

**Torres Rojas, Genara**

FOI#13517

**From:** awells@phillipslytle.com  
**Sent:** Wednesday, October 10, 2012 4:44 PM  
**To:** Duffy, Daniel  
**Cc:** Torres Rojas, Genara; Van Duyne, Sheree  
**Subject:** Freedom of Information Online Request Form

Information:

First Name: Andrew  
Last Name: Wells  
Company: Phillips Lytle LLP on behalf of the Polytechnic Institute of New York University  
Mailing Address 1: 437 Madison Avenue  
Mailing Address 2: 34th Floor  
City: New York  
State: NY  
Zip Code: 10022  
Email Address: [awells@phillipslytle.com](mailto:awells@phillipslytle.com)  
Phone: 212-508-0422  
Required copies of the records: Yes

List of specific record(s):

Contracts related to the construction of the Center for Advanced Technology in Telecommunication CATT, a building owned by the Port Authority, which is collocated with the Bern Dibner Library at 5 Metrotech Center on the campus of the Polytechnic Institute of New York University Poly in Brooklyn. The contracts are between Poly and the construction manager for the project Morse Diesel and the architects for the project: 1 Davis Brody Associates and 2 Prentice Chan, Ohlhausen. These contracts were sent to Deborah Schneekloth of the Port Authority by Poly with letters dated May 15, 1989 and September 1, 1989. Ms. Schneekloth acknowledged receipt of the letters and contracts on May 22, 1989 and October 17, 1989, respectively. The Port Authority provided the funding for the project. Please let me know if the Port Authority has maintained copies of these documents. If so, Poly would like copies of the contracts. Please contact me if you have any questions.

**THE PORT AUTHORITY OF NY & NJ**

Daniel D. Duffy  
FOI Administrator

November 6, 2012

Mr. Andrew Wells  
Phillips Lytle LLP  
437 Madison Avenue, 34th Floor  
New York, NY 10022

Re: Freedom of Information Reference No. 13517

Dear Mr. Wells:

This is a response to your October 10, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy enclosed) for Request for copies of contracts related to the construction of the Center for Advanced Technology in Telecommunication CATT between Poly and the construction manager for the project Morse Diesel and the architects for the project: Davis Brody Associates and Prentice Chan, Ohlhausen.

Material responsive to your request and available under the Code may be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/13517-LPA.pdf>. Paper copies of the available records may be requested.

Certain material responsive to your request is exempt from disclosure pursuant to exemption (1) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy  
FOI Administrator

Enclosure

225 Park Avenue South  
New York, NY 10003  
T: 212 435 3642 F: 212 435 7555

---

THE PORT AUTHORITY  
OF  
NEW YORK AND NEW JERSEY  
CENTER FOR ADVANCED TECHNOLOGY  
IN  
TELECOMMUNICATIONS

---

AGREEMENT

between

THE PORT AUTHORITY  
OF  
NEW YORK AND NEW JERSEY

and

POLYTECHNIC UNIVERSITY

---

## AGREEMENT

THIS AGREEMENT, made effective as of the 30th day of September, 1988, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic, created by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America, and having an office at One World Trade Center, in the Borough of Manhattan, City, County and State of New York, and POLYTECHNIC UNIVERSITY (formerly known as Polytechnic Institute of New York) (hereinafter called "the Lessee"), a not-for-profit educational institution chartered by the Board of Regents of the University of the State of New York having an office at 333 Jay Street, in the Borough of Brooklyn, County of Kings, City and State of New York, whose representative is Seymour Scher.

WITNESSETH, That:

WHEREAS, the City of New York, Forest City Metrotech Associates and Metrotech, a wholly-owned subsidiary of the Lessee, have proposed by a certain agreement also executed by the New York City Public Development Corporation (hereinafter referred to as "the PDC") and the Lessee (said agreement being hereinafter referred to as "the Development Agreement") to undertake the creation of the Metropolitan Technology Center, a sixteen-acre business-university redevelopment in an area generally bounded by Willoughby Street, Jay Street, Tech Place (Johnson Street), Bridge Street, Tillary Street, Flatbush Avenue Extension and Gold Street in the borough of Brooklyn (hereinafter sometimes referred to as "the Project"); and

WHEREAS, among the components of the Project are the Center for Advanced Technology in Telecommunications (hereinafter referred to as "the CATT") and the Bern Dibner Library of Technology and Science of Polytechnic University (hereinafter referred to as "the Library") both of which will occupy one building to be constructed in the Project (hereinafter referred to as "the Building").

WHEREAS, it is anticipated that the City of New York will acquire the real property described in Exhibit A attached hereto and hereby made a part hereof and to be more fully described in the Conveyance, as defined in subparagraph (5) of paragraph (a) of Section 1 of this Agreement, upon which the Building is to be constructed (sometimes hereinafter referred to as "the Land") and will convey title to the Land to the Lessee;

NOW, THEREFORE, the Port Authority and the Lessee, for and in consideration of the rents, covenants and mutual agreements hereinafter contained, hereby covenant and agree as follows:

### Section 1. Conditions Precedent

(a) No Construction Payment, as defined in Section 3 hereof, except for those construction payments to be made pursuant to subparagraph (1) of paragraph (b) of said Section 3, may be made and the Port Authority shall not be required to deposit any amount in escrow as provided in said Section 3 unless and until the following conditions precedent shall have been met in the manner provided in paragraph (b) of this Section:

(1) the Port Authority and The City of New York shall have entered into that certain Agreement dated as of September 30, 1988 (hereinafter referred to as "the City Agreement") and the same shall not have been discharged, amended or modified as to its effectiveness or in any manner which is inconsistent with the purposes of this Agreement, the Declaration of CATT/Library Condominium in the form of Exhibit D attached to this Agreement and hereby made a part hereof, with such changes thereto as the Port Authority may consent (referred to herein as "the Declaration") or the Conveyance;

(2) (i) the Lessee will have entered into firm agreements consistent with the provisions of this Agreement, the Declaration and the Conveyance (which shall not be discharged, amended or modified either as to their effectiveness or in any manner which is inconsistent with the provisions of this Agreement, the Declaration or the Conveyance without the prior written consent of the Port Authority) providing for the performance of the Construction Work, as defined in Section 2 hereof; (ii) the Lessee shall obtain and deliver to the Escrow Agent, as defined in subparagraph (2) of paragraph (b) of Section 3 of this Agreement, a clean irrevocable letter of credit in the form of Exhibit L attached hereto and hereby made a part hereof with such changes thereto as the Lessee shall propose and as the Port Authority in its sole discretion shall approve issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District in an amount not less than Three Million Dollars and No Cents (\$3,000,000.00), such letter of credit (A) to be maintained in such amount until the earlier of the two hundred seventieth (270th) day after the completion of construction of the Building (including without limitation thereto the completion of all "punch-list" items) or the delivery of a draft against such letter of credit pursuant to the provisions of subparagraph (3) of said paragraph (b) (subsequent to the delivery of such a draft or drafts and prior to such two hundred seventieth (270th) day to be maintained in such amount less the amount of such draft or drafts), (B) to be in favor of the Escrow Agent, (C) to be drawn upon only with the written approval of the Port Authority or in the event of its expiration as provided in subparagraph (3) of said paragraph (b) and (D) to be usable only for expenditures necessary to complete the construction of the Building or to reimburse the Port Authority or the CATT Fund described in subparagraph (2) of said paragraph (b) as set forth in subparagraph (3) of said paragraph (b); and (iii) the Lessee shall demonstrate that it shall have sufficient funds which are and will be available to sufficiently equip the CATT for the purposes and uses intended for the CATT at a currently estimated cost for such equipment of \$8,000,000.00. "Funds which are and will be available" as used in this subparagraph (2) may include firm, irrevocable commitments for loans or other grants, the provision of letters of credit (other than the letter of credit referred to above) or donations actually received by the Lessee or any combination of any of the foregoing aggregating the amounts required for the purposes. The Lessee may undertake to provide equipment in partial or complete fulfillment of its aforesaid obligation to demonstrate the availability of funds to equip the CATT. The Lessee shall deliver to the Port Authority a list of equipment which the Lessee undertakes to install in the CATT which list shall also show the appraised valuation of each item of such equipment. If the valuation of such item of equipment is satisfactory to the Port Authority, the undertaking to provide such item of equipment shall fulfill the Lessee's obligation to demonstrate the availability of funds equal to such valuation for the purposes of clause (iii) of this subparagraph (2).

(3) firm agreements consistent with the provisions of this Agreement, the Declaration and the Conveyance (which shall not be discharged, amended or modified either as to their effectiveness or in any manner which is inconsistent with the provisions of this Agreement, the Declaration or the Conveyance without the prior written consent of the Port Authority) shall have been entered into between the applicable developer or developers and one or more contractors providing for the construction of two commercial facilities (hereinafter collectively referred to as "the Commercial Facilities" and individually referred to as a "Commercial Facility") in the Project aggregating not less than 500,000 gross square feet of space, as defined in Section 38 of this Agreement (or a hotel and office building complex may be substituted for one of the aforesaid commercial facilities); financing in the full amount of the construction of the Commercial Facilities shall have been secured or committed; copies of such agreements or of agreements or commitments for such financing shall be delivered to the Port Authority; and such agreements and agreements or commitments for such financing have been executed by the parties thereto, are in effect and have not been modified in any manner which is detrimental to the interests of the Port Authority or which is inconsistent with this Agreement, the Conveyance or the Declaration without the prior written consent of the Port Authority;

(4) marketable, fee simple title to the Land and the property required for the Commercial Facilities shall have been acquired by the City of New York or PDC (whether by condemnation or otherwise) and shall have been, in the case of the Land, transferred to the Lessee free and clear of any and all mortgages, liens, encumbrances, occupancies, restrictions, easements and other defects in title excepting only (i) restrictions on the use of the Land which shall be effective for no more than ten (10) years and shall permit the uses set forth in Section 8 of this Agreement, provided, that nothing in such deed or in this subparagraph (4) shall subject or be deemed to subject the Port Authority to such restrictions except as provided in the City Agreement and (ii) those restrictions to which the Port Authority shall consent or which do not render title unmarketable or uninsurable at the regular rates of reputable title insurance companies licensed to do business in the State of New York and, in the case of the Commercial Facilities, leased to the applicable developer or developers and that there remain no impediments to the commencement of construction of the Building and the Commercial Facilities (provided, that with respect to not more than one of the two required Commercial Facilities the property required for such Commercial Facility shall be deemed to have been leased to the applicable developer and there shall not be deemed to be an impediment to commencement of construction of such Commercial Facility in the event that the City of New York or the PDC shall have acquired the property required for such Commercial Facility and shall have entered into an agreement with the developer of such Commercial Facility providing for the letting of the property required for such Commercial Facility to such developer, the relocation of the occupants of such property shall have been substantially completed, and the remaining Commercial Facility shall include not less than 400,000 gross square feet of space, as defined in Section 38 of this Agreement), copies of agreements between the City of New York or the PDC, as the case may be, and the Lessee, in the case of the Land, and the applicable developers, in the case of the property required for the Commercial Facilities, have been delivered to the Port Authority, and such agreements have been executed by the parties thereto, are in effect and have not been modified in any manner which is detrimental to the interests of the Port Authority or which is

inconsistent with this Agreement, the Conveyance or the Declaration without the prior written consent of the Port Authority and, in the case of any such property acquired by condemnation, the Port Authority shall have been furnished with all appropriate papers in that proceeding indicating that condemnation has taken place and has been concluded without any further right of appeal with respect to title to the property acquired by condemnation, as opposed to the amount of any applicable award in condemnation;

(5) the Lessee shall have conveyed marketable fee simple title to the Land, free and clear of any and all mortgages, liens, encumbrances, occupancies, restrictions, easements and other defects in title excepting only those restrictions to which the Port Authority shall consent or which do not render title unmarketable or uninsurable at the regular rates of reputable title insurance companies licensed to do business in the State of New York, to the Port Authority and the Lessee as tenants-in-common by Bargain and Sale Deed with a covenant against grantor's acts, duly executed and acknowledged by the Lessee and in form for recording (referred to herein as "the Conveyance") and the Conveyance shall have been recorded in the manner prescribed by applicable law, the execution, delivery and recording of the Conveyance to be preceded by and contemporaneous with the execution, delivery and recording of the deed from the City of New York or PDC to the Lessee and the Lessee shall pay any and all revenue stamps, deed, transfer, sales and other taxes, including any and all New York Real Property Transfer Gains Tax, due in connection with the Conveyance;

(6) the Port Authority and the Lessee, as tenants-in-common, shall have entered into the Declaration, the Declaration shall have been recorded in the manner prescribed by applicable law and appropriate filings or registrations shall have been made in connection with the creation of the Condominium established by the Declaration pursuant to applicable law or an exemption therefrom or a "no-action" letter in connection therewith shall have been obtained and at the time of the execution and recording of the Declaration the Land shall be free and clear of any and all mortgages, liens, encumbrances, occupancies, restrictions, easements, and other defects in title excepting only those restrictions contained in the Conveyance and excepting any liens or encumbrances arising out of the acts of the Port Authority, the execution and recording of the Declaration to be preceded by and contemporaneous with the execution, delivery and recording of the Conveyance or, in the event that such execution and recording cannot be contemporaneous by reason of the requirements of the Attorney General of the State of New York or any other office or agency with which applicable law requires that the Declaration be filed or registered, as nearly contemporaneous as possible;

(7) all federal, New York City, New York State and local consents or approvals which may be required in connection with the acquisition of the property required for the Building and the Commercial Facilities and the rights to development of the Building and the Commercial Facilities and all statutory requirements in connection therewith shall have been secured, satisfied or concluded;

(8) a copy of the Development Agreement has been delivered to the Port Authority and the same is consistent with this Agreement, the Conveyance and the Declaration and the Development Agreement has been executed by the parties thereto, is in effect and has not been modified in any manner which is

detrimental to the interests of the Port Authority or which is inconsistent with this Agreement, the Conveyance or the Declaration without the prior written consent of the Port Authority; and

(9) copies of the contract of sale between the City of New York and the Lessee relating to the Land together with copies of the agreement, if any, between the City of New York and the Lessee or others participating in the CATT or the Library or the Building covering the payment of taxes or payments in lieu of taxes with respect thereto, all of which shall be consistent with this Agreement, the City Agreement, the Declaration and the Conveyance, have been delivered to the Port Authority and such contract of sale and such agreement relating to taxes or payments in lieu of taxes have been executed by the parties thereto, are in effect and have not been modified in any manner which is detrimental to the Port Authority or which is inconsistent with this Agreement, the Conveyance or the Declaration without the prior written consent of the Port Authority.

(b) In the event that at any time subsequent to the execution of this Agreement and prior to January 1, 1990, as such date may be postponed pursuant to Paragraph (d) of this Section:

(1) the conditions set forth in subparagraphs (1), (5) and (6) of paragraph (a) of this Section shall have been met to the satisfaction of the Port Authority and the Lessee shall have demonstrated to the satisfaction of the Port Authority that it has all of the funds referred to in clause (iii) of subparagraph (2) of said paragraph (a) or shall have delivered its undertaking to provide equipment having a value equal to all or a portion of such funds and have demonstrated the availability of the remaining such funds to the satisfaction of the Port Authority (all of such determinations being in the sole discretion of the Port Authority) and the Lessee shall have obtained the letter of credit described in subparagraph (2) of said paragraph (a);

(2) the Lessee shall deliver to the Port Authority an officers' certificate signed by its President or one of its Vice Presidents and by the Lessee's Secretary or one of its Assistant Secretaries to the effect that the agreements delivered to the Port Authority and described in subparagraphs (2), (3), (8) and (9) of said paragraph (a) are in full force and effect and have not been modified from the form delivered to the Port Authority in any manner which is detrimental to the interests of the Port Authority or which is inconsistent with this Agreement, the Conveyance or the Declaration without the written permission of the Port Authority, that those of such agreements which were delivered to the Port Authority in draft form have been executed by the parties thereto, that the conveyances referred to in subparagraph (4) of said paragraph (a) have been effected, that all consents, approvals and statutory requirements have been secured, satisfied or concluded and that all conditions to the effectiveness of the agreements delivered to the Port Authority pursuant to the provisions of paragraphs (2), (3), (8) and (9) which are capable of being met prior to the date of said officers' certificate have been met and that the only remaining conditions to the effectiveness of said agreements are those which are reasonable and customary in agreements of their respective kinds and which are capable of satisfaction in the ordinary course of business of the respective parties to such agreements; and

(3) the Lessee shall deliver to the Port Authority an opinion or opinions of counsel (which may be issued by counsel to the Lessee or by counsel to the applicable developers of the Commercial Facilities) to the effect that the agreements described in subparagraphs (2), (3), (8) and (9) of said paragraph (a), in the form described in such officers' certificate, have been duly executed, are valid and enforceable and are in full force and effect, that the conveyances referred to in subparagraph (4) of said paragraph (a) have been effected and that all governmental consents or approvals which may be required in connection with the transactions contemplated by such agreements and conveyances have been secured, satisfied or concluded and all applicable governmental laws, rules, regulations, orders and directions have been complied with, such opinions to be subject to such qualifications or exceptions as may be acceptable to the Port Authority;

then the conditions precedent set forth in paragraph (a) of this Section shall be deemed satisfied, provided, that in the event that, prior to the commencement of construction of the Building: (A) the Port Authority shall receive notice that any of the facts certified as true in said officers' certificate is not or is no longer true, (B) the Port Authority shall, by reason of any occurrence affecting the validity, legality or effectiveness of the City Agreement, the Conveyance or the Declaration, determine in its sole discretion that the conditions set forth in subparagraphs (1), (5) and (6) of paragraph (a) of this Section have not been met, (C) the Port Authority shall receive notice that the funds referred to in subparagraph (2) of said paragraph (a) shall no longer be available to the Lessee or (D) the Port Authority shall receive notice that the letter of credit referred to in said subparagraph (2) is no longer in effect, then the Port Authority may notify the Lessee and the Escrow Agent, as defined in Section 3 of this Agreement, that it does not consider the conditions precedent set forth in paragraph (a) of this Section to be satisfied at that time and may withdraw the CATT Fund, all as provided in said Section 3.

(c) In the event that the Conveyance and the Declaration or another instrument or instruments in lieu thereof have not been entered into prior to January 1, 1990, as such date may be postponed pursuant to paragraph (d) of this Section, or in the event all of the conditions precedent set forth in paragraph (a) of this Section shall not have been met in the manner set forth in paragraph (b) of this Section prior to January 1, 1990, as such date may be so postponed, it is understood and agreed that the Port Authority shall have no further obligations with respect to the construction of the CATT and it is further agreed that the Lessee shall reimburse the Port Authority for all Construction Payments and all Port Authority Costs, as respectively defined in Sections 3 and 7 hereof, without the giving of any notice by the Port Authority, such reimbursement to be made on or before the thirtieth (30th) day following January 1, 1990, as such date may be so postponed, and (1) if the Conveyance and the Declaration shall have been entered into, the Port Authority shall convey the CATT Unit, as defined in Section 2 of this Agreement, to the Lessee as provided in Section 11 of this Agreement or (2) if the Conveyance and not the Declaration shall have been entered into, the Port Authority shall convey all the right, title and interest of the Port Authority in and to the Land to the Lessee free and clear of any mortgages, liens, encumbrances, restrictions and easements created by the affirmative willful acts of the Port Authority without the consent of the Lessee and of any liens or encumbrances not related to or arising out of the Port Authority's interest in the Land (in lieu of removing any judgement liens on the Land resulting from its acts the Port Authority may undertake to pay any such liens when due), by delivery to the Lessee of a Quitclaim Deed executed and acknowledged on behalf of the Port Authority and in proper form for recording and the Lessee shall pay any and all revenue stamps, deed, transfer, sales and other taxes, including any and all New York Real Property Transfer Gains Tax, due in connection with the Conveyance.

(d) If on January 1, 1990 one or more of the conditions precedent set forth in paragraph (a) of this Section shall not have been met in the manner set forth in paragraph (b) of this Section by reason of one or more unavoidable delays then the date set forth in said paragraph (b) for the meeting of the conditions precedent set forth in said paragraph (a) shall be postponed, solely with respect to the condition precedent or conditions precedent not so met on such date by reason of such unavoidable delay or unavoidable delays, by that number of days subsequent to the date of this Agreement during which the Lessee is unable to proceed to meet such condition precedent or conditions precedent solely by reason of such unavoidable delay or unavoidable delays, provided, that the date set forth in said paragraph (b) for the meeting of the conditions precedent set forth in said paragraph (a) shall not be postponed pursuant to this paragraph (d) beyond March 1, 1991. The term "unavoidable delays" as used in this Agreement shall mean only delays resulting from strikes, lockouts, acts of God, injunctions, acts by governmental entities (other than the Port Authority acting in its capacity as lessor of the CATT Unit, as owner thereof or as a party to this Agreement), enemy action, civil commotion, fire, casualty or other similar causes beyond the control of the Lessee, not including the Lessee's financial condition, provided, that the Lessee shall have notified the Port Authority of such delay no more than thirty (30) days after the commencement thereof.

(e) It is expressly understood by the Lessee and the Lessee expressly acknowledges and is fully cognizant of the fact that the costs incurred by the Port Authority in connection with the Lessee's retention of an architect or architects for the design portion of the CATT Work, as defined in Section 3 hereof, which costs are reimbursable to the Port Authority by the Lessee and any other monies which may be expended by the Lessee for such portion of the CATT Work or otherwise may be a complete waste of money to the Lessee because any of the conditions precedent set forth in this Section shall not have been met or because the construction of the Building or the effectuation of the Project does not occur for any other reason or reasons. The Lessee expressly understands and acknowledges that by entering into this Agreement with the Port Authority the same shall not create or be deemed to create any obligation on the part of the Port Authority with respect to the construction of the CATT and the payment therefor because the conditions precedent thereto set forth in this Section shall not have been met. Neither the Port Authority's sole determination that any of the conditions precedent set forth in this Section have not been met to its satisfaction nor the Port Authority's determination that any of the facts certified in the officer's certificate referred to in paragraph (b) of this Section are not or are no longer true shall be deemed a failure of the Port Authority to act in good faith nor a determination that the Port Authority has acted arbitrarily or capriciously and the Lessee hereby agrees that it shall never introduce in any forum any alleged statements, representations, promises or assurances made by representatives of the Port Authority to the extent that the same would change or affect the express and precise provisions of this Section 1 and the risks and obligations assumed by the Lessee thereunder, and the Lessee hereby affirms its acceptance of the risks and obligations created under this Section.

## Section 2. Construction by the Lessee

(a) The Lessee agrees to finish off and complete, at its own expense except as provided in Section 3 of this Agreement, the Land and to install and construct thereon and thereon facilities and installations in accordance with plans and specifications to be prepared by the Lessee and approved, in advance, by the Port Authority. The Lessee

shall, prior to its submission to the Port Authority of the plans and specifications herein provided for, submit to the Port Authority for its consent, the Lessee's comprehensive plan for the development of the Land including but not limited to any renderings, layouts, or locations, any models, estimated commencement and completion dates and preliminary functional plans. The said construction which the Lessee shall perform shall include:

(i) all excavation, foundation work, erection, construction, installation and improvements necessary to construct the Building in accordance with such approved plans and specifications containing the Library, the CATT and such other portions of the Building and such other facilities which will be used in common by the CATT and the Library and which are necessary or desirable for the operation and maintenance of a first-class building;

(ii) the construction and installation of all appropriate pipes, mains, cables, wires and conduits and other facilities required in connection with or relating to the mechanical, utility, electrical, sanitary sewer, storm sewer, water, telephone, fire alarm, fire protection, gas and other systems to be constructed within the Building, including all necessary relocations, and all work necessary or required to tie the foregoing to the utility conduits, pipes and connectors now existing in the Land or in the public streets adjacent to the Land including all necessary valves and other equipment and accessories necessary to, or required for, the use and operation of the heating, electrical, water and other utility systems which are to serve the Building;

(iii) all the work necessary or required to tie into the supply lines maintained or erected by the Lessee or for the Project, if any, for steam or high temperature hot water for heating purposes and chilled water for air cooling purposes;

(iv) the grading and paving of any access roadways and ramps and sidewalks and other pedestrian walks, including without limitation the construction and installation of any road required by such comprehensive plans and the performance of any and all work required by the City of New York with respect to such roadways, ramps, sidewalks and walks;

(v) appropriate landscaping of the Land; and

(vi) the demolition of such improvements, roadways, ramps, sidewalks and other walks existing on the Land at the time of the delivery of possession of the Land to the Lessee as shall be specified in such comprehensive plans and necessary or appropriate for the completion of the Project.

The portions of the Building and the other facilities which will be used in common by the CATT and the Library referred to in subparagraph (i) of this paragraph (a) and the construction work set forth in subparagraphs (ii) through (vi) of this paragraph (a) are sometimes hereinafter collectively referred to as "the Common Elements" which Common Elements shall include, without limitation thereto, the following:

(A) the Land;

(B) the structural elements of the Building including, but not limited to, the roof, structural steel, exterior walls, interior load bearing walls, columns, girders, beams, supports, floor slabs, steel deck, footings and foundations;

(C) those portions of the Land and of the Building which are not located in the portions of the Building to be occupied by the CATT and the Library as designated on the plans and specifications of the Lessee approved by the Port Authority and which shall include without limitation thereto any access roadways, ramps, parking areas, yards, sidewalks, other pedestrian walks and all other exterior paved or landscaped areas, stairs, stairways, fire escapes, entrances and exits of the Building, street or ground level lobbies, elevator lobbies, corridors, halls and toilet areas (excepting stairs, stairways, fire escapes, entrances and exits of the Building, elevator lobbies, corridors, halls and toilet areas situated entirely within the portions of the Building to be occupied by the CATT or the Library), elevators, elevator shafts, escalators and mechanical equipment and service rooms; and

(D) the heating, ventilating, air conditioning, electricity, gas, hot and cold water and other utility systems, fire protection systems, communications systems and other facilities serving the Building (excluding those located within and exclusively serving the portions of the Building to be occupied by the CATT or the Library), including without limitation, truck loading facilities, sanitation facilities and electro-mechanical facilities whether situated within or outside of the Building.

The construction work set forth in subparagraphs (i) through (vi) of this paragraph (a) shall include, without limitation thereto, the construction of the portion of the Building to be occupied by the CATT, as described in the plans and specifications approved by the Port Authority pursuant to this Section (such portion of the Building, together with the fixtures, improvements and other property of the Port Authority to be located therein or thereon and with the pro-rata interest in the Common Elements appertaining thereto, being hereinafter referred to as "the CATT Unit"), and the construction of the portion of the Building to be occupied by the Library, as also described in the plans and specifications approved by the Port Authority pursuant to this Section (such portion of the Building, together with the pro-rata interest in the Common Elements appertaining thereto, being hereinafter referred to as "the Library Unit"). The CATT Unit shall contain not less than eighty-three thousand (83,000) gross square feet, as defined in Section 38 of this Agreement, provided, that the CATT Unit may contain less than eighty-three thousand (83,000) gross square feet but in no event less than seventy-five thousand (75,000) gross square feet, so long as the Library Unit does not contain more than the number of gross square feet determined by multiplying the number of gross square feet in the CATT Unit by six hundred twenty-seven thousandths (.627). All of such construction work shall be constructed by the Lessee on the Land and off the Land where required. The design and performance of all the construction work set forth in subparagraphs (i) through (vi) of this paragraph, whether on or off the Land, is sometimes herein collectively referred to as "the Construction Work".

The plans and specifications shall comply with all applicable governmental laws, ordinances, enactments, resolutions, rules, regulations and orders including, without limitation thereto, those local laws set forth in the Charter or Administrative Code of the City of New York which pursuant to the provisions of the

City Agreement apply to the planning and construction of the CATT Unit by the Lessee except as otherwise provided in the City Agreement with respect to taxes or in Chapter One Hundred Fifty-One of the Laws of New York, 1978, and Chapter One Hundred Ten of the Laws of New Jersey, 1978, or as agreed to by the Port Authority and the City of New York at any time and from time to time prior to the preparation of such plans and specifications.

The plans and specifications shall conform to environmental and solid waste disposal standards and any New York State, New York City and Kings County plans therefor.

The Lessee shall keep the comprehensive plan covered by this paragraph (a) up to date and shall submit to the Port Authority for its prior approval any amendment, revision or modification thereof.

(b) (1) The Lessee agrees at its sole cost and expense, except as provided in Section 3 of this Agreement, to design and perform the Construction Work.

(2) Prior to the commencement of the Construction Work, the Lessee shall submit to the Port Authority for the Port Authority's approval complete plans and specifications therefor, which plans shall clearly specify the portions of the Building which are part of the CATT Unit, the portions of the Building which are part of the Library Unit and the portions of the Building which are Common Elements. The Port Authority may refuse to grant approval with respect to the Construction Work if, in its opinion, any of the proposed Construction Work as set forth in said plans and specifications (all of which shall be in such detail as may reasonably permit the Port Authority to make a determination as to whether the requirements hereinafter referred to are met) shall:

(i) Be improper for the use and occupancy for which it is designed,

(ii) Be designed for use solely for purposes other than those authorized under this Agreement, or provide for a CATT Unit containing areas and facilities which are not usable for the purposes authorized under this Agreement for the CATT Unit,

(iii) Include in the CATT Unit spaces which should be a part of the Common Elements or the Library Unit, include in the Common Elements spaces which should be a part of the CATT Unit or the Library Unit or include in the Library Unit spaces which should be a part of the CATT Unit or the Common Elements,

(iv) Include a CATT Unit which is smaller than the gross square feet requirement set forth in paragraph (a) of this Section, or a Library Unit which is larger than the gross square feet limitation set forth in said paragraph (a), or

(v) Be in violation or contravention of any provision or term of this Agreement.

(c) All Construction Work shall be performed in accordance with the following terms and conditions:

(1) The Lessee hereby assumes the risk of loss or damage to all of the Construction Work prior to the completion thereof and the risk of loss or damage to all property of the Port Authority arising out of or in connection with the performance of the Construction Work. In the event of such loss or damage, the Lessee shall forthwith repair, replace and make good the Construction Work and the property of the Port Authority without cost or expense to the Port Authority. The Lessee shall itself and shall also require its architect and contractors to indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Port Authority) arising or alleged to arise out of the design or performance of the Construction Work and for all expenses, including without limitation thereto legal expenses, incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Lessee, of any contractors of the Lessee, of the Port Authority, or of third persons, or from acts of God or of the public enemy, or otherwise, excepting only claims and demands which result solely from affirmative wilful acts done by the Port Authority, its Commissioners, officers, agents and employees with respect to the Construction Work.

If so directed, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), provided, that in the event such claim or demand is covered by insurance maintained by the Lessee or its contractors, such suit may be defended by the insurer providing such coverage, and in handling such neither the Lessee nor any such insurer shall, without obtaining express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(2) Prior to engaging or retaining an architect or architects for the Construction Work, the Lessee will consult with the Port Authority as to the criteria for selection which may include any such relating to Equal Employment Opportunity and Minority and Women-owned Business Enterprise Participation, and the name or names of said architect or architects and the Lessee's proposed contract with said architect or architects shall be submitted to the Port Authority for its approval. The Lessee shall not enter into a contract with an architect or architects until the Port Authority shall have approved such architect or architects and such contract. Notwithstanding the foregoing the Port Authority hereby consents to the retention by the Lessee of the architectural partnership of Davis, Brody & Associates and Prentice & Chan, Ohlhausen, subject to the Port Authority's approval of the Lessee's contract with such firm. All construction work shall be done in accordance with plans and specifications to be submitted to and approved by the Port Authority prior to the commencement of the Construction Work, and until such approval has been obtained the Lessee shall continue to resubmit plans and specifications as required. Upon approval of such plans and specifications by the Port Authority, the Lessee shall proceed diligently at its sole

cost and expense to perform the Construction Work. All Construction Work, including workmanship and materials, shall be of first class quality. The Lessee shall re-do, replace or construct at its own cost and expense, any Construction Work not done in accordance with the approved plans and specifications or the provisions of this Section 2. The Lessee shall commence the Construction Work no later than January 1, 1990, as such date may be postponed pursuant to paragraph (d) of Section 1 of this Agreement, and shall diligently pursue the Construction Work to completion. Upon completion of the Construction Work the Lessee shall supply the Port Authority with "as built" drawings in form and number as requested by the Port Authority.

