVAC equipment to serve the premises without Owner's prior consent in each instance.

(ii) Owner shall not be responsible if the normal operation of the Building system providing HVAC to the premises on the seventh floor (the "HVAC System") shall fail to provide cooled or heated air, as the case may be, in accordance with the specifications set forth in Exhibit A by reason of (i) any machinery or equipment installed by or on behalf of Tenant, which shall have an electrical load in excess of the average electrical load

and human occupancy factors for the HVAC System as designed, as the case may be, or (ii) any rearrangement of partitioning or other alterations made or performed by or on behalf of Tenant. Tenant shall install, at Tenant's expense, if missing, blinds or shades on all windows, which blinds and shades shall be subject to Owner's approval, and shall keep all of the operable windows in the premises closed, and lower the blinds when necessary because of the sun's position, whenever the HVAC System is in operation. Tenant at all times shall cooperate fully with Owner and shall abide by the rules and regulations which Owner may reasonably prescribe for the proper functioning and protection of the HVAC System.

(iii) The Fixed Rent does not reflect or include any charge to Tenant for the furnishing of any HVAC services to the seventh floor other than to the extent described in Section 58 (f) (i) and (ii) above. Owner shall not be required to furnish any HVAC services at any times ("Overtime Periods") other than the times specifically described in this lease for the provision of such HVAC services unless Tenant delivers notice to the managing agent requesting such services at least 48 hours prior to the time at which such services are to be provided, but Owner shall use reasonable efforts (without obligation to incur any additional cost) to arrange for HVAC services during Overtime Periods on such shorter notice as Tenant shall provide. If Owner furnishes HVAC service to the premises during Overtime Periods, Tenant shall pay to Owner Owner's then established rates, subject to increase, for supplying such overtime Building services in the Building, provided all other tenants in the Building are paying such rates.

(iv) With respect to the eighth (8<sup>th</sup>) floor only, notwithstanding any provision of this lease to the contrary, Owner shall have no obligation to furnish to Tenant or the demised premises any heat, air conditioning, or HVAC equipment and Tenant shall, at its sole cost and expense, continue to operate and maintain (all in accordance with the terms of this lease) all HVAC equipment ("Tenant's HVAC Equipment") needed or desired by Tenant to obtain heat, air conditioning, and ventilation in the demised premises on the 8<sup>th</sup> floor during both regular business hours and Overtime Periods. Tenant shall, at its sole cost and expense, (a) maintain and promptly make all repairs, structural or otherwise, ordinary and extraordinary, to all components of all HVAC equipment used within the demised premises on the 8<sup>th</sup> floor and its rooftop package units servicing the 8<sup>th</sup> floor (and Owner shall have no obligation with respect thereto), (b) maintain, and prior to the commencement of the term deliver to Owner, a full service contract (including proof of insurance from such HVAC service company) covering the HVAC system with Airstream Air Conditioning Corp., with an address at 246 Park Avenue, Garden City, New York or Henick-Lane Service Corp. or any other company of equal quality and reputation, and (c) pay all permit fees and other costs and obtain and maintain all permits associated with any HVAC units or equipment in and/or serving the demised premises. Airstream Air Conditioning Corp. may continue as Tenant's HVAC servicer so long as Airstream Air Conditioning Corp. continues to operate in a Building-standard manner, as determined by Owner in its reasonable judgment. All such equipment shall, upon expiration or earlier termination of this lease, become and remain the property of Owner and shall be surrendered by Tenant, in its then "as-is" condition, but maintained as required by this lease. Further, Tenant shall, at its sole cost and expense, install, repair, and maintain all roof flashings related to Tenant's HVAC Equipment or

appurtenances thereto on the roof of the Building. Tenant shall, at its sole cost and expense, repair any damage caused to the Building by such flashings or the installation, repair, or maintenance thereof. Owner's engineer shall, at Tenant's sole reasonable cost and expense, make an annual inspection of Tenant's flashings and issue a report to Owner and Tenant listing any maintenance or repair work required thereon. Tenant shall, at Tenant's sole cost and expense, perform such maintenance or repairs within 90 days of the engineer's report by an Owner-approved contractor. At the time that Owner repairs and/or replaces the roof of the Building (such time to be at Owner's choosing), Owner shall, at Tenant's sole cost and expense, install pitch pockets in a Building-approved manner on all equipment supports of or related to Tenant's HVAC Equipment or appurtenances thereto on the roof of the Building, and such work shall be done in a manner such that Owner shall be able to obtain a new roof guaranty. Prior to installing the pitch pockets, Owner shall engage in a bidding process to select the contractor to install such pitch pockets. All bidding contractors shall be selected by Owner at its own discretion. The bidding process for the pitch pockets may or may not, at Owner's option, be conducted at the same time Owner conducts a bidding process, if any, for repairing and/or replacing the roof of the Building. In either case, Owner shall select the winning contractor at its own discretion, but Owner shall take into account which contractor offered the lowest bid for the pitch pockets in making its selection. Once the pitch pockets are installed by Owner at Tenant's expense, any liability with respect to leaking of or from the pitch pockets shall be borne by Owner. Further, prior to the commencement of the term of this lease, Tenant shall at its sole cost and expense, legalize and demise according to all applicable laws, codes, and regulations the Tenant cooling tower equipment located in the C staircase on the level below the main roof of the Building. Tenant must file such work with the DOB and provide proof of such filing and DOB final approval thereof to Owner. The plans with respect to the demising of the cooling tower equipment shall be provided to Owner prior to the commencement of such work, and Owner shall, within 30 days, approve or disapprove with specificity such plans. Tenant shall not commence such work until and unless it has received approval for such plans from Owner. Tenant shall not be responsible for delays in completion of work resulting from circumstances beyond its reasonable control such as those resulting from plan approval process or DOB actions. Notwithstanding the foregoing, Tenant shall pursue diligently and use its best efforts to obtain all approvals and permits, as required herein and by law, and shall make all filings in a timely manner.

(v) Tenant shall not be released or excused from the performance of any of its obligations under this lease for any failure or for interruption or curtailment of any HVAC service, for any reason whatsoever, and no such failure, interruption or curtailment shall constitute a constructive or partial eviction.

(vi) Notwithstanding anything herein to the contrary, Tenant shall not install window air conditioning units in any window in the demised premises, unless explicitly approved by the City of New York and the New York City Landmarks Preservation Commission. Tenant shall provide access to all windows in the demised premises to Owner for repairs and emergencies.

(g) Owner agrees to make available from its cooling tower the condenser water reasonably required for Tenant's air conditioning equipment; provided that if Tenant requires any condenser water, Tenant shall notify Owner that it shall connect its air conditioning equipment to the cooling tower. Tenant shall be permitted, at Tenant's sole cost and expense and at Owner's direction, to tie into the existing cooling tower. All piping and ancillary equipment (including, without limitation, electrical control wiring) which is required to be installed in the demised premises and other portions of the Building to transport such condenser water to Tenant's air conditioning equipment from the cooling tower and to control its flow shall be installed by Tenant, at Tenant's sole cost and expense, in accordance with the provisions of this lease. Tenant shall pay, within ten days after delivery of a bill therefor, Owner's established charges for condenser water. As of the date of this lease, Owner's established charges for condenser water are \$.45 per connected ton per hour, which rate is subject to increases from time to time in percentage amounts equal to the percentage increases in the CPI Index (as hereinafter defined). The "CPI Index" shall mean the All-Items figures in the Consumer Price Index-All Urban Consumers (1982-84=100) of the Bureau of Labor Statistics of the United States Department of Labor for New York, New York - Northwestern, New Jersey (or any successor index).