(3) Prior to entering into a contract for any part of the Construction Work, the Lessee shall submit to the Port Authority for its approval the names of the contractors to whom the Lessee proposes to award said contracts. The Port Authority shall have the right to disapprove any contractor who may be unacceptable to it. The Lessee shall include in all such contracts such provisions and conditions as may be reasonably required by the Port Authority. Each of the Lessee's construction contracts shall provide that the contractor thereunder shall look solely to the Lessee for payment under such contract and shall set forth that no party other than the Lessee shall be responsible for such payment. Each of the Lessee's construction contracts shall contain provisions requiring the contractor thereunder and all subcontractors to conform its performance of the Construction Work to environmental and solid waste disposal standards and any New York State, New York City or Kings County plans therefor. Each of the Lessee's construction contracts and the contract with its architect shall provide that such contractors and such architect, respectively, shall perform their obligations for the Port Authority under their respective contracts at no increased charge, in the event that the Port Authority shall elect to perform the Construction Work as provided in paragraph (b) of Section 16 of this Agreement and the architect's agreement shall permit the Port Authority to use such architect's plans and specifications in connection with the Port Authority's performance of the Construction Work.

The Lessee shall file with the Port Authority a copy of its contracts with its contractors prior to the commencement of the Construction Work.

(4) The Lessee shall furnish or require its architect or construction manager to furnish a full time resident engineer during the performance of the Construction Work. The Lessee shall provide, in addition to those certifications set forth elsewhere in this Agreement, such certifications of its architect and construction manager with respect to the Construction Work as may be reasonably requested by the Port Authority from time to time.

(5) The Lessee agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof, notwithstanding that the same have been approved by the Port Authority and notwithstanding the incorporation therein of Port Authority recommendations or requirements. Notwithstanding the requirement for approval by the Port Authority of certain contracts to be entered into by the Lessee or the incorporation therein of Port Authority requirements or recommendations, and notwithstanding any rights the Port Authority may have reserved to itself hereunder, the Port Authority shall have no liabilities or obligations of any kind to any contractors engaged by the Lessee or for any other matter in connection

therewith and the Lessee hereby releases and discharges the Port Authority, its Commissioners, officers, agents, representatives and employees of and from any and all liability, claims for damages or losses of any kind, whether legal or equitable, or from any action or cause of action arising or alleged to arise out of the performance of any Construction Work pursuant to the contracts between the Lessee and its contractors. Any warranties contained in any construction contract entered into by the Lessee for the performance of the Construction Work hereunder shall be for the benefit of the Port Authority as well as the Lessee, may be exercised by both the Port Authority and the Lessee and each contract shall so provide.

(6) The Port Authority shall have the right, through its duly designated representatives, to inspect the Construction Work and the plans and specifications thereof, at any and all reasonable times during the progress thereof and from time to time, in its discretion, to take samples and perform testing on any part of the Construction Work.

(7) The Lessee shall, if requested by the Port Authority, take all reasonable measures to prevent erosion of the soil and the blowing of sand during the performance of the Construction Work, including but not limited to the fencing of the Land or portions thereof or other areas and the covering of open areas with asphaltic emulsion or similar materials as the Port Authority may direct.

(8) Title to any soil, dirt, sand or other matter excavated by the Lessee during the course of the Construction Work shall vest in the Lessee and the Lessee at its expense shall dispose of the same without further instruction from the Port Authority.

(9) The Lessee shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the Construction Work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them, provided, however, that nothing herein contained shall be construed to limit the right of the Lessee to contest any claim of a contractor, subcontractor, materialman, workman and/or other person and no such claim shall be considered to be an obligation of the Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. The Lessee shall use its best efforts to resolve any such claims and shall keep the Port Authority fully informed of its actions with respect thereto. Nothing herein contained shall be deemed to constitute consent to the creation of any liens or claims against the CATT Unit nor to create any rights in said third persons against the Port Authority.

(10) The Lessee in its own name as insured and including the Port Authority as an additional insured shall procure and maintain comprehensive general liability insurance, including but not limited to comprehensive automobile liability (covering owned, hired and non-owned vehicles), premises-operations, products liability/completed operations, explosion, collapse and underground property damage, personal injury and independent contractor coverages, with a contractual liability endorsement covering the obligations assumed by the Lessee under the indemnities set forth in this Agreement, which shall be in addition to all policies of insurance otherwise required by this Agreement or the Lessee may

provide such insurance by requiring each contractor engaged by it for the Construction Work to procure and maintain such insurance including such contractual liability endorsement, said insurance, whether procured by the Lessee or by a contractor engaged by it as aforesaid, not to contain any care, custody or control exclusions, and not to contain any exclusion for bodily injury to or sickness, disease or death of any employee of the Lessee or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. The said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claims or actions against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and that said protections shall pertain and apply with like effect with respect to any claim or action against the Port Authority by the Lessee, but such endorsement shall not limit, vary or affect the protections afforded the Port Authority thereunder as an additional insured. Said insurance shall be in not less than the following minimum limits:

Minimum Limits

**Comprehensive General Liability**

Combined single limit for bodily injury, for wrongful death and for property damage arising from any one occurrence:	<b>\$5,000,000</b>
--	--------------------

**Comprehensive Automobile Liability**

Combined single limit for bodily injury, for wrongful death and for property damage arising from any one accident:	<b>\$2,000,000</b>
--	--------------------

The insurance required hereunder shall be maintained in effect at all times during the performance of the Construction Work and up to and including the Completion Date and shall be in compliance with and subject to the provisions of paragraphs (c) and (d) of Section 15 hereof.

The Lessee shall also procure and maintain in effect, or cause to be procured and maintained in effect Worker's Compensation Insurance required by law.

(11) The Lessee, if requested by the Port Authority at any time and from time to time during the performance of the Construction Work, shall submit to the Port Authority any engineering studies prepared by the Lessee relating to the compliance of the plans and specifications with the standards set forth in clauses (i) through (v) of subparagraph (2) of paragraph (b) of this Section and shall also submit such samples of construction materials as may be reasonably required at any time and from time to time by the Port Authority.

(12) The Lessee shall procure and maintain Builder's Risk (All Risk) Completed Value Insurance covering the Construction Work during the performance thereof including material delivered to the Land but not attached to the

realty. Such insurance shall be in compliance with and subject to the applicable provisions set forth herein and shall name the Port Authority, the Lessee and its contractors and subcontractors as additional assureds and such policy shall provide that any loss shall be adjusted with the Lessee and payable to the Escrow Agent. In the event of loss, the proceeds of such insurance shall be deposited in the CATT Fund and the Library Fund established pursuant to the Escrow Agreement, as defined in subparagraph (2) of paragraph (b) of Section 3 of this Agreement, in proportion to the damage suffered by the CATT Unit and the Library Unit, respectively, and shall be used by the Lessee pursuant to the Escrow Agreement and this Agreement for the repair, replacement or rebuilding of the Construction Work and any excess shall be retained by the Escrow Agent and distributed as provided in the Escrow Agreement, provided, that if the Escrow Agreement is no longer in effect when the proceeds of such insurance are payable they shall be paid to the Lessee and used by it for the repair, replacement or rebuilding of the Construction Work and any excess may be retained by the Lessee.

The policies or certificates representing insurance covered by this paragraph (12) shall be delivered by the Lessee to the Port Authority at least fifteen (15) days prior to the commencement of the performance of the Construction Work, and each policy or certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereof and, also, a valid provision obligating the insurance company to furnish the Port Authority ten (10) days' advance notice of the cancellation, termination, change or modification of the insurance evidenced by said policy or certificate. Renewal policies or certificates shall be delivered to the Port Authority at least ten (10) days before the expiration of the insurance which such policies are to renew.

The insurance covered by this paragraph (12) shall be written by a company or companies approved by the Port Authority. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to the form or substance thereof or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement, provided, that the Port Authority will accept an insurance carrier if it has and maintains an A.M. Best rating of B+ or better. If the Port Authority at any time so requests, a certified copy of each of the said policies shall be delivered to the Port Authority.

(13) Nothing contained in this Lease shall grant or be deemed to grant to any contractor, architect, supplier, subcontractor or any other person engaged by the Lessee or any of its contractors in the performance of any part of the Construction Work any right of action or claim against the Port Authority, its Commissioners, officers, agents and employees with respect to any work any of them may do in connection with the Construction Work. Nothing contained herein shall create or be deemed to create any relationship between the Port Authority and any such contractor, architect, supplier, subcontractor or any other person engaged by the Lessee or any of its contractors in the performance of any part of the Construction Work and the Port Authority shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased in connection with the Construction Work.

(14) Without limiting any of the terms and conditions of this Agreement the Lessee understands and agrees that it will put into effect prior to the commencement of any Construction Work an affirmative action program and min-

ority business entrepreneur program in accordance with such requirements as the Port Authority shall supply to the Lessee within one hundred eighty (180) days after the execution of this Agreement. Such requirements shall also be applicable to the Lessee's contractor or contractors, and subcontractors at any tier of construction as well as to the Lessee and the Lessee shall include such requirements within all of its construction contracts so as to make such requirements the direct obligation of the construction contractor or contractors and subcontractors at any tier of construction. The Lessee and said contractor, contractors and subcontractors shall furnish to the Port Authority such data as the Port Authority may request at any time and from time to time regarding the affirmative action program of the Lessee and its contractor, contractors, and subcontractors, and at any tier of construction the Lessee and its contractor, contractors and subcontractors at any tier of construction shall make and put into effect such modifications and additions thereto as may be directed by the Port Authority to effectuate the goals of such affirmative action and minority business entrepreneur program.

(d) The Lessee may wish to commence performance of portions of the Construction Work prior to the approval by the Port Authority of its plans and specifications pursuant to paragraph (b) of this Section, and if it does it shall submit a written request to the Port Authority setting forth the work it proposes then to do. The Port Authority shall have full and complete discretion as to whether or not to permit the Lessee to proceed with said work, provided, that the Lessee may perform the excavation portion of the Construction Work upon prior approval by the Port Authority of the Lessee's plans for such excavation portion of the Construction Work, provided, further, that the Port Authority may only refuse to approve the Lessee's excavation plans based on the factors set forth in subparagraph (2) of paragraph (b) of this Section. In the event that the Port Authority has no objection to the Lessee's proceeding with the requested work or, if the Lessee has requested to perform the excavation portion of the Construction Work, the Lessee's excavation plans are approved by the Port Authority, then in such event the Port Authority shall notify the Lessee by letter to such effect. If the Lessee performs the work covered by said letter prior to the approval of its plans and specifications pursuant to paragraph (b) of this Section it agrees all such work shall be performed subject to and in accordance with all of the provisions of the approval letter and subject to and in accordance with the following terms and conditions:

(1) The performance by the Lessee of the work covered by any request as aforesaid will be at its sole risk and if for any reason the plans and specifications for the Construction Work are not approved by the Port Authority or if the approval thereof calls for modifications or changes in the work undertaken by the Lessee under any approval granted by the Port Authority pursuant to this paragraph (d), the Lessee will, as directed by the Port Authority, at the Lessee's sole cost and expense, either restore the area affected to the condition existing prior to the commencement of any such work or make such modifications and changes in any such work as may be required by the Port Authority.

(2) Nothing contained in any approval hereunder shall constitute a determination or indication by the Port Authority that the Lessee has complied with the applicable governmental laws, ordinances, enactments, resolutions, rules, regulations and orders which may pertain to the work to be performed.

(3) The approved work will be performed in accordance with and subject to the terms, indemnities and provisions of this Agreement covering the Construction Work.

(4) No work under any such approval shall affect or limit the obligations of the Lessee under all prior approvals with respect to its performance of the Construction Work.

(5) The Lessee shall comply with all requirements, stipulations and provisions as may be set forth in the letters of approval.

(6) Without limiting the discretion of the Port Authority hereunder, the Port Authority hereby specifically advises the Lessee that even if the Port Authority hereafter in the exercise of its discretion wishes to grant approvals under this paragraph (d), it may be unable to do so, so as to permit the Lessee to continue work without interruption following its completion of the work covered by any prior approval hereunder. The Lessee hereby acknowledges that if it commences work pursuant to this paragraph (d), it shall do so with full knowledge that there may not be continuity by it in the performance of its construction work under the procedures of this paragraph (d).

(7) No prior approval of any work in connection with the Construction Work shall create or be deemed to create any obligation on the part of the Port Authority to permit subsequent work to be performed in connection with the Construction Work prior to the approval by the Port Authority of the Lessee's complete plans and specifications therefor. It is understood that no such prior approval shall release or relieve the Lessee from its obligation to submit complete plans and specifications for the Construction Work and to obtain the Port Authority's approval of the same as set forth in paragraph (b) hereof. It is further understood that in the event the Lessee elects not to continue to seek further approval letters pursuant to this paragraph (d), the obligations of the Lessee to restore the area and to make modifications and changes as set forth in subparagraph (1) above shall be suspended until the Lessee's submission of its complete plans and specifications in accordance with paragraph (b) hereof.

(e) The Construction Work shall be performed in such a manner that, in accordance with good construction practice, there will be at all times a minimum of air pollution, water pollution or any other type of pollution and a minimum of noise emanating from, arising out of or resulting from the operation, use or maintenance of any portion of the Construction Work by the Lessee and from the operations of the Lessee under this Agreement. Accordingly, and in addition to all other obligations imposed on the Lessee under this Agreement and without diminishing, limiting, modifying or affecting any of the same, the Lessee shall be obligated to construct as part of the Construction Work hereunder such structures, fences, equipment, devices and other facilities as may be necessary or appropriate to accomplish the foregoing and each of the foregoing shall be and become a part of the Construction Work it affects and all of the foregoing shall be covered under the comprehensive plan of the Lessee submitted under paragraph (a) hereof and shall be part of the Construction Work hereunder.

(f) (1) Title to all Construction Work on the Land which is located within or which constitutes a portion of the CATT Unit shall vest in the Port Authority as the same or any part thereof is created, constructed or installed and shall be and become a part of the CATT Unit hereunder subject to the provisions of this Agreement.

(2) Title to all Construction Work on the Land which is located within or which constitutes a portion of the Library Unit shall vest in the Lessee as the same or any part thereof is created, constructed or installed.

(3) Title to all Construction Work on the Land which is located within or which constitutes a portion of the Common Elements shall vest in the Port Authority and the Lessee, each receiving an undivided interest in such Construction Work in proportion to the interest in all the Common Elements appertaining to their respective units.

(g) (1) When the Construction Work is completed and ready for use the Lessee shall advise the Port Authority to such effect and shall deliver to the Port Authority a certificate by an authorized officer of the Lessee and a certificate by the Lessee's architect, each certifying that the Construction Work has been performed in accordance with the approved plans and specifications and the provisions of this Agreement and in compliance with all applicable governmental laws, ordinances, enactments, resolutions, rules, regulations and orders.

(2) The Lessee shall not use or permit the use of the Construction Work or any portion thereof for the purposes set forth herein or for any other purpose except the performance of the Construction Work until the Lessee shall have delivered to the Port Authority the certificates set forth in subparagraph (1) of this paragraph (g) and until the Lessee shall have obtained a Certificate of Occupancy for the entire building permitting such use. The term "the Completion Date" for the purposes of this Agreement shall mean the later of the effective date of such Certificate of Occupancy or the date of the delivery to the Port Authority of the certificates set forth in subparagraph (1) of this paragraph (g).

### Section 3. Construction Payments

#### (a) Definitions:

The following terms as used in this Agreement shall have the respective meanings given below:

(1) Each payment made to the Lessee or to the Lessee and its contractor pursuant to paragraph (b) of this Section, whether made by the Port Authority or by the Escrow Agent, as defined in the Escrow Agreement described in paragraph (b) of this Section, out of funds deposited by the Port Authority, is referred to herein as a "Construction Payment". The date of each Construction Payment is herein referred to as a "Construction Payment Date".

(2) The term "Construction Payment Amount" as used herein shall mean the total of all Construction Payments paid to the Lessee or to the Lessee and its contractor pursuant to paragraph (b) hereof, whether made by the Port Authority or by the Escrow Agent out of funds deposited by the Port Authority, as such amount is finally determined in accordance with said paragraph (b).

(3) The term "CATT Work" as used herein shall mean that portion of the Construction Work necessary to complete the CATT Unit (excluding the portion of the Common Elements appurtenant thereto) and that proportion of the Construction Work necessary to complete the Common Elements as the number of

gross square feet in the CATT Unit (excluding the portion of the Common Elements appurtenant thereto) bears to the total number of gross square feet in the CATT Unit and the Library Unit (excluding the Common Elements) but excluding those Common Elements or that portion of any Common Element which is designed to be greater in capacity than that necessary for the Building in order to permit the addition of floors to or other extension to or expansion of the Building subsequent to the Completion Date or the construction of any bridge or other above-grade connection between the Building and any other building, whether before or after the Completion Date.

(4) The term the "Cost of the CATT Work" shall mean the sums of the following, to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied:

(i) amounts actually paid and costs incurred by the Lessee to independent contractors for work actually performed and labor and materials actually furnished in connection with the performance of the CATT Work;

(ii) amounts actually paid and costs incurred by the Lessee in connection with the CATT Work for engineering, architectural, professional and consulting services, legal services in an amount not to exceed One Hundred Thousand Dollars and No Cents (\$100,000.00), property and liability insurance, governmental filing fees and supervision of construction;

(iii) amounts actually paid and costs incurred by the Lessee for the fees and expenses of the sole arbitrator and for any Port Authority Costs paid by the Lessee in connection with any arbitration carried out pursuant to this Section in which the determination of cost made by the Lessee is entirely upheld by the arbitrator; and

(iv) other Port Authority costs paid or incurred to the Port Authority by the Lessee relating to the Conveyance, the Declaration or the Construction Work prior to the completion of the construction of the Building (including without limitation thereto the completion of all "punch-list" items).

Amounts paid or incurred by the Lessee as set forth in items (i),(ii) and (iii) above shall be included in the Cost of the CATT Work only to the extent that the inclusion of the same is permitted by sound accounting practices consistently applied. Additionally, the Cost of the CATT Work shall include only that work performed by the Lessee in accordance with all of the terms and provisions of (A) this Agreement, (B) the final plans and specifications as approved by the Port Authority pursuant to subparagraph (2) of paragraph (b) of Section 2 hereof and (C) the approval letters covering the work, if any, performed pursuant to paragraph (d) of Section 2 hereof; the Cost of the CATT Work shall not include either the cost of any CATT Work which although performed pursuant to an approved plan or specification is not incorporated in the final plans and specifications as approved by the Port Authority or the cost of altering such CATT Work.

(b) The Port Authority shall reimburse the Lessee for the Cost of the CATT Work, or pay the Cost of the CATT Work, as follows:

(1) Prior to the satisfaction of the conditions precedent set forth in paragraph (a) of Section 1 of this Agreement in the manner set forth in paragraph (b) of said Section 1, whenever the Lessee shall have expended on the Cost of the CATT Work sums totalling, in each instance, not less than One Hundred Thousand Dollars and No Cents (\$100,000.00) with all the said expenditures being of the kind described below in this subparagraph (1), the Lessee shall, but not more often than once a calendar month, deliver to the Port Authority a certificate signed by a responsible fiscal officer of the Lessee and by a responsible officer of the Lessee's architect, general contractor or construction manager, which certificate shall certify the sum of the amounts actually paid and costs incurred in connection with the CATT Work for preliminary architecture and design, including without limitation thereto construction management services, if any, actually performed in connection with the CATT Work and solely related to such preliminary architecture and design and similar engineering, professional and consulting services. Each such certificate shall: first set forth, in detail, the amounts paid to specified persons for the CATT Work covered by each such certificate which have not previously been reported in certificates delivered to the Port Authority; second have attached thereto reproduction copies or duplicate originals of the receipted invoices of such persons; third certify that the amounts and payments therein set forth have been made and constitute part of the preliminary architecture and design portion of the Cost of the CATT Work and, in case any payment made by the Lessee to any person for such services includes both work which is part of the preliminary architecture and design portion of the CATT Work and work which is not part of such portion of the CATT Work or is made pursuant to a contract which covers costs which are part of such portion of the Cost of the CATT Work and costs which are not, the Lessee and such architect, general contractor or construction manager shall certify the amount billed or invoiced by such person, that such amount has been paid and the portion of such amount attributable to the preliminary architecture and design portion of the Cost of the CATT Work pursuant to the terms of this Agreement; and fourth have attached thereto copies of cancelled checks or other evidence of payment thereof as shall be determined by the Port Authority for all invoices submitted in the immediately preceding certificate. Each such certificate shall also set forth the total cumulative payments made by the Lessee as aforesaid from the commencement of the CATT Work to the date of the certificate, and each such certificate shall also contain a certification by the Lessee that each portion of the CATT Work covered by said certificate has been performed in accordance with the terms of this Agreement. The certificate shall also contain such further information and documentation with respect to the aforesaid costs, documents and certification as the Port Authority may, from time to time require, which information, documentation and certifications shall be given on such forms as may be adopted by the Port Authority. Within thirty-five (35) days after the delivery of a duly submitted certificate by the Lessee, the Port Authority shall pay to the Lessee the amounts paid by the Lessee during the period covered by such certificate, as certified in such certificate as constituting a part of such portion of the Cost of CATT Work (but only to the extent that such amounts or any portion thereof have not theretofore been included in a Construction Payment), provided, that the total of the Construction Payments made pursuant to this subparagraph (1) shall not exceed One Million Dollars and No Cents (\$1,000,000.00), provided, however, that

in the event this Agreement is not in full force and effect or if the Lessee shall be under a notice of termination of this Agreement or in default under any term or provision thereof or if the Lessee shall have certified any cost as having been incurred as part of the preliminary architecture and design portion of the Cost of the CATT Work but which cost in the opinion of the Port Authority was not so incurred or is not a cost properly chargeable to such portion of the Cost of the CATT Work under sound accounting practice or does not represent an appropriate division of the costs of a particular contract which covers costs which are part of the preliminary architecture and design portion of the Cost of the CATT Work and costs which are not, the Port Authority shall have the right, in its discretion, to withhold the making of the Construction Payment or a portion thereof to the Lessee and, provided, further, that no making or withholding of a Construction Payment shall waive or be deemed to have waived any rights of the Port Authority with respect to the termination of this Agreement or to a default by the Lessee under any term or provision hereof or to the making or withholding of future Construction Payments or with respect to any determination as to the usability of any item of work as aforesaid.

It is further understood that at the election of the Port Authority no payment will be made, or a portion of a requested payment may be withheld, if the Port Authority's inspection or audit does not substantiate the contents of said certificate and until such matters have been resolved to the satisfaction of the Port Authority, but the Port Authority shall have no obligation to conduct any such inspection or audit at such time. In the event that the Port Authority shall withhold any Construction Payment or portion thereof the Port Authority and the Lessee shall immediately attempt to agree upon and resolve their differences with respect thereto.

In the event that the conditions precedent set forth in paragraph (a) of Section 1 of this Agreement are not satisfied prior to January 1, 1990, as such date may be postponed pursuant to the provisions of paragraph (d) of Section 1 of this Agreement, the Lessee shall pay to the Port Authority the sum of all Construction Payments as set forth in paragraph (c) of said Section 1.

(2) Upon the satisfaction of the conditions precedent set forth in paragraph (a) of Section 1 of this Agreement in the manner set forth in paragraph (b) of said Section 1, the Lessee shall deposit the sum of Eight Million Five Hundred Thousand Dollars and No Cents (\$8,500,000.00) with the escrow agent (referred to herein as "the Escrow Agent") under an escrow agreement in the form attached hereto, made a part hereof and marked "Exhibit E" (referred to herein as "the Escrow Agreement"), such amount to constitute the "Library Fund" as defined in the Escrow Agreement and the Port Authority shall deposit the sum of Sixteen Million Five Hundred Thousand Dollars and No Cents (\$16,500,000.00) less the sum of all Construction Payments made by the Port Authority pursuant to subparagraph (1) of this paragraph (b) with the Escrow Agent, such amount to constitute the "CATT Fund" as defined in the Escrow Agreement, such deposits to be made in the following times and amounts: (A) Within fifteen (15) days after the date of satisfaction of the conditions precedent set forth in paragraph (a) of Section 1 of this Agreement in the manner specified in paragraph (b) of said Section 1, the Lessee shall deliver the Letter of Credit referred to in subparagraph (2) of paragraph (a) of Section 1 of this Agreement to the Escrow Agent and shall deposit in the Library Fund the sum of Five Million Dollars and No Cents (\$5,000,000.00) and the Port Authority shall simultaneously therewith

deposit in the CATT Fund the sum of Nine Million Seven Hundred Thousand Dollars and No Cents (\$9,700,000.00) less the sum of all Construction Payments made by the Port Authority pursuant to subparagraph (1) of this paragraph (b); (B) Within two hundred seventy (270) days after the date of satisfaction of the conditions precedent set forth in paragraph (a) of Section 1 of this Agreement in the manner specified in paragraph (b) of said Section 1, the Lessee shall deposit in the Library Fund the sum of Three Million Five Hundred Thousand Dollars and No Cents (\$3,500,000.00) and the Port Authority shall deposit in the CATT Fund the sum of Six Million Eight Hundred Thousand Dollars and No Cents (\$6,800,000.00) less the outstanding Port Authority Costs not reimbursed by the Lessee after demand therefor. In the event that (i) the Port Authority or the Lessee shall fail to make their initial deposits on or before said fifteenth (15th) day, (ii) construction of the Building has not commenced and either the Port Authority or the Lessee shall fail to make a deposit on or before the date on which such deposit is to be made and the other party shall request the return of its deposits or (iii) construction of the Building has not commenced and, at any time subsequent to the initial deposit by the Port Authority with the Escrow Agent, the Port Authority shall determine pursuant to paragraph (b) of Section 1 of this Agreement that such conditions precedent are not at that time satisfied and the Port Authority shall notify the Escrow Agent and the Lessee to that effect, then the Escrow Agent shall return the sum of all amounts deposited by each party to such party, as provided in the Escrow Agreement, the Lessee shall pay to the Port Authority the sum of all Construction Payments and Port Authority Costs within thirty (30) days after the return of such deposits, the Port Authority shall convey the CATT Unit to the Lessee as provided in Section 11 of this Agreement and this Agreement shall be of no further force or effect. The Escrow Agent shall pay the Lessee's contractors for Construction Work performed by such contractors by check delivered to the Lessee and payable to the Lessee and such contractor or shall reimburse the Lessee for payments made to its contractors for Construction Work performed by such contractors by check delivered to the Lessee and payable to the Lessee, all upon receipt of appropriate certifications as provided in the Escrow Agreement. All amounts paid to the Lessee and its contractors by the Escrow Agent from the CATT Fund shall be Construction Payments as defined in this Agreement and the term "Construction Payment" shall not include any amounts paid from the Library Fund or any amount remaining in or credited to the CATT Fund and returned to the Port Authority. The Lessee may request reimbursement and the Escrow Agent may reimburse the Lessee for the Cost of CATT Work commenced or performed prior to the deposit of the CATT Fund or the date of satisfaction of the conditions precedent so long as such work is performed in accordance with the provisions of this Agreement and the Port Authority has not previously reimbursed the Lessee for such Cost of CATT Work. The Lessee shall deliver to the Port Authority complete copies of all certificates delivered to the Escrow Agent pursuant to the Escrow Agreement and of all other communications delivered by the Lessee to the Escrow Agent in connection with the Construction Work simultaneously with the delivery of such certificates or communications to the Escrow Agent. In the event that the Lessee shall have certified any cost as having been incurred as a portion of the Cost of the CATT Work and requested payment of such cost by the Escrow Agent but which cost in the opinion of the Port Authority was not so incurred or if incurred is not a cost properly chargeable to the Cost of the CATT Work under sound accounting practice, consistently applied, or does not represent an appropriate division of the costs of a particular contract which covers costs which are part of the Cost of the CATT Work and costs which are not, then the Port Authority shall notify the

Escrow Agent and the Lessee to such effect stating the amount of such cost, the Port Authority and the Lessee shall immediately attempt to agree upon and resolve their differences with respect thereto and, as provided in the Escrow Agreement, the Escrow Agent shall reserve in the CATT Fund an amount equal to such cost as stated by the Port Authority. The Port Authority shall have no obligation to conduct any audit of any certificate delivered to it or to the Escrow Agent or any inspection of the Construction Work but may do so in its sole discretion. The Lessee shall not request the Escrow Agent by delivery of a certificate or otherwise to make any payment from the CATT Fund which exceeds the amount actually due or paid to independent contractors and other persons for the CATT Work.

(3) In the event that, prior to the Completion Date, either the CATT Fund or the Library Fund or both of them shall be depleted the Lessee may, with the written consent of the Port Authority, instruct the Escrow Agent to draw upon the letter of credit referred to in subparagraph (2) of paragraph (a) of Section 1 of this Agreement as provided in the Escrow Agreement with the proceeds of said letter of credit to be deposited in the CATT Fund and the Library Fund as specified in the Lessee's instruction to the Escrow Agent, which instruction shall require the consent of the Port Authority. The Port Authority shall not withhold its consent to the Lessee's instruction that the Escrow Agent draw upon said letter of credit and make such deposits so long as such instruction provides for the deposit:

(i) in the CATT Fund of proceeds of said letter of credit equal to the excess of (A) the sum of the cost to complete the CATT Work on the date of such instruction, the Cost of the CATT Work which has been performed by the Lessee's contractors prior to such date but which has not theretofore been paid or reimbursed by the Port Authority or the Escrow Agent and any amount previously certified by the Lessee as part of the Cost of the CATT Work and disbursed by the Escrow Agent from the CATT Fund but which the Port Authority has specified pursuant to subparagraph (2) of this paragraph (b) was not incurred, was not properly chargeable as a part thereof under sound accounting practice, consistently applied, or does not represent an appropriate division of the cost of a particular contract which covers costs which are part of the Cost of the CATT Work and costs which are not, over (B) the amount remaining in the CATT Fund on such date; and

(ii) in the Library Fund of the remainder of the proceeds of said letter of credit drawn on such date.

If the Port Authority shall fail to respond to a proposed instruction of the Lessee delivered to the Port Authority by the Lessee either by consenting to such instruction or by objecting thereto within sixty (60) days after the delivery of such instruction to the Port Authority the Port Authority shall be deemed to have consented to such instruction. In the event that the Port Authority and the Lessee shall disagree as to the amount to be deposited in the CATT Fund and the Library Fund the Port Authority and the Lessee shall immediately attempt to agree upon and resolve their differences with respect thereto. In the event that the issuer of said letter of credit shall notify the Escrow Agent that such issuer elects not to renew such letter of credit and the Lessee shall not deliver to the Escrow Agent

within thirty (30) days thereafter a replacement letter of credit in the same form or with such changes therein as the Lessee shall propose and the Port Authority in its sole discretion shall approve, then the Escrow Agent shall, as provided in the Escrow Agreement, draw the entire amount of said letter of credit and hold such proceeds separate from the CATT Fund and the Library Fund until instructed as to the disposition of such proceeds in writing by the Port Authority and the Lessee. In the event that (I) the Library Fund has been depleted, (II) the entire amount available under said letter of credit has been drawn and the proceeds deposited in the CATT Fund and the Library Fund as described in this subparagraph (3), (III) the CATT Work has been completed (including without limitation thereto the completion of all "punch-list" items, (IV) there are no existing disputes between the Port Authority and the Lessee with respect to amounts previously certified by the Lessee as part of the Cost of the CATT Work and disbursed by the Escrow Agent from the CATT Fund but which the Port Authority has specified pursuant to subparagraph (2) of this paragraph (b) was not incurred, was not properly chargeable as part thereof under sound accounting practice, consistently applied, or does not represent an appropriate division of the costs of a particular contract which covers costs which are part of the Cost of the CATT Work and costs which are not and (V) all outstanding Port Authority Costs have been paid after demand therefor, then the Lessee may, with the written consent of the Port Authority, instruct the Escrow Agent to transfer to the Library Fund that portion of any amount remaining in the CATT Fund which constitutes proceeds of said letter of credit and which shall be necessary to complete the Library Unit in accordance with the plans and specifications approved by the Port Authority. If the Lessee and the Port Authority shall disagree as to the amount necessary to complete the Library Unit in accordance with the plans and specifications approved by the Port Authority, the Port Authority and the Lessee shall immediately attempt to agree upon and resolve their differences with respect thereto. Upon the earlier of (X) the termination of the letting under this Agreement or (Y) the final determination of the Cost of the CATT Work and the making of any required payments pursuant to the provisions of subparagraph (4) of this paragraph (b), the escrow shall be terminated and the amounts remaining in the CATT Fund and the Library Fund shall be returned to the Port Authority and the Lessee, respectively, all as set forth in the Escrow Agreement.

(4) Upon the occurrence of the Completion Date the Lessee shall supply to the Port Authority a full statement of the Cost of the CATT Work, as defined herein, certified by a responsible fiscal officer of the Lessee and sworn to before a Notary Public. After examination and approval of such certified statement and after such further examination of the records and books of account of the Lessee as the Port Authority shall deem reasonable, the Port Authority will finally determine the Cost of the CATT Work, subject to the provisions of paragraph (c) of this Section, and if such final determination discloses that the lesser of the Cost of the CATT Work or Sixteen Million Five Hundred Thousand Dollars and No Cents (\$16,500,000.00) exceeds the total of all previous Construction Payments whether made by the Port Authority or by the Escrow Agent then the Port Authority shall pay such excess to the Lessee or shall instruct the Escrow Agent to do so if the CATT Fund is still in existence; and if such final determination discloses that the total of all previous Construction Payments exceeds the lesser of the Cost of the CATT Work or Sixteen Million Five Hundred Thousand Dollars and No Cents (\$16,500,000.00), the Lessee shall repay to the Port Authority the amount of such excess less the amount of such Construction Payments which constitute proceeds of the letter of credit referred to in

subparagraph (2) of paragraph (a) of Section 1 of this Agreement or proceeds of the insurance required by subparagraph (12) of paragraph (c) of Section 2 of this Agreement upon notice from the Port Authority of the amount thereof. In the event that the Escrow Agent shall on the return of the CATT Fund to the Port Authority return amounts which constitute proceeds of said letter of credit or proceeds of such insurance the Port Authority shall pay such amounts to the Lessee. Anything herein contained to the contrary notwithstanding, it is expressly understood that the Port Authority shall not pay or reimburse for any Cost of the CATT Work in excess of Sixteen Million Five Hundred Thousand Dollars and No Cents (\$16,500,000.00). It is also expressly understood that the Port Authority may set off Port Authority Costs not reimbursed to the Port Authority, after demand therefor, against amounts which may be payable to the Lessee pursuant to this subparagraph (4). It is hereby further understood and agreed that nothing in this Section shall be or be deemed to be for the benefit of any contractor of the Lessee.

(c) (1) The Port Authority and the Lessee shall within thirty (30) days after the execution of this Agreement select an individual who shall be licensed to practice architecture or engineering in New York State to serve as sole arbitrator under this Agreement. In the event that the parties shall fail to agree upon an arbitrator or the arbitrator, however selected, shall resign or be unable to serve and the parties shall fail to agree upon a successor arbitrator, either the Port Authority or the Lessee may request the American Arbitration Association to select a sole arbitrator who shall be an individual licensed to practice architecture or engineering in New York State not employed by either the Port Authority or the Lessee or by any firm retained by any of the developers or other similar participants in the Project. All arbitrations conducted under this Agreement shall be conducted according to the existing rules of the American Arbitration Association. The costs of all arbitrations conducted under this Agreement shall be borne by the Lessee except as provided in clause (iii) of subparagraph (4) of paragraph (a) of this Section.

(2) If the Port Authority has withheld any Construction Payment or any portion thereof as provided in subparagraph (1) of paragraph (b) of this Section and the parties have been unable to resolve their differences within fifteen (15) days after such withheld amount would have been due and payable then such dispute shall be decided by arbitration with said sole arbitrator.

(3) If the Escrow Agent has reserved any amount pursuant to the direction of the Port Authority as provided in subparagraph (2) of paragraph (b) of this Section and the parties shall have been unable to resolve their differences within fifteen (15) days after the Port Authority's notice directing the Escrow Agent to withhold such amount then such dispute shall be decided by arbitration with said sole arbitrator.

(4) If the Port Authority and the Lessee shall disagree as to the amount to be deposited from the proceeds of the letter of credit in the CATT Fund and the Library Fund as provided in subparagraph (3) of paragraph (b) of this Section and the parties shall have been unable to resolve their differences within fifteen (15) days after notice from the Port Authority objecting to the Lessee's proposed instruction to the Escrow Agent then such dispute shall be decided by arbitration with said sole arbitrator.

(5) If the Port Authority and the Lessee shall disagree as to the amount necessary to complete the Library Unit in accordance with the plans and specifications approved by the Port Authority as provided in subparagraph (3) of paragraph (b) of this

Section and the parties shall have been unable to resolve their differences within thirty (30) days after the Lessee's delivery to the Port Authority of its proposed instruction to the Escrow Agent then such dispute shall be decided by arbitration with said sole arbitrator.

(6) If the parties shall disagree as to the amount finally determined by the Port Authority to be the Cost of the CATT Work as provided in subparagraph (4) of paragraph (b) of this Section and the parties shall have been unable to resolve their differences within sixty (60) days after the Port Authority's notice to the Lessee of the Port Authority's final determination of the Cost of the CATT Work, then such dispute shall be decided by arbitration with said sole arbitrator.

(d) In any such arbitration as to whether any cost included by the Lessee in its computation of the Cost of the CATT Work has been incurred, the question to be submitted to the arbitrator for decision shall be as follows:

"Was all or any part of such cost incurred by the Lessee; and if part but not all of such cost was so incurred, what was the amount which was so incurred?"

(e) In any such arbitration as to whether any cost included by the Lessee in its computation of the Cost of the CATT Work is properly chargeable as part thereof under sound accounting practice, consistently applied, the question to be submitted to the arbitrator for decision shall be as follows:

"Can it reasonably be held that all or any part of such cost is properly chargeable as part of the Cost of the CATT Work under sound accounting practice, consistently applied; and if part but not all of such cost can reasonably be held to be so chargeable, then what amount can reasonably be held to be so chargeable?"

(f) (1) In any such arbitration as to whether any cost included by the Lessee in its computation of the Cost of the CATT Work is properly chargeable in accordance with this Agreement as part of the Cost of the CATT Work, or should be charged as part of the cost of other Construction Work, including whether or not there has been a proper allocation and breakdown of costs where a contract or contracts covers different categories of work, the question to be submitted to the arbitrator for decision shall be as follows:

"Can it reasonably be held that such cost has been properly charged in accordance with this Agreement as part of the Cost of the CATT Work including whether there has been a sound allocation and breakdown of costs under a contract or contracts covering different categories of work under sound accounting practice, consistently applied, or if not, then what amount should be properly charged as part of the Cost of the CATT Work?"

(2) In any such arbitration as to whether the cost to complete the CATT Work has been properly determined by the Lessee, the question to be submitted to the arbitrator for decision shall be as follows:

"Can it reasonably be held that the cost to complete the CATT Work has been properly determined or if not, what is the cost to complete the CATT Work?"

(g) The entire obligation of the Port Authority under paragraph (b) of this Section 3 to reimburse the Lessee for or pay the Cost of the CATT Work shall be limited in amount to a total of Sixteen Million Five Hundred Thousand Dollars and No Cents (\$16,500,000.00) and limited in time to construction commenced by the Lessee on or before January 1, 1990 and to amounts to be paid to the Lessee pursuant to certificates of the Lessee submitted in accordance with paragraph (b) no later than two (2) years after the Completion Date and further limited to the construction of facilities of such nature as, in the opinion of the Port Authority, are usable by the Lessee for the purposes permitted hereunder.

(h) The Lessee shall promptly submit to the Port Authority further information, including but not limited to its estimate of the amounts and times of the various payments it will be making in connection with the Cost of the CATT Work as the Port Authority may from time to time and at any time request.

(i) The Port Authority shall have the right by its agents, employees and representatives to audit and inspect during regular business hours after the submission to the Port Authority or the Escrow Agent, as the case may be, of any of the certificates called for in paragraph (b) hereof, the books and records and other data of the Lessee relating to the Cost of the CATT Work, as aforesaid, it being specifically understood that the Port Authority shall not be bound by any prior audit or inspection conducted by it. The Lessee agrees to keep such books, records and other data within the Port of New York District, but the Lessee shall not be required to maintain any such books, records and other data for more than five (5) years after the last delivery to the Port Authority of a certificate pursuant to paragraph (b) of this Section.

#### Section 4. Letting

The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority at the Project in the Borough of Brooklyn, County of Kings, City and State of New York, the CATT Unit.

The parties acknowledge that the CATT Unit constitutes non-residential real property.

#### Section 5. Term

(a) The term of the letting of the CATT Unit hereunder shall commence at 12:01 o'clock A.M. on the date of the Conveyance and shall, unless sooner terminated, or unless extended, expire at 11:59 o'clock P.M. on the day preceding the fortieth anniversary of the Rent Commencement Date, as defined in Section 6 hereof, provided that, all rental payments required in Section 6 shall have been made prior to such fortieth anniversary, and if all such rental payments shall not have been made on or prior to such fortieth anniversary, the term of the letting of the CATT Unit hereunder shall not expire until the last such payment has been made, but may be terminated by the Port Authority as provided in this Agreement.

(b) If the Port Authority shall not give possession of the CATT Unit to the Lessee on the commencement date set forth in paragraph (a) hereof by reason of the fact that the CATT Unit or any part thereof, or any part of the Building are in the course of

construction, repair, alteration or improvement, having been damaged by any casualty or any reason of the failure or refusal of any occupant thereof to deliver possession thereof to the Port Authority or by reason of any cause or condition beyond the control of the Port Authority, the Port Authority shall not be subject to any liability for the failure to give possession on said date. No such postponement or failure to give possession on such date shall affect the validity of this Agreement or the obligations of the Lessee hereunder, nor shall the same be construed in any way to extend the term of the letting of the CATT Unit beyond the date stated in paragraph (a) of this Section. The Lessee understands and acknowledges that the CATT Unit will not be completed on the commencement date of the term of the letting hereunder, that the Lessee is responsible for the completion of the CATT Unit as set forth in this Agreement and that the Port Authority shall not be subject to any liability for failure to tender effective possession of the CATT Unit prior to the Completion Date.

Section 6. Rentals

(a) The Lessee agrees to pay to the Port Authority in advance a basic rental for the CATT Unit equal to the sum of the Construction Payment Amount, as defined in Section 3 hereof, payable as follows:

(1) in the sum of Ten Thousand Dollars and No Cents (\$10,000.00) on the first day of the second calendar month following the Completion Date (which day is referred to herein as "the Rent Commencement Date") and in the sum of Ten Thousand Dollars and No Cents (\$10,000.00) on each of the nineteen (19) immediately following Payment Dates;

(2) in the sum of Thirty-seven Thousand Five Hundred Dollars and No Cents (\$37,500.00) on each of the next twenty (20) Payment Dates;

(3) in the sum of Sixty-two Thousand Five Hundred Dollars and No Cents (\$62,500.00) on each of the next twenty (20) Payment Dates;

(4) in the sum of Seventy-five Thousand Dollars and No Cents (\$75,000.00) on each of the next twenty (20) Payment Dates;

(5) in the sum of One Hundred Thousand Dollars and No Cents (\$100,000.00) on each of the next twenty (20) Payment Dates;

(6) in the sum of One Hundred Thirty-one Thousand Two Hundred Fifty Dollars and No Cents (\$131,250.00) on each of the next twenty (20) Payment Dates;

(7) in the sum of One Hundred Eighty-seven Thousand Five Hundred Dollars and No Cents (\$187,500.00) on each of the next twenty (20) Payment Dates; and

(8) in the sum of Two Hundred Twenty-one Thousand Two Hundred Fifty Dollars and No Cents (\$221,250.00) on each Payment Date thereafter through the expiration of the letting hereunder;

Provided, that, if on any Payment Date the installment of basic rental to be paid on such Payment Date together with all installments of basic rental previously paid by the Lessee

to the Port Authority shall exceed the sum of the Construction Payment Amount and the aggregate outstanding amount of the Port Authority Costs, then the Lessee shall on such Payment Date pay to the Port Authority the excess of the sum of the Construction Payment Amount and the aggregate outstanding amount of Port Authority Costs over the aggregate amount of all installments of basic rental previously paid by the Lessee to the Port Authority and the Lessee shall not be required to make any further payments of basic rental on any Payment Date thereafter. For the purposes of this Section 6 the term "Payment Date" shall mean each anniversary of the Rent Commencement Date during the term of the letting hereunder and the first day of each of the third, sixth and ninth calendar months following the Rent Commencement Date and each anniversary of such first days during the term of the letting hereunder.

(b) Payments of basic rental due under this Agreement may, for the convenience of the Lessee, be made in whole or in part by any third party with the Lessee to receive full credit for any such payments but with the express understanding that the acceptance of such payments by the Port Authority shall not create or be deemed to create any rights or interests in any such third party in the Land, the Building or the CATT Unit and shall not relieve or release or be deemed to relieve or release the Lessee from its primary obligation to make such payments to the Port Authority.

#### Section 7. Port Authority Costs

(a) The following terms as used in this Agreement shall have the respective meanings given below:

(1) "Port Authority Activities" shall mean and include the negotiating, completing or carrying out of this Agreement, the Conveyance, the Declaration and the City Agreement, including without limitation thereto the arbitration of disputes in connection with, the termination or cancellation of, and the collection of unpaid amounts under, such agreements, the regaining of possession, restoring and reletting of the CATT Unit thereunder and the Port Authority's performance of the Lessee's obligations under paragraph (c) of Section 12 and Section 16 hereof.

(2) "Port Authority Costs", "Port Authority Cost", "cost to the Port Authority" or "costs of the Port Authority" shall mean and include payments made or expenses incurred by the Port Authority to third parties (except as provided with respect to self-insurance) in connection with Port Authority Activities, including without limitation the following items:

(i) the cost of any third-party insurance carried by the Port Authority with respect to the Port Authority Activities, with respect to the Port Authority's interest in the Land (including without limitation thereto the cost of any title search or title insurance incurred by the Port Authority) or the CATT Unit or with respect to any accident or casualty occurring therein, thereat or thereto, including appraisal costs and in the event the Port Authority self-insures any risk, damage or liability, then the cost of such risk, damage or liability which would have been covered by third-party insurance, had it been maintained by the Port Authority;

(ii) the costs of telephone, telegraph, postage, messenger service and other communications charges, trucking and protection services incurred to third parties in connection with the Port Authority Activities;

(iii) expenses incurred in connection with any arbitration undertaken pursuant to or concerning any of the provisions of this Agreement;

(iv) payments to third parties for legal, accounting, architectural, engineering and other professional services related to the Port Authority Activities; and

(v) all costs and fees incurred to third parties in connection with the filing or recording of this Agreement, the Conveyance, the Declaration, the reconveyance described in Section 11 hereof or any similar instrument or any memorandum of any such instrument;

provided, that the terms "Port Authority Costs", "Port Authority Cost", "cost to the Port Authority" or "costs of the Port Authority" when used in connection with the termination or cancellation of, and the collection of unpaid amounts under, this Agreement, the regaining of possession, restoring and reletting of the CATT Unit thereunder and the Port Authority's performance of the Lessee's obligations under paragraph (c) of Section 12 and Section 16 hereof shall also include the following items:

(vi) wages, fringe benefits and other payroll costs paid to or for hourly employees for time worked in connection with such Port Authority Activities;

(vii) the properly allocable portion of salaries, fringe benefits and other payroll costs paid to or for salaried employees for time worked in connection with such Port Authority Activities; and

(viii) an amount for administration and overheads equal to thirty (30%) percent of the total of the amounts referred to in subdivisions (vii) and (viii) of this subparagraph.

In no event shall any cost or expenditure be included in Port Authority Costs more than once even though fitting under more than one category provided for in this subparagraph. The Port Authority shall not act arbitrarily and capriciously in determining Port Authority Costs.

(3) "Fringe benefits" shall mean the items of cost which the Port Authority is obligated to pay or incur pursuant to applicable collective bargaining agreements or which the Port Authority otherwise agrees to pay on the basis of wages and salaries paid to employees including, without limitation, vacation allowances, sick leave, holiday pay, birthdays, jury duty, medical checkup, lunch time, relief time, other paid time off, bonuses, pension plans, welfare and training funds, and health, life, accident, or other such types of insurance, and any other payment made or cost incurred by agreement with such employees and personnel or pursuant to Port Authority policy with respect to such employees and personnel.

(4) "Other payroll costs" shall mean taxes and other payments payable pursuant to law upon the basis of wages and salaries paid to employees, including, without limitation, F.I.C.A., New York State Unemployment Insurance, disability insurance and Federal Unemployment Insurance.

(b) The Lessee shall pay to the Port Authority on demand from time to time the aggregate outstanding amount of the Port Authority Costs on the date of such demand and in any event the Lessee shall pay to the Port Authority on the Rent Commencement Date the aggregate outstanding amount of Port Authority Costs on the Rent Commencement Date.

(c) It is the understanding of the parties hereto that, except for the obligation to make Construction Payments as provided in Section 3 hereof, which amounts shall be recovered by the Port Authority in connection with the basic rental reserved in Section 6 hereof, and except for those Port Authority staff costs incurred in connection with the supervision of the negotiating, completing or carrying out of the City Agreement, the Conveyance, the Declaration or this Agreement not included in the definition of Port Authority Costs, the Port Authority shall not suffer or bear any cost or expense of any kind in connection with such agreements; the negotiation, preparation and execution of such agreements; the Construction Work; the operation of the CATT and the Library; the operation and maintenance of the Building; any Port Authority Activity or any other act or thing which may be done or occur by the Lessee or the Port Authority or any other person, and that the Lessee shall bear all such costs and expenses and shall reimburse the Port Authority for any such costs or expenses incurred by it, all in the manner provided in this Agreement.

section 8. Use of the CATT Unit and Various Obligations of the Lessee

(a) The Lessee shall use the CATT Unit for the operation of a center for advanced technology in telecommunications and related technologies as provided in subparagraph (1) of paragraph (b) of this Section in connection with the Lessee's activities as a not-for-profit educational institution and for no other purpose whatsoever.

(b) The Lessee shall:

(1) during the term of the letting under this Agreement operate the CATT, or cause the CATT to be operated, in such a manner as to provide a range of services to support the users and producers of telecommunications and related technologies including telecommunications research and the training of technology professionals in the newest advances in telecommunications.

(2) assume all costs of operating and maintaining the CATT arising prior to or during the term of the letting under this Agreement including but not limited to payments of taxes or in lieu of taxes, if any, made to the City of New York.

(3) indemnify and hold the Port Authority harmless from and against any and all costs, expenses, losses, damages, liabilities, claims and demands which may be incurred or arise out of or in connection with the acquisition of the Land, the design, development, construction, use, occupancy, operation and maintenance of the Building, the Library, and of the CATT or which may arise

out of the acts or omissions of the Lessee or any default of the Lessee hereunder or under the Conveyance and reimburse the Port Authority for its costs and expenses, including without limitation reasonable legal expenses, which may be incurred in connection with any of the foregoing, provided, that such indemnity, hold harmless and reimbursement obligation of the Lessee shall not extend to the Port Authority Costs described in Section 7 hereof which shall be reimbursed as described in said Section 7.

(4) during the term of the letting hereunder operate and maintain the Library so as to provide library facilities and services for the benefit of the students of Polytechnic University, the users of the CATT and such other persons as the Lessee shall determine to permit to use the Library, all at the Lessee's sole cost and expense, including but not limited to payments of taxes or in lieu of taxes, if any, made to the City of New York.

(c) In the event that the Lessee shall use the CATT Unit for a purpose which would have rendered the CATT Unit subject to real property taxes but for the Port Authority's interest in the CATT Unit and real property taxes are assessed and levied against the CATT Unit, the Lessee shall pay to the Port Authority as additional rent an amount equal to the real property taxes assessed against the CATT Unit which would be due and payable if the Port Authority were not the owner of the CATT Unit.

#### Section 9. Ingress and Egress

The Lessee, its officers, employees, students, customers, patrons, invitees, contractors, suppliers of material and furnishers of services, shall have the right of ingress and egress between the CATT Unit and city streets or public ways adjacent to the Land by means of such roads, walks, lobbies and corridors comprising a portion of the Common Elements as shall be constructed pursuant to the plans and specifications approved by the Port Authority as provided in Section 2 hereof to the same extent as possessed by the Port Authority under the Declaration in its capacity as Unit Owner of the CATT Unit. The Lessee hereby releases and discharges the Port Authority, its successors and assigns, of and from any and all claims, demands or causes of action which the Lessee may now or at any time hereafter have against the Port Authority, arising or alleged to arise out of the closing of any city street, road, public way, walk, lobby, corridor or other area used as such whether within or outside the Land. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to the CATT Unit or to space adjacent to the CATT Unit, through such roads, walks, lobbies and corridors, or in any streets, ways and walks on the Land or near the CATT Unit.

#### Section 10. Compliance with Governmental Requirements

(a) The Lessee shall comply with all laws and ordinances and governmental rules, regulations and orders now or at any time during the term of this Lease which are applicable to or which affect the operations of the Lessee at the Building or its use and occupancy of the Building; the Lessee shall, in accordance with and subject to the provisions of Section 18 hereof, make any and all structural and non-structural improvements, alterations or repairs of the Building that may be required at any time hereafter by any present or future law, rules, regulation, requirement, order or direction.

(b) The Lessee hereby agrees that it shall, at its own cost and expense procure and obtain from all governmental authorities having jurisdiction over the operations of the Lessee hereunder and shall maintain in full force and effect throughout the term of this Agreement all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations. "Governmental authority" shall not be construed as intending to include The Port Authority of New York and New Jersey, when acting solely as lessor under this Agreement.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property at the Building. Such provision is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

(d) Since the Port Authority has agreed in the City Agreement to conform to the local laws set forth in the Charter or Administrative Code of the City of New York which would be applicable if the Port Authority were a private corporation, the Lessee shall comply with all local laws, rules, regulations and ordinances which would be applicable to its operations in the CATT Unit if the Port Authority were a private corporation.

(e) The Lessee shall have such time within which to comply with the aforesaid local laws, rules, regulations and ordinances as the authorities enforcing the same shall allow.

**Section 11. Reconveyance of the CATT Unit to the Lessee; Right to Purchase**

(a) Upon the occurrence of any of the following events:

(1) the expiration of the letting of the CATT Unit as provided in Section 5 hereof;

(2) the termination of the letting of the CATT Unit hereunder as provided in subparagraph (2) of paragraph (b) of Section 13 hereof in connection with the payment in full of the outstanding Construction Payment Amount and Port Authority Costs and any unpaid additional rent as described in Section 16 hereof;

(3) the termination of this Agreement by reason of the failure to satisfy the conditions precedent set forth in paragraph (a) of Section 1 of this Agreement prior to January 1, 1990 as provided in paragraph (c) of Section 1 of this Agreement, in the event that the Conveyance and the Declaration have been entered into; or

(4) the termination of this Agreement in connection with the failure of the Lessee to deposit funds with the Escrow Agent or the receipt by the Port Authority of notice that such conditions precedent are no longer satisfied, as provided in subparagraph (2) of paragraph (b) of Section 3 hereof,

the Port Authority shall convey all the right, title and interest of the Port Authority in and to the CATT Unit (and the appurtenant portion of the Common Elements included therein) to the Lessee free and clear of any mortgages, liens, encumbrances, restrictions

and easements created by the affirmative willful acts of the Port Authority without the consent of the Lessee and of any liens and encumbrances not related to or arising out of the Port Authority's interest in the CATT Unit (in lieu of removing any judgment liens on the CATT Unit resulting from its acts the Port Authority may undertake to pay any such liens when due), by delivery to the Lessee of a Quitclaim Deed executed and acknowledged on behalf of the Port Authority and in proper form for recording. The Lessee shall pay any and all revenue stamps, deed, transfer, sales and other taxes, including any and all New York Real Property Transfer Gains Tax, due in connection with such conveyance. So long as the letting under this Agreement shall remain in effect the Port Authority shall not sell, convey, transfer, mortgage, pledge or assign the CATT Unit or any part thereof except subject to this Agreement (including without limitation thereto the provisions of this Section 11) and the letting thereunder.

(b) The Lessee shall have the right to purchase the CATT Unit from the Port Authority on any Payment Date subsequent to the tenth (10th) anniversary of the Rent Commencement Date by delivery to the Port Authority of payment in full of the outstanding Construction Payment Amount and Port Authority Costs and any unpaid additional rent as described in Section 16 thereof and upon receipt of such payment the Port Authority shall convey all the right, title and interest of the Port Authority in and to the CATT Unit (and the appurtenant portion of the Common Elements included therein) to the Lessee free and clear of any mortgages, liens, encumbrances, restrictions and easements created by the affirmative willful acts of the Port Authority without the consent of the Lessee and of any liens and encumbrances not related to or arising out of the Port Authority's interest in the CATT Unit (in lieu of removing any judgment liens on the CATT Unit resulting from its acts the Port Authority may undertake to pay any such liens when due), by delivery to the Lessee of a Quitclaim Deed executed and acknowledged on behalf of the Port Authority and in proper form for recording and upon such purchase this Agreement shall terminate with the same force and effect as if the date of such conveyance were the date originally specified herein for the expiration of the letting hereunder, provided, that the Lessee shall give to the Port Authority unconditional written notice of its election to so purchase the CATT Unit not more than one hundred twenty (120) nor less than ninety (90) days prior to the Payment Date on which the Lessee wishes such purchase to be effective. No such notice shall be effective to effectuate such purchase if on the date of the giving of said notice (1) the Lessee is in default in the performance or observance of any term, provision or condition of this Agreement or (2) this Agreement is not in full force and effect. In the event that the Lessee shall give said notice to the Port Authority and such notice shall be effective as provided in the preceding sentence, then the Port Authority shall not terminate this Agreement and the letting thereunder pursuant to Section 19 of this Agreement subsequent to the date of the giving of such notice and on or prior to the effective date of such purchase by reason of a default in the performance or observance of any term, provision or condition of this Agreement commencing subsequent to the date of the giving of such notice so long as the Lessee shall duly and punctually pay the rentals and fees and make all other payments required hereunder when due to the Port Authority within ten (10) days after receipt of a statement therefor, shall promptly cure any and all other such defaults which are curable by the Lessee and shall repair, replace, rebuild, replace, paint and maintain the CATT Unit as provided in Section 12 hereof, but nothing in this paragraph (b) shall prohibit or be deemed to prohibit the Port Authority from terminating this Agreement pursuant to Section 19 thereof in the event that the Lessee shall fail to pay in full the outstanding Construction Payment Amount and Port Authority Costs and any unpaid additional rent on the Payment Date on which such purchase is to be effective.

Section 12. Care, Maintenance, Rebuilding and Repair by the Lessee

(a) The Lessee shall repair, replace, rebuild and paint all or any part of the CATT Unit and any other part of the Building, which may be damaged or destroyed by the acts or omissions of the Lessee or by those of its officers or employees or of other persons on or in the CATT Unit or the Building.

(b) The Lessee shall, throughout the term of this Lease, assume the entire responsibility for, shall perform and shall relieve the Port Authority from all responsibility for all repair, replacement, rebuilding and maintenance whatsoever in the CATT Unit and in the Building, whether such repair, replacement, rebuilding or maintenance be ordinary or extraordinary, partial or entire, inside or outside, foreseen or unforeseen, structural or otherwise, and without limiting the generality of the foregoing, the Lessee shall:

(1) at all times keep the CATT Unit, the exterior of the Building and all the Lessee's structures, fixtures, equipment and personal property which are located in any part of the Building which is open to or visible by the general public, in a clean and orderly condition or appearance;

(2) remove all snow and ice from the pedestrian walkways and vehicular roadways and driveways located on the Land and maintain and repair curb cuts, driveways, walkways, paving and other surfaces located thereon and perform all other activities and functions necessary or proper to make the Building available for use by the Lessee;

(3) take good care of the Building, including without limitation thereto the CATT Unit and all fences, building walls, windows, skylights, screens, roofs, foundations, steelwork, columns, doors, partitions, floors and ceilings, paved and unpaved areas and glass of every kind, and maintain the same at all times in good condition, except for reasonable wear and tear which does not adversely affect the watertight condition or structural integrity of the Building or adversely affect the efficient and proper utilization thereof; and shall perform all preventive maintenance including but not limited to painting and make all repairs and replacements, and do all rebuilding, inside and outside, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, which repairs, rebuilding and replacements by the Lessee shall be in quality and class not inferior to the original in materials and workmanship; and to pay promptly the cost and expense of such repairs, replacements and maintenance;

(4) maintain and make repairs and replacements to the foundations, exterior walls and the structural supporting frame and roof of the Building and make all structural repairs to the Building;

(5) take all necessary anti-erosion measures and maintain the landscaping at all times in good condition, including but not limited to periodic replanting and perform and maintain landscaping with respect to all portions of the Land not paved or built upon;

(6) be responsible for and shall make the necessary tie-in connections with the utility service lines of the public utility company or companies serving the Building and pay such public utility company or companies

for the service and be responsible for the maintenance and repair of all utility service lines, including but not limited to, service lines for the supply of water, electric power and telephone conduits and lines, sanitary sewers and storm sewers, located upon the Land;

(7) supply, replace, install, repair, maintain and keep clean all grease traps and all drainage pipes exclusively used by it in its operations hereunder whether such pipes are located on the Land, in the Building or elsewhere at the Project;

(8) be responsible for appropriate lighting and for the lamping and relamping of the Building and all access roadways located upon the Land; and

(9) repair any damage to the paving or other surface of the Land or the Building caused by any oil, gasoline, grease, lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon.

(c) In the event the Lessee fails to commence so to maintain, clean, repair, replace, lamp, relamp, rebuild, paint, repaint or to restore as required by this Agreement within a period of ten (10) days after notice from the Port Authority so to do in the event that the said notice specifies that the required work to be accomplished by the Lessee includes maintenance or repair other than preventive maintenance, or within a period of thirty (30) days if the said notice specifies that the work to be accomplished by the Lessee involves preventive maintenance only, or fails diligently to continue to completion the maintenance, repair, replacement, lamping and relamping rebuilding, painting, repainting or restoration of all of the CATT Unit required to be repaired, replaced, rebuilt, painted, repainted or restored by the Lessee under the terms of this Agreement, the Port Authority may, at its option, and in addition to any other remedies which may be available to it, repair, replace, lamp or relamp, rebuild, paint, repaint or restore all or any part of the CATT Unit included in the said notice, and the cost thereof shall become a part of the Port Authority Costs and shall be payable by the Lessee upon demand.

(d) The obligation of the Lessee as hereinbefore set forth in this Section 12 (in the event that damage or destruction caused by the acts and omissions of the Lessee or by those of its employees, guests, customers or invitees is covered by any contract of insurance under which the Port Authority is insured) is hereby released to the extent that the loss is recouped by actual payment to the Port Authority of the proceeds of such insurance.