(h) (i) The areas within the Building that are outside the demised premises and are occupied by the Supplemental Equipment (as hereinafter defined) (including without limitation, Tenant's non-exclusive use, in common with one or more other tenants of the Building and Owner, of the vertical shafts and horizontal raceways of the Building to the extent Tenant's use of such areas are approved in writing by Owner) are referred to herein collectively as the "License Areas." At the inception of this lease, the License Areas include those portions of the roof on which Tenant has installed Tenant's HVAC Equipment or appurtenances thereto (as such equipment and areas are shown on Exhibit B attached hereto), the legalized and properly demised cooling tower equipment in the C staircase on the level below the main roof of the Building, and the areas on the 5<sup>th</sup> and 6<sup>th</sup> floors containing the Connecting Equipment. The precise amount and location of the License Areas shall be agreed upon by Owner and Tenant. It is expressly understood that Owner retains the right to use the License Areas for any purpose whatsoever provided that Tenant shall have reasonable access to, and Owner shall not unduly interfere with the use of, the Supplemental Equipment therein. For the purposes of determining Tenant's obligations with respect to the License Areas, the License Areas shall be deemed to be a portion of the demised premises; consequently, unless otherwise provided in this Article 58, all of the provisions of this lease with respect to Tenant's obligations hereunder shall apply to the installation, use and maintenance of the License Areas and the Supplemental Equipment, including without limitation, provisions relating to compliance with requirements as to insurance, indemnity, janitorial services, repairs, maintenance and compliance with law, except that Tenant shall have no obligation to pay Fixed Rent or any additional rent for the License Areas, and the square footage of the License Areas shall not be included in the calculation of Tenant's Share. Owner shall have no obligation with regard to the License Areas except as provided in this Article 58, and Owner shall enforce all rules and regulations with regard to the License Areas in a non-discriminatory fashion against all users or licensees of such space. The term "Supplemental Equipment" shall mean Tenant's HVAC Equipment, the Connecting

Equipment, and any other equipment servicing the demised premises but not located within the demised premises.

(ii) Indemnity. Tenant shall install, use, maintain and repair the Supplemental Equipment, and use the License Areas, so as not to damage or materially interfere with the operation of the Building, the Building systems or with the occupancy or activities of any other tenant of the Building; and Tenant hereby agrees to indemnify and hold harmless the Owner from and against any and all claims (including but not limited to claims for bodily injury or property damage), actions, mechanic's liens, losses, liabilities, and expenses (including reasonable attorney fees and costs of defense by Owner's legal counsel) (collectively, "Claims"), which may arise from the installation, operation, use, maintenance or removal of the Supplemental Equipment and use of the License Areas, except to the extent caused by the negligence or wrongful act of Owner or Owner's breach of this lease. Similarly, Tenant shall pay upon demand by Owner the costs to repair any physical damage to the Building and the License Areas caused by such installation, operation, use, maintenance or removal except to the extent caused by the negligence or wrongful act of Owner or Owner's breach of this lease. Tenant hereby waives and releases the Owner from any Claims Tenant may have at any time (including but not limited to Claims relating to interruptions in services) arising out of or relating in any way to the installation, operation, use, maintenance, and/or removal of the Supplemental Equipment and/or use of the License Areas, except to the extent caused by the negligence or wrongful act of Owner or Owner's breach of this lease. In no event shall Owner be liable to Tenant for lost profits or consequential or incidental damages of any kind.

(iii) Tenant Waiver. Owner shall not have any obligations with respect to the Supplemental Equipment or License Areas or compliance with any requirements relating thereto, nor shall Owner be responsible for any damage that may be caused to the Supplemental Equipment or License Areas except to the extent caused by the negligence or willful misconduct of Owner or Owner's breach of this lease and not insured or required to be insured by Tenant under this lease. Owner makes no representation that the Supplemental Equipment or License Areas will be able to operate without interference or disturbance, and Tenant agrees that Owner shall not be liable to Tenant therefor. Except in emergencies or upon reasonable notice in the case of repairs or routine maintenance of the Building, Owner shall not unreasonably interfere with Tenant's ability to use the Supplemental Equipment.

(iv) Damage to Supplemental Equipment/Taxes on Supplemental Equipment. Notwithstanding anything in this lease to the contrary, Tenant shall (i) be solely responsible for any damage caused as a result of and/or to the Supplemental Equipment except to the extent caused by the negligence or wrongful act of Owner or by Owner's breach of this lease, (ii) promptly pay any tax, license, or permit fees charged pursuant to any requirements in connection with the installation, maintenance or use of the Supplemental Equipment and comply with all precautions and safeguards recommended by all governmental authorities, and (iii) make necessary repairs, replacements to, or maintenance of the Supplemental Equipment.

(v) Owner's Rights. If any of the conditions set forth in this Article 58 are not complied with by Tenant, or if Tenant's use of the Supplemental Equipment is interfering with the activity or occupancy of any other tenant in the Building, then without limiting Owner's rights and remedies it may otherwise have under this lease, Tenant shall, upon written notice from Owner, have the option either to (i) make such repairs and restoration as required under Section 58(h)(vi) below, (ii) reposition any Supplemental Equipment to a location designated by Owner if Owner elects to permit such repositioning, and make such repairs and restorations as required under Section 58(h)(vi) below, or (iii) correct such noncompliance within thirty (30) days after receipt of notice. If Tenant fails to correct noncompliance within thirty (30) days after receipt of notice or until such time as Tenant is able to comply if compliance takes more than thirty (30) days, then, subject to Section 58(h)(vi) below, Tenant shall immediately discontinue its use of the applicable Supplemental Equipment until such time it is in compliance. Tenant acknowledges and agrees that any exercise by Owner of its rights under this Section 58(h)(v) shall not relieve Tenant of any of its obligations under this lease.

(vi) Removal of Supplemental Equipment. Notwithstanding anything in this lease to the contrary, upon the expiration or earlier termination of this lease, all Supplemental Equipment shall become the property of Owner and shall be surrendered with the premises unless the parties agree otherwise upon the installation of such Supplemental Equipment, in which case Tenant, subject to the control of and direction from Owner, shall remove all or any portion of the Supplemental Equipment, repair any damage caused thereby, and restore the License Areas and other facilities of the Building to their condition existing prior to the installation of the Supplemental Equipment.

59. Rent Control. If the fixed rent or any additional rent shall be or become uncollectible by virtue of any law, governmental order or regulation, or direction of any public officer or body pursuant to law, Tenant shall enter into such agreement or agreements and take such other action as Owner may request, as may be legally permissible, to permit Owner to collect the maximum fixed rent and additional rent which may from time to time during the continuance of such rent restriction be legally permissible, but not in excess of the amounts of fixed rent and additional rent payable under this lease. Upon the termination of such rent restriction (a) the fixed rent and additional rent, after such termination, shall become payable under this lease in the amount of the fixed rent and additional rent set forth and (b) Tenant shall pay to Owner, if legally permissible, an amount equal to (i) the fixed rent and additional rent which would have been paid pursuant to this lease, but for such rent restriction, less (ii) the fixed rent and additional rent paid by Tenant to Owner during the period that such rent restriction was in effect.

60. Holding Over. If the demised premises are not surrendered and vacated as and at the time required by this lease (time being of the essence), Tenant shall be liable to Owner for (a) all losses, costs, liabilities and damages which Owner may incur by reason thereof, including, without limitation, attorneys' fees, and Tenant shall indemnify, defend and hold harmless Owner against all claims made by any succeeding tenants against Owner or otherwise arising out of or resulting from the failure of Tenant timely to surrender and vacate the demised

premises in accordance with the provisions of this lease, and (b) per diem use and occupancy in respect of the demised premises equal to two times the fixed rent and additional rent payable under this lease for the last year of the term of this lease (which amount Owner and Tenant presently agree is the minimum to which Owner would be entitled, is presently contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Article be construed as permitting Tenant to hold over in possession of the demised premises after the expiration or termination of the term of this lease.