### Section 13. Damage to or Destruction of the CATT Unit

(a) If the Building or the CATT Unit or any structures, improvements, fixtures and equipment, furnishings and physical property located thereon, or any part thereof, shall be damaged or destroyed by fire, the elements, the public enemy, or other casualty, or by reason of any cause whatsoever and whether partial or total, the Lessee shall, at its sole cost and expense, and whether or not such damage or destruction is covered by insurance proceeds sufficient for the purpose, remove all debris resulting from such damage or destruction, and shall rebuild, restore, repair and replace the damaged portion of the Building, CATT Unit, structure, improvement, fixture, equipment, furnishing or physical property, as the case may be, in accordance with the plans and specifications for the same as they existed prior to such damage or destruction

or with the approval in writing of the Port Authority make such other repairs, replacements, changes or alterations as may be desired by the Lessee and which are consistent with the provisions of this Agreement. Such rebuilding, restoration, repairs, replacements or alterations shall be commenced promptly and shall proceed with all due diligence subject to the terms and conditions of this Agreement, including without limitation the terms and provisions of the Section of this Agreement entitled "Other Construction by the Lessee".

(b) Notwithstanding the foregoing, if such damage or destruction as is described in paragraph (a) of this Section occurs subsequent to the tenth (10th) anniversary of the Rent Commencement Date and the cost of rebuilding, restoration, repair or replacement shall exceed ten percent (10%) of the then full insurable value of the Building and all structures, improvements, fixtures and equipment, furnishings and physical property located on the Land immediately prior to such damage or destruction, the Lessee shall have the option of either:

(1) performing all rebuilding, restoration, repairs, replacement or alterations required, in accordance with the provisions of this Agreement, or

(2) terminating the letting under this Agreement by written notice to the Port Authority given within thirty (30) days after the occurrence of such damage or destruction, provided, that, the Lessee shall deliver with such notice payment in full of the outstanding Construction Payment Amount and Port Authority Costs and any unpaid additional rent as described in Section 16 hereof. Upon the effective date of such termination the Port Authority shall deliver to the Lessee a conveyance as set forth in Section 11 hereof and the Lessee, upon such termination, shall be released and discharged from any and all obligations under this Agreement other than those which shall have accrued prior to the date of such termination or shall mature on such date.

(c) Except as provided in paragraph (b) of this Section, no destruction of, or damage to the whole or any part of the CATT Unit or the Building or to any part of any structures, improvements, fixtures, and equipment, furnishings or other property located thereon by fire or any other casualty, cause or condition shall permit the Lessee to surrender or terminate this Agreement or shall relieve the Lessee from its liability to make payment of any monies, charges, fees or rentals or additional rent payable under this Agreement or from any of its other obligations hereunder. The Lessee waives any rights now or hereafter conferred upon the Lessee by statute or otherwise to quit or surrender the CATT Unit and terminate this Agreement or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any destruction or damage. The parties stipulate that neither the provisions of Section 227 of the Real Property Law of New York nor those of any other similar statute shall extend or apply to this Agreement.

(d) If such damage or destruction as is described in paragraph (a) of this Section is covered by insurance then the proceeds of such insurance shall be applied by the Lessee to the payment of the cost of the rebuilding, restoration, repair, replacement and alteration work required to be performed by the Lessee under the provisions of this Agreement or to the payment to the Port Authority described in subparagraph (2) of paragraph (b) of this Section and any excess may be retained by the Lessee. The provisions of this paragraph (d) shall be effective so long as this Agreement and the letting hereunder are in effect on the date of the damage or destruction of the CATT Unit and not thereafter terminated by the Port Authority pursuant to the Section of this

Agreement entitled "Termination" notwithstanding any provision of the Declaration or the By-Laws attached thereto which may provide for a different division of such insurance proceeds.

(e) The Lessee shall be the insurer of the Port Authority against the risk of loss or theft or damage to any Port Authority fixtures, equipment and personal property which are a part of or are located in or on the CATT Unit and shall promptly replace or repair the same within five (5) days of such loss, theft or damage.

#### Section 14. Property Insurance

In addition to any other insurance provided for or required under this Agreement, the Lessee shall procure and maintain in its own name as insured and including the Port Authority as a named insured, and shall pay the premiums on, the following policies of insurance in the limits set forth below, which policies shall be effective during the term of the letting under this Agreement:

(1) all risk property damage insurance in limits covering the full replacement cost of the Building and all structures, improvements, fixtures and equipment, furnishings and physical property owned or leased by, or within the care, custody or control of, the Lessee and now or in the future located on or constituting a part of the Building or the CATT Unit leased to the Lessee. Full replacement cost shall be determined by the Port Authority. Such insurance shall cover and insure against all risks of physical loss or damage including flood and earthquake; and

(2) boiler and machinery insurance covering all boilers, pressure-vessels and machines operated by the Lessee or others in or on the Building or the CATT Unit, the policy to be effective throughout the letting having such limits as the Port Authority may determine and to be in the form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction or by the Superintendent of Insurance of the State of New York.

Such policies shall provide that any loss shall be adjusted with and payable to the Lessee. In the event of loss the proceeds of such insurance shall be used by the Lessee as provided in paragraph (d) of Section 13 of this Agreement. The Port Authority shall not act arbitrarily and capriciously in determining the replacement cost of the Building or the limits of any policy required pursuant to this Section. The aforesaid insurance shall be written by a company or companies approved by the Port Authority. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to the form or substance thereof or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement, provided, that the Port Authority will accept an insurance carrier if it maintains an A.M. Best rating of B+ or better.

#### Section 15. Indemnity and Liability Insurance

(a) (1) The Lessee shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs or

expenses including legal expenses incurred in connection with the defense of) all claims and demands of third persons including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of any default of the Lessee in performing or observing any term or provision of this Agreement, or out of the use or occupancy of the CATT Unit and the Building by the Lessee, or by others with or without its consent or out of any other acts or omissions of the Lessee, its officers and employees in the CATT Unit or the Building or out of the acts or omissions of others in the CATT Unit or the Building with the consent of the Lessee.

(2) If so directed, the Lessee shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), provided, that in the event such claim or demand is covered by insurance maintained by the Lessee such suit may be defended by the insurer providing such coverage, and in handling such neither the Lessee nor any such insurer shall, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

(b) In addition to the obligations set forth in paragraph (a) of this Section and all other insurance required under this Agreement, the Lessee during the term of the letting under this Agreement in its own name as insured and including the Port Authority as an additional insured shall procure, maintain and pay the premium or premiums on a policy or policies of comprehensive general liability insurance, including but not limited comprehensive automobile liability (covering owned, hired and non-owned vehicles) and premises-operations coverages and covering bodily injury, including death, and property damage liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the minimum limits set forth below. The said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against the Lessee by the Port Authority and that said protections shall also pertain to and apply with respect to any claim or action against the Port Authority by the Lessee, but such endorsement shall not limit, vary, change, or affect the protections afforded the Port Authority thereunder as an additional insured. The said policy or policies of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Lessee under paragraph (a) hereof and under all the other indemnities of the Lessee set forth in this Agreement.

#### Minimum Limits

##### Comprehensive General Liability

Combined single limit for  
bodily injury, for wrongful  
death and for property damage  
arising from any one occurrence:

\$2,000,000

## Comprehensive Automobile Liability

Combined single limit for  
bodily injury, for wrongful  
death and for property damage  
arising from any one accident:

\$2,000,000

Notwithstanding the foregoing, it is specifically understood and agreed that the Port Authority shall have the right upon notice to the Lessee given from time to time and at any time to require the Lessee to increase any or all of the foregoing minimum limits and the Lessee shall promptly comply therewith and shall promptly submit a certificate or certificates evidencing the same to the Port Authority. The Port Authority shall not act arbitrarily and capriciously in increasing any of such minimum limits.

(c) As to the insurance required by the provisions of subparagraph (10) of paragraph (c) of Section 2 hereof a certified copy of the policies or a certificate or certificates or binders, evidencing the existence thereof, shall be delivered by the Lessee to the Port Authority at least fifteen (15) days prior to the commencement of the performance of the Construction Work. As to the insurance required by the provisions of Section 14 hereof and of this Section a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority simultaneously with the delivery of the Conveyance to the Port Authority. Each policy, certificate or binder delivered as aforesaid shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' written advance notice thereof to the Port Authority. Each such copy or certificate shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal policy shall be delivered to the Port Authority at least thirty (30) days prior to the expiration of each expiring policy, except for any policy expiring after the date of expiration of the term of this Agreement. The insurance required by the provisions of Section 14 hereof and by this Section shall be written by a company or companies approved by the Port Authority. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to the form or substance thereof or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority, the Lessee shall promptly obtain a new and satisfactory policy in replacement. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

(d) All insurance required under this Agreement may be reviewed by the Port Authority for adequacy of terms, conditions and limits of coverage at any time and from time to time during the term of the letting hereunder. The Port Authority may at any such time require additions, deletions, amendments or modifications to such insurance, or may require such other and additional insurance, in such amounts and against such hazards, as the Port Authority may require. The Port Authority shall not

act arbitrarily and capriciously in requiring such additions, deletions, amendments or modifications or such other or additional insurance.

Section 16. Additional Rent and Charges

(a) If the Lessee shall fail or refuse to perform any of its obligations under this Agreement, the Port Authority, in addition to all other remedies available to it, shall have the right to perform any of the same and the Lessee shall pay the Port Authority's cost thereof on demand, provided, that if a period is provided in this Agreement for the Lessee to perform an obligation the Port Authority shall not, except in the case of an emergency, proceed to perform such obligation until the expiration of such period. If the Port Authority has paid any sum or sums or has incurred any obligations, expense or cost which the Lessee has agreed to pay or reimburse the Port Authority for, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations, expense or cost by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement, or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, including any legal expense or cost in connection with any actions or proceeding brought by the Port Authority against the Lessee or by third parties against the Port Authority, or if the Lessee is required to pay any amount equal to real property taxes as set forth in paragraph (c) of Section 8 of this Agreement or if prior to the expiration or earlier termination of the letting hereunder the Port Authority shall pay any Common Charges pursuant to the Declaration or pursuant to the By-Laws attached to the Declaration (hereinafter referred to as "Common Charges"), then the sum or sums so paid, the expense so incurred, the amount equal to real property taxes and the Common Charges so paid shall be Port Authority Costs and the Lessee agrees to pay such sum or sums, such expense, such amount or such Common Charges, including all interest costs, damages and penalties, and the same and any and all other Port Authority Costs incurred subsequent to the Completion Date may be added to any installment of rent thereafter due hereunder and each and every part of the same shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rent as set forth in Section 6 hereof. The Lessee acknowledges that so long as this Agreement and the letting hereunder shall remain in effect no suit for unpaid Common Charges may be instituted and no lien for unpaid Common Charges may be foreclosed against the Unit Owner of the CATT Unit by the Board of Managers of the CATT/Library Condominium, all as provided in the By-Laws attached to the Declaration.

(b) Without limiting the generality of paragraph (a) of this Section, in the event that, subsequent to the commencement of the Construction Work, an event of default under this Agreement shall occur and shall not be cured within any applicable grace period the Port Authority may proceed to perform the Construction Work (notwithstanding that the Lessee may have been diligently proceeding to perform the Construction Work) as set forth in the plans and specifications approved by the Port Authority, provided that the Port Authority shall have no obligation to install any furniture, fixtures or equipment other than building systems such as heating, air conditioning, ventilation and electrical systems, except that the Port Authority shall complete the CATT Unit in accordance with said plans and specifications excluding any furnishings and similar trade fixtures, if any, shown thereon. The Lessee hereby grants to the Port Authority, in the event it has elected to perform the Construction Work as provided in this paragraph (b), and to its contractors, employees and representatives an irrevocable easement to enter upon the Land and into the Building, including without

limitation thereto the Library Unit and the CATT Unit for the purpose of performing such Construction Work, which easement shall be automatically effective upon the Port Authority's election to complete such Construction Work and shall terminate upon the completion of such Construction Work. In the event that the Port Authority shall commence to perform such Construction Work the Port Authority shall thereupon, to the extent provided above in this paragraph, diligently pursue the Construction Work to completion and shall perform all of such Construction Work in accordance with the plans and specifications previously approved by the Port Authority. As provided in the Escrow Agreement, subsequent to the commencement of the Construction Work by the Port Authority it may request that the Escrow Agent pay or reimburse the Port Authority for the cost of performing the Construction Work in the same manner as if the Lessee had requested such payments or reimbursements and may receive such amounts from the Escrow Agent. If during the performance of such Construction Work by the Port Authority, either the CATT Fund or the Library Fund shall be depleted the Port Authority may instruct the Escrow Agent to draw upon the letter of credit as provided in subparagraph (3) of paragraph (b) of Section 3 of this Agreement without consultation with or the approval of the Lessee. In the event that the Port Authority shall pay any sum or incur any obligation, expense or cost in so performing the Construction Work or in connection therewith which sum, obligation, expense or cost is not paid or reimbursed by the Escrow Agent, then such sum, obligation, expense or cost so paid or incurred shall be Port Authority Costs and the Lessee hereby agrees to pay such sum, obligation, expense or cost and the same may be added to any installment of rent thereafter due hereunder and each and every part of the same shall become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rent as set forth in Section 6 hereof.

**Section 17. Rights of Entry Reserved**

(a) The Port Authority, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Land and into the Building and the CATT Unit for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Agreement, for emergency repairs to utility systems, and for the doing of any act or thing which the Port Authority may be obligated or have the right to do under this Agreement or otherwise.

(b) In the event that any property of the Lessee shall obstruct the access of the Port Authority, its employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, the Lessee shall move such property, as directed by the Port Authority, in order that access may be had to the system or part thereof for its inspection, maintenance or repair and, if the Lessee shall fail to so move such property after direction from the Port Authority to do so, the Port Authority may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.

(c) Nothing in this Section shall or shall be construed to impose upon the Port Authority any obligations to inspect the Land, the Building or the CATT Unit at any time, to so construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure so to do. The Lessee is and shall be, prior to any termination of the letting hereunder pursuant to Section 19 hereof, in exclusive control and possession of the Land, the Building and the CATT Unit and the Port Authority shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Land, the Building, or the CATT Unit nor for

any injury or damage to the Land, the Building or the CATT Unit nor to any property of the Lessee or of any other person located in or thereon (other than those occasioned by the affirmative acts of the Port Authority, its employees, agents and representatives).

(d) The exercise of any or all of the foregoing rights by the Port Authority or others shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.

**Section 18. Other Construction by the Lessee**

(a) Except as otherwise expressly provided herein in Section 2 hereof and in paragraph (b) of this Section and except for repairs as provided in Section 12 hereof, the Lessee shall not erect any structures, make any improvements or do any construction in the CATT Unit or in the Building or alter, modify, or make additions, improvements or repairs to or replacements of any structure now existing or built at any time during the letting, or install any fixture (other than trade fixtures, removable without damage to the Land, the Building or the CATT Unit, any such damage to be immediately repaired by the Lessee) without the prior written approval of the Port Authority, which approval may be granted or withheld in the Port Authority's sole discretion, provided, that the Port Authority shall not exercise such discretion arbitrarily or capriciously and, provided, further, that the Lessee shall not be required to submit for approval, and the Port Authority shall not be required to review, any construction, improvement, alteration, modification, repair, replacement or addition which takes place entirely within the Library Unit and which does not affect the CATT Unit, the Common Elements, the purpose of the Library Unit or the capacity of the electrical, mechanical, ventilation, heating, cooling, water or sewerage systems in the Building. In the event any construction, improvement, alteration, modification, repair, replacement or addition is made without such required approval, then upon reasonable notice so to do, the Lessee will remove the same, or at the option of the Port Authority cause the same to be changed to the satisfaction of the Port Authority. In case of any failure on the part of the Lessee to comply with such notice, the Port Authority may effect the removal or change and the Lessee shall pay the cost thereof to the Port Authority upon demand therefor. So long as this Agreement and the letting hereunder shall remain in effect, the written approval of the Port Authority pursuant to this paragraph (a), when given, shall also constitute the consent of the Unit Owner of the CATT Unit required pursuant to the provisions of Section 9.2 of the Declaration.

(b) The Port Authority understands that the Building contains additional structural elements to permit the addition of floors to or other extension to or expansion of the Building subsequent to the Completion Date. In the event that the Lessee shall determine to construct such additional floors, or otherwise extend or expand the Building, prior to the commencement of the construction of such additional floors or other extension to or expansion of the Building the Lessee shall submit to the Port Authority for the Port Authority's approval complete plans and specifications therefor. The Port Authority may refuse to grant approval with respect to such construction if, in its opinion, any of the proposed construction as set forth in said plans and specifications (all of which shall be in such detail as may reasonably permit the Port Authority to make a determination as to whether the requirements hereinafter referred to are met) shall:

(i) Be unsafe, unsound, hazardous or improper for the use and occupancy for which it is designed,

(ii) Be designed solely for use for purposes other than those authorized under this Agreement, solely for use other than in connection with the Lessee's activities as a not-for-profit educational institution or for a use which would conflict with the uses of the CATT Unit permitted by the Declaration or unreasonably burden the uses of the CATT Unit permitted by the Declaration,

(iii) Not provide circulation areas meeting the requirements of the building code of the City of New York or other adequate and proper Common Elements,

(iv) Not comply with the provisions of the City Agreement including, without limiting the generality thereof, those provisions of the City Agreement providing that local laws set forth in the Charter or Administrative Code of the City of New York shall apply to the planning and construction of the CATT Unit by the Lessee except as otherwise provided in the City Agreement with respect to taxes or in Chapter Six Hundred Fifty-One of the Laws of New York, 1978, and Chapter One Hundred Ten of the Laws of New Jersey, 1978 or as agreed to by the Port Authority and the City of New York at any time and from time to time,

(v) Be in violation or contravention of any other provisions and terms of this Agreement,

(vi) Not comply with all applicable governmental laws, ordinances, enactments, resolutions, rules, regulations and orders,

(vii) Not comply with all applicable requirements of the National Board of Fire Underwriters and the Fire Insurance Rating Organization of New York or any successor organization,

(viii) Not comply with the American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People, ANSI A117.1-80, or

(ix) Include the construction of additional structural elements or utility service lines passing through the CATT Unit or obstructing access to the CATT Unit or the views from the CATT Unit, provided, that for the purpose of this clause (ix) the CATT Unit shall not be deemed to include the portion of the Common Elements appurtenant thereto.

The Port Authority shall not act arbitrarily or capriciously in determining the compliance of the Lessee's plans with the standards set forth in clauses (i) through (ix) of this Section. In the event that the Lessee shall construct such additional floors or other extension to or expansion of the Building the Building shall be deemed to include such new construction, the portions of such new construction which would have been Common Elements had they been part of the Construction Work hereunder shall become a part of the Common Elements and an undivided interest therein shall be appurtenant to the CATT Unit and Library Unit in the respective proportions determined as provided in the Declaration and the By-Laws attached thereto, the remaining portions of such new

DEC 4 1985



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

MARIO M. CUOMO  
GOVERNOR

November 14, 1985

Dear Chairman Kaltenbacher:

One of the economic development themes I have stressed over the years is the need to develop closer ties between academic/research institutions and the business community to foster technology transfer and economic productivity. The development of the Center for Advanced Technology in Telecommunications, as part of the Metrotech office complex in downtown Brooklyn, represents a wonderful opportunity to create such an environment where businesses can interact directly with applied research networks, and thereby enhance their own market viability and competitiveness.

I fully endorse this project and request that the Commissioners of the Port Authority approve up to \$14 million of the amount allocated for New York regional development projects to help finance the development of the Center for Advanced Technology in Telecommunications at Metrotech.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mario M. Cuomo".

Mr. Philip D. Kaltenbacher  
Chairman  
Port Authority of New York  
and New Jersey  
One World Trade Center  
New York, New York 10048

cc: GB FYI  
ML  
MK  
RR

construction shall become a part of the Library Unit and the Port Authority's and the Lessee's respective undivided interests in the Common Elements shall be reallocated as provided in the Declaration and the By-Laws attached thereto. The Port Authority shall have no obligation to, and shall not, pay for, reimburse or contribute to any part of the Lessee's cost of constructing such additional floors or other extension to or expansion of the Building or the new Common Elements included therein. So long as this Agreement and the letting hereunder shall remain in effect, the approval by the Port Authority of such plans and specifications pursuant to this paragraph (b), when given, shall also constitute the consent of the Unit Owner of the CATT Unit required pursuant to the provisions of Section 9.3 of the Declaration.

Section 19. Termination by the Port Authority

(a) If any one or more of the following events shall occur, that is to say:

(1) The Lessee shall become insolvent or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator or all or substantially all of its property; or

(2) By order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any state thereof; or

(3) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee, or any execution or attachment shall be issued against the Lessee or any of its property, whereupon possession of the CATT Unit shall be taken by someone other than the Lessee, and such possession or control shall continue in effect for a period of fifteen (15) days, however if the Lessee shall within such fifteen (15) day period after such taking, execution or attachment, act, by bonding any claim or otherwise, to regain possession of the CATT Unit and shall not regain possession within thirty (30) days after such taking, execution or attachment; or

(4) The Lessee shall voluntarily abandon, desert or vacate the CATT Unit or discontinue its operations at the Project, or after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) days by action of any governmental agency other than the Port Authority from conducting its operations at the Project, regardless of the fault of the Lessee; or

(5) Any lien is filed against the CATT Unit or against the Building because of any act or omission of the Lessee and is not removed or bonded within ten (10) days; or

(6) The letting hereunder or any part thereof or the interest or estate or any part thereof of the Lessee under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation; or

(7) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within thirty (30) days after the filing thereof, however if the Lessee shall within thirty (30) days after the filing of such petition, serve and file its answer or other papers in opposition to such petition which may be required to effect such dismissal and such petition shall not be dismissed within ninety (90) days after the filing of such petition; or

(8) The Lessee shall, without the prior written consent of the Port Authority, become a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(9) The Lessee shall fail duly and punctually to pay the rentals or fees or to make any other payment required hereunder when due to the Port Authority and such failure shall continue for a period of ten (10) days after receipt of a statement therefor; or

(10) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement on its part to be kept, performed, or observed, within ten (10) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption, except for causes beyond its control);

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may upon five (5) days' notice terminate the rights of the Lessee hereunder and the letting of the CATT Unit hereunder, such termination to be effective upon the date specified in such notice, and thereafter at the Port Authority's election by notice to the Lessee, the entire unpaid balance of the Construction Payment Amount, the Port Authority Costs and any unpaid additional rent as described in Section 16 hereof shall become immediately due and payable to the Port Authority without demand or further notice from the Port Authority. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

(b) If any of the events enumerated in paragraph (a) of this Section shall occur prior to the commencement of the Construction Work hereunder, the Lessee shall not commence the Construction Work and the Port Authority upon the occurrence of any such event or at any time thereafter during the continuance thereof by twenty-four (24) hours' notice may cancel the interest of the Lessee under this Agreement, such cancellation to be effective upon the date specified in such notice, and the Lessee shall pay the entire unpaid balance of the Construction Payment Amount, if any, the Port Authority Costs and any unpaid additional rent as described in Section 16 hereof to the Port Authority, without any demand or further notice from the Port Authority, on or before the thirtieth (30th) day following the effective date of such cancellation.

(c) No acceptance by the Port Authority of rentals, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the Port Authority to terminate the letting.

(d) No waiver by the Port Authority of any default on the part of the Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said terms, covenants and conditions.

(e) The rights of termination described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Lessee, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

(f) The Lessee shall not interpose any counterclaims in any summary proceeding or action for non-payment of rental which may be brought by the Port Authority.

(g) Upon termination as provided in this Section the Port Authority shall not, and shall have no obligation to, convey the CATT Unit to the Lessee as provided in Section 11 hereof.

Section 20. Right of Re-Entry

The Port Authority shall, as an additional remedy upon the giving of a notice of termination as provided in Section 19 hereof, have the right to re-enter the CATT Unit (and the pro-rata portion of the Common Elements included therein) and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 21. Waiver of Redemption

The Lessee hereby waives any and all rights to recover or regain possession of the CATT Unit and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority obtains possession of the CATT Unit in any lawful manner.

Section 22. Survival of the Obligations of the Lessee

(a) In the event that the letting of the CATT Unit hereunder shall have been terminated in accordance with a notice of termination as provided in Section 19 hereof, or the interest of the Lessee cancelled pursuant thereto, or in the event that the Port

Authority has re-entered, regained or resumed possession of the CATT Unit in accordance with the provisions of Section 20 hereof, all the obligations of the Lessee under this Agreement shall survive such termination or cancellation, or re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting under this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Port Authority to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or resumption of possession had taken place. The Port Authority may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency for the entire unexpired term.

(b) The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) on account of the Lessee's rental obligations, shall be (1) the sum of the outstanding Construction Payment Amount; the unpaid Port Authority Costs, including without limitation all costs incurred by the Port Authority in connection with regaining possession and restoring the CATT Unit, and reletting the CATT Unit, for legal expenses, putting the CATT Unit in order, including without limitation cleaning, decorating and restoring, maintenance, brokerage fees and any Common Charges paid by the Port Authority; and any unpaid additional rent, less (2) the amount which the Port Authority shall have actually received from any tenant, licensee, permittee, or other occupier of the CATT Unit or a part thereof, during the period for which damages are sought or from any purchaser in the event the Port Authority shall sell the CATT Unit.

Section 23. Reletting or Sale by the Port Authority

The Port Authority upon termination or cancellation pursuant to Section 19 hereof, or upon any re-entry, regaining or resumption of possession pursuant to Section 20 hereof, may occupy the CATT Unit, may let the CATT Unit, may sell the CATT Unit and shall have the right to permit any person, firm or corporation to enter upon the CATT Unit and use the same. Such reletting may be of part only of the CATT Unit and for a period of time the same as or shorter than or longer than the balance of the term hereunder remaining prior to such termination or cancellation, and on the terms and conditions the same as or different from those set forth in this Agreement. The Port Authority shall also, upon termination or cancellation pursuant to the said Section 19, or upon its re-entry, regaining or resumption of possession pursuant to the said Section 20, have the right to repair or to make structural or other changes in the CATT Unit including changes which alter the character of the CATT Unit and the suitability thereof for the purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. No such reletting, sale or use and occupancy shall be or be construed to be an acceptance of a surrender. Notwithstanding any provisions of the contract of sale between the City of New York and the Lessee, the deed delivered thereunder, the Conveyance or the Metrotech Urban Renewal Plan, dated May 1986, as amended, the Lessee shall not seek a reversion of the Land or the enforcement of any covenant to the contrary contained in such contract of sale or such deed by reason of the fact that the Port Authority or any purchaser or lessee of the CATT Unit, shall, subsequent to the termination by the Port Authority of the letting hereunder, use the CATT Unit for any purpose permitted by the City Agreement or by any legislation applicable to the Port Authority or such purchaser. The provisions of this section shall survive any termination or cancellation of this Agreement.

Section 24. Remedies to be Non-exclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority or to the Lessee at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 25. Surrender

The Lessee covenants and agrees to yield and deliver peaceably to the Port Authority possession of the CATT Unit on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in good condition, reasonable wear arising from the use of the CATT Unit permitted elsewhere in this Agreement excepted, provided, that, the Lessee shall not be required to surrender the CATT Unit if such expiration or termination is coincident with the delivery by the Port Authority to the Lessee of a conveyance as set forth in Section 11 of this Agreement.

Section 26. Acceptance of Surrender of Lease

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority and of the Lessee. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents or employees of the Port Authority, shall be deemed an acceptance of a surrender of the letting or of this Agreement.

Section 27. Removal of Property

All personal property (including trade fixtures) removable without material damage to the CATT Unit, which are installed by the Lessee in or on the CATT Unit, shall be deemed to be and remain the property of the Lessee. All such property, provided the Lessee shall install suitable replacements therefor if such personal property is necessary to operate the CATT, the Library or the Building in a first-class manner, may at the Lessee's option be removed by the Lessee from the CATT Unit at any time during the term of this Agreement. Furthermore, all such property of the Lessee shall, unless otherwise agreed in writing by the parties hereto, be removed by the Lessee on or before the expiration or other termination of the term of this Agreement unless such expiration or termination is coincident with the payment of all outstanding payments of basic rental as provided in Section 5 hereof or coincident with the payment, as provided in subparagraph (2) of paragraph (b) of Section 13 hereof, of the outstanding Construction Payment Amount and Port Authority Costs and any unpaid additional rent as described in Section 16 hereof. If the Lessee shall fail to remove its property on or before the termination or expiration of this Agreement, the Port Authority may remove such property to a public warehouse for deposit or retain the same in its own possession, and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second to any sums owed by the Lessee to the Port Authority, including without limitation the outstanding Construction Payment

Amount and Port Authority Costs and any unpaid additional rent, as described in Section hereof, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and same shall exceed the proceeds of sale, the Lessee shall pay such excess to the Port Authority upon demand.

Section 28. Brokerage

The Lessee represents and warrants that it has not had any contacts, dealings or conversations with any broker in connection with the negotiation and execution of this Agreement, the Declaration or the Conveyance, the letting hereunder or in connection with any conveyance, assignment, letting, transfer or other transaction related to the Land, the Building or the Project and that to the best of the Lessee's knowledge there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered arising out of, through or on account of any contacts, dealings, acts or conversations of the Lessee in connection with the negotiation and execution of this Agreement, the Declaration and the Conveyance and the letting hereunder.

Section 29. Limitation of Rights and Privileges Granted

(a) No greater rights or privileges with respect to the use of the CATT Unit or any part thereof are granted or intended to be granted to the Lessee by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted hereby.

(b) The CATT Unit is let to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the CATT Unit may be subject, rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private which is engaged in furnishing heating, lighting, power, telegraph, telephone, steam, or transportation services and of the City and State of New York; and (iii) permits, licenses, regulations and restrictions, if any, of the United States, the City and State of New York or other governmental authority.

(c) The Lessee acknowledges that it has not relied upon any representation or statement of the Port Authority or its Commissioners, officers, employees or agents as to the condition of the Land or the suitability thereof for the Construction Work to be performed on the Land or the operations permitted in the CATT Unit by this Agreement. Without limiting any obligation of the Lessee to commence operations hereunder at the time and in the manner stated elsewhere in this Agreement, the Lessee agrees that no portion of the Land or the Building will be used initially or at any time during the letting which is in a condition unsafe or improper for the conduct of the Lessee's operations hereunder so that there is possibility of injury or damage to life or property. The Lessee shall take possession of the CATT Unit in the condition it is in as of the commencement of the term of the letting hereunder.

**Section 30.      Notices**

Except where expressly required or permitted herein to be oral, all notices, directions, requests, consents and approvals required to be given to or by either party shall be in writing, and all such notices and requests shall be personally delivered to the duly designated officer or representative of such party or delivered to the office of such officer or representative during regular business hours, or forwarded to him or to the party at such address by registered or certified mail. The Lessee shall from time to time designate in writing an office within the Port of New York District and an officer or representative whose regular place of business is at such office upon whom notices and requests may be served. Until further notice, the Port Authority hereby designates its Executive Director, and the Lessee designates the person named on the first page hereof as their officers upon whom notices and requests may initially be served, and the Port Authority designates its office at One World Trade Center, New York, New York 10048, and the Lessee designates its office at 333 Jay Street, Brooklyn, New York 11201 as their respective offices where notices and requests may initially be served. If mailed, the notices herein required to be served shall be deemed effective and served as of the date of the registered or certified mailing thereof.

**Section 31.      Place of Payments**

All payments required of the Lessee by this Agreement shall be made to the Port Authority, P.O. Box 17309, Newark, New Jersey 07194, or to such other office or location as may be substituted therefor from time to time by notice to the Lessee.

**Section 32.      Construction and Application of Terms**

(a) The section and paragraph headings, if any, in this Agreement, are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provision hereof.

(b) The terms, provisions and obligations contained in the Exhibits and Schedules attached hereto, whether there set out in full or as amendments of, or supplements to provisions elsewhere in the Agreement stated, shall have the same force and effect as if herein set forth in full.

**Section 33.      Non-liability of Individuals**

No Commissioner, trustee, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**Section 34.      Services and Utilities**

The Port Authority shall have no obligation to furnish or supply to, for or behalf of the Lessee any services or utilities whatsoever.

Section 35. Abatement

The Lessee shall not be entitled to any abatement of rental hereunder, whether by reason of any partial eviction, partial or complete destruction of the CATT Unit or reduction in the square footage of the CATT Unit, as built, or otherwise.

Section 36. Force Majeure

(a) The Port Authority shall not be liable for any failure, delay or interruption in performing any of its obligations hereunder due to causes or conditions beyond the control of the Port Authority. Further, the Port Authority shall not be liable unless the failure, delay or interruption shall result from failure on the part of the Port Authority to use reasonable care to prevent or reasonable efforts to cure such failure, delay or interruption

(b) No abatement, diminution or reduction of the rentals or other fees or charges payable by the Lessee, shall be claimed or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental, or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom or by any other cause or causes beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes or conditions, except as otherwise herein specifically provided.

Section 37. Condemnation of All or Any Part of the CATT Unit

(a) In any action or other proceeding by any governmental agency or agencies for the taking for a public use of any interest in all or part of the CATT Unit (including without limitation thereto the pro-rata portion of the Common Elements appurtenant thereto), or in case of any deed, lease or other conveyances in lieu thereof (all of which are in this Section referred to as "taking"), the Lessee shall be entitled to participate in the preparation and settlement of the Port Authority's claim in connection with the taking of the CATT Unit, but the Lessee shall not be entitled to assert any claim on its own behalf to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or rental or any part thereof paid therefor, or to institute any action or proceeding or to assert any claim against such agency or agencies or against the Port Authority for any such taking, it being understood and agreed between the parties hereto that the Port Authority shall be entitled to all compensation or awards made or to be made or paid, and all such consideration or rental, free of any claim or right of the Lessee, except for a possible claim to an award for trade fixtures owned and installed by the Lessee and, in the event that such taking is of a fee interest and not merely of a term of years, except for an amount to reimburse the Lessee for the consideration paid by the Lessee to the City of New York for the Lessee's purchase of the Land, being that amount which bears the same relation to such consideration paid by the Lessee to the City of New York as the number of square feet in the CATT Unit so taken (including, without limitation thereto, the pro-rata portion of the Common Elements so taken) bears to the total number of square feet in the Building (including, without limitation thereto, the Common Elements), provided, that nothing in

this Section shall deprive, or be deemed to deprive, the Lessee of compensation for any taking of the Library Unit (including, without limitation thereto, the pro-rata portion of the Common Elements appurtenant thereto). To the extent that such compensation, award, consideration or rental, less any such amount attributable to the Land acquisition, shall exceed the sum of the outstanding Construction Payment Amount and Port Authority Costs, including without limitation all legal and accounting expenses and other costs incurred by the Port Authority in connection with such taking, and any unpaid additional rent, the Port Authority shall pay such excess to the Lessee. To the extent that such Construction Payment Amount, Port Authority Costs and additional rent shall exceed such compensation, award, consideration or rental, less any such amount attributable to the Land acquisition, the Lessee shall remain liable to the Port Authority therefor. The provisions of this Section shall be effective so long as this Agreement and the letting hereunder are in effect on the date of such taking and not thereafter terminated by the Port Authority pursuant to the Section of this Agreement entitled "Termination" notwithstanding any provision of the Declaration or the By-Laws attached thereto which may provide for a different division of such compensation, award, consideration or rental. In the event that any such taking shall include the Library Unit or a portion thereof, the parties to this Agreement, acting in their respective capacities as owner of the CATT Unit and as owner of the Library Unit, shall attempt to coordinate their respective claims.

(b) In the event that all or any portion of the CATT Unit is required by the Port Authority to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the Port Authority may by notice given to the Lessee terminate the letting with respect to all or such portion of the CATT Unit so required. If the Port Authority so elects to terminate all or such portion of the CATT Unit so required it shall give the Lessee written notice to such effect. Such termination shall be effective on the date specified in the notice. The Lessee hereby agrees to deliver possession of all or such portion of the CATT Unit so required upon the effective date of such termination in the same condition as that required for the delivery of the CATT Unit upon the date originally fixed by this Agreement for the expiration of the term of the letting. If any compensation or award is received by the Port Authority in connection with such termination, such compensation or award shall be credited or paid to the Lessee in the same manner and to the same extent as if such termination constituted a taking. No taking by or conveyance to any governmental authority as described in paragraph (a) of this Section, nor any delivery by the Lessee nor taking by the Port Authority pursuant to this paragraph, shall be or be construed to be an eviction of the Lessee or a breach of this Agreement or to be made the basis of any claim by the Lessee against the Port Authority for damages, consequential or otherwise.

(c) In the event that the taking covers the entire CATT Unit, or in the event that the letting is terminated with respect to the entire CATT Unit pursuant to paragraph (b) of this Section, then the letting of the CATT Unit under this Agreement shall, as of the date possession is taken by such agency or agencies from the Port Authority or as of the effective date of such termination, cease and determine in the same manner and with the same effect as if the said date were the original date of expiration hereof except that the entire outstanding Construction Payment Amount and Port Authority Costs and any unpaid additional rent, less the amount of any compensation, award, consideration or rental described in paragraph (a) of this Section received by the Port Authority, shall become immediately due and payable to the Port Authority without demand or notice from the Port Authority.

(d) In the event that the taking covers a part only of the CATT Unit, or in the event that the letting is terminated with respect to a part only of the CATT Unit pursuant to paragraph (b) of this Section, then the letting as to such part shall, as of the date possession thereof is taken by such agency or agencies or as of the effective date of the termination pursuant to said paragraph (b), cease and determine in the same manner and with the same effect as if the term of the letting had on that date expired; but there shall be no abatement of basic rental or of any charge hereunder, provided, that any such compensation, award, consideration or rental received by the Port Authority in connection with such partial taking shall be applied first to reduce the outstanding amount of Port Authority Costs and then to reduce the outstanding Construction Payment Amount so that if on any Payment Date referred to in Section 6 hereof the installment of basic rental to be paid on such Payment Date together with the total of all such compensation, award, consideration or rental and all installments of basic rental previously paid by the Lessee to the Port Authority shall exceed the sum of the Construction Payment Amount and the aggregate outstanding amount of the Port Authority Costs, then the Lessee shall on such Payment Date pay to the Port Authority the excess of the sum of the Construction Payment Amount and the aggregate outstanding amount of Port Authority Costs over the sum of the total of all such compensation, award, consideration or rental and the aggregate amount of all installments of basic rental previously paid by the Lessee to the Port Authority and the Lessee shall not be required to make any further payments of basic rental on any Payment Date thereafter.

#### Section 38. Definitions

The following terms when used in this Agreement, shall, unless the context shall require otherwise, have the respective meanings given below:

- (a) "Agreement" shall mean this agreement.
- (b) "Causes or conditions beyond the control of the Port Authority", shall mean and include acts of God, the elements, weather conditions, tides, earthquakes, settlements, fire, acts of governmental authority, war, shortage of labor or materials, acts of third parties for which the Port Authority is not responsible, injunctions, strikes, boycotts, picketing, slowdowns, work stoppages, labor troubles or disputes of every kind (including all those affecting the Port Authority, its contractors, suppliers or subcontractors) or any other condition or circumstances, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances) which is beyond the control of the Port Authority or which could not be prevented or remedied by reasonable effort and at reasonable expense.
- (c) "Lease" shall mean this agreement.
- (d) "Letting" shall mean the letting under this Agreement for the original term stated herein, and shall include any extension thereof.
- (e) "Person" shall mean not only a natural person, corporation or other regular entity, but shall also include two or more natural persons, corporations or other regular entities, acting jointly as a firm, partnership, unincorporated association, joint venturers or others.

(f) "Governmental Authority", "Governmental Board" and "Governmental Agency" shall mean federal, state, municipal and other governmental authority, board and agencies of any state, or the United States except that it shall not be construed to include The Port Authority of New York and New Jersey, the lessor under this Lease.

(g) The term "gross square feet" shall mean

(1) with respect to the Building, the area in square feet of all the floors in the Building enclosed by the roof, including without limitation thereto all subgrade floors, determined by measuring from the interior surface of the plate glass, partition or finished but undecorated surface of the exterior wall of the Building to the same interior surface of the opposite exterior wall of the Building; and

(2) with respect to the CATT Unit, the Library Unit or the Common Elements, the area in square feet of all the floors, including without limitation thereto all subgrade floors, within the CATT Unit, excluding the portion of the Common Elements appurtenant thereto; the Library Unit, excluding the portion of the Common Elements appurtenant thereto; or the Common Elements, as the case may be, determined by measuring from the interior surface of the plate glass, partition or finished but undecorated surface of the exterior wall of the Building to the same interior surface of the opposite exterior wall of the Building or to the midpoint of the opposite demising wall, as the case may be, or if no exterior wall shall abut such area, from the midpoint of the demising wall to the midpoint of the opposite demising wall, and, in the case of the CATT Unit and the Library Unit such term shall also include that portion of the area of the Common Elements as shall bear the same relation to the total area of the Common Elements that the area of the CATT Unit or the Library Unit, as the case may be, bears to the area of both the CATT Unit and the Library Unit.

(h) The symbol "%" and the words "per centum" and "per cent" whenever used herein or in the schedules attached shall be deemed to be used synonymously and interchangeably.

#### Section 39. No Unlawful Discrimination

The Lessee shall treat all employees and applicants for employment at the CATT without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference in all employment divisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment except as provided by law, and shall state in all solicitations for employment at the CATT that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, sexual orientation or affectional preference.

#### Section 40. Late Charges

If the Lessee should fail to pay any amount required to be paid by the Lessee under this Agreement, as the same may hereafter from time to time be amended, modified or extended, when due to the Port Authority, including without limitation any

payment of basic rental or additional rent, or other rental or any payment of utility or other charges or if any such amount is found to be due as the result of an audit, then, in each event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (hereinbelow described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority of payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be and become additional rent, recoverable by the Port Authority in the same manner and with like remedies as if it were originally a part of the rental. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in Section 19 of this Agreement or (ii) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 41. Assignment and Sublease

(a) The Lessee covenants and agrees that it will not sell, convey, transfer, mortgage, pledge or assign this Agreement, the Land, the Building, the CATT Unit or any part thereof, or any rights created thereby or the letting thereunder or any part thereof, without the prior written consent of the Port Authority, provided, that the Lessee may, without such consent, subject the Library Unit to a mortgage securing a loan extended to the Lessee in its capacity as owner of the Library Unit.

(b) The Lessee shall not sublet the CATT Unit or any part thereof, without the prior written consent of the Port Authority.

(c) If without prior written consent of the Port Authority, the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of paragraphs (a) or (b) of this Section or if the CATT Unit is occupied by anybody other than the Lessee, the Port Authority may collect rent from any assignee, sublessee or anyone who claims a right under this Agreement or letting or who occupies the CATT Unit, and the Port Authority shall apply the net amount collected to the rentals herein reserved; but no such collection shall be deemed a waiver by the Port Authority of the covenants contained in paragraphs (a) and (b) of this Section or an acceptance by the Port Authority of any such assignee, sublessee, claimant or occupant as lessee, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein.

(d) Neither a consent by the Port Authority to any sale, conveyance, transfer, mortgage, pledge, sublease or assignment nor the limited right to mortgage the Library Unit set forth in paragraph (a) of this Section shall be construed or deemed to release, relieve or discharge any succeeding assignee, successor or transferee of the Lessee or any other person claiming any right, title or interest in this Agreement from the requirement of obtaining the prior written consent of the Port Authority in the event it wishes to sell, convey, transfer, mortgage, pledge, sublet or assign this Agreement or any part thereof, or any rights created thereby or the letting hereunder or any part thereof; and such assignee, successor or transferee or other person claiming any right, title or interest in this Agreement shall not sell, convey, transfer, mortgage, pledge, sublet or assign this Agreement or any part thereof, or any rights created or the letting thereunder or any part thereof without such prior written consent of the Port Authority.

(e) The Lessee shall not use or permit any person to use the CATT Unit or any portion thereof for any purpose other than the purposes stated in Section 8 hereof. Except as provided in this Agreement or otherwise permitted in writing by the Port Authority, the Lessee shall not permit the CATT Unit to be used or occupied by any person other than its own officers, employees, students, contractors and representatives.

**Section 42. Assignment by the Port Authority**

Nothing in this Agreement shall prohibit or shall be deemed to prohibit the Port Authority from selling, conveying, transferring, mortgaging, pledging or assigning its interest in the CATT Unit subject to this Agreement (including without limitation thereto the provisions of Section 11) and the letting hereunder, to any person, firm, corporation or individual, including without limitation thereto, the City of New York, PDC, the State of New York, the New York State Urban Development Corporation or any subsidiary of the Port Authority or of any of them.

**Section 43. Relationship to Other Agreements**

So long as this Agreement and the letting hereunder shall remain in effect the provisions of this Agreement shall govern the Port Authority and the Lessee in the exercise of their rights and the performance of their duties as Unit Owners of the CATT Unit and the Library Unit, respectively, set forth in the Declaration and the By-Laws attached thereto. In the event of any inconsistency between the provisions of this Agreement and those of the Conveyance, as between the parties to this Agreement, this Agreement shall control.

**Section 44. Transfer of Development Rights**

The Lessee shall have the right with the approval of the Port Authority, which approval shall not be arbitrarily or capriciously withheld, to transfer to any transferee permitted under applicable law development rights or "floor area ratio" which are not necessary or used for or in the construction of the Building in accordance with the plans and specifications approved by the Port Authority and the Port Authority shall, in its capacity as owner of the CATT Unit, join with the Lessee in its capacity as owner

of the Library Unit in the execution of appropriate agreements or instruments necessary to effect such transfer, provided, that such agreements shall be in form determined by the Port Authority to be satisfactory, which determination shall not be made or withheld arbitrarily or capriciously, provided, further, that the Lessee hereby indemnifies and holds the Port Authority, its Commissioners, officers, employees and representatives, harmless from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal expenses incurred in connection with the defense of) all claims and demands of third persons, including without limitation thereto claims and demands of governmental agencies, other than the Port Authority, arising out of or in connection with or resulting from such transfer or any construction or development by the transferee of such rights or under color of such rights.

Section 45. Rules and Regulations

So long as this Agreement and the letting hereunder shall remain in effect the Lessee may make such reasonable rules and regulations for the operation of the Building and the conduct of the persons admitted thereto as do not conflict with the provisions of this Agreement, the Declaration and the By-Laws attached thereto, provided, that no such rules and regulations shall be or be deemed to be rules and regulations of the CATT/Library Condominium nor shall they have any force or effect subsequent to the cancellation, termination or expiration of the letting hereunder.

Section 46. Opinion of Counsel

The Lessee shall deliver to the Port Authority simultaneously with the execution and delivery of this Agreement an opinion of counsel with respect to the Lessee's organization and existence, the authority of the persons executing and delivering the Agreement on behalf of the Lessee and the valid and binding nature of this Agreement upon the Lessee which opinion shall be in such form and shall contain such other opinions as the Port Authority shall specify.

Section 47. Entire Agreement

This Agreement consists of the following: Sections 1 through 47, inclusive, and Exhibits A, D, E and L. This Agreement constitutes the entire agreement of the parties on the subject matter hereof except for the Declaration and the Conveyance and the documents or instruments attached hereto and thereto and may not be changed, modified, discharged or extended except by written instrument duly

executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless writing expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

Karin S. Killian  
Secretary

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By Frank Garcia  
(Title) \_\_\_\_\_  
(Seal)

ATTEST:

J. E. Ryan  
VICE PRESIDENT

POLYTECHNIC UNIVERSITY

By [Signature]  
(Title) SR. VICE PRESIDENT  
(Corporate Seal)



EXHIBIT D

DECLARATION

OF

CATT/LIBRARY CONDOMINIUM

(Pursuant to Article 9-B of the Real Property Law  
of the State of New York)

DECLARATION made this \_\_\_\_\_ day of \_\_\_\_\_, 1988 by POLYTECHNIC UNIVERSITY (hereinafter called "Polytechnic"), a not-for-profit educational institution chartered by the Board of Regents of the University of the State of New York having an office at 333 Jay Street, in the Borough of Brooklyn, County of Kings, City and State of New York, and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic, created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office at One World Trade Center, in the Borough of Manhattan, City, County and State of New York, (Polytechnic and the Port Authority being hereinafter collectively referred to as "the Declarants"), the Port Authority being represented by its Treasurer and Polytechnic being represented by its Senior Vice President, each of whom is fully empowered and qualified to execute this Declaration.

The Declarants own the Property (as hereinafter defined) in fee simple absolute.

By execution and recordation of this Declaration the Declarants intend to establish a condominium under the provisions of Article 9-B of the Real Property Law of the State of New York (hereinafter referred to as the "Act").

The Declarants desire to submit their respective interest in the Property to the Act so that immediately upon the recording of this Declaration, Polytechnic will be the owner of the Library Unit (as hereinafter defined) and its appurtenant interests in the Common Elements (as hereinafter defined) and the Port Authority will be the owner of the CATT Unit (as hereinafter defined) and its appurtenant interests in the Common Elements. The Declarants are each entering into this Declaration for the sole purpose of subjecting their respective interests in the Property to condominium ownership.

EXHIBIT A

Description of Land

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, and known as Tax Lots 12, 14, 16, 17, 18, 19, 23, 25, 26 and the northern 15 feet of Lots 11 and 27 of Brooklyn Tax Block 143 as shown on the Tax Map of the Borough of Brooklyn, City and State of New York, as said tax map existed on June 18, 1987.

## D E C L A R A T I O N :

The Declarants hereby declare pursuant to the Act on behalf of themselves, their successors and assigns, and on behalf of all persons having or seeking any interest of any nature whatsoever in the Property, as follows:

### ARTICLE I SUBMISSION OF THE PROPERTY

The Declarants hereby submit the Land (as hereinafter defined), all other improvements erected and to be erected thereon and all replacements thereof, including without limitation thereto, the Building (as hereinafter defined) when erected thereon, all easements, rights and appurtenances belonging thereto and all other property, real, personal or mixed, used in connection therewith and owned by the Declarants (the Land, the Building and all such property being collectively referred to herein as "the Property") to the provisions of the Act and pursuant thereto does hereby establish a condominium to be known as the "CATT/Library Condominium" (hereinafter referred to as "the Condominium").

### ARTICLE II BY-LAWS

Attached to this Declaration and made a part hereof are the by-laws of the Condominium (referred to herein as "the By-Laws"), which set forth detailed provisions governing the operation, use and occupancy of the Condominium. All capitalized terms which are not defined separately herein shall have the meanings given to those terms in the By-Laws.

### ARTICLE III THE LAND

Included in the Property is all that certain tract, plot, piece and parcel of land (referred to herein as "the Land") situate, lying and being in the County of Kings, City and State of New York, and more particularly described in Schedule A attached hereto and hereby made a part hereof. The street address of the Land is \_\_\_\_\_, Brooklyn, New York. The Declarants own the Land in fee simple absolute.

ARTICLE IV  
THE BUILDING

Section 4.1 Description of the Building

Included in the Property is a building (referred to herein as "the Building") to be constructed on the Land having \_\_\_\_\_ levels below grade and \_\_\_\_\_ stories above grade. The Building is to be Class [insert class of construction] fireproof construction [describe structural system of Building].

Section 4.2 Portions of the Building

The Building is hereby divided into two units (each being hereinafter individually referred to as a "Unit" and collectively referred to as "the Units") and certain common elements (referred to herein as "the Common Elements") to be shared in common among the owners of the Units (each being individually referred to herein as a "Unit Owner" and collectively referred to herein as "the Unit Owners"). The Units consist of (a) one library unit (referred to herein as "the Library Unit") and (b) one CATT unit (referred to herein as "the CATT Unit") and are more fully described in Article V. All references herein or in the By-Laws to a Unit shall be deemed to include such Unit's pro rata undivided interest in the Common Elements.

ARTICLE V  
THE UNITS

Section 5.1 Size; Location

Schedule B annexed hereto sets forth with respect to each Unit the Unit designation, tax lot number, location, approximate area, the Common Elements to which such Unit has immediate access and the percentage of interest in the Common Elements appurtenant to such Unit. The locations of the Units and the Common Elements are shown on the floor plans of the Building (hereinafter referred to as "the Floor Plans") certified by \_\_\_\_\_, registered architects, intended to be filed in the New York County Office of the Register of the City of New York (the "City Register's Office") pursuant to Section 339-p of the Act simultaneously with the recording of this Declaration.

Section 5.2 Description

The Units are described as follows:

- (a) The Library Unit shall consist of [describe Library Unit] and shall contain approximately \_\_\_\_\_ square feet of gross floor area.

EXHIBIT D  
DECLARATION  
OF

CATT/LIBRARY CONDOMINIUM

(Pursuant to Article 9-B of the Real Property Law  
of the State of New York)

DECLARATION made this \_\_\_\_\_ day of \_\_\_\_\_, 1988 by POLYTECHNIC UNIVERSITY (hereinafter called "Polytechnic"), a not-for-profit educational institution chartered by the Board of Regents of the University of the State of New York having an office at 333 Jay Street, in the Borough of Brooklyn, County of Kings, City and State of New York, and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic, created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office at One World Trade Center, in the Borough of Manhattan, City, County and State of New York, (Polytechnic and the Port Authority being hereinafter collectively referred to as "the Declarants"), the Port Authority being represented by its Treasurer and Polytechnic being represented by its Senior Vice President, each of whom is fully empowered and qualified to execute this Declaration.

The Declarants own the Property (as hereinafter defined) in fee simple absolute.

By execution and recordation of this Declaration the Declarants intend to establish a condominium under the provisions of Article 9-B of the Real Property Law of the State of New York (hereinafter referred to as the "Act").

The Declarants desire to submit their respective interest in the Property to the Act so that immediately upon the recording of this Declaration, Polytechnic will be the owner of the Library Unit (as hereinafter defined) and its appurtenant interests in the Common Elements (as hereinafter defined) and the Port Authority will be the owner of the CATT Unit (as hereinafter defined) and its appurtenant interests in the Common Elements. The Declarants are each entering into this Declaration for the sole purpose of subjecting their respective interests in the Property to condominium ownership.

Building shall equal a fraction the numerator of which shall be the number of square feet of floor area in the CATT Unit, including the portion of the Common Elements appurtenant thereto, and the denominator of which shall be the aggregate number of square feet of floor area in both of the Units, including the floor area added to the Library Unit in connection with the construction of such additional floors or other extension to or expansion of the Building and excluding the Common Elements appurtenant to both Units. The undivided interest in the Common Elements appurtenant to the Library Unit subsequent to the construction of such additional floors or other extension to or expansion of the Building shall equal a fraction the numerator of which shall be the number of square feet of floor area in the Library Unit, including the floor area added to the Library Unit in connection with the construction of such additional floors or other extension to or expansion of the Building and excluding the portion of the Common Elements appurtenant thereto, and the denominator of which shall be the aggregate number of square feet of floor area in both of the Units, including the floor area added to the Library Unit in connection with the construction of such additional floors or other extension to or expansion of the Building and excluding the Common Elements appurtenant to both Units.

(d) The Unit Owner of the CATT Unit shall have no obligation to, and shall not, reimburse or contribute to any part of the cost to the Unit Owner of the Library Unit of constructing such additional floors or other extension to or expansion of the Building or the new Common Elements included therein.

#### ARTICLE X PERSON TO RECEIVE SERVICE

Polytechnic University, 33 Jay Street, Brooklyn, New York 11201, Attention: \_\_\_\_\_ or any current operating manager of the Common Elements, is hereby designated to receive service of process in any action which may be brought against the Condominium. The person receiving service of process on behalf of the Condominium shall promptly forward copies of such process to both Unit Owners.

#### ARTICLE XI DETERMINATION OF PERCENTAGES OF INTEREST IN COMMON ELEMENTS; ADJUSTMENTS

##### Section 11.1 Method of Determination

The percentages of interest of the respective Units in the Common Elements set forth in Schedule B hereto have been determined upon the basis of the approximate proportions which the number of square feet of floor area in each Unit bears to the aggregate number of square feet of floor area in all the Units.

## Section 11.2 Method of Adjustment

The Unit Owners may agree among themselves to exchange or surrender space in their Units and, in connection therewith, to reallocate the respective percentages of interest in the Common Elements appurtenant to the Units. Any such surrender, exchange or reallocation shall be reflected in an amendment to this Declaration filed in the City Register's Office by the Board of Managers and both Unit Owners with the consent of each holder of a mortgage on a Unit.

## ARTICLE XII EASEMENTS

### Section 12.1 Encroachments

If (a) any portion of the Common Elements encroaches upon a Unit (or any portion thereof), (b) a Unit (or any portion thereof) encroaches upon another Unit (or any portion thereof) or upon any portion of the Common Elements or (c) any such encroachment shall hereafter occur as a result of (1) settling or shifting of the Building, (2) any alteration or repairs to the Common Elements made by or with the consent (when required by the By-Laws) of the Board of Managers acting on behalf of the Unit Owners or (3) any repair or restoration of the Building (or any portion thereof) or of any Unit or Common Element after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement in favor of the encroaching Unit Owner, or both Unit Owners in the case of a Common Element, shall exist for such encroachment and for the maintenance of the same as long as the Building shall stand.

### Section 12.2 Ingress; Egress

Each Unit Owner shall have in common with the other Unit Owner, and each Unit shall be subject to, an easement of ingress and egress and an easement to inspect, use, maintain, repair, alter and replace all Common Elements located in any Unit or elsewhere on the Property; provided, however, that except in the case of circumstances reasonably believed to involve present danger to life or property (hereinafter referred to as "an Emergency"), access to any Unit pursuant to such easement shall be exercised (a) only by the Board of Managers, (b) on not less than three (3) days' notice and (c) in such a manner as will minimize the adverse effect on the normal and reasonable operation or use of the Common Elements or of such Unit by the Unit Owner.

### Section 12.3 Board of Managers

The Board of Managers or its designee shall have a right of access to each Unit to inspect the same, to remove violations therefrom, if the Unit Owner thereof has failed to do so or to promptly commence and continue with diligence to pursue its removal after appropriate notice, and to inspect, use, maintain, repair, alter and replace all Common Elements contained in such Unit, provided, however, that such right of access shall, except in the case of an Emergency, be exercised upon such prior reasonable notice and in such a manner as will minimize the adverse effect on the normal operation or use of the Unit by the Unit Owner thereof.

### Section 12.4 Support and Necessity

Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of the other Unit and the Common Elements.

### Section 12.5 Additional Utility Easements

The Board of Managers may grant additional electric, gas, steam or other utility easements or relocate any existing utility easements in any portion of the Property, provided, however, that such additional or relocated utility easements will not prevent or materially adversely affect the normal and reasonable operation or use of any Unit by the Unit Owner thereof. Any utility company employees and agents shall have the right of access to the Units and the Common Elements in furtherance of such easement, provided, however, that such right of access shall be exercised in such a manner as shall minimize the adverse effect on the normal and reasonable operation and use of the Common Elements and of the Units.

## ARTICLE XIII AMENDMENTS

This Declaration may be amended only by the written consent of both Unit Owners. No amendment shall be effective until recorded in the City Register's Office. Any references herein to this Declaration shall be deemed to refer to this Declaration as it may be amended from time to time.

## ARTICLE XIV TERMINATION

### Section 14.1. Duration of Condominium

The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain as more

particularly provided in the By-Laws, or (b) such time as withdrawal of the Property from the provisions of the Act is authorized by the written consent of both Unit Owners and their mortgagees, if any. No withdrawal pursuant to clause (b) of this Section shall be effective until an appropriate instrument of withdrawal is recorded in the City Register's Office.

#### Section 14.2 Effect of Termination

If the Condominium is terminated pursuant to clause (a) of Section 14.1 of this Declaration, the Property and the proceeds thereof shall be disposed of in accordance with the applicable provisions of the By-Laws. If withdrawal of the Property from the provisions of the Act is authorized pursuant to clause (b) of Section 14.1 of this Declaration, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided by the Unit Owners as specified in the written consent referred to in said clause (b), provided, that if such written consent does not specify the division of such net proceeds, then such net proceeds shall be divided by the Unit Owners in proportion to their respective percentages of interest in the Common Elements, provided, further, that no payment shall be made to a Unit Owner until there has first been paid off out of such Unit Owner's share of such net proceeds all liens (including mortgages on such Unit Owner's Unit). Nothing contained in this Declaration shall be deemed to prohibit any Unit Owner from bidding to purchase the Property at any such sale.

#### ARTICLE XV POWER OF ATTORNEY

Each Unit Owner shall grant to the persons who shall from time to time constitute the Board of Managers an irrevocable power of attorney, coupled with an interest, in such form as the Board of Managers shall reasonably determine, to execute, acknowledge and deliver any (1) instrument necessary or appropriate to comply with any applicable law, ordinance, resolution, requirement, rule, regulation or order of the Department of Buildings, the City Planning Commission or any other public authority having jurisdiction over the Property relating to the maintenance, demolition, construction, repair or restoration of the Building, (2) consent, covenant, restriction, easement or declaration affecting the Condominium which the Board of Managers deems necessary or appropriate or (3) any amendment to this Declaration required under Article IX hereof or under Article XIII hereof.

ARTICLE XVI  
COVENANTS RUNNING WITH THE LAND

Section 16.1 Construction of Provisions

All provisions of this Declaration and the By-Laws, including, without limitation, the provisions of this Article XVI, shall be construed to be covenants running with the land. Such provisions shall bind and inure to the benefit of any person having at any time any interest or estate in a Unit as though such provisions were recited and stipulated at length in each and every deed, conveyance, or lease or terms of occupancy thereof, provided, that nothing in this Declaration shall prohibit or be deemed to prohibit either Unit Owner from waiving, transferring or limiting the exercise of any power, right, option or election of such Unit Owner set forth in this Declaration or the By-Laws pursuant to any agreement with the other Unit Owner or with a third party.

Section 16.2 Saving Provision

If any provision of this Declaration or the By-Laws is invalid, or would cause this Declaration or the By-Laws to be insufficient to create the Condominium, such provision shall be deemed deleted from this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Act but shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property, as enforceable equitable servitudes and/or covenants running with the land, under other applicable law to the extent permitted under such applicable law, except as provided in Section 16.1 of this Declaration, with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, both Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the land. If any provision which is necessary to cause this Declaration or the By-Laws to be sufficient to create the Condominium is missing from this Declaration or the By-Laws, then such provision shall be deemed included as part of this Declaration or the By-Laws, as the case may be, for the purposes of submitting the Property to the provisions of the Act.

Section 16.3 Provisions Enforceable if no Condominium

Subject to Section 16.1 of this Declaration, if this Declaration and the By-Laws are insufficient to create the Condominium, the provisions of this Declaration and the By-Laws shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property as enforceable equitable servitudes and/or covenants running with the land to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, both Unit Owners had signed and recorded an

instrument agreeing to each such provision as an enforceable equitable servitude and/or covenant running with the land.

ARTICLE XVII  
NO WAIVER

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

ARTICLE XVIII  
CAPTIONS

The captions in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

ARTICLE XIX  
CERTAIN REFERENCES

Section 19.1 Gender

Any references in this Declaration to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the content otherwise requires.