61. Tenant's Work. (a) Subject to the provisions of this Article, Article 3, all other provisions of this lease, and the rules and regulations of the Building now or hereafter in effect, Owner's consent to the performance by Tenant of work ("Tenant's Work") consisting of nonstructural alterations to the demised premises in accordance with Tenant's Plans (as defined below) shall not be unreasonably withheld or delayed, provided that (i) Tenant is not then in default under this lease, (ii) Tenant's Work is not structural, (iii) the outside appearance of the Building shall not be affected, (iv) Tenant's Work shall not affect any structural part of the Building, (v) no part of the Building outside of the demised premises shall be affected, (vi) the mechanical, electrical, plumbing and other service and utility systems of the Building shall not be affected, and (vii) Tenant's Work shall comply with the applicable provisions of this lease and law. Any Tenant's Work which is required to be performed by Tenant pursuant to any provision of this lease which is structural or which affects any mechanical, electrical, plumbing or other service or utility system of the Building shall be performed in accordance with this Article and all other applicable provisions of this lease, or may, at Owner's option, be performed by Owner at Tenant's expense (in which event, Tenant shall pay Owner in installments, in advances, as the work progresses). Notwithstanding anything herein to the contrary, Tenant shall, prior to the commencement of any work, whether structural or nonstructural, file notice of such work with Owner and any governmental agencies, as may be required by such agencies. Notwithstanding the foregoing, during the term of this lease, Tenant may, upon fifteen days prior notice to Owner but without Owner's prior approval, perform Tenant's Work, not to exceed \$25,000, consisting of nonstructural cosmetic work (including painting, wall coverings, floor coverings, and landscape partitions without electricity) that does not require a building permit. Notwithstanding anything herein to the contrary, Owner shall not unreasonably withhold its consent to any Tenant's Work that does not exceed \$25,000 and consists of partitions that contain electrical work provided that Tenant shall (i) submit, prior to the commencement of such work, full plans to Owner for Owner's review and approval, not to be unreasonably withheld, and (ii) file such work with the DOB and provide proof to Owner of (A) such filing prior to the commencement of any such work and (B) DOB final approval of such work within 10 days of Tenant's receipt of such final approval, which date shall not be later than 120 days after the commencement of any such work.

(b) Prior to the commencement of any Tenant's Work, Tenant shall submit to Owner for its approval three sets of complete plans, drawings and specifications, suitable for filing ("Tenant's Plans"), including, without limitation, all mechanical, electrical, air conditioning and other utility systems and facilities, for Tenant's Work, prepared by an architect and/or engineer duly licensed in the State of New York. Within 30 days following Owner's

receipt of Tenant's Plans, Owner shall review or cause the same to be reviewed and shall thereupon (i) return to Tenant one set of Tenant's Plans with Owner's approval (which shall not be unreasonably withheld) or disapproval noted thereon or (ii) provide a letter to Tenant with its comments and its approval or disapproval, and if same shall be disapproved in any respect Owner shall state the reasons for such disapproval. If Owner shall not approve Tenant's Plans Tenant shall, within five days of receipt thereof, cause its architect or engineer to make such changes to Tenant's Plans as Owner shall require and shall thereupon resubmit the same to Owner for its approval. To the extent required pursuant to any mortgage affecting the Building, Tenant's Plans shall also be subject to the prior approval of the holder of such mortgage. Following the approval of Tenant's Plans, the same shall be final and shall not be changed by Tenant without the prior approval of Owner, which shall not unreasonably be withheld (and such mortgagee, if required), except as may be required by law. Tenant shall reimburse Owner for all out-of-pocket expenses paid to third parties in connection with Owner's (or such third parties') review of Tenant's Plans and supervision of compliance with the requirement of this lease in the performance of Tenant's Work. Tenant shall give prior notice to Owner of any changes required by law and shall furnish Owner (and such mortgagee, if required) with copies of all such required changes in Tenant's Plans. Owner's approval of Tenant's Plans or of any revisions shall not constitute an opinion or agreement by Owner that the same are structurally sufficient or the Tenant's Plans are in compliance with law, nor shall such approval impose any present or future liability on Owner or waive any of Owner's rights under this lease. Owner's approval of Tenant's Plans shall be conditioned upon Tenant employing licensed persons and firms (where required by law) and labor for the performance of Tenant's Work so as not to cause any jurisdictional or other labor disputes in the Building. Tenant hereby agrees that in the event Tenant commences any Tenant's Work, such Tenant's Work will be completed and fully paid for by Tenant. In any event, all contractors Tenant proposes to employ shall be bondable and shall be subject to Owner's prior approval. Such approval shall be requested by Tenant prior to the commencement of any Tenant's Work. Notwithstanding the foregoing, Tenant shall select a general contractor from a list of Building-approved contractors.

(c) Promptly following Owner's approval of Tenant's Plans, Tenant shall secure or cause to be secured, at Tenant's expense, all necessary approvals of Tenant's Plans from all governmental authorities having jurisdiction and all permits and licenses necessary to perform Tenant's Work. Prior to the commencement of any Tenant's Work, Tenant shall furnish Owner with copies of Tenant's Plans as approved by such governmental authorities and copies of such permits and licenses; provided, however, that the filing of any applications with any governmental authorities for such approval or for any permits or licenses required to perform Tenant's Work shall be done by a person or entity approved by Owner. Prior to such filing, Tenant shall submit copies of such applications to Owner for its approval, which shall not unreasonably be withheld or delayed.

(d) Upon Tenant having secured the approvals from Owner and from governmental authorities as required under this Article, Tenant shall promptly (i) enter into a construction contract in form and substance approved by Owner, which approval shall not be unreasonably withheld or delayed, provided such contract shall include, among other terms,



indemnification, insurance, bonding and release of lien provisions satisfactory to Owner, shall be submitted on the basis of a lump sum contract price, shall provide for a retainage of not less than 15% in connection with any progress payments to be made to the contractor prior to the completion of Tenant's Work and shall otherwise comply with the terms of this lease, and (ii) furnish Owner with a copy of such executed contract. Tenant shall use all reasonable means to ensure that (1) Tenant's Work shall be completed in a timely manner in accordance with Tenant's Plans and (2) that no liens of any nature are placed on the Building as a result of Tenant's Work.

(e) Following compliance by Tenant with its obligations under the foregoing provisions of this Article, Tenant shall promptly commence or cause to be commenced Tenant's Work and shall complete or cause the same to be completed with reasonable diligence, in a first-class, workmanlike manner in accordance with the approved Tenant's Plans, all licenses and permits, this lease, all applicable laws, ordinances and regulations of all governmental and insurance authorities and all applicable requirements of the Board of Fire Underwriters. All of Tenant's Work shall be performed in a manner so as to cause no inconvenience or disturbance to other tenants or contractors in the Building. Any heavy demolition work, core drilling or other slab penetrations to be performed by Tenant as part of Tenant's Work shall be performed on business days before 8:00 A.M. or after 6:00 P.M. Tenant shall cause all construction work to be performed in a reasonable manner and shall comply with Owner's work regulations for the Building (including, without limitation, the payment of charges for services).

(f) Tenant's Work shall not include any structural changes to the demised premises or to the Building or impair the structural soundness thereof, and all of Tenant's Work shall be performed within the demised premises. Tenant's Work shall in no event interfere with or impair the use of other portions of the Building or its services, including, without limitation, the plumbing, heating, ventilating, air conditioning and electrical systems, by Owner or other occupants of the Building.

(g) Except as set forth below, Tenant shall pay its contractors, laborers, subcontractors, materialmen and suppliers in accordance with their respective agreements with Tenant, shall not cause or suffer any liens, mortgages, chattel liens, or other title retention or security agreements to be placed on the demised premises, any improvements therein or the Building. Nothing contained in this Article or elsewhere in this lease shall be construed in any way as constituting any consent or authorization to Tenant to subject the land or the Building or any part of the land or the Building or any improvements or other personal property therein or the interest or estate of Owner or of the lessor under any underlying lease to any lien or charge in respect of Tenant's Work. All contracts or agreements made by Tenant with any third party for the furnishing of any labor or materials in connection with Tenant's Work (or any other work or alterations by Tenant) shall expressly provide that the contractor or materialman shall look solely to Tenant for the payment of any labor or materials furnished to the demised premises pursuant to such contract or agreement and that neither Owner nor the lessor under any underlying lease shall have any responsibility or liability for the payment thereof.

(h) Promptly following the completion of Tenant's Work, Tenant shall obtain and submit to Owner:

1. A Certificate from Tenant's architect certifying that Tenant's Work has been completed in accordance with Tenant's Plans.
2. A complete set of "as built" plans and specifications.
3. A Certificate from Tenant's general contractor certifying that (i) Tenant's Work has been completed in accordance with Tenant's Plans, (ii) such general contractor has been paid in full for all of Tenant's Work, and (iii) all laborers, materialmen and subcontractors employed by the general contractor in connection with Tenant's Work have been paid in full, which certificate shall be accompanied by lien releases from all such parties and such other data establishing payment or satisfaction of all other obligations in respect of Tenant's Work.
4. Copies of all final governmental and fire underwriters' sign-offs, approvals, permits and certificates evidencing the completion of Tenant's Work in compliance with all governmental and fire underwriters' requirements, and copies of all equipment use permits.