Section 19.2 Subdivisions

Unless otherwise indicated, all references herein to Articles, Sections, Schedules, Exhibits or other provisions are references to Articles, Sections, Schedules, Exhibits or other provisions of or to this Declaration.

ARTICLE XX  
SEVERABILITY

Subject to the provisions of Article XVI of this Declaration, if any provision of this Declaration is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Declaration and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Declaration shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.

ARTICLE XXI  
FURTHER ASSURANCES

Section 21.1 Delivery of Further Assurances

Any party which is subject to the terms of this Declaration, the By-Laws or any Rules and Regulations (as defined in the By-Laws) adopted thereunder, shall, at the expense of the Board of Managers as a Common Expense (as also defined in the By-Laws), execute, acknowledge and deliver to the Board of Managers such instruments, in addition to those specifically provided for herein, and take such other action, in either case as is not inconsistent with the provisions of this Declaration, the By-Laws or law, as the Board of Managers may reasonably request to effectuate the provisions of this Declaration or any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

Section 21.2 Power of Board of Managers

If any Unit Owner (a) refuses, or fails within twenty (20) days after request therefor, to execute, acknowledge or deliver any instrument, or take any action which such Unit Owner is required to execute, acknowledge and deliver or take pursuant to this Declaration, the By-Laws or any Rules or Regulations or (b) in the case of failure to perform any act not reasonably capable of being performed within twenty (20) days, does not commence performance of such act within such twenty (20) day period and diligently prosecute such performance to completion thereafter, then the Board of Managers is hereby authorized as attorney-in-fact for such Unit Owner to execute, acknowledge and deliver such instrument or take such action in the name and on behalf of such Unit Owner.

ARTICLE XXII  
LIEN FOR COMMON CHARGES

The lien of the Board of Managers on each Unit for the unpaid Common Charges (as defined in the By-Laws) related thereto, together with interest thereon, shall be prior and superior to all sums unpaid on any first and any subordinate mortgage, whether of record or otherwise, on such Unit, except as otherwise provided in the By-Laws. Such lien shall be subject to foreclosure as provided in the By-Laws.

ARTICLE XXIII  
EXCULPATION

No Commissioner, trustee, director, officer, agent or employee of either Declarant shall be charged personally or held contractually liable by or to any Unit Owner or the other Declarant by reason of this Declaration, the By-Laws or any Rules and Regulations, or by reason of either party herein named as a Declarant having served as such or as a Unit Owner.

IN WITNESS WHEREOF, the Declarants have caused this Declaration to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 1988.

ATTEST:

POLYTECHNIC UNIVERSITY

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Corporate Seal)

ATTEST:

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Seal)

(Port Authority Acknowledgement)

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_

; that he is the

of The Port Authority of New York and New Jersey, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Commissioners of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
(notarial seal and stamp)

(Corporate Acknowledgement)

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came \_\_\_\_\_

to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_

that he is the \_\_\_\_\_ President of Polytechnic University, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
(notarial seal and stamp)

BY-LAWS  
OF  
CATT/LIBRARY CONDOMINIUM

ARTICLE I  
GENERAL

Section 1.01 Purpose; Definitions

These By-Laws set forth the rules and procedures concerning the conduct of the affairs of the CATT/Library Condominium (hereinafter referred to as "the Condominium"). The Condominium owns the property consisting of Lot \_\_\_\_\_ which forms a part of \_\_\_\_\_, on the Tax Map of the Borough of Brooklyn, County of Kings, City and State of New York (the "Land"), and the building and all other improvements now or hereafter to be erected thereon and all replacements thereof when erected thereon (hereinafter collectively referred to as "the Building") including, without limitation, the Units and the Common Elements, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, used in connection herewith and owned by the Declarants (the Land, the Building and all such property being collectively referred to herein as "the Property"), all of which have been submitted to the provisions of Article 9-B of the Real Property Law of the State of New York by the recording of a declaration (such declaration as it may be amended from time to time being hereinafter referred to as "the Declaration") in the Kings County Office of the Register of the City of New York simultaneously herewith. All capitalized terms which are not separately defined herein shall have the meanings given to those terms in the Declaration. All references herein to By-Laws shall mean these By-Laws as they may be amended from time to time.

Section 1.02 Applicability of By-Laws

All present and future Unit Owners and their heirs, legal representatives, successors and assigns, mortgagees of Units, lessees, sublessees and occupants of Units, employees and guests of Unit Owners, and all other persons now or hereafter using the facilities of the Property, are and shall be subject to the Declaration and these By-Laws. The acceptance of a deed or conveyance or the succeeding to title to, or the entering into a lease or sublease for, or the act of occupancy of, any Unit or portion thereof by any person shall constitute an agreement by such person that these By-Laws and the provisions of the Declaration are accepted, ratified, and will be complied with by

such persons. Nothing in this Section shall prohibit or be deemed to prohibit either Unit Owner from waiving, transferring or limiting the exercise of any power, right, option or election of such Unit Owner set forth in the Declaration or these By-Laws pursuant to any agreement with the other Unit Owner or with a third party.

#### Section 1.03 Principal Office

The principal office of the Condominium shall be located at the Property, or at such other place within the Borough of Brooklyn reasonably convenient thereto as may be designated from time to time by the Board of Managers (as hereinafter defined).

#### Section 1.04 Fiscal Year

The fiscal year of the Condominium shall be the calendar year unless otherwise determined by the Board of Managers.

#### Section 1.05 Certain Other References

References herein to "both Unit Owners pro rata" shall mean proportionately in accordance with each Unit Owner's respective percentage of interest in the Common Elements, as set forth in Schedule B to the Declaration. References herein to "the pro rata share of a Unit" shall mean that share which is equal to the percentage of interest in the Common Elements appurtenant to such Unit.

### ARTICLE II BOARD OF MANAGERS

#### Section 2.01 Number, Term and Qualification

The affairs of the Condominium shall be governed by a board of managers of the Condominium (referred to herein as "the Board of Managers"). The Board of Managers shall consist of two (2) persons. One (1) member of the Board of Managers shall be designated by the Unit Owner of the CATT Unit and one (1) member of the Board of Managers shall be designated by the Unit Owner of the Library Unit. The members of the Board of Managers shall be designated at the annual meeting of Unit Owners, or at a special meeting called for that purpose, and shall serve until the date herein fixed for the next annual meeting of Unit Owners and until their respective successors shall have been designated by the Unit Owners or until their earlier death, resignation or removal. There shall be no limit on the number of successive terms a member of the Board of Managers may serve. Members of the Board of Managers need not be Unit Owners or Commissioners, trustees, shareholders, directors, officers, partners, agents or employees of Unit Owners.

Section 2.02 Powers and Duties

(a) Except as set forth in the Declaration, the Board of Managers shall have all the powers and duties necessary for or incidental to the administration of the affairs of the Condominium. Subject to each Unit Owner's right to sell, mortgage, lease, sublease, or use its Unit as provided in the Declaration and elsewhere in these By-Laws, all other determinations with respect to the administration of the affairs of the Condominium shall be made by the Board of Managers, acting as set forth in Section 2.06 of these By-Laws.

(b) Subject to the provisions of paragraph (a) of this Section and without limiting the generality thereof, the Board of Managers shall be entitled to make determinations with respect to the following matters:

(1) Management, operation, care, upkeep, repair, replacement, rebuilding, maintenance and painting of the Common Elements including, without limitation, restoration of the Property after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

(2) Additions and improvements to, or alterations or modifications of, the Common Elements.

(3) Employment and dismissal of all personnel necessary for the maintenance and operation of the Common Elements.

(4) Determination of the Common Charges (as hereinafter defined) and collection thereof from the Unit Owners.

(5) Adoption of such rules and regulations as the Board of Managers may deem necessary for the operation and use of the Common Elements and of any amendments or additions thereto (hereinafter referred to as "the Rules and Regulations"). Copies of any Rules and Regulations and of changes therein shall be furnished to each Unit Owner.

(6) Enforcement by all lawful means of the provisions of the Declaration, these By-Laws and any Rules and Regulations, including, without limitation, the institution of proceedings for a temporary restraining order or permanent or temporary injunction.

(7) Establishment and maintenance of bank accounts on behalf of the Condominium and designation of the authorized signatories thereto, provided, however, that any such account shall require not less than two signatories, one designated or approved by each Unit Owner.

(8) Obtain, maintain, and review insurance coverage on the Property, including the Units, pursuant to the provisions of Section 6.02 of these By-Laws.

(9) Adjust and settle insurance claims and execute and deliver releases in connection therewith, if the loss involves both Units or the Common Elements (alone or in conjunction with a Unit), as set forth in Section 6.02 of these By-Laws.

(10) Borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep, repair, replacement, rebuilding, maintenance and painting of, or the making of restorations, additions, and improvements to, or alterations or modifications of, the Common Elements, provided, however, that no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the consent of the Unit Owner of such Unit. If any sum borrowed by the Board of Managers on behalf of the Condominium pursuant to the authority contained in this subparagraph (10) is not repaid by the Board of Managers when required, a Unit Owner who pays to the applicable creditor its pro rata portion thereof shall be entitled to obtain from such creditor a release of any lien which such creditor has on such Unit Owner's Unit. Each loan agreement entered into by the Board of Managers shall contain language giving effect to the provision contained in the foregoing sentence.

(11) Execute, swear to or affirm, acknowledge, deliver, and record (i) any declaration or other instrument affecting the Property which the Board of Managers deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution or requirement of any public authority with jurisdiction over the Property (including the Department of Buildings, the City Planning Commission, the City Surveyor's Office and the Board of Standards and Appeals), or (ii) any consent, covenant, restriction, easement or declaration affecting the Property which the Board of Managers deems necessary or appropriate and which does not prevent or materially adversely affect the normal and reasonable operation and uses of a Unit by the Unit Owner thereof.

(12) Execute, acknowledge, deliver, and record, on behalf of both Unit Owners as their attorney-in-fact for such purpose, a restatement of the Declaration and/or these By-Laws whenever, in the Board of Managers' estimation, it is advisable to consolidate and restate all amendments, modifications, additions and deletions theretofore made to or from the Declaration and/or these By-Laws.

(13) Organize corporations to act as its designee with respect to such matters as it may determine including, without limitation, in connection with the acquisition of title to any Unit pursuant to Section 6.05 of these By-Laws.

### Section 2.03 Managing Agents and Managers

(a) So long as Polytechnic shall be the lessee of the CATT Unit and the Unit Owner of the Library Unit, Polytechnic shall act as the managing agent of the Condominium without compensation and shall manage and operate the Common Elements or in lieu thereof may employ a managing agent or a manager, at such compensation as Polytechnic may determine, to manage and operate the Common Elements. If Polytechnic retains a managing agent or manager Polytechnic shall pay the compensation of such managing agent or manager. Polytechnic, acting as such manager, or such managing agent or manager, subject to the direction of Polytechnic, shall have the powers set forth in subparagraphs (1), (3), (6), (7) and (8) of paragraph (b) of Section 2.02 of these By-Laws, shall have the powers set forth in subparagraph (2) of said paragraph (b) with the specific authorization of the Board of Managers and shall have the power to determine the Common Charges as set forth in subparagraph (4) of said paragraph (b) only so long as Polytechnic shall (i) be the managing agent of the Condominium pursuant to this paragraph (a) and (ii) bear and pay all of such Common Charges itself. No determination of Common Charges made by Polytechnic as managing agent of the Condominium shall be binding on the Unit Owner of the CATT Unit for any period during which Polytechnic is not the lessee of the CATT Unit and does not bear and pay all of such Common Charges.

(b) In the event that Polytechnic shall no longer be the lessee of the CATT Unit or shall no longer be the Unit Owner of the Library Unit but the Port Authority shall be the Unit Owner of the CATT Unit, the Port Authority shall employ a managing agent or a manager, at such compensation as the Port Authority may determine, to manage and operate the Common Elements. In such event, the fees and other charges, if any, of such managing agent or manager shall be a Common Expense (as hereinafter defined). Such managing agent or manager employed by the Port Authority, subject to the direction of the Port Authority, shall have the powers set forth in subparagraphs (1), (3), (4), (6), (7) and (8) of paragraph (b) of Section 2.02 of these By-Laws and shall have the powers set forth in subparagraph (2) of said paragraph (b) with the specific authorization of the Board of Managers.

(c) In the event that (1) the Port Authority shall not be the Unit Owner of the CATT Unit and Polytechnic shall not be the lessee of the CATT Unit or (2) the Port Authority shall not be the Unit Owner of the CATT Unit and Polytechnic shall not be the Unit Owner of the Library Unit, then the Board of Managers may employ a managing agent or a manager, at such compensation as

the Board of Managers may determine, to manage and operate the Common Elements. In such event, the fees and other charges, if any, of such managing agent or manager shall be a Common Expense. Such managing agent or manager employed by the Board of Managers, subject to the direction of the Board of Managers, shall have the powers set forth in subparagraphs (1), (2), (3), (4), (6), (7) and (8) of paragraph (b) of Section 2.02 of these By-Laws.

(d) In the event that a managing agent or manager shall have been employed as provided in paragraphs (a), (b) or (c) of this Section, such managing agent or manager shall also perform such duties and services as the Board of Managers shall specify.

#### Section 2.04 Resignation and Removal

Any member of the Board of Managers may resign at any time by written notice delivered or sent by registered or certified mail to the President or Secretary of the Condominium. Acceptance of such resignation shall not be necessary to make it effective. Any member of the Board of Managers may be removed from office with or without cause at any time only by the Unit Owner entitled to designate such member pursuant to Section 2.01 of these By-Laws.

#### Section 2.05 Vacancies

Vacancies in the Board of Managers resulting from any cause shall be filled by designation of a new member by the Unit Owner previously represented by the member whose service on the Board of Managers has terminated.

#### Section 2.06 Meetings, Quorum, Decisions, and Contracts

(a) The Board of Managers shall meet immediately after the annual meeting of Unit Owners, and whenever called together by any Unit Owner or upon the written request of any member of the Board of Managers then holding office. All meetings of the Board of Managers shall be held upon notice given to each member by mailing (by registered or certified mail, return receipt requested) such notice to him at least twenty (20) days prior to such meeting at the last address furnished by such member to the Secretary. Regular meetings may be held at such times and places as the Board of Managers may determine, but not less frequently than annually. Such regular meetings shall be held immediately after the annual meeting of Unit Owners, unless any such meeting shall be rescheduled pursuant to paragraph (b) of this Section or by agreement of all members of the Board of Managers to an alternative date reasonably satisfactory to each member. Notwithstanding the absence of notice of any meeting of the Board of Managers, if all the members shall be present thereat, or if a signed waiver of notice shall be submitted by all absentees, either before or after the holding of such meeting, then any such meeting shall be valid for all purposes.

(b) The presence of both of the members of the Board of Managers shall be required to constitute a quorum. If any meeting of the Board of Managers cannot be held because both members of the Board of Managers are not present, the meeting shall be adjourned to a time when both members of the Board of Managers may be present. At any such adjourned meeting at which a quorum, constituted as aforesaid, is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. At all meetings of the Board of Managers, each member shall be entitled to one vote and the unanimous affirmative votes of both of the members of the Board of Managers shall constitute the decision of the Board of Managers.

(c) Meetings of the Board of Managers shall be held at the principal office of the Condominium or at such other place as may be designated from time to time by the Board of Managers. Any one or more members of the Board of Managers may participate in a meeting of the Board of Managers by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Any action permitted or required to be taken at a meeting of the Board of Managers may be taken without a meeting if both of the members of the Board shall consent thereto in writing.

#### Section 2.07 Compensation

No member of the Board of Managers shall by virtue of his office as such receive any salary or compensation for his services. Any member of the Board of Managers may hold any other office in the Condominium or with any Unit Owner or perform any service for the Condominium or any Unit Owner and receive compensation therefor.

#### Section 2.08 Liability of Board of Managers

(a) The members of the Board of Managers shall not (in their capacities as such) be personally liable, responsible or accountable, whether in damages or otherwise, to any party, with respect to any contract made or act taken or omitted to be taken by the Board of Managers, or by any manager, managing agent, employees, or independent contractors employed by it, on behalf of the Condominium unless such contract was made or such act taken or omitted to be taken in bad faith or as a result of willful misconduct. To the extent any liability exceeds the proceeds of any insurance maintained pursuant to paragraph (b) of this Section, the Unit Owners, pro rata, shall severally indemnify and hold harmless each member of the Board of Managers and his successors, heirs and personal representatives, from and against any and all claims, costs, loss, damage, expense or liability (including, but not limited to, reasonable attorney's fees) suffered or sustained by him by reason of any contract made

or act taken or omitted to be taken in respect of which such member shall be exculpated from liability pursuant to the preceding sentence, provided, that so long as Polytechnic shall lease the CATT Unit from the Unit Owner of the CATT Unit, Polytechnic shall reimburse the Unit Owner of the CATT Unit for its pro rata share of such indemnity.

(b) The Board of Managers may purchase and maintain insurance insuring the Board of Managers against damages for its errors or omissions to the extent such errors and omissions are not the result of bad faith or willful misconduct under the Declaration and these By-Laws.

#### Section 2.09 Interested Members of Board of Managers

The Board of Managers may contract or effect any other transaction with any member of the Board of Managers, any Unit Owner, or any affiliate of any of them without incurring any liability for self-dealing unless such contract or transaction is entered into in bad faith or as a result of willful misconduct.

#### Section 2.10 First Meeting

The first meeting of the Board of Managers shall be held immediately following the first meeting of the Unit Owners as set forth in Section 3.01 of these By-Laws.

### ARTICLE III UNIT OWNERS

#### Section 3.01 Meetings

(a) Annual meetings of the Unit Owners shall be held on \_\_\_\_\_, unless any such meeting shall be rescheduled by any Unit Owner to an alternate date reasonably satisfactory to the other Unit Owner, provided, however, that the first annual meeting shall occur on the first \_\_\_\_\_ after the Declaration is recorded. At each annual meeting a new Board of Managers (which may comprise members from the previous or any prior Board of Managers) shall be designated by the Unit Owners in accordance with the requirements of Section 2.01 of these By-Laws, and such other business transacted thereat as may properly come before such meeting. Special meetings of the Unit Owners shall be called whenever so directed by resolution of the Board of Managers or whenever so requested in writing by any Unit Owner.

(b) It shall be the duty of the Secretary to give written notice of each annual or special meeting of the Unit Owners to each Unit Owner. Such notice shall be signed by the President or the Secretary or an Assistant Secretary, shall state the purpose of such meeting and the time and place where it is to

be held, and shall be mailed to each Unit Owner of record of the Condominium entitled to vote at each such meeting, not less than ten (10) nor more than forty (40) days before such meeting. Such notice shall be directed to each Unit Owner at such address as such Unit Owner shall designate from time to time in writing to the Board of Managers.

(c) Notwithstanding the foregoing paragraphs of this Section, any meeting of Unit Owners shall be valid for all purposes if both of the Unit Owners are represented thereat in person or by proxy.

(d) Meetings of the Unit Owners shall be held at the principal office of the Condominium or at such other place as may be designated from time to time by the Board of Managers. Any Unit Owner, its designee or its proxy may participate in a meeting of the Unit Owners by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Any action permitted or required to be taken at a meeting of Unit Owners may be taken without a meeting if both of the Unit Owners shall consent thereto in writing.

#### Section 3.02 Quorum and Decisions

The presence, in person or by proxy, of both Unit Owners shall be required to constitute a quorum at all meetings of Unit Owners. If any meeting of Unit Owners cannot be held because both Unit Owners are not present in person or by proxy, the meeting shall be adjourned to a time when both Unit Owners may be present in person or by proxy. The unanimous affirmative vote of both Unit Owners shall be required to take any action at any meeting of Unit Owners. Any person designated as a proxy by a Unit Owner need not himself be a Unit Owner and shall be so designated by a writing duly signed by such Unit Owner, which writing need not be acknowledged or witnessed, and filed with the Secretary. Any such designation shall be revocable at any time by written notice filed with the Secretary by the Unit Owner having made such designation, but any revocation shall not affect any votes cast by the proxy prior to the filing of such notice of revocation.

#### Section 3.03 Liability of Unit Owners

(a) All liability with respect to any contract made or act taken or omitted to be taken in connection with the affairs and operation of the Condominium as a whole, and all liability with respect to any actions and occurrences relating to the ownership, operation and maintenance of the Common Elements, shall be a Common Expense (as defined herein) which, except as otherwise provided herein and in the Declaration, shall be provided between the Unit Owners pro rata. All liability in connection with the affairs and operation of one Unit alone shall

be borne solely by the Unit Owner of such Unit, who shall indemnify and hold the Unit Owner of the other Unit harmless from and against, and shall reimburse such other Unit Owner's costs and expenses including legal expenses incurred in connection with the defense of, any and all claims or demands suffered or sustained by such other Unit Owner by reason of any contract relating to such first Unit Owner's Unit.

(b) Notwithstanding the provisions of paragraph (a) of this Section, so long as Polytechnic shall lease the CATT Unit from the Unit Owner of the CATT Unit, the Unit Owner of the CATT Unit shall not be liable to Polytechnic as set forth in said paragraph (a) for any claims or demands suffered by Polytechnic by reason of any contract related to the CATT Unit and Polytechnic shall indemnify and hold harmless the Unit Owner of the CATT Unit, its Commissioners, trustees, shareholders, directors, officers, partners, agents, employees and representatives from and against, and shall reimburse the Unit Owner of the CATT Unit for such Unit Owner's costs or expenses including legal expenses incurred in connection with the defense of, all claims and demands of third persons including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of any default of Polytechnic in performing or observing any term or provision of the agreement of lease between Polytechnic and the Unit Owner of the CATT Unit, or out of the use or occupancy of the CATT Unit or the Building by Polytechnic, or by others with or without its consent or out of any other acts or omissions of Polytechnic, its officers and employees in the CATT Unit or the Building, or out of the acts or omissions of others in the CATT Unit or the Building with the consent of Polytechnic. If so directed, Polytechnic shall at its own expense defend any suit based upon any claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such, so long as the Port Authority shall be the Unit Owner of the CATT Unit, Polytechnic shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

(c) The liability of any Unit Owner with respect to any contract, act or omission in connection with or relating to the ownership, operation, maintenance, use, occupancy or affairs of the Condominium, any Unit (whether or not owned by such Unit Owner) or the Common Elements shall in any event be limited to such Unit Owner's interest in its Unit so that no Unit Owner shall have any personal liability beyond its interest in its Unit, provided, that such limitation shall not apply to the indemnification set forth in paragraph (b) of this Section.

ARTICLE IV  
OFFICERS

Section 4.01 Designation

(a) The officers of the Condominium shall be the President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Managers at its first meeting after the date of the Declaration, and thereafter at the regular meeting of the Board of Managers in each year following the annual meeting of Unit Owners. The officers of the Condominium shall serve until their successors shall have been elected or until their earlier death, resignation or removal. The Board of Managers may at any time or from time to time appoint one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers and such other officers as in its judgment may be necessary or desirable, to hold office at the pleasure of the Board of Managers.

(b) Any officer may be removed by the Board of Managers at any time, with or without cause. Vacancies, whether resulting from such removal or otherwise, may be filled by the Board of Managers at any meeting of the Board of Managers.

(c) So long as Polytechnic shall be the lessee of the CATT Unit and the Unit Owner of the Library Unit the President shall be the member of the Board of Managers designated by Polytechnic and the Secretary and the Treasurer shall both be the member of the Board of Managers designated by the Unit Owner of the CATT Unit. In the event that Polytechnic shall no longer be the lessee of the CATT Unit or shall no longer be the Unit Owner of the Library Unit but the Port Authority shall be the Unit Owner of the CATT Unit, the President shall be the member of the Board of Managers designated by the Port Authority and the Secretary and the Treasurer shall both be the member of the Board of Managers designated by the Unit Owner of the Library Unit. In the event that (1) the Port Authority shall not be the Unit Owner of the CATT Unit and Polytechnic shall not be the lessee of the CATT Unit or (2) the Port Authority shall not be the Unit Owner of the CATT Unit and Polytechnic shall not be the Unit Owner of the Library Unit then the Board of Managers shall elect the President, the Secretary and the Treasurer. No person shall hold more than two offices at the same time.

Section 4.02 President

The President, subject to the control of the Board of Managers, shall be the chief executive officer of the Condominium and shall be responsible for general management of the affairs of the Condominium and perform all of the duties and have all of the general powers incidental to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York. He shall preside at all meetings of Unit Owners and of the Board of Managers.

#### Section 4.03 Vice Presidents

In the absence or inability of the President to act, a Vice President, if any, shall have the power and perform the duties of the President. If there shall be more than one Vice President present, in the absence of the President, the first appointed Vice President shall have the power and perform the duties of the President. The Vice Presidents shall also perform such other duties as shall from time to time be imposed upon them by the Board of Managers or by the President.

#### Section 4.04 Secretary

The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Managers; he shall attend to the giving and serving of all notices of the Condominium. The Secretary shall also have charge of such books and papers as the Board of Managers may direct and shall in general perform all of the duties incidental to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York.

#### Section 4.05 Treasurer

(a) The Treasurer shall have the care and custody of all funds and securities of the Condominium as a whole, and shall be responsible for the deposit of such funds and other securities in the name of the Board of Managers, in such depositories as the Board of Managers may from time to time designate. He shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements necessary for the preparation of all required financial data, and shall in general perform all of the duties incidental to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York. If so required by the Board of Managers, the Treasurer shall, before receiving any funds or securities of the Condominium, furnish to the Board of Managers a bond with a surety company as surety in such form and amount as the Board of Managers from time to time shall determine. The premium upon any such bond for funds or securities of the Condominium shall be a Common Expense.

(b) Notwithstanding the provisions of paragraph (a) of this Section, so long as Polytechnic shall be the lessee of the CATT Unit and the Unit Owner of the Library Unit, Polytechnic, acting as managing agent of the Condominium pursuant to paragraph (a) of Section 2.03 of these By-Laws, shall pay all disbursements of the Condominium in Polytechnic's own name and shall keep full and accurate financial records and books of account showing all receipts and disbursements necessary for the preparation of all required financial data and the Treasurer of the Condominium shall not be required to pay such disbursements or keep such records or books of account.

Section 4.06 Execution of Documents

All agreements, contracts, deeds, leases, checks, and other instruments of the Condominium shall be executed by such two officers of the Condominium or by such other person or persons as the Board of Managers may from time to time designate, provided, however, that one of such officers or persons shall have been appointed or approved by the member of the Board of Managers designated by the Unit Owner of each Unit.

Section 4.07 Compensation of Officers

No officer shall receive any compensation from the Condominium for acting as such, unless otherwise determined by the Board of Managers.

ARTICLE V  
NOTICES

Section 5.01 Notices

Except where expressly required or permitted herein or in the Declaration to be oral, all notices required or desired to be given to or by either Declarant, any Unit Owner or to the Board of Managers hereunder or under the Declaration shall be in writing and all such notices shall be personally delivered to the duly designated officer or representative of such Declarant or Unit Owner or delivered to the office of such officer or representative during regular business hours, or if to the Board of Managers to the duly designated officer or representative of the Unit Owner of each of the CATT Unit and the Library Unit or to their respective offices, or forwarded to such officer or representative or to such Declarant or Unit Owner or Unit Owners at such address or addresses by registered or certified mail and, if a manager or managing agent shall have been selected as provided in these By-Laws, a duplicate shall be sent in like manner to such manager or managing agent. The Declarants and each Unit Owner shall from time to time designate in writing an office within the City of New York and an officer or representative whose regular place of business is at such office upon whom notices and requests may be served. Until further notice the Port Authority designates its Executive Director and Polytechnic designates its \_\_\_\_\_ as the officer upon whom notices and requests may be served and each Declarant designates its office as set forth on the front page of the Declaration as the office where notices and requests may be served. If mailed, the notices herein required to be served shall be deemed effective and served as of the date of the registered or certified mailing thereof.

Section 5.02 Waiver of Service of Notice

Whenever any notice is required to be given by law, the Declaration or these By-Laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE VI  
OPERATION OF THE PROPERTY

Section 6.01 Determination of Common Expenses and Fixing of Common Charges

(a) Except as otherwise provided in the Declaration or these By-Laws, all costs and expenses in connection with the ownership, management, operation, care, upkeep, repair, replacement, rebuilding, maintenance and painting of, and any restorations, additions or improvements to, or alterations or modifications of the Common Elements (such costs and expenses being hereinafter collectively referred to as "the Common Expenses") shall be determined by the Board of Managers and, as set forth below, borne by the Unit Owners. The Common Expenses shall also include, without limitation, the following:

(1) All costs of furnishing services, utilities, and facilities to the Common Elements such as, but not limited to, steam for heating and air conditioning, cleaning services, and electricity.

(2) Until assessment of the Units as separate tax lots, any real estate taxes assessed against the Property as a single tax lot, provided, however, that, in the event that either but not both of the CATT Unit and the Library Unit shall be exempt from real property taxation and from payments in lieu of taxation, all expenses for taxes or payments in lieu of taxes shall be borne by the Unit Owner of the Unit which is not so exempt.

(3) Expenses of any appraisal of the Property obtained pursuant to paragraph (e) of Section 6.02 of these By-Laws or otherwise by determination of the Board of Managers.

(4) Except as set forth in paragraph (a) of Section 2.03 of these By-Laws, charges for the services of any managing agent retained pursuant to these By-Laws for the Common Elements.

(5) All costs and expenses of providing the insurance coverages provided for in paragraph (b) of Section 2.08 of these By-Laws and in Section 6.02 of these By-Laws.

(6) All such other items as may be provided for in the Declaration or these By-Laws to be Common Expenses.

The Common Expenses shall also include (i) such amounts as the Board of Managers may deem proper as a reserve for replacements with respect to the Common Elements, and (ii) such amounts as the Board of Managers may deem proper as a reserve for the satisfaction of claims under the indemnification set forth in Section 2.08 of these By-Laws or the liability described in the first sentence of paragraph (a) of Section 3.03 of these By-Laws.

(b) The Board of Managers shall from time to time ascertain the Common Expenses and shall from time to time and at least annually prepare, or cause to be prepared, a budget to meet the Common Expenses, and shall allocate and assess charges to meet the Common Expenses. The charges to meet the Common Expenses (hereinafter referred to as "the Common Charges") shall be billed to and collected from the Unit Owners by the Board of Managers from time to time but no less frequently than once each quarter, provided, that so long as Polytechnic shall be the lessee of the CATT Unit the Common Charges allocable to the CATT Unit shall be billed to and collected from Polytechnic and the Unit Owner of the CATT Unit shall have no liability for Common Charges or Common Expenses.

(c) All costs and expenses which are allocable solely to the ownership, management, operation, care, upkeep, repair, replacement, rebuilding, maintenance and painting of, and any restorations, additions or improvements to, or alterations or modifications of, one Unit alone shall be borne solely by the Unit Owner of such Unit and shall not be deemed Common Expenses, provided, that so long as Polytechnic shall be lessee of the CATT Unit, Polytechnic shall bear such costs and expenses which are allocable solely to the CATT Unit.

(d) Upon request of any Unit Owner, the Board of Managers shall furnish, or cause to be furnished, copies of each budget on which the Common Charges are based to both Unit Owners.

#### Section 6.02 Insurance

(a) The Board of Managers shall be required to obtain and maintain, or cause to be obtained and maintained, in the name of the Condominium and including each Unit Owner as a named insured, and shall pay the premiums on, the following policies of insurance in not less than the following limits (with such inclusions, exclusions, and deductible amounts as the Board of Managers may deem prudent and appropriate):

(1) all risk property damage insurance in limits covering the full replacement cost of the Building and all structures, improvements, fixtures and equipment, furnishings

and physical property forming a part of the Common Elements, or within the care, custody or control of, the Board of Managers and now or in the future located on or constituting a part of the Building. Full replacement cost shall be determined by the Board of Managers. Such insurance shall cover and insure against all risks of physical loss or damage including flood and earthquake.