(i) Nothing contained in this Article shall limit the provisions of Article 3 or any other provisions of this lease, except as specifically set forth in this Article. The provisions of this Article are in addition to the provisions contained in Article 3 and elsewhere in this lease.

62. Intentionally Omitted.

63. Americans with Disabilities Act. Notwithstanding any provision of this lease to the contrary, Tenant shall, at its expense, subject to all of the provisions of this lease, comply with all aspects of the Americans with Disabilities Act, as now or hereafter constituted (the "ADA"), with respect to the demised premises, whether or not such compliance is required as the result of Tenant's business, Tenant's Work, Tenant's use or manner of use of the demised premises or the Building (including the use permitted under this lease), or Tenant's method of operation or whether or not such compliance requires structural changes to the demised premises. If Tenant's business, Tenant's Work, Tenant's use or manner of use or Tenant's method of operation requires changes to any portion of the Building or areas adjacent to the Building in order to comply with the ADA, either, at Tenant's option, (i) Tenant shall discontinue such business, use or method of operation, or (ii) Owner shall perform those changes at Tenant's sole cost and expense (in which event, Tenant shall pay Owner for the expense of the changes, plus 15% of the expense, in installments, in advance, as the work is performed).

64. Confidentiality. Tenant shall hold in confidence and shall not disclose to third parties, and shall cause its officers, directors, employees, representatives, brokers, attorneys, accountants, and advisers to hold in confidence and not disclose to third parties, this lease and its terms, as hereby or hereafter amended, and any information relating to Owner or the

Building, if any, provided by Owner to Tenant in connection with this lease, as hereby or hereafter amended (collectively, the "Information"), except to the extent any Information (a) must be disclosed by order of any court or regulatory agency, or by law (b) is publicly known or becomes publicly known other than through the acts of Tenant, or any of its officers, directors, employees, representatives, brokers, attorneys or advisers, or (c) must be disclosed by Tenant in connection with any financing or sale, any subletting of the demised premises, or any assignment of this lease, as hereby or hereafter amended, by Tenant. Notwithstanding the foregoing, Tenant may, in entering a Facilities Service Agreement, as hereinafter defined, disclose certain terms of this lease that are reasonably necessary to disclose to its clients, but under no circumstances shall Tenant disclose any financial term of this lease to any party for any reason except as permitted under Sections 64 (a) or (c) hereof. Within five days of Owner's request, Tenant shall provide to Owner any such disclosed information.

65. Assignment and Subletting. (a) Except as set forth in Article 65(i) and subject to the provisions of Article 65(j) hereof, if Tenant shall at any time during the term of this lease desire to assign this lease or sublet all or one entire floor of the demised premises (a partial subletting of less than an entire floor being prohibited under any and all circumstances), Tenant shall give notice thereof to Owner, which notice shall be accompanied by (i) a conformed or photostatic copy of the proposed assignment or sublease, the effective or commencement date of which shall be at least 30 days after the giving of such notice, (ii) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business and its proposed use of the demised premises, and (iii) current financial information with respect to the proposed assignee or subtenant, including, without limitation, its most recent financial report. Such notice (the "Proposed Sublet Statement") with respect to a proposed sublease of all of the demised premises shall be deemed an offer from Tenant to Owner whereby Owner may, at its option (the "Entire Lease Option"), terminate this lease. A Proposed Sublet Statement with respect to a proposed sublease of the entire 7<sup>th</sup> or 8<sup>th</sup> floor shall be deemed an offer from Tenant to Owner whereby Owner may, at its option (the "Single Floor Option"), terminate this lease with respect only to floor (the "Eliminated Space") for which the sublease is proposed, commencing on the date (referred to as "Elimination Date") immediately prior to the proposed commencement date of the term of the proposed subletting, as set forth in the Proposed Sublet Statement. The Entire Lease Option or the Single Floor Option may be exercised by Owner by notice to Tenant at any time within 30 days after such notice has been given by Tenant to Owner; and during such 30-day period Tenant shall not assign this lease or sublet such space to any person.

(b) (i) If Owner exercises the Entire Lease Option to terminate this lease, this lease shall end and expire on the date that such assignment or sublet was to be effective or commence, as the case may be, Tenant shall vacate the demised premises on or before such date, and the fixed rent and additional rent shall be paid and apportioned to such date.

(ii) In the event the Single Floor Option is exercised, the following shall apply:

(1) The Eliminated Space shall be eliminated from the demised premises;

(2) Tenant shall surrender the Eliminated Space to Owner on or prior to the Elimination Date in the same manner as if said date were the expiration date of this lease; and

(3) From the Elimination Date through the expiration date of this lease, the Fixed Rent and Tenant's Share shall each be reduced in the proportion which the area of the Eliminated Space bears to the total area of the demised premises immediately prior to the Elimination Date, and, from the Elimination Date forward, Tenant shall have no rights with respect to the Elimination Space nor any obligations with respect to the Elimination Space, including, but not limited to, any obligations to pay Fixed Rent or any increases therein or any additional rent, and any prepaid portion of Fixed Rent for any period after the Elimination Date allocable to the Elimination Space shall be refunded by Owner to Tenant.

At the request of Owner, Tenant shall execute and deliver an instrument or instruments, in form satisfactory to Owner, setting forth any modifications to this lease contemplated in or resulting from the operation of the foregoing provisions of this Article 65(b); however, neither Owner's failure to request any such instrument nor Tenant's failure to execute or deliver any such instrument shall vitiate the effect of the foregoing provisions of this Article. The failure by Owner to exercise any option under this Article 65 with respect to any subletting shall not be deemed a waiver of such option with respect to any extension of such subletting or any subsequent subletting of the premises affected thereby or any other portion of the demised premises.

(c) If Owner does not exercise its option pursuant to paragraph (a) of this Article, provided Tenant is not then in default under this lease, Owner's consent (which must be in writing and in form satisfactory to Owner) to the proposed assignment or sublease shall not be unreasonably withheld or delayed, provided and upon condition that:

(i) Tenant shall have complied with the provisions of paragraph (a) of this Article, Owner shall not have exercised its option under said paragraph (a) of this Article within the time permitted therefor and Tenant is not then in default under this lease;

(ii) In Owner's judgment the proposed assignee or subtenant is engaged in a business and the demised premises will be used in a manner which (a) is in keeping with the then standards of the Building and (b) will not violate any negative covenant as to use contained in any other lease of space in the Building;

(iii) The proposed assignee or subtenant is reputable, of good character and has sufficient financial worth considering the responsibility involved, and Owner has been furnished with reasonable proof thereof; and is not any of the following: employment or travel agency (or offices therefor); government or quasi-government or agency or department thereof or owned in whole or in part by a government or quasi-government or agency or department thereof (or offices therefor); charity, not-for-profit organization or other organization dependent in whole or in part on charitable contributions (or offices therefor); or any person or entity who shall create, in Owner's reasonable opinion, any excessive traffic or use of the Building services;

(iv) Neither (a) the proposed assignee or subtenant nor (b) any person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or subtenant or any person who controls the proposed assignee or sublessee, is then an occupant of any part of the Building or 393 Fifth Avenue, New York, New York.

(v) The proposed assignee or subtenant is not a person with whom Owner is then negotiating (or with whom Owner has within the prior six-month period negotiated) the lease of space in the Building or 393 Fifth Avenue, New York, New York;

(vi) The form of the proposed sublease or assignment shall be in form satisfactory to Owner and shall comply with the applicable provisions of this Article;

(vii) The rental and other terms and conditions of the sublease are the same as those contained in the proposed sublease furnished to Owner pursuant to paragraph (a) of this Article;

(viii) Tenant shall reimburse Owner on demand for any out-of-pocket costs that may be incurred by Owner in connection with said assignment or sublease, including, without limitation, reasonable legal costs incurred in connection with the granting of any requested consent;

(ix) Tenant shall not have (1) advertised or publicized in any way the availability of the demised premises without prior notice to and approval by Owner, nor shall any advertisement state the name (as distinguished from the address) of the Building or the proposed rental, or (2) listed the demised premises for subletting, whether through a broker, agent, representative, or otherwise at a rental rate less than the greater of (x) the fixed rent and additional rent then payable hereunder for such space, or (y) the fixed rent and additional rent at which Owner is then offering to lease other space in the Building;

(x) Tenant is not required to use a leasing agent or broker, but if Tenant employs or uses the services of a leasing agent or broker, Tenant shall have employed Owner's leasing agent for the Building as Tenant's exclusive agent for a minimum of the first

three months that Tenant employs or uses the services of a leasing agent or broker in attempting to consummate a sublease or assignment; and

(xi) Owner does not have reasonably comparable space for lease in the Building.

(d) Each subletting pursuant to this Article shall be subject to all of the covenants, agreements, terms, provisions and conditions contained in this lease. Notwithstanding any such subletting or assignment and/or acceptance of rent or additional rent by Owner from any subtenant or assignee, Tenant shall and will remain fully liable for (and any assignee shall assume the obligation for) the payment of the fixed rent and additional rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this lease on the part of Tenant to be performed and all acts and omissions of any licensee, subtenant, assignee or anyone claiming under or through any subtenant or assignee which shall be in violation of any of the obligations of this lease, and any such violation shall be deemed to be a violation by Tenant. Tenant further agrees that notwithstanding any such subletting or assignment, no other and further subletting of the demised premises or assignment by Tenant or any person claiming through or under Tenant shall or will be made except upon compliance with and subject to the provisions of this Article. If Owner shall decline to give its consent to any proposed assignment or sublease, or if Owner shall exercise its option under paragraph (a) of this Article, Tenant shall indemnify, defend and hold harmless Owner against and from any and all loss, liability, damages, costs and expenses (including reasonable counsel fees) resulting from any claims that may be made against Owner by the proposed assignee or subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

(e) If (i) Owner fails to exercise its option under paragraph (a) of this Article and consents to a proposed assignment or sublease, and (ii) Tenant fails to execute and deliver the assignment or sublease to which Owner consented within 60 days after the giving of such consent, then Tenant shall again comply with all of the provisions and conditions of paragraph (a) of this Article before assigning this lease or subletting all of the demised premises.

(f) With respect to each and every sublease or subletting authorized by Owner under the provisions of this lease, it is further agreed:

(i) No subletting shall be for a term ending later than one day prior to the expiration date of this lease.

(ii) No sublease shall be valid, and no subtenant shall take possession of the demised premises or any part thereof, until an executed counterpart of such sublease has been delivered to Owner.

(iii) Each sublease shall provide that it is subject and subordinate to this lease and to the matters to which this lease is or shall be subordinate, and that

in the event of termination, re-entry or dispossession by Owner under this lease Owner may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Owner's option, attorn to Owner pursuant to the then executory provisions of such sublease, except that Owner shall not (1) be liable for any previous act or omission of Tenant under such sublease, (2) be subject to any offset, not expressly provided in such sublease, which theretofore accrued to such subtenant against Tenant, or (3) be bound by any previous modification of such sublease or by any previous prepayment of more than one month's rent.

(g) In the event of an assignment, Owner and the assignee may modify this lease in any manner, without notice to Tenant or Tenant's consent, without thereby terminating Tenant's liability for the performance of any obligations under this lease, as so modified, except that any such modification which increases any such obligations in any material way shall not, to the extent of such increase only, be binding upon Tenant.

(h) If Owner shall give its consent to any assignment of this lease or to any sublease, Tenant shall in consideration therefor, pay to Owner, as additional rent:

(i) in the case of an assignment, an amount equal to one-half of all sums and other consideration paid to Tenant by the assignee for or by reason of such assignment (including, but not limited to, sums paid for the sale or rental of Tenant's leasehold improvements, trade fixtures, equipment, furniture, furnishings and other personal property) after deducting the amount of Tenant's Costs (as hereinafter defined); and

(ii) in the case of a sublease, one-half of any rents, additional charges, or other consideration payable under the sublease to Tenant by the subtenant (including, but not limited to, sums paid for the sale or rental of Tenant's leasehold improvements, trade fixtures, equipment, furniture, furnishings and other personal property) which is in excess of the fixed rent and additional rent accruing during the term of the sublease, after deducting the amount of Tenant's Costs.

The sums payable under this paragraph (h) shall be paid to Owner as and when paid by the assignee or subtenant to Tenant. "Tenant's Costs" shall mean the reasonable expenses actually incurred by Tenant in connection with the assignment or sublease for brokerage commissions, advertising expenses, attorneys' fees, rent concessions, and the costs of any alterations and installations in the demised premises required, in Owner's judgment, reasonably exercised, to make the Eliminated Space or the entire demised premises, as the case may be, a self-contained rental unit appropriate for the subtenant or assignee, all based on bills receipts or other evidence satisfactory to Owner. Tenant Costs, however, shall not include the costs of removal of Tenant's property, furniture, fixtures, or any other items installed in the premises by Tenant, or by Owner on Tenant's behalf, or the repair costs, if any, after the removal thereof. Tenant's Costs shall be deducted in the first month of the sublease or at the outset of the assignment.

(i) Notwithstanding anything herein to the contrary including any provisions (other than any notice provisions) set forth in Article 65(a) hereof, Owner shall have no right to terminate this lease in connection with (a) an assignment of this lease or (b) a sublease of all of the demised premises in connection with transactions with an entity into or with which Tenant is merged or consolidated or to which substantially all of Tenant's assets or shares of stock or partnership interests or limited liability company interests or limited liability partnership interests or professional corporation interests are transferred so long as (i) such transfer was made for a legitimate independent business purpose and not principally for the purpose of transferring this lease, (ii) the successor to Tenant has either (1) a net worth computed in accordance with generally accepted accounting principles at least equal to the net worth of Tenant immediately prior to such merger, consolidation or transfer or (2) to Owner's reasonable satisfaction, a demonstrated capacity to meet the financial obligations of the Tenant under this Lease, (iii) proof satisfactory to Owner of such net worth or financial capacity is delivered to Owner at least 10 days prior to the effective date of any such transaction, (iv) Tenant is not then in default under this Lease, and (v) all of the conditions set forth in this Article 65 including, but not limited to, subsection (c) (ii) through (xi) are met. With respect to an assignment or subletting under this Article 65(i), Tenant shall not be required to comply with all of the provisions of Article 65(a) or 65(c)(i) but shall be required to comply only with the notice provisions of Article 65(a) and the requirements under Article 65(a)(i) through (iii). Further, with respect to an assignment or subletting under this Article 65(i), the conditions set forth in Article 65(c)(ii), (iii), and (vi) shall be met to Owner's reasonable satisfaction.

(j) Notwithstanding anything herein to the contrary, Owner acknowledges that Tenant's business to be conducted on the premises requires Tenant to enter into facilities service agreements ("Facilities Service Agreements") with certain regular and known clients of Tenant ("Clients") in order for such Clients to use Tenant's facilities for production and post-production activities. Such Clients may include radio and television networks, cable television and motion picture companies, producers, advertising agencies, and others involved in production, post-production, and transmission media. Tenant represents to Owner that such arrangements will require access by each Client to the premises to be made only in connection with and in the ordinary course of Tenant's business. Notwithstanding anything contained elsewhere in this Article 65, Owner hereby consents in advance to any Facilities Service Agreement between Tenant and such a Client for the limited purpose of permitting such an arrangement as is described in this Section 65(j). Owner hereby agrees that any such Facilities Service Agreement shall not be deemed an assignment or subletting under this lease and shall not be subject to the other provisions of this Article 65 relating to consents, recapture rights, or otherwise. The effectiveness of such advance consent as to a particular Facilities Service Agreement is conditioned on such Facilities Service Agreement being in writing and consistent with the provisions of this lease. Notwithstanding any such Facilities Service Agreement, Tenant shall remain responsible for full compliance with all of the terms of this lease, and Tenant shall be liable to Owner for any violation by its Clients of any provisions of this lease. Tenant represents and covenants that no Facilities Service Agreement purports or will purport (i) to give any Client any right whatsoever as a tenant of the Building, (ii) to establish any kind of landlord-tenant relationship between Tenant and any Client or between Owner and



any Client, or (iii) to give any Client any rights greater than the rights Tenant has with respect to this lease, the Owner, or the Building. Tenant shall indemnify, defend and hold harmless Owner, and its successors, assigns, and each of their partners, managers, employees, agents, officers, and directors from and against any claims (including but not limited to claims for bodily injury or property damage), actions, liens, demands, penalties, fines, liabilities, settlements, damages, losses, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, reasonable attorneys' and consultants' fees and costs by Owner's legal counsel and consultants and disbursements and investigation and laboratory fees arising out of, or in any way related to any Facilities Service Agreement, any Client, or such Client's use of the demised premises.