(2) boiler and machinery insurance covering all boilers, pressure-vessels and machines operated by the Board of Managers or the Unit Owners or others in or on the Building, the policy having such limits as the Board of Managers may determine and to be in the form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction or by the Superintendent of Insurance of the State of New York.

(3) Comprehensive general liability insurance, including but not limited to comprehensive automobile liability (covering owned, hired and non-owned vehicles) and premises-operations coverages and covering bodily injury, including death, and property damage liability, none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the minimum limits set forth below.

Minimum Limits

Comprehensive General Liability

Combined single limit for  
bodily injury, for wrongful  
death and for property damage  
arising from any one occurrence:       \$2,000,000

Comprehensive Automobile Liability

Combined single limit for  
bodily injury, for wrongful  
death and for property damage  
arising from any one accident:       \$2,000,000

The said policy or policies of liability insurance shall also provide or contain an endorsement providing that the protections afforded the Condominium and each Unit Owner with respect to any claims or actions against the Condominium or either Unit Owner by a third person shall pertain and apply with like effect to any claim or action against the Condominium or one Unit Owner or both of them by the other Unit Owner or with respect to a claim or action by the Condominium against either or both Unit Owners, but such endorsement shall not limit, vary or affect the protections afforded the Unit Owners as named insureds under such policy or policies.

(4) The insurance described in paragraph (b) of Section 2.08 of these By-Laws and fidelity insurance covering the members of the Board of Managers and all officers and employees of the Condominium or of any Unit Owner and of any managing agent or agents who handle Condominium funds or securities.

(5) Worker's compensation and New York State disability insurance, as required by law, on any workers employed by the Board of Managers.

(6) Such other insurance insuring against risks shared in common by the Unit Owners as the Board of Managers may determine.

If at any time any of the insurance policies shall be or become unsatisfactory to any Unit Owner as to the form or substance thereof or if any of the carriers issuing such policies shall be or become unsatisfactory to any Unit Owner, the Board of Managers shall promptly obtain a new and satisfactory policy in replacement, provided, that each Unit Owner will accept an insurance carrier if it maintains an A.M. Best rating of B+ or better and, provided, further, that no Unit Owner shall act arbitrarily and capriciously in determining that the form or substance of any of such policies are unsatisfactory to such Unit Owner.

(b) So long as the Port Authority shall be the Unit Owner of the CATT Unit, each policy shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(c) The premiums for all the insurance referred to in paragraph (a) of this Section shall be a Common Expense, payable pro rata by the Unit Owners as Common Charges except as otherwise provided in these By-Laws.

(d) All such policies shall, except as may be determined by the Board of Managers, provide that adjustment of loss shall be made by (1) the Board of Managers if the loss involves both Units or the Common Elements (alone or in conjunction with a Unit) or (2) the applicable Unit Owner if the loss involves only such Unit Owner's Unit and no part of the Common Elements. Subject to the rights of any mortgagee, insurance proceeds with respect to any loss shall be payable to the party entitled to adjust such loss as aforesaid, except that

if such loss involves both Units or either Unit in conjunction with any part of the Common Elements, then such proceeds shall be paid to the respective Unit Owners and the Board of Managers in proportion to the cost of repairing or restoring the Units and the Common Elements, respectively, as the case may be.

(e) All policies of physical damage insurance shall, except as may be determined by the Board of Managers, contain waivers of any defense based on co-insurance or other insurance or of invalidity arising from any acts of the insured and of pro rata reduction of liability, and shall provide that such policies may not be cancelled or substantially modified without at least twenty (20) days' prior written notice to each of the insureds. Duplicate originals or certificates of insurance of all policies of insurance maintained by the Board of Managers and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Board of Managers to both Unit Owners and, upon request, to all mortgagees of Units of whom the Board of Managers is notified. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Managers may obtain an appraisal, if the Board determines such appraisal to be necessary or advisable, from a fire insurance company or other qualified expert of the full replacement value, without deduction for depreciation, of the entire Building including all the Units and all of the service machinery and other Common Elements contained in the Building (but excluding fixtures, furniture, furnishings or other personal property not constituting a part of Unit), for the purpose of determining the amount of fire and extended coverage insurance to be effected from time to time pursuant to this Section.

(f) The Unit Owners shall not be prohibited from carrying other insurance for their own benefit, provided, however, that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. All such policies shall contain waivers of subrogation in favor of the other Unit Owner and the Board of Managers (or, if not reasonably obtainable, name the other Unit Owner and the Board of Managers as additional insureds) and, so long as the Port Authority shall be the Unit Owner of the CATT Unit, shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

(g) Notwithstanding the foregoing provisions of this Section, so long as Polytechnic shall be the lessee of the CATT Unit and the Unit Owner of the Library Unit, Polytechnic shall

furnish the policies of insurance required to be furnished pursuant to the agreement of lease between the Unit Owner of the BATT Unit and Polytechnic and the Board of Managers shall not be required to obtain the policies of insurance set forth in paragraph (a) of this Section.

Section 6.03 Repair or Restoration after Fire or Other Casualty

(a) Subject to paragraphs (b) and (c) of this Section, in the event that the Building or any part thereof is damaged or destroyed by fire, the elements, the public enemy or other casualty, or by reason of any cause whatsoever and whether partial or total, the Board of Managers, with respect to any damage or destruction of the Common Elements, and each Unit Owner, with respect to any damage or destruction of its Unit, shall at their respective costs and expenses and whether or not such damage or destruction is covered by insurance proceeds sufficient for the purpose, rebuild, restore, repair or replace the damaged portion of the Building, including each Unit but excluding fixtures, furniture, furnishings or other personal property not constituting a part of such Unit. The Board of Managers, the applicable Unit Owner or mortgagee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments or, if the Unit Owner has advanced such payments, reimburse the Unit Owner therefor. The Unit Owners and the Board of Managers shall cooperate with one another in arranging for and coordinating the construction work required to effectuate any repair and restoration work, provided, however, that nothing in this Section shall impair the right of any Unit Owner obligated to effectuate any repair or restoration pursuant to this paragraph (a) to make all determinations and decisions as to the prosecution and completion of the repair or restoration of its Unit.

If only one Unit is destroyed or damaged by fire or other casualty, and if the net insurance proceeds are sufficient to cover, or if such net proceeds exceed, the cost of repairs and restoration, the deficit or surplus, as the case may be, shall be borne or enjoyed, as the case may be, entirely by the Unit Owner owning such Unit. If such damage or destruction, however, affects only the Common Elements, then any deficit in or surplus of insurance proceeds shall be borne as Common Expenses, or enjoyed by both Unit Owners pro rata, as the case may be. Further, if such damage or destruction affects more than one Unit or any Unit in conjunction with the Common Elements, then any deficit in or surplus of insurance proceeds shall be borne by the Unit Owners as Common Expenses or enjoyed by them, as the case may be, in either case in the proportion that the cost of repairing the damage or destruction to each Unit and the Common Elements, respectively, bears to the cost of repairing the entire damage or destruction, with the proportion allocable to the cost of repairing the damage or destruction to the Common Elements to

be borne or enjoyed, as the case may be, by both Unit Owners pro rata. Any surplus payable to any Unit Owner pursuant to this paragraph (a) shall be reduced by such amounts as may be required to pay all unpaid liens, including mortgages and the lien of the Board of Managers for unpaid Common Charges but excluding liens and mortgages not then due and payable, on its Unit in the order of priority of such liens.

(b) Notwithstanding the provisions of paragraph (a) of this Section, so long as Polytechnic shall be the lessee of the CATT Unit and shall be the Unit Owner of the Library Unit, if the Building or any part thereof shall be damaged or destroyed by fire, the elements, the public enemy, or other casualty, or by reason of any cause whatsoever and whether partial or total, Polytechnic shall, at its sole cost and expense, and whether or not such damage or destruction is covered by insurance proceeds sufficient for the purpose, remove all debris resulting from such damage or destruction, and shall rebuild, restore, repair and replace the damaged portion of the Building, or part thereof, as the case may be, in accordance with the plans and specifications for the same as they existed prior to such damage or destruction or with the approval in writing of the Unit Owner of the CATT Unit make such other repairs, replacements, changes or alterations as may be desired by Polytechnic and which are consistent with the provisions of the agreement of lease between the Unit Owner of the CATT Unit and Polytechnic. Such rebuilding, restoration, repairs, replacements or alterations shall be commenced promptly and shall proceed with all due diligence, provided, that Polytechnic shall not be required to perform such rebuilding, restoration, repair and replacement pursuant to this paragraph (b) unless required by the provisions of said agreement of lease. If the damage or destruction described in this paragraph (b) is covered by insurance furnished by Polytechnic pursuant to the provisions of paragraph (g) of Section 6.02 of these By-Laws and of the agreement of lease between the Unit Owner of the CATT Unit and Polytechnic, then (1) the proceeds of such insurance shall be applied by Polytechnic to the payment of the cost of the rebuilding, restoration, repair, replacement and alteration work required to be performed by Polytechnic pursuant to this paragraph (b) and said agreement of lease or, if the terms of said agreement of lease do not require Polytechnic to perform such rebuilding, restoration, repair and replacement, to any payment required to be made to the Unit Owner of the CATT Unit pursuant to said agreement of lease and (2) any excess of such proceeds over such cost or such payment may be retained by Polytechnic.

(c) If three-fourths or more of the Building is destroyed or substantially damaged, Polytechnic is not required to rebuild, restore, repair or replace the damaged portion of the Building pursuant to paragraph (b) of this Section and both Unit Owners do not duly and promptly resolve to proceed with the

repair or restoration thereof, then the Building shall not be repaired and the Property or so much thereof as shall remain shall be subject to an action for partition instituted by any Unit Owner or lienor of any Unit, as if owned in common, and the Property shall be sold, in which case the net proceeds of sale resulting from such action for partition and the sale of the entire Property or remaining portion thereof, together with the net proceeds of insurance policies, shall be divided between both Unit Owners pro rata, provided, however, that no payment shall be made to any Unit Owner until there has first been paid out of such Unit Owner's share of such funds, such amounts as may be necessary to pay all unpaid liens, including mortgages, on such Unit Owner's Unit in the order of priority of such liens, provided, further, that so long as Polytechnic shall be the lessee of the CATT Unit and the Unit Owner of the Library Unit no payment shall be made to Polytechnic as Unit Owner of the Library Unit until all amounts required to be paid to the Unit Owner of the CATT Unit under the agreement of lease between Polytechnic and the Unit Owner of the CATT Unit have been so paid. Nothing contained herein or in the Declaration shall be construed to impair the right of any Unit Owner to bid for purchase of and acquire the Property at any such sale.

#### Section 6.04 Payment of Common Charges

(a) Except as provided elsewhere in these By-Laws, each Unit Owner shall be obligated to pay to the Board of Managers the Common Charges assessed against its Unit by the Board of Managers pursuant to the provisions of Section 6.01 of these By-Laws at such time or times (but not less frequently than quarterly) as the Board of Managers shall determine. Unless otherwise determined by the Board of Managers, the Common Charges shall be payable quarterly, in advance, on the first day of each quarter.

(b) The Board of Managers on behalf of the Unit Owners shall have a lien on each Unit for the unpaid Common Charges assessable against such Unit, together with interest thereon, which lien shall be prior to all liens, including, without limitation, all sums unpaid on any first and any subordinate mortgage, whether of record or otherwise, on such Unit.

(c) No Unit Owner shall be liable for the payment of any Common Charges assessed against its Unit subsequent to a sale or other conveyance thereof by such Unit Owner.

#### Section 6.05 Foreclosure of Liens for Unpaid Common Charges

The Board of Managers in respect of the liens arising from unpaid Common Charges shall, in addition to the rights provided under the Act or hereunder, have all the rights of a secured creditor under the Uniform Commercial Code in effect in New York. In any action brought by the Board of Managers to foreclose a lien on any Unit because of unpaid Common Charges,

the Unit Owner thereof shall be required to pay a reasonable rental for the use and occupancy of such Unit and the Board of Managers shall be entitled in such foreclosure action to the appointment of a receiver to collect the same. The Board of Managers, acting on behalf of the non-defaulting Unit Owner, shall have the power, and the non-defaulting Unit Owner shall be permitted, to purchase such Unit at the foreclosure sale (in either case, in the name of the Board of Managers or in the name of a designee, corporate or otherwise) and to acquire, hold, lease, mortgage, convey, vote the votes appurtenant to, or otherwise deal with the same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the lien securing such charges and foreclosure shall be maintainable notwithstanding the pendency of a suit to recover a money judgment.

Notwithstanding the other provisions of this Section, so long as Polytechnic shall be the lessee of the CATT Unit the Board of Managers shall not institute any suit to recover a money judgment or action to foreclose a lien for unpaid Common Charges against the Unit Owner of the CATT Unit.

#### Section 6.06 Statement of Common Charges

The Board of Managers shall promptly provide any Unit Owner who so requests the same in writing, a written statement of all unpaid Common Charges due to the Board of Managers from each Unit Owner.

#### Section 6.07 Maintenance and Repairs

(a) Except as otherwise provided in the Declaration or these By-Laws and subject to the conditions set forth herein and therein, all repairs, replacements, rebuilding, maintenance and painting, whether structural or non-structural, ordinary or extraordinary, shall be made (1) with respect to any Unit by the Unit Owner thereof at such Unit Owner's sole cost and expense, provided, that so long as Polytechnic shall be the lessee of the CATT Unit Polytechnic shall perform such repairs, replacements, rebuilding, maintenance and painting with respect to the CATT Unit and (2) with respect to the Common Elements, wherever located, by the Board of Managers and the cost and expense thereof shall be charged as a Common Expense.

(b) Notwithstanding the provisions of paragraph (a) of this Section, if any repairs, replacements, rebuilding, maintenance or painting of the Property or any part thereof is necessitated by the act or neglect or carelessness of (1) any Unit Owner or any lessee, sublessee, guest, or occupant of such Unit Owner's Unit, the entire cost thereof shall be borne by such Unit Owner or (2) the Board of Managers, the entire cost thereof shall be charged by the Board of Managers as a Common Expense, except in all such cases to the extent such cost is covered by

the proceeds of any insurance maintained pursuant to the provisions hereof, provided, that so long as Polytechnic shall be the lessee of the CATT Unit Polytechnic shall bear the cost of any repairs, replacements, rebuilding, maintenance and painting necessitated by its action, neglect or carelessness and the Unit Owner of the CATT Unit shall have no liability therefor.

Section 6.08 Compliance with Requirements of Law

(a) Each Unit Owner, with respect to such Unit Owner's Unit, and the Board of Managers, with respect to the Common Elements, shall comply with all private covenants or restrictions affecting the Property and all laws and ordinances and governmental rules, regulations, requirements, orders and directions which now or at any time are applicable to or which affect the operations of such Unit Owner or of the Board of Managers, as the case may be, at the Building or such Unit Owner's use and occupancy of its Unit or the Board of Manager's use and occupancy of the Common Elements; each Unit Owner and the Board of Managers shall, in accordance with and subject to the provisions of the Declaration and these By-Laws, make any and all structural and non-structural improvements, alterations or repairs of such Unit Owner's Unit or the Common Elements, as the case may be, that may be required at any time hereafter by any such present or future law, ordinance, rule, regulation, requirement, order or direction.

(b) Notwithstanding the provisions of paragraph (a) of this Section, nothing in the Declaration or these By-Laws shall be construed as a submission by the Port Authority to the application to itself of any such laws and ordinances and governmental rules, regulations, requirements, orders and directions.

Section 6.09 Additions, Improvements, Alterations or Modifications to Units

(a) All additions, improvements, alterations or modifications permitted to be made by a Unit Owner pursuant to the Declaration shall be made in compliance with all laws, ordinances, rules, regulations, requirements, orders and directions of all governmental authorities having jurisdiction. Any Unit Owner making or causing to be made any additions, improvements, alterations or modifications shall agree, and shall be deemed to have agreed, to indemnify and hold the other Unit Owner and the Board of Managers harmless from any liability arising therefrom. No person may make any additions, improvements, alterations or modifications to a Unit unless permitted to do so by the provisions of the Declaration.

(b) In the event that any Unit Owner shall determine to perform additions or improvements to, or alterations or modifications of, its Unit, such Unit Owner in its own name as

insured and including the other Unit Owner as an additional insured shall procure and maintain comprehensive general liability insurance, including but not limited to comprehensive automobile liability (covering owned, hired and non-owned vehicles), premises-operations, products liability/completed operations, explosion, collapse and underground property damage, personal injury and independent contractor coverages, with a contractual liability endorsement covering the obligations assumed by such Unit Owner under the indemnities set forth in the Declaration and in these By-Laws or such Unit Owner may provide such insurance by requiring each contractor engaged by it for such additions, improvements, alterations or modifications to procure and maintain such insurance including such contractual liability endorsement, said insurance, whether procured by such Unit Owner or by a contractor engaged by it as aforesaid, not to contain any care, custody or control exclusions, and not to contain any exclusion for bodily injury to or sickness, disease or death of any employee of such Unit Owner or any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. The said policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded such Unit Owner thereunder with respect to any claims or actions against such Unit Owner by a third person shall pertain and apply with like effect with respect to any claim or action against such Unit Owner by the other Unit Owner and that said protections shall pertain and apply with like effect with respect to any claim or action against such other Unit Owner by such Unit Owner, but such endorsement shall not limit, vary or affect the protections afforded such other Unit Owner thereunder as an additional insured. Said insurance shall be in not less than the following minimum limits:

Minimum Limits

Comprehensive General Liability

Combined single limit for bodily injury, for wrongful death and for property damage arising from any one occurrence:	\$5,000,000
---	-------------

Comprehensive Automobile Liability

Combined single limit for bodily injury, for wrongful death and for property damage arising from any one accident:	\$2,000,000
---	-------------

The insurance required hereunder shall be maintained in effect at all times during the performance of such additions, improvements, alterations or modifications and shall comply with the provisions

of paragraphs (b) and (e) of Section 6.03 of these By-Laws. The Board of Managers may require such additional insurance, or permit such Unit Owner to procure such lesser insurance, as the Board of Managers in its sole discretion may determine.

Section 6.10 Additions, Improvements, Alterations or Modifications to the Common Elements

Except as otherwise provided in the Declaration or these By-Laws and subject to the conditions set forth therein or herein, all additions or improvements to, or alterations or modifications of, any Common Element shall be made by the Board of Managers and the cost and expense thereof shall be treated as a Common Expense. The cost of any addition or improvement to, or alteration or modification of any Common Element permitted to be made by a Unit Owner pursuant to the Declaration or these By-Laws shall be solely chargeable to and paid by such Unit Owner.

Section 6.11 Certain Alterations

(a) In the event that Polytechnic shall no longer be the lessee of the CATT Unit or shall no longer be the Unit Owner of the Library Unit, then the Unit Owner of the CATT Unit shall have the right at any time to perform such alterations to the Building's mechanical, HVAC, electrical and plumbing systems (hereinafter collectively referred to as "Systems") as shall be necessary to disconnect the CATT Unit's Systems from those of the other Unit and the Common Elements upon the prior written consent of the other Unit Owner. Such consent shall not be withheld where the Unit Owner of the CATT Unit delivers to the Board of Managers (1) an opinion letter of a licensed engineer that the proposed alterations will not adversely affect the proper functioning of any System or the use thereof by the other Unit Owner; (2) copies of all plans and specifications relating to such alterations; (3) its written agreement providing that (A) all such alterations shall be completed in a good and workmanlike manner with materials of first class quality, (B) any pipes and conduits erected in the Common Elements or the Library Unit shall, to the extent practicable, be located in existing rooms and spaces set aside therefor or shall be within walls or otherwise concealed, (C) it will comply with all laws and ordinances and governmental rules, regulations, requirements, orders and directions which are applicable to such Unit Owner and (D) it will indemnify and hold harmless the other Unit Owner and the Board of Managers from and against any loss or damage arising out of such alterations.

(b) In the event the Unit Owner of the CATT Unit disconnects the CATT Unit's Systems from the Building's Systems in accordance with paragraph (a) of this Section, the Unit Owner of the CATT Unit shall, from and after the date of such disconnection, be exempt from Common Expenses and Common Charges relating to utilities or services provided to the CATT Unit by the Systems.

(c) In furtherance of its rights under this Section, the Unit Owner of the CATT Unit shall have the right to enter the Library Unit and the Common Elements and to perform such alterations therein as may be necessary to disconnect any System, provided, however, that any such access to the Library Unit shall be preceded by at least ten (10) days' notice to the Unit Owner of the Library Unit and that any alterations performed in the Library Unit shall not result in any material change in the layout or dimensions of such Unit or otherwise materially adversely affect the normal and reasonable operation or use of the Library Unit or result in a mechanic's lien against the Library Unit.

#### Section 6.12 Use of Common Elements

The Common Elements shall be used only for the furnishing of services, passages, and facilities for which they are reasonably suited and which are incidental to the use and occupancy of the Units.

#### Section 6.13 Restrictions on Use of Units

The use and occupancy of the Units shall be as permitted under the Declaration and shall be governed by and subject to the provisions thereof, and the other provisions hereof, and any Rules and Regulations. No nuisance shall be allowed on the Property nor shall any use or practice be allowed by any Unit Owner which adversely affects the normal and reasonable operation or use of the Common Elements or of the other Unit by the Unit Owner thereof. No portion of the Property shall be used for lodgings or sleeping purposes or for any immoral purpose.

#### Section 6.14 Water Charges and Sewer Rents

Except as otherwise provided in these By-Laws, charges for water consumption within the respective Units and in respect of HVAC service to each Unit shall be determined by the Board of Managers on the basis of actual consumption, and to the extent actual consumption cannot be ascertained, pursuant to an allocation formula determined after appropriate audit procedures performed by a reputable engineer or energy consultant. Sewer rents in respect of the Property, unless separately assessed, shall be Common Expenses, payable by both Unit Owners pro rata, except as otherwise provided in these By-Laws.

#### Section 6.15 Steam and Electricity

Except as otherwise provided in these By-Laws, charges for steam consumption within the respective Units and in respect of HVAC service to each Unit shall be determined by the Board of Managers on the basis of actual consumption, and to the extent actual consumption cannot be ascertained, pursuant to an allocation formula determined after appropriate audit procedures

performed by a reputable engineer or energy consultant. Except as otherwise provided in these By-Laws, electricity usage shall be separately metered to each Unit and the charges therefor paid directly to the utility.

Section 6.16 Gas

Except as otherwise provided in these By-Laws, consumption of natural gas within each Unit for cooking, heating or air conditioning purposes shall be separately metered for each Unit and payment of the costs therefor shall be made directly to the utility.

Section 6.17 Window Washing

Window washing services shall be arranged by the Board of Managers or by the managing agent or manager. The charges therefor shall be a Common Expense, payable by both Unit Owners pro rata, except as otherwise provided in these By-Laws.

Section 6.18 Utilities Serving the Common Elements

Except as otherwise provided in these By-Laws, the cost and expense of water, steam, electricity and gas and other utilities and services serving or benefitting the Common Elements shall be charged as a Common Expense on the basis of actual consumption within the Common Elements, and to the extent actual consumption cannot be ascertained, pursuant to an allocation formula or formulas determined after appropriate audit procedures performed by a reputable engineer or energy consultant.

Section 6.19 Abatement and Enjoining of Violations  
by Unit Owners

The violation of any Rules and Regulations or the breach of any By-Law contained herein, or the breach of any provision of the Declaration, shall give the Board of Managers the right, in addition to such other rights as are set forth in these By-Laws or provided by law, (a) without notice in case of Emergency, to enter any portion of any Unit in which or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, except as otherwise provided in these By-Laws, any structure, thing or condition resulting in such violation or breach and the Board of Managers shall not thereby be deemed guilty of or liable for trespass or (b) at any other time to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

Section 6.20 Vault Charges

Except as otherwise provided in these By-Laws, all license fees, and all periodic taxes and charges, for vaults or

other protrusions beyond the Building line shall be paid by the Unit Owner or Unit Owners with the rights to possession of such vaults or protrusions or, in the event that such vaults or protrusions shall be Common Elements, by both Unit Owners pro-rata.

#### Section 6.21 Service Contracts

In no event shall the Board of Managers enter into a service contract for the performance of any services solely benefitting one Unit Owner, unless approved by the Unit Owner so benefitted and the fees therefor treated as an expense assessable against such Unit Owner. If the Board of Managers shall enter into a service contract with any service contractor in respect of the entire Property, the fees payable under such service contract shall be deemed Common Expenses assessable against each Unit Owner in accordance with its pro rata interest in the Common Elements, except as otherwise provided in these By-Laws.

### ARTICLE VII MORTGAGES

#### Section 7.01 Notice to Board of Managers

Any Unit Owner who mortgages its Unit shall notify the Board of Managers of the name and address of the mortgagee and shall file a true and complete copy of the notice and mortgage and any other relevant documents with the Board of Managers. A Unit Owner which satisfies a mortgage covering its Unit shall so notify the Board of Managers and shall file a true and complete copy of the satisfaction of mortgage and other relevant documents with the Board of Managers.

#### Section 7.02 Notice of Default and Unpaid Common Charges

Whenever so requested in writing by the mortgagee of a Unit, the Board of Managers shall promptly report to such mortgagee any default in the payment of Common Charges or any other default by the Unit Owner of such Unit under the provisions of the Declaration, these By-Laws, or any Rules and Regulations which may then exist. The Board of Managers, when giving notice to a Unit Owner of any such default, shall also send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has theretofore been furnished to the Board of Managers. The Board of Managers shall also accept payment of any sum or performance of any act by any such mortgage holder required to be paid or performed by the Unit Owner of the Unit so encumbered with the same force and effect as though paid or performed by such Unit Owner.

ARTICLE VIII  
SALES AND LEASES OF UNITS

Section 8.01 Sales

Subject to the provisions of any applicable mortgage of record on its Unit, each Unit Owner shall have the absolute right to sell, convey, exchange, or otherwise transfer fee title to its Unit, and, to lease all or any part thereof; provided, however, that the Unit Owner selling, conveying, exchanging, or otherwise transferring fee title to its Unit shall have first paid, or shall concurrently therewith pay, in full to the Board of Managers all unpaid Common Charges, if any, then due and owing in respect of its Unit and all other sums, if any, then due and owing to the Board of Managers by such Unit Owner.

Section 8.02 Deed subject to Declaration and By-Laws

Any deed to a purchaser of a Unit shall provide that the acceptance thereof by the grantee thereunder shall constitute such grantee's agreement to take subject to the provisions of the Declaration and these By-Laws. Any lease entered into for a Unit or a part thereof, except for the initial lease between Polytechnic and the Unit Owner of the CATT Unit and any permitted sublease thereunder, shall provide that the lessee thereunder agrees to operate under such lease in accordance with the terms hereof and of the Declaration. Nothing in this Section shall prohibit or be deemed to prohibit either Unit Owner from waiving, transferring or limiting the exercise of any power, right, option or election of such Unit Owner set forth in the Declaration or these By-Laws pursuant to any agreement with the other Unit Owner or with a third party.

ARTICLE IX  
CONDEMNATION

In the event of any taking in condemnation or by eminent domain of part or all of the Property, the award made for such taking shall, subject to the provisions of any applicable mortgage and of the agreement of lease between Polytechnic and the Unit Owner of the CATT Unit, be payable to the Unit Owners of the Units or portions of Units taken in the same proportion that the portion of each Unit (excluding the Common Elements appurtenant thereto) taken bears to the total portion of the Property taken and to the Board of Managers for distribution to the Unit Owners in the same proportion that the portion of the Common Elements taken bears to the total portion of the Property taken. The Board of Managers shall arrange for the prompt repair or restoration of the portion of the Common Elements so taken using the portion of the award payable to the Board of Managers as set forth in the preceding sentence. If such portion of the award is insufficient to cover, or if such portion of the award

exceeds, the cost of any necessary repairs or restoration, the deficit or surplus, as the case may be, will be borne and shared by both Unit Owners pro rata. Notwithstanding the provisions of this Article IX, in the event of any partial or total taking in condemnation or eminent domain which renders restoration or repair of the Building economically impracticable or substantially impossible, the vesting in the condemnor of title to the Property or portion thereof condemned shall automatically be deemed a termination of the Declaration entitling any Unit Owner to institute a partition proceeding and otherwise to proceed as if such vesting of title were an election by the Unit Owners pursuant to paragraph (c) of Section 6.03 of these By-Laws to refuse to restore the Building after the occurrence of an event of fire or other casualty which destroyed three-fourths or more of the Building. Notwithstanding the foregoing so long as immediately prior to any such taking Polytechnic shall be the lessee of the CATT Unit and the Unit Owner of the Library Unit the award shall be divided as provided in the agreement of lease between Polytechnic and the Unit Owner of the CATT Unit.

## ARTICLE X RECORDS AND AUDITS; EXAMINATION OF BOOKS

### Section 10.01 Records

The Board of Managers or the manager or managing agent, if any, shall keep in the City of New York detailed records of the actions of the Board of Managers and such manager or managing agent, minutes of the meetings of the Board of Managers, minutes of the meetings of the Unit Owners, and financial records and books of account with respect to the activities of the Board of Managers, including a chronological listing of all receipts and expenditures, provided, that so long as Polytechnic shall be the managing agent pursuant to paragraph (a) of Section 2.03 of these By-Laws, Polytechnic shall maintain and keep all such records, minutes and books in the City of New York and the Unit Owner of the CATT Unit shall have the right to examine them and make extracts thereof during normal business hours upon request.

### Section 10.02 Audits and Reports

Unless Polytechnic shall be the lessee of the CATT Unit and the Unit Owner of the Library Unit, within ninety (90) days after the end of each fiscal year, an annual balance sheet and statement of receipts and expenditures of the Condominium as at and for the year then ended, certified by such independent certified public accountant as shall be selected by the Board of Managers, shall be submitted by the Board of Managers to the Unit Owners and to all mortgagees of Units who have requested the same in writing. At the request of any Unit Owner, more frequent financial reports on the affairs of the Condominium shall be submitted by the Board of Managers to the Unit Owners. The cost

of any such audit shall be borne by the Unit Owners as a Common Expense. The cost of any such additional reports shall be borne solely by the Unit Owner requesting the same if such request shall not have been joined in or approved by the other Unit Owner, and by both Unit Owners equally if and to the extent the other Unit Owner shall have joined in or approved such request.

#### Section 10.03 Examination of Books

Each Unit Owner and each mortgagee of a Unit shall be permitted at any time and from time to time to examine the books of account of the Condominium on reasonable notice during normal business hours.

### ARTICLE XI MISCELLANEOUS

#### Section 11.01 Waiver

No provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

#### Section 11.02 Captions

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws nor the intent of any provision hereof.

#### Section 11.03 Certain References

(a) A reference in these By-Laws to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context otherwise requires.

(b) Unless otherwise indicated, all references herein to Articles, Section or other provisions are references to Articles, Section or other provisions of these By-Laws.

#### Section 11.04 Severability; Conflicts

Subject to the provisions of the Declaration, if any provision of these By-Laws is invalid or unenforceable as against any person or under certain circumstances, the remainder of these By-Laws and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of these By-Laws shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law. In the event any provisions of these By-Laws or any Rules and

Regulations conflict with the Declaration or each other, the following order of precedence among such documents shall control: (a) the Declaration, (b) these By-Laws and (c) any Rules and Regulations. In the event of any conflict between any such provisions and the Act, the Act shall control.