66. Late Charge. If any rent or additional rent is not paid within ten days after the same is due, in addition to any other remedies Owner may have under this lease, Tenant shall pay to Owner a late charge equal to six cents for each dollar not so paid, to defray Owner's administrative costs in connection therewith.

67. Intentionally Omitted.

68. Directory Listings. Owner shall provide Tenant with its proportionate share of the listings on the tenant directory located in the main lobby of the Building, provided that Tenant shall pay to Owner Owner's standard charge for any changes requested by Tenant following the initial listings.

69. Mortgagees. If any prospective or future mortgagee of all or any portion of the land or Building, or any leasehold interest therein, shall request any modifications of this lease as a condition to issuing or extending any mortgage loan, Tenant will not withhold or delay its consent thereto provided that such modifications do not increase any of Tenant's financial obligations or decrease any of Owner's essential services and do not otherwise materially increase the obligations of Tenant under this lease or materially and adversely affect any rights of Tenant under this lease.

70. Landmarks Designation. Tenant is hereby notified that all or a portion of the Building and the premises are subject to the jurisdiction of the New York City Landmarks Preservation Commission. In accordance with Sections 25-305, 25-306, 25-309 and 25-310 of the Administrative Code of the City of New York and the rules set forth in Title 63 of the Rules of the City of New York, any demolition, construction, reconstruction, alteration or minor work as described in such sections and such rules may not be commenced within or at the Building or the premises without the prior written approval of the New York City Landmarks Preservation Commission. Tenant is notified that such demolition, construction, reconstruction, alterations or minor work includes, but is not limited to, (a) work to the exterior of the Building or the premises involving windows, signs, awnings, flagpoles, and banners and (b) interior work to the Building or the premises that (i) requires a permit from the Department of Buildings or (ii) changes, destroys or affects an interior architectural feature of an interior landmark or an exterior architectural feature of an improvement that is a landmark or located on a landmark site or in a

historic district. In addition, Tenant understands and agrees that no such demolition, construction, reconstruction, alteration, or minor work may be performed by Tenant without Owner's prior written approval. Tenant further represents, warrants, and covenants that, at any time during the term of this lease, in the event that Tenant should enter into a sublease, or any renewal thereof, for all or any portion of the premises, as may be permitted pursuant to the terms and conditions of this lease, such sublease, or renewal thereof, shall contain, conspicuously set forth therein, a notice to the subtenant in compliance with the terms, conditions and provisions of Section 25-322 of the Administrative Code of the City of New York.

71. Nondisturbance Agreement. Owner shall make reasonable efforts to obtain a nondisturbance agreement in favor of Tenant from any present mortgagee, in form and substance required by such mortgagee. If any mortgagee shall refuse to deliver a nondisturbance agreement, Owner shall have no obligation or liability to Tenant as a result of that refusal, and this lease shall remain in full force and effect according to its terms except that this lease shall not be subject or subordinate to any such present mortgage. Notwithstanding anything herein to the contrary, if Owner shall not obtain from any future mortgagee or future ground lessor (under a new mortgage or new ground lease) a nondisturbance agreement with Tenant in form and substance acceptable to the mortgagee or ground lessor in question, this lease shall not be subject and subordinate to the mortgage or ground lease in question. Notwithstanding the foregoing, Tenant shall promptly execute and deliver any such nondisturbance agreement provided by any mortgagee or ground lessor, but Tenant shall not be required to execute any such agreement if the same shall materially modify any of Tenant's rights or obligations under this lease. Owner shall not be required to incur any expense, liability, or obligation in order to obtain any nondisturbance agreement, and any fee, expense, reimbursement or other payment, or any additional documentation, required by any mortgagee or ground lessor shall promptly be paid, and delivered, by Tenant.

72. Floor Numbers/Certificate of Occupancy. (a) The parties acknowledge that the Department of Buildings of the City of New York ("DOB") refers to the second floor of the Building as the "mezzanine", the third floor of the Building as the "second" floor, and so forth. The topmost floor of the Building, referred to in this lease as the eighth floor, is known by the DOB as the "seventh" floor. In order to avoid confusion, the parties agree that any and all filings with the DOB shall use the DOB's system of floor identification, but that for all other purposes, Owner's system of identification shall be used. Notwithstanding the foregoing, Owner and Tenant agree that the demised premises hereunder shall consist of the top two floors of the Building.

(b) Notwithstanding anything herein to the contrary, Tenant hereby acknowledges that it must amend the Building's Certificate of Occupancy to legalize Tenant's use or manner of use of the premises located on the 8<sup>th</sup> floor. Upon Owner's obtaining an amended Certificate of Occupancy for the second floor, Owner shall give notice ("Owner's Notice") to Tenant that such amended Certificate of Occupancy has been obtained. Tenant shall have six months from the date of Owner's Notice to obtain an Amended Certificate of Occupancy for the 8<sup>th</sup> floor (the "8<sup>th</sup> Floor Amended Certificate of Occupancy"), and Tenant

shall, at all times, pursue diligently and use its best efforts to obtain the 8<sup>th</sup> Floor Amended Certificate of Occupancy. If Tenant is unable, after using due diligence and its best efforts, to obtain the 8<sup>th</sup> Floor Amended Certificate of Occupancy, Owner shall not be unreasonable in granting an extension of time to obtain the 8<sup>th</sup> Floor Amended Certificate of Occupancy. Owner shall reasonably cooperate with Tenant in obtaining the 8<sup>th</sup> Floor Amended Certificate of Occupancy, but Owner shall not be required to incur any expenses in its cooperation with Tenant. Tenant shall promptly reimburse Owner for any and all costs or expenses incurred by Owner in the obtaining of the 8<sup>th</sup> Floor Amended Certificate of Occupancy. Tenant shall have no right to cancel, reject, or modify this lease in any way due to its failure at any time to obtain the 8<sup>th</sup> Floor Amended Certificate of Occupancy.

73. Noises, Interference. (a) Owner acknowledges that the purpose for which Tenant is leasing the eighth floor of the Building, to wit to operate a television production studio, requires sound integrity and an environment as free from interference, vibration, and sound as reasonably possible. Notwithstanding anything herein to the contrary, Owner agrees that, except in the case of emergency repairs, neither it shall, nor shall it permit any tenant of the Building to, perform construction work or repairs in the Building that are reasonably likely to cause noise, vibration, and/or interference with Tenant's studio operations without first endeavoring to give Tenant reasonable advance notice of such work. Owner shall endeavor to schedule such work in a manner designed to minimize any interference with Tenant's operations. Notwithstanding the foregoing, neither Owner nor any tenant shall have any obligation to schedule such work to be done on an overtime or weekend basis.

(b) Tenant shall have the right, at its own cost and expense, in compliance with any and all terms and provisions of this lease, to provide sound attenuation to any and all noise or vibration producing Building equipment on floors of the Building other than the demised premises, including to the elevator machines and doors, and Owner shall reasonably cooperate with Tenant in good faith and at Tenant's expense in such endeavor. Notwithstanding the foregoing, Tenant shall not, in providing such sound attenuation, interfere with, disturb, or inconvenience Owner or any other tenant in the Building, and if such sound attenuation directly or indirectly increases the Owner's cost of operating the Building in any manner, such sound attenuation shall not be permitted. Tenant shall have no right to provide sound attenuation to any noise or vibration producing equipment of any other tenant in the Building, but Owner shall endeavor to assist Tenant in obtaining the approval of any such other tenant to provide sound attenuation to such tenant's equipment.

74. Notices. (a) Any notice or other communication under this lease shall be in writing and shall be given by (1) personal delivery, (2) registered or certified mail (return receipt requested), or (3) nationally recognized overnight courier service, to the parties hereto at the following addresses or at such other address as any party hereto shall hereafter specify by 10 days' prior notice given and received in the manner provided in this Section.

If to the Owner:

Stahl 401 Fifth LLC  
c/o Stahl Real Estate Company  
277 Park Avenue  
New York, New York 10172  
Attention: Mr. Gregg S. Wolpert  
Telephone: (212) 826-7060

With a required copy to:

Colliers ABR, Inc.  
40 East 52<sup>nd</sup> Street  
New York, NY 10022  
Attention: Mr. Thomas C. Waldron, Jr.

And a required copy to:

Duane Morris LLP  
380 Lexington Avenue  
New York, New York 10168  
Attention: Stewart J. Stern, Esq.  
Telephone: (212) 692-1070

If to Tenant:

NEP Image Group, LLC  
305 East 46th St.  
New York, NY 10017  
Attention: Charles Pontillo

With a required copy to:

Mr. James V. Milano, CFO  
NEP Image Group, LLC  
2 Beta Drive  
Pittsburgh, PA 15238

And a required copy to:

Regina A. Matejka, Esq.  
c/o DelVecchio & Recine, LLP  
1100 Franklin Avenue Suite 202  
Garden City, NY 11530

(b) Receipt and Delivery. A notice shall be deemed to have been duly received (and the time period in which a response thereto is required shall commence) (a) if personally delivered, on the date of such delivery (as evidenced by the receipt of the personal delivery service), (b) if mailed, on the date set forth on the return receipt, or (c) if delivered by overnight courier, on the date of such delivery (as evidenced by the receipt of the overnight courier service). If any notice cannot be delivered because of a changed address of which no notice was given, or the refusal to accept same, the notice shall be deemed received on the date the notice is sent (as evidenced by the affidavit of the sender). Any notice may be given by counsel for the party giving such notice.

74. Roof Access. Tenant acknowledges that Owner's only means of access to the roof of the Building is through the demised premises on the 8<sup>th</sup> floor. Except in the event of emergencies, Owner shall attempt to give reasonable notice to Tenant that Owner or any party working by or for Owner intends to access the roof and/or bring materials to and from the roof and that Owner will access the roof through the reception area on the 8<sup>th</sup> floor. Owner shall endeavor not to interfere with Tenant's business or clients in accessing the roof. Notwithstanding the foregoing, Owner shall not have any obligation to schedule such access on an overtime or weekend basis.

75. Basement Space. Prior to the commencement date of this lease, Tenant shall remove all of Tenant's property located in the basement of the Building, including, but not limited to, Tenant's furniture, fixtures, machinery, equipment and other personal property and any property of (i) third parties related to, affiliated with, and/or controlled by Tenant, (ii) Tenant's Clients, or (iii) any of Tenant's invitees, guests, visitors, agents, or employees.

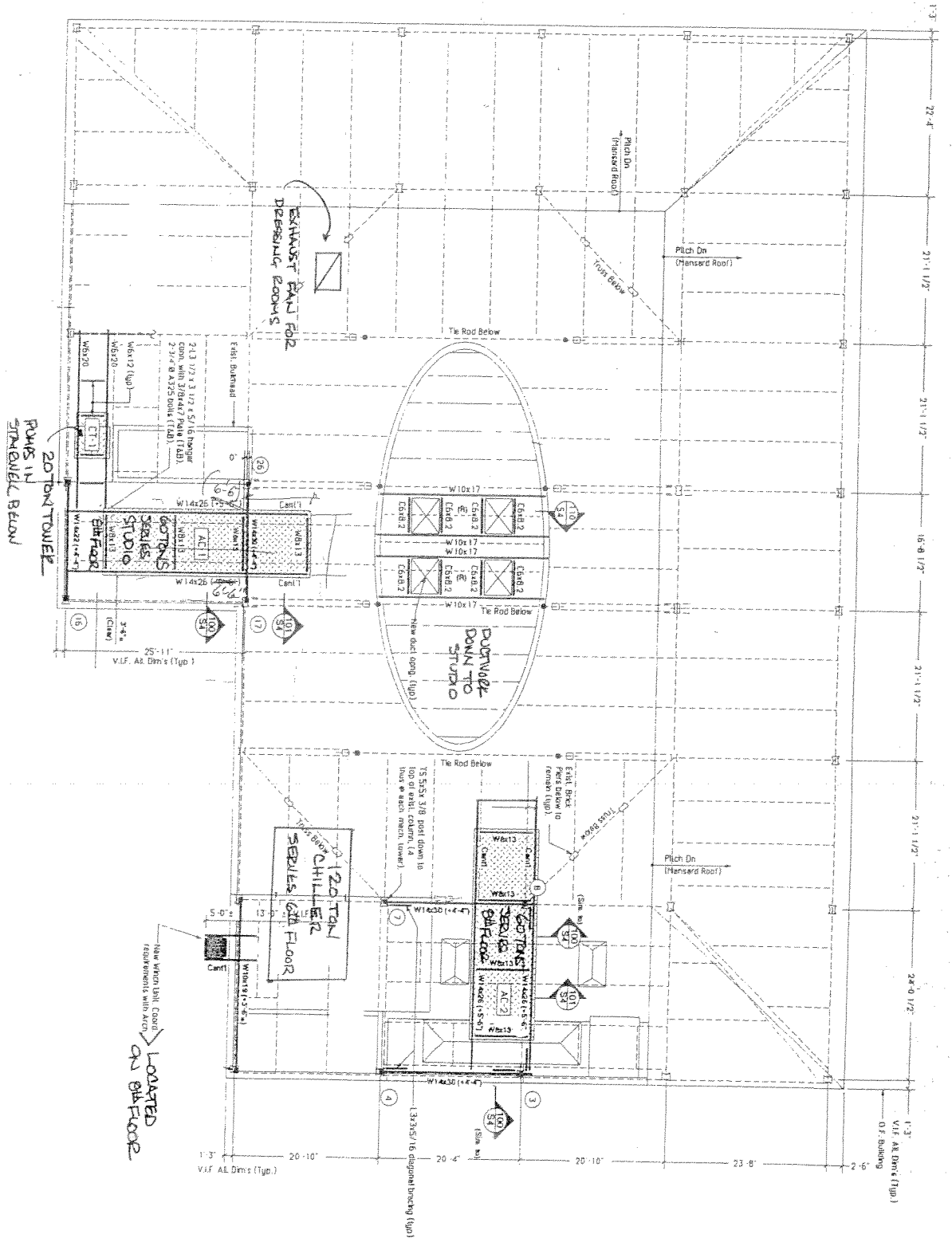
EXHIBIT A

The heating and air-conditioning systems servicing the Demised Premises shall be maintained so as to achieve the following temperatures:

	Inside Condition (Degrees) _____	Outside Condition (Degrees) _____
Cooling Season	78 F dry bulb 50% RH	90 F dry bulb 75 F wet bulb
Heating Season	65 F dry bulb	5 F dry bulb

EXHIBIT B

**Roof Framing Plan**



<p><b>Roof Framing Plan</b></p> <p>KAR ANDREB</p> <p>DATE: 10/1/93</p>		<p><b>M.T.I. Studios</b>          401 Fifth Avenue          New York, NY</p> <p><b>De Nardis Associates, Inc.</b>          Consulting Eng.</p> <p>525 NO. BROOKLYN          AVE. BROOKLYN, NY 11216          TEL: (914) 491 8299          FAX: (914) 948 9299</p>	<p><b>KOSSAR + G.</b>          ARCHITECT          121 WEST          NY NY, NY          TEL: 212 929-1111          FAX: 212 691-1111</p>
<p>PROJECT NO. 930722-01</p> <p>DATE: 10/1/93</p>			
<p>27 JUNE, 1993          18 JUNE, 1993          01 JULY, 1993</p> <p>Construction Section          Construction Section          Project M.I.I.</p>			



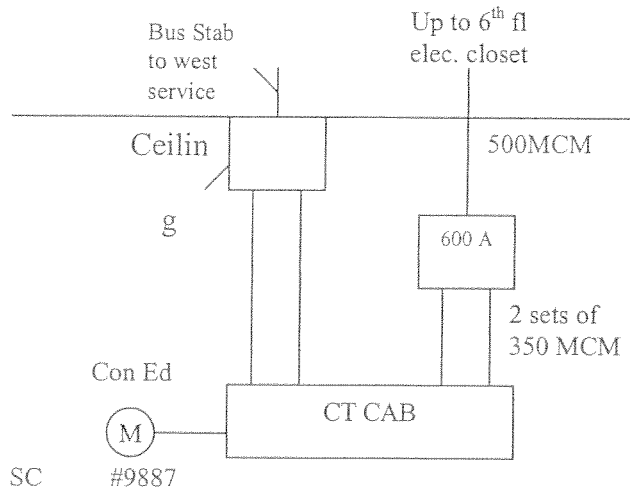


## EXHIBIT C

### Electrical Modification

10/28/03 v.5

1.



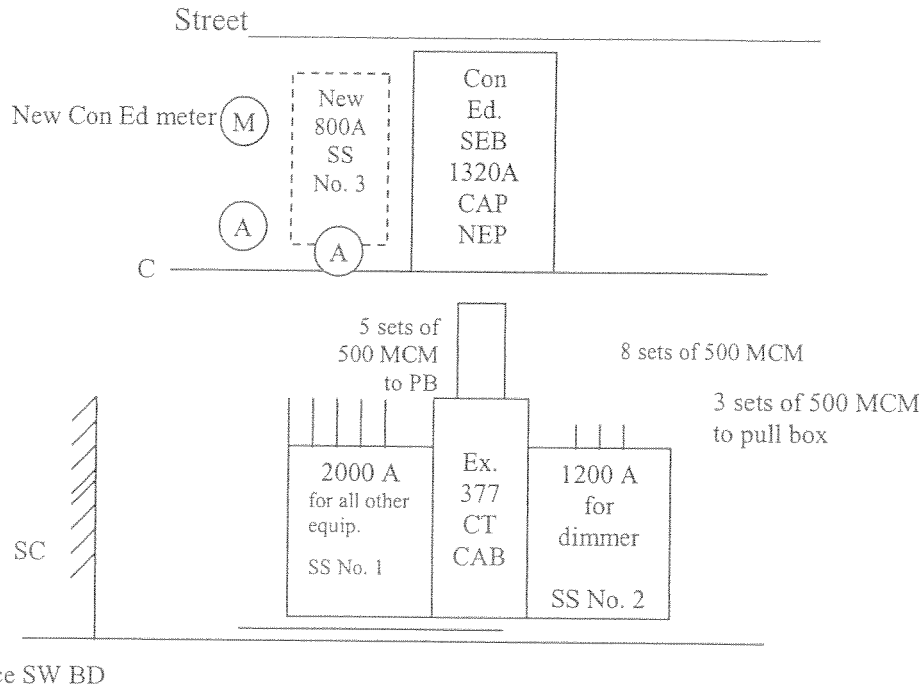
This existing installation provides a 500 MCM to 6<sup>th</sup> floor for Owner's use.  
The following must be done:

- (A) Con Ed meter no. 9887 should be transferred to Stahl's account
- (B) 500 MCM riser and 42 CKT L&P panel on 6<sup>th</sup> floor reverts to Owner
- (C) This will provide 380 amperes for this floor
- (D) Tenant requested a 400 A SW – at a location to be determined by the Owner
- (E) Owner will remove Tenant's filter transformer from 6<sup>th</sup> floor. Weight approximately 400 to 500 lbs.

2. (A). Tenant requested 2 existing conduits above ceiling on the 6<sup>th</sup> floor for their use. These conduits which emanate from an 800 A switch (meter #8642) in sub cellar will be rerouted from the 6<sup>th</sup> floor to the 7<sup>th</sup> and the 8<sup>th</sup> floor. Owner to provide 400 A disconnect switch and terminate one set 350 MCM on the 8<sup>th</sup> floor. The conduits are now connected to a filter transformer which will be removed. After ceiling is removed, the elevation of conduits will be inspected to make certain they don't conflict with future HVAC installation. If it is determined that the conduits need to be raised tight to ceiling slab Tenant will perform this work at its expense.

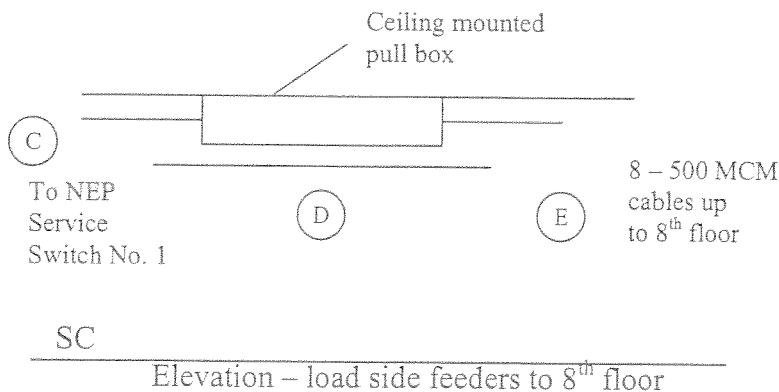
(B.) 500 MCM cable which serves P&L panel will revert to the Owner (the cable starts in the subbasement).

3.



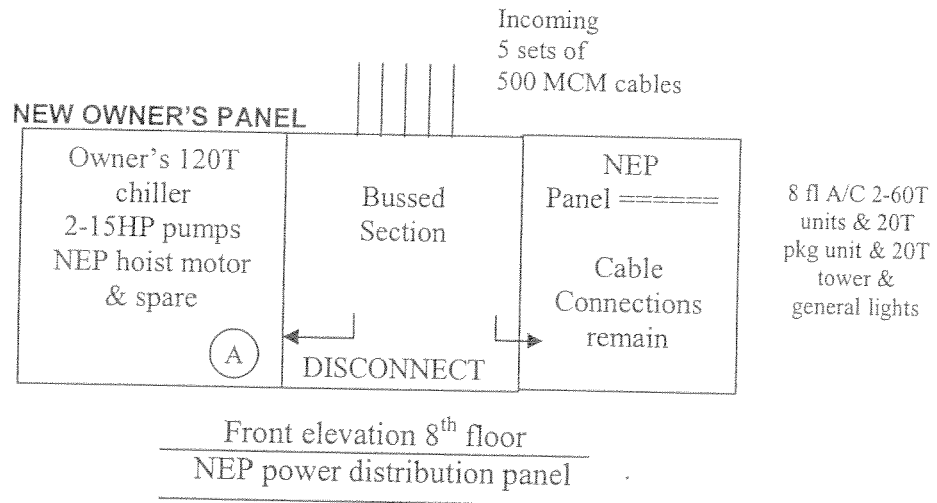
This existing installation serves Tenant floors.

- (A) Tap the load side of the Con Edison Service End Box and install new 800 A SS No. 3 & meter for Owner's use
- (B) Minimum 5 foot clearance must be maintained on all required sides of SS No. 3 or the service end box.
- (C) Disconnect 2 sets of 500 MCM cables from SS No. 1 (load side) which go to the 8<sup>th</sup> floor and reconnect to the line side of the new SS No. 3. Change out fuse size for compatibility with the 3 remaining sets of cables



- (D) 2 of the 5 sets of 500 MCM cables that are disconnected from Tenant SS No. 1 (load side) must be identified and spliced to new load side cables from 800 A SS No. 3
- (E) Prepare drawing for submission to the advisory board for review and approval.

4.



- (A) Disconnect feed cables to panel, intercept 2 of the 5 sets of incoming 500 MCM for the new feed to this panel
- (B) Leave Tenant hoist motor as is for Tenant use (the motor will be fed off the Owners meter)
- (C) Feeder installation to 120T chiller and chill water pumps will remain as is, but will be on the Owner's meter (the switchgear feeding the chiller will remain and revert to the Owner).
- (D) Division of 3 cables to Tenant panel and 2 cables to Owner's panel appear to satisfy power requirements of both.
5. (A.) Open knife switchboard in the basement, connected to the west service and which contains 3 – 250 A switches serving floors 5, 6 & 7, will no longer be used by Tenant. The Con Ed meter(s) attached to these switches will be transferred to the Owner's account or removed at the Owner's option.