#### Section 11.05 Covenant of Further Assurances

(a) Any party which is subject to the terms of these By-Laws, the Declaration, or any Rules and Regulations, shall, at the expense of the Board of Managers as a Common Expense, execute, acknowledge and deliver to the Board of Managers such instruments, in addition to those specifically provided for herein, and take such other action, in either case as is not inconsistent with the provisions of the Declaration, these By-Laws or law, as the Board of Managers may reasonably request to effectuate the provisions of these By-Laws or any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

(b) If any Unit Owner (1) refuses, or fails within twenty (20) days after request therefor, to execute, acknowledge or deliver any instrument, or take any action which such Unit Owner is required to execute, acknowledge and deliver or take pursuant to the Declaration, these By-Laws or any Rules and Regulations or (2) in the case of failure to perform any act not reasonably capable of being performed within twenty (20) days, does not commence performance of such act within such twenty (20) day period and diligently prosecute such performance to completion thereafter, then the Board of Managers is hereby authorized as attorney-in-fact for such Unit Owner to execute, acknowledge and deliver such instrument or take such action in the name and on behalf of such Unit Owner.

### ARTICLE XII AMENDMENTS

#### Section 12.01 Method of Amendment

These By-Laws may not be amended, modified, added to or deleted except by the written consent of both Unit Owners. Any amendment, modification, addition or deletion to or from these By-Laws duly authorized as above provided may be executed by the Board of Managers as attorney-in-fact for both Unit Owners.

#### Section 12.02 Rules and Regulations

The Rules and Regulations, if any, may be adopted, amended, modified or changed upon the written consent of the Board of Managers.

ARTICLE XIII  
POWER OF ATTORNEY TO BOARD OF MANAGERS

In addition to the powers of attorney granted to the Board of Managers in the Declaration or elsewhere herein, the Board of Managers shall have a power of attorney from the Unit Owners to execute, acknowledge, swear to or affirm, deliver, and record any consent, covenant, restriction, easement, declaration, agreement, instrument, or other document and to take any other act which the Board of Managers is duly authorized to execute, acknowledge, swear to or affirm, deliver, record or take pursuant to the Declaration, these By-Laws or any Rules and Regulations. The foregoing powers of attorney and all other powers of attorney granted herein to the Board of Managers including, without limitation thereto, the powers of attorney granted under paragraph (b) of Section 11.05 and Article XII shall:

- (a) be coupled with an interest and irrevocable;
- (b) survive the death, disability or incompetence of, or any purported revocation by, the grantors thereof;
- (c) be exercised only if such exercise shall have been approved either by the Board of Managers acting as provided in Section 2.06 of these By-Laws and then only if the document to be executed pursuant thereto shall be executed by at least one signee of each Unit Owner; and
- (d) bind the heirs, executors, administrators, legal representatives, and successors and assigns of the grantors thereof.

EXHIBIT E

ESCROW AGREEMENT

ESCROW AGREEMENT, dated as of \_\_\_\_\_, 1988, among THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter referred to as "the Port Authority"), a body corporate and politic, created by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America, and having an office at One World Trade Center, in the Borough of Manhattan, City, County and State of New York, POLYTECHNIC UNIVERSITY (hereinafter called "the Lessee"), a not-for-profit educational institution chartered by the Board of Regents of the University of the State of New York having an office at 333 Jay Street, in the Borough of Brooklyn, County of Kings, City and State of New York, and \_\_\_\_\_ (hereinafter called "the Escrow Agent") a banking corporation organized under the laws of \_\_\_\_\_, having an office for the purpose of this Agreement at \_\_\_\_\_ in the Borough of Manhattan, City, County and State of New York,

WITNESSETH, THAT:

WHEREAS, the Port Authority and the Lessee have entered into an Agreement, dated as of September 30, 1988 (hereinafter referred to as "the Lease") under which the Lessee is to construct for itself and for the Port Authority a building (hereinafter referred to as "the Building") on certain real property owned by the Port Authority and the Lessee, which will house the Center for Advanced Technology in Telecommunications (hereinafter referred to as "the CATT") and the Bern Dibner Library of Technology and Science of Polytechnic University (hereinafter referred to as "the Library"); and

WHEREAS, the Port Authority is to bear up to the sum of Sixteen Million Five Hundred Thousand Dollars and No Cents (\$16,500,000.00) of the cost of the design and construction of the portion of the Building to be occupied by the CATT and of a pro-rata portion of the cost of the design and construction of the portions of the Building to be used in common by the CATT and the Library and the Lessee is to bear the cost of the design and construction of the portion of the Building to be occupied by the Library, a pro-rata portion of the cost of the design and construction of the portions of the Building to be used in common by the CATT and the Library and the remaining portion, if any, of the cost of the design and construction of the CATT, all as set forth in the Lease;

NOW, THEREFORE, the parties agree as follows:

1. Establishment of the CATT Fund. The Port Authority shall transfer to the Escrow Agent a sum of not more than Sixteen Million Five Hundred Thousand Dollars and No Cents (\$16,500,000.00) by certified or bank checks payable to the order of the Escrow Agent at the times and in the amounts set forth in Schedule ES attached hereto and hereby made a part hereof. The Fund thus created is hereinafter referred to as "the CATT Fund". The Lessee understands and agrees that the second payment to be made by the Port Authority as set forth in said Schedule ES may be reduced by the amount of outstanding Port Authority Costs not paid by the Lessee after demand therefor. The CATT Fund shall be owned by the Port Authority and shall be held and disposed of by the Escrow Agent in accordance with the provisions of this Escrow Agreement relating thereto.

2. Establishment of the Library Fund. The Lessee shall transfer to the Escrow Agent the sum of Eight Million Five Hundred Thousand Dollars and No Cents (\$8,500,000.00) by certified or bank checks payable to the order of the Escrow Agent at the times and in the amounts set forth in said Schedule ES. The Fund thus created is hereinafter referred to as "the Library Fund". The Library Fund shall be owned by the Lessee and shall be held and disposed of by the Escrow Agent in accordance with the provisions of this Escrow Agreement relating thereto.

3. Investment of the CATT Fund and the Library Fund; Interest.

[The provisions of this Section shall be modified or replaced in their entirety to conform to the arrangement actually concluded with the Escrow Agent.]

(a) The Escrow Agent shall invest the CATT Fund in short-term obligations of the United States of America or of any New York Clearinghouse Bank as directed by the Port Authority. Except as provided in Section 8 of this Escrow Agreement interest on the CATT Fund shall accrue and belong to the Port Authority and the Escrow Agent shall pay to the Port Authority from time to time interest accrued on the CATT Fund in excess of the portion of the fees and expenses of the Escrow Agent payable from such interest pursuant to said Section 8. The Lessee hereby consents to such payments of interest to the Port Authority by the Escrow Agent.

(b) The Escrow Agent shall invest the Library Fund in short-term obligations of the United States of America or of any New York Clearinghouse Bank as directed by the Lessee. Except as provided in Section 8 of this Escrow Agreement interest on the

Library Fund shall accrue and belong to the Lessee and shall be retained by the Escrow Agent as part of the Library Fund until the earlier of (1) the receipt by the Escrow Agent of notice from the Lessee and the Port Authority of the completion of the construction of the Building (including without limitation thereto the completion of all "punch-list" items) or (2) the dissolution of the escrow hereunder as provided in Section 7 hereof, at which earlier time any such interest remaining in the Library Fund shall be paid to the Lessee. Upon the request of the Escrow Agent, the Port Authority and the Lessee shall certify to the Escrow Agent whether or not such completion shall have occurred.

4. Return of the CATT Fund and the Library Fund.

(a) In the event that the Lessee shall not pay to the Escrow Agent any amount required to be deposited in the Library Fund as set forth in said Schedule ES on or before the date on which such deposit is to be made as set forth in said Schedule ES, then, upon written request of the Port Authority delivered to the Escrow Agent and, in the event that the amount not so paid is the second amount to be deposited in the Library Fund, the certification by the Port Authority that the Construction Work as defined in the Lease has not commenced, on the third (3rd) business day following the Escrow Agent's receipt of such request (and certification, if required) the Escrow Agent shall pay the entire CATT Fund to the Port Authority and shall pay the entire Library Fund, if any, to the Lessee.

(b) In the event that the Port Authority shall not pay to the Escrow Agent any amount required to be deposited in the CATT Fund as set forth in said Schedule ES on or before the date on which such deposit is to be made as set forth in said Schedule ES, except as to any amount which may be deducted therefrom in accordance with the provisions of Section 1 of this Escrow Agreement, then, upon written request of the Lessee delivered to the Escrow Agent and, in the event that the amount not so paid is the second amount to be deposited in the CATT Fund, the certification by the Lessee that the Construction Work as defined in the Lease has not commenced, on the third (3rd) business day following the Escrow Agent's receipt of such request (and certification, if required) the Escrow Agent shall pay the entire Library Fund to the Lessee and shall pay the entire CATT Fund to the Port Authority.

(c) In the event that the Port Authority shall deliver to the Lessee a Default Termination Certificate executed by the Port Authority in the form attached hereto as Exhibit E-1 and hereby made a part hereof, on the third (3rd) business day following the Escrow Agent's receipt of such Default Termination Certificate the Escrow Agent shall pay the entire CATT Fund to the Port Authority and shall pay the entire Library Fund to the Lessee.

5. Distributions by the Escrow Agent.

(a) From time to time but not more often than once a calendar month, upon receipt by the Escrow Agent from the Lessee of a Payment Certificate executed by a responsible fiscal officer of the Lessee and by a responsible officer of the Lessee's general contractor or construction manager in the form of Exhibit E-2 attached hereto and hereby made a part hereof, the Escrow Agent shall, on the third (3rd) business day following the Escrow Agent's receipt of such Payment Certificate, pay (1) to the Lessee by check delivered to the Lessee and payable to the Lessee the total amount specified in said Payment Certificate as reimbursement to the Lessee and (2) to each of the persons specified in said Payment Certificate as having actually performed Construction Work and having not been paid therefor by the Lessee, by a check delivered to the Lessee and jointly payable to the Lessee and such person the amount specified in Schedule A as payable to such person, all such amounts to be withdrawn from the CATT Fund and from the Library Fund as follows: (i) from the CATT Fund, until only amounts reserved pursuant to paragraph (c) of this Section remain in the CATT Fund or, if there are no such amounts, until the CATT Fund is depleted, the total amount certified in said Payment Certificate to be a part of the Cost of the CATT Work and (ii) from the Library Fund, until the Library Fund is depleted, the total amount certified in said Payment Certificate to be a part of the Cost of the Construction Work other than the CATT Work, provided, that the aggregate amount of all checks issued by the Escrow Agent pursuant to said Payment Certificate shall not exceed the sum of the amounts available for withdrawal from each of the CATT Fund and the Library Fund for payment to the Lessee or to such persons pursuant to said Payment Certificate, provided, further, that if such Payment Certificate requests only payment to contractors supplying, or reimbursement to the Lessee for its payment of or payment to contractors supplying, engineering, architectural, professional or consulting services, legal services, property and liability insurance, governmental filing fees or supervision of construction, such Payment Certificate may be in the form of Exhibit E-2 attached hereto with all references to the Lessee's general contractor or construction manager deleted therefrom in lieu of the form attached hereto as Exhibit E-2 and may be executed by a responsible fiscal officer of the Lessee only.

(b) (deleted)

(c) In the event that the Port Authority shall, at any time and from time to time, notify the Escrow Agent in writing (1) that in the opinion of the Port Authority a cost certified by the Lessee in any Payment Certificate delivered to the Escrow Agent pursuant to paragraph (a) of this Section was not incurred

as a portion of the Cost of the CATT Work or if incurred is not properly chargeable to the Cost of the CATT Work under sound accounting practice, consistently applied, or does not represent an appropriate division of the costs of a particular contract which covers costs which are part of the Cost of the CATT Work and costs which are not and (2) of the amount of such cost, then, in such event, the Escrow Agent shall reserve in the CATT Fund an amount equal to such cost as stated by the Port Authority in its notice. The amount so reserved shall be maintained in the CATT Fund and shall not be paid to the Lessee or to any person performing Construction Work until (i) the Lessee and the Port Authority shall deliver to the Escrow Agent a written request executed by both the Lessee and the Port Authority permitting the release of all or part of said reserved amount or (ii) \_\_\_\_\_, as sole arbitrator, shall deliver to the Escrow Agent a written request executed by said sole arbitrator permitting the release of all or part of said reserved amount, in which case the Escrow Agent shall no longer be required to maintain in the CATT Fund and may pay from the CATT Fund the portion of such reserved amount set forth in said request or all of said amount, if set forth in said request, upon receipt by the Escrow Agent from time to time of appropriate Payment Certificates therefor pursuant to paragraph (a) of this Section, provided, that upon the release of such reserved amount the Escrow Agent shall also transfer from the Library Fund to the CATT Fund such sum, if any, as the Lessee and the Port Authority shall specify in their written request, or as \_\_\_\_\_, as sole arbitrator, shall specify in the request delivered by said sole arbitrator.

(d) In the event that the Port Authority shall certify to the Escrow Agent in writing that an event of default has occurred under the Lease and has not been cured within any applicable grace period and that the Port Authority has elected to perform the Lessee's construction obligations pursuant to the terms of the Lease and shall notify the Escrow Agent in writing that the Escrow Agent is to accept Payment Certificates submitted by the Port Authority, the Escrow Agent shall, subsequent to the receipt of such certificate and notice from the Port Authority, accept Payment Certificates submitted pursuant to paragraph (a) of this Section executed by the Port Authority and by a responsible officer of the general contractor or construction manager then retained by the Port Authority and responsible for the Construction Work and shall pay such amounts by check delivered to the Port Authority and payable to the Port Authority or jointly payable to the Port Authority and its contractors, from the CATT Fund and the Library Fund in the same manner as if such Payment Certificates had been executed by a responsible fiscal officer of the Lessee and submitted by the Lessee and such payments had been made to the Lessee and payable to the Lessee or jointly payable to the Lessee and its contractors, provided, that for a period of three (3) business days commencing on the day following the receipt by the Escrow Agent of such certificate and notice, the Escrow Agent shall not accept payment certificates

from either the Lessee or the Port Authority and shall not make any further payments based on Payment Certificates received by it from the Lessee without the written consent of the Port Authority.

(e) In the event that the Port Authority shall certify to the Escrow Agent in writing that an event of default has occurred under the Lease and has not been cured within any applicable grace period and that the Port Authority has elected to have Forest City Metrotech Associates complete the construction of the Building and shall notify the Escrow Agent in writing that the Escrow Agent is to accept Payment Certificates submitted by Forest City Metrotech Associates, or by an affiliate of Forest City Metrotech Associates specified by the Port Authority in its notice to the Escrow Agent, in each case as agent for the Lessee, the Escrow Agent shall, subsequent to the receipt of such certificate and notice from the Port Authority, accept Payment Certificates submitted pursuant to paragraph (a) of this Section executed by a responsible fiscal officer of said Forest City Metrotech Associates or of such specified affiliate and by a responsible officer of the general contractor or construction manager responsible for the Construction Work (or by Forest City Metrotech Associates or such specified affiliate alone in circumstances where the Lessee could properly so certify as set forth in said paragraph (a)) and shall pay such amounts by checks delivered to Forest City Metrotech Associates or such specified affiliate and payable to Forest City Metrotech Associates or such specified affiliate, in each case as agent for the Lessee, or jointly payable to said Forest City Metrotech Associates or such specified affiliate, as agent for the Lessee, and its contractors, from the CATT Fund and the Library Fund in the same manner as if such Payment Certificates had been executed by a responsible fiscal officer of the Lessee and submitted by the Lessee and such payments had been made to the Lessee and payable to the Lessee or jointly payable to the Lessee and its contractors, provided, that for a period of three (3) business days commencing on the day following the receipt by the Escrow Agent of such certificate and notice, the Escrow Agent shall not accept payment certificates from any of the Lessee, Forest City Metrotech Associates or such specified affiliate and shall not make any further payments based on Payment Certificates received by it from the Lessee without the written consent of the Port Authority. In the event that the Escrow Agent shall receive from the Port Authority the certificate and notice set forth in this paragraph the Escrow Agent shall deliver to Forest City Metrotech Associates or such specified affiliate copies of all Payment Certificates and attachments thereto previously delivered to the Escrow Agent by the Lessee.

6. Letter of Credit. (a) The Lessee shall obtain a letter of credit in the form of Exhibit L attached to this Escrow Agreement with such changes thereto as the Lessee shall propose

and as the Port Authority in its sole discretion shall approve issued by a banking institution satisfactory to the Port Authority and having its main office within the Port of New York District to be in favor of the Escrow Agent and shall deliver such letter of credit to the Escrow Agent at the time of payment of the first amount to be deposited in the Library Fund as provided in Schedule ES attached hereto. The Lessee shall maintain such letter of credit in an amount not less than Three Million Dollars and No Cents (\$3,000,000.00) until the delivery to the issuer thereof of a draft or drafts as provided in this Section and thereafter in such amount less the amount of such draft or drafts until the earlier of the two hundred seventieth (270th) day after the completion of construction of the Building (including without limitation thereto the completion of all "punch-list" items) or the termination of this Escrow Agreement. Upon the request of the Escrow Agent the Port Authority and the Lessee shall certify whether or not such completion shall have occurred. In the event that the Escrow Agent shall from time to time receive (a) a written instruction executed by a responsible fiscal officer of the Lessee and approved by the Port Authority, or (b) subsequent to the receipt by the Escrow Agent of the certification and notice referred to in paragraph (d) of Section 5 of this Escrow Agreement, a written instruction executed by the Port Authority, or (c) subsequent to the receipt by the Escrow Agent of the certification and notice referred to in paragraph (e) of Section 5 of this Escrow Agreement, a written instruction executed by a responsible fiscal officer of Forest City Metrotech Associates or the affiliate hereof specified in the notice delivered pursuant to said paragraph (e) and approved by the Port Authority, that the Escrow Agent draw a specified amount on such letter of credit, further specifying the portion of such amount to be deposited in the CATT Fund and the portion of such amount to be deposited in the Library Fund, then the Escrow Agent shall deliver to the issuer of such letter of credit a draft in the amount specified in such instruction and shall hold the portion of the proceeds thereof specified to be deposited in the CATT Fund as part of the CATT Fund and the portion of such proceeds specified to be deposited in the Library Fund as part of the Library Fund and shall distribute such amounts in accordance with the provisions of this Escrow Agreement relating to the CATT Fund and the Library Fund including without limitation thereto the provisions of paragraph (c) of Section 5 of this Escrow Agreement. The written approval of the Port Authority shall not be required to be appended to such instruction if the Lessee shall deliver such instructions together with a certification that the instruction was delivered to the Port Authority for its approval and that the Port Authority failed to respond to such proposed instruction either by consenting to such instruction or objecting thereto within sixty (60) days after the delivery of such instruction. The Escrow Agent shall promptly inform the Lessee and the Port Authority and, subsequent to the receipt by the Escrow Agent of the certification and notice referred to in said paragraph (e),

Forest City Metrotech Associates or said specified affiliate, of all notices received from the issuer of such letter of credit.

(b) In the event the issuer of such letter of credit shall notify the Escrow Agent that such issuer elects not to renew such letter of credit and the Lessee shall not deliver to the Escrow Agent within thirty (30) days thereafter a replacement letter of credit in the same form or with such changes therein as the Lessee shall propose and as the Port Authority in its sole discretion shall approve, then the Escrow Agent shall draw the entire amount of such letter of credit and hold the proceeds thereof separate from the CATT Fund and the Library Fund until instructed as to the disposition of such proceeds in writing by the Port Authority and the Lessee.

(c) In the event that subsequent to the drawing of the entire amount available under such letter of credit, the Library Fund shall be depleted and the Lessee shall deliver to the Escrow Agent an instruction executed by a responsible fiscal officer of the Lessee and bearing the written consent of the Port Authority that the Escrow Agent shall transfer a specified amount from the CATT Fund to the Library Fund together with the following certifications: that the CATT Work has been completed (including without limitation thereto the completion of all "punch-list" items), that there are no existing disputes between the Port Authority and the Lessee with respect to amounts previously certified by the Lessee as part of the Cost of the CATT Work but as to which the Port Authority has objected and that the Lessee has paid all Port Authority Costs outstanding after demand therefor, then the Escrow Agent shall transfer such specified amount from the CATT Fund to the Library Fund.

7. Return of Funds After Commencement of Distributions. In the event (a) that both the Lessee and the Port Authority shall notify the Escrow Agent that the escrow established by this Escrow Agreement is terminated, (b) the Lessee shall, after the delivery to the Escrow Agent of one or more Payment Certificates as set forth in paragraph (a) of Section 5 of this Escrow Agreement, fail to deliver a Payment Certificate to the Escrow Agent within six (6) months after the last delivery to the Escrow Agent of a Payment Certificate and the Port Authority shall request the return of both the CATT Fund and the Library Fund in writing or (c) the Port Authority shall deliver to the Lessee a Final Withdrawal Certificate executed by the Port Authority in the form of Exhibit E-3 attached hereto and hereby made a part hereof, then the Escrow Agent shall pay the entire amount remaining in the CATT Fund to the Port Authority (including without limitation thereto any amounts reserved pursuant to paragraph (c) of Section 5 of this Escrow Agreement and not released as provided in said paragraph) and shall pay the entire amount remaining in the Library Fund to the Lessee.

8. Fees and Expenses of the Escrow Agent. The Escrow Agent, from time to time, shall deduct from the interest accrued on the CATT Fund that portion of the Escrow Agent's fees and expenses outstanding at such time as bears the same relation to the total fees and expenses of the Escrow Agent outstanding at such time that the CATT Fund bears to the sum of the CATT Fund and the Library Fund at such time and shall, at such time, deduct from the interest accrued on the Library Fund that portion of the Escrow Agent's fees and expenses outstanding at such time as bears the same relation to the total fees and expenses of the Escrow Agent outstanding at such time that the Library Fund bears to the sum of the CATT Fund and the Library Fund at such time.

9. Responsibility of Escrow Agent; Indemnity.

(a) The duties and obligations of the Escrow Agent with respect to the CATT Fund and the Library Fund shall be determined solely by the express provisions of this Escrow Agreement and the Escrow Agent shall be under no obligation to refer to, or to ascertain the terms or conditions of, the Lease or any other agreement between the Port Authority and the Lessee related to this Escrow Agreement, provided, that nothing in this Section shall relieve or be deemed to relieve the Escrow Agent from the obligation to examine, to refer to and to ascertain the terms of any notice or certificate delivered to the Escrow Agent pursuant to the terms of this Escrow Agreement or from the obligation to follow the directions contained in proper notices and certificates properly presented to the Escrow Agent pursuant to the terms of this Escrow Agreement.

(b) The Escrow Agent shall be entitled to rely on, and shall be entitled to act in reliance upon, any notice, certificate or other document furnished to the Escrow Agent pursuant to the terms of this Escrow Agreement, believed by the Escrow Agent to be genuine and to have been signed and presented by the proper party or parties. The Escrow Agent shall also be entitled to rely upon the advice of counsel with respect to any matter arising under this Escrow Agreement.

(c) The Escrow Agent shall not be liable to the parties to this Escrow Agreement by reason of any mistake of fact or law on its part or by reason of any act or omission taken or omitted in connection with this Escrow Agreement unless such mistake, act or omission results from or arises out of the Escrow Agent's gross negligence, willful misconduct or bad faith. The Lessee and the Port Authority hereby indemnify the Escrow Agent for, and hold it harmless against, any and all liability and expense to persons other than parties to this Escrow Agreement which may arise out of any act or omission of the Escrow Agent taken or omitted in accordance with the provisions of this Escrow Agreement as it may be amended, modified or supplemented, except for such liability and expense to such persons as may result from

or arise out of the Escrow Agent's gross negligence, willful misconduct or bad faith, provided, that the indemnity of the Port Authority hereunder shall be limited to, and payable solely from, the amount remaining in the CATT Fund from time to time.

10. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or if mailed, postage prepaid, by first-class, registered or certified mail, as follows:

If to the Port Authority, addressed to:

Executive Director  
The Port Authority  
of New York and New Jersey  
One World Trade Center  
New York, New York 10048

If to the Lessee, addressed to:

Dr. Seymour Scher  
Polytechnic University  
333 Jay Street  
Brooklyn, New York 11201

If to the Escrow Agent, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All notices shall be deemed given when delivered or, if refused, when refused. In the event that either the Port Authority or the Lessee shall give any notice, request, demand or other communication to the Escrow Agent, such party shall also simultaneously give a duplicate copy of such notice, request, demand or other communication to the remaining party, but it is expressly understood that the giving of such duplicate notice shall not be or be deemed to be a condition precedent to the taking of any action or the doing of any thing by the Escrow Agent, nor shall the failure to give such duplicate notice prevent or be deemed to prevent the taking of such action or the doing of any thing which the Escrow Agent has the right to take or do upon the giving of such notice.

11. Non-liability of Individuals. No Commissioner, trustee, director, officer, agent or employee of any party to this Escrow Agreement shall be charged personally or held contractually liable by or to any other party to this Escrow Agreement under

any term or provision thereof or of any supplement, modification or amendment to this Escrow Agreement, because of any breach hereof or because of its or their execution or attempted execution thereof.

12. Effectiveness. This Escrow Agreement shall take effect upon the initial deposit of funds into the CATT Fund by the Port Authority or into the Library Fund by the Lessee and shall continue in full force and effect until both the CATT Fund and the Library Fund are depleted, unless this Escrow Agreement is earlier terminated by the return of the balance remaining in the CATT Fund and the balance remaining in the Library Fund to the respective parties depositing the same as provided in Sections 4 or 7 of this Escrow Agreement.

13. General.

(a) This Escrow Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to agreements made and to be entirely performed within such state.

(b) This Escrow Agreement sets forth the entire agreement and understanding of all three of the parties to this Escrow Agreement in respect to this escrow transaction and supersedes any prior agreements, arrangements and understandings relating to the subject matter hereof among all three of the parties hereto.

(c) The Lessee may not sell, convey, transfer, pledge or assign this Escrow Agreement or the Lessee's interest, if any, in the funds deposited hereunder without the prior written consent of the Port Authority.

(d) Nothing in this Escrow Agreement shall create or be deemed to create any rights of any kind whatsoever in persons who are not parties to this Escrow Agreement, except as provided in paragraph (e) of Section 5 of this Escrow Agreement and in Section 6 of this Escrow Agreement subsequent to the delivery to the Escrow Agent by the Port Authority of the certificate and notice referred to in said paragraph (e).

(e) This Escrow Agreement may not be amended, modified, discharged, superseded or cancelled except by a written instrument duly executed by each party hereto. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right of such

party at any later time to enforce the performance of such provision.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Seal)

ATTEST:

POLYTECHNIC UNIVERSITY

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Corporate Seal)

ATTEST:

\_\_\_\_\_  
(Name of Escrow Agent)

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Corporate Seal)

SCHEDULE ES  
TO ESCROW AGREEMENT

SCHEDULE OF DEPOSITS

<u>Date</u>	<u>Amount of Deposit in CATT Fund</u>	<u>Amount of Deposit in Library Fund</u>
Within 15 days after the date of satisfaction of the conditions precedent set forth in paragraph (a) of Section 1 of the Lease in the manner specified in paragraph (b) of said Section 1.	Not less than \$8,700,000 nor more than \$9,700,000.	\$5,000,000
Within 270 days after the date of satisfaction of the conditions precedent set forth in paragraph (a) of Section 1 of the Lease in the manner specified in paragraph (b) of said Section 1.	\$6,800,000	\$3,500,000

EXHIBIT E-1  
TO ESCROW AGREEMENT

DEFAULT TERMINATION CERTIFICATE  
(Pursuant to Section 4(c) of the within-described  
Escrow Agreement)

THE UNDERSIGNED, The Port Authority of New York and New Jersey (hereinafter referred to as "the Port Authority"), HEREBY CERTIFIES, pursuant to the Escrow Agreement, dated as of \_\_\_\_\_, 19\_\_ (hereinafter referred to as "the Escrow Agreement"), among the Port Authority, Polytechnic University (hereinafter referred to as "the Lessee") and (hereinafter referred to as "the Escrow Agent"), THAT the Lessee has not commenced construction of the Building (as defined in the Escrow Agreement) and that the Port Authority has determined pursuant to the provisions of paragraph (b) of Section 1 of the Agreement, dated as of September 30, 1988, between the Port Authority and the Lessee (hereinafter referred to as "the Lease") that it does not consider the conditions precedent set forth in paragraph (a) of Section 1 of the Lease to be satisfied at this time and hereby directs the Escrow Agent to pay the entire CATT Fund (as defined in the Escrow Agreement) to the Port Authority and the entire Library Fund (as defined in the Escrow Agreement) to the Lessee, all as set forth in paragraph (c) of Section 4 of the Escrow Agreement.

IN WITNESS WHEREOF, the undersigned has executed these presents this \_\_\_ day of \_\_\_\_\_, 19\_\_.

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By \_\_\_\_\_

(Title) \_\_\_\_\_

EXHIBIT E-2  
TO ESCROW AGREEMENT

PAYMENT CERTIFICATE  
(Pursuant to Section 5(a) of the within-described  
Escrow Agreement)

THE UNDERSIGNED, being \_\_\_\_\_ (Title) \_\_\_\_\_ of Polytechnic University (hereinafter referred to as "the Lessee") and \_\_\_\_\_ (Title) \_\_\_\_\_ of (Name of the Lessee's general contractor or construction manager), HEREBY CERTIFY, pursuant to the Escrow Agreement, dated as of \_\_\_\_\_, 1988 (hereinafter referred to as "the Escrow Agreement"), among The Port Authority of New York and New Jersey (hereinafter referred to as "the Port Authority"), the Lessee and \_\_\_\_\_ (hereinafter referred to as "the Escrow Agent"), AS FOLLOWS:

1. That the amounts set forth in the columns headed "Amount to be Paid to Contractor" and "Amount to be Reimbursed" on the Schedule A attached hereto (hereinafter referred to as "Schedule A") have not previously been certified, either in whole or in part, to the Port Authority and to the Escrow Agent nor have such amounts been included, either in whole or in part, in any Schedule A attached to any previous Payment Certificate.

2. That attached hereto are reproduction copies or duplicate originals of the invoices of each of the persons specified in the column headed "Contractor" on Schedule A next to an amount in the column headed "Amount to be Reimbursed" on Schedule A marked by such persons to indicate their receipt of such amounts, that the Lessee has paid each such amount to the persons specified next to such amount in the column headed "Contractor" on Schedule A and that such persons have actually performed Construction Work. In this Payment Certificate the terms "CATT Work", "Construction Work", "Cost of the CATT Work" and "Library Unit" shall have the meanings defined for such terms in the Agreement, dated as of September 30, 1988 between the Port Authority and the Lessee (hereinafter referred to as "the Lease").

3. That attached hereto are reproduction copies or duplicate originals of the invoices of each of the persons specified in the column headed "Contractor" on Schedule A next to an amount in the column headed "Amount to be Paid to Contractor", that the Lessee has not paid each such amount to such person, that each such amount is payable to such person and that such person has actually performed Construction Work.

4. That each amount set forth in the columns headed "Amount to be Paid to Contractor" and "Amount to be Reimbursed"

on Schedule A constitutes part of the Cost of the CATT Work or, if any amount set forth in such columns includes both work which is part of the CATT Work and work which is not part of the CATT Work or if any amount set forth in such columns was incurred pursuant to a contract which covers costs which are part of the Cost of the CATT Work and costs which are not, that each amount set forth in Schedule A in the column headed "Cost of CATT Work" constitutes part of the Cost of the CATT Work, that each amount set forth in Schedule A in the column headed "Cost of the Library Work" constitutes part of the cost of the Construction Work other than the CATT Work and constitutes part of the cost of the Library Unit and that with respect to each person set forth in the column headed "Contractor" the sum of the amount set forth in the column headed "Cost of the CATT Work" next to the name of such person and the amount set forth in the column headed "Cost of the Library Work" next to the name of such person equals the sum of the amount, if any, set forth in the column headed "Amount to be Paid to Contractor" next to the name of such person and the amount, if any, set forth in the column headed "Amount to be Reimbursed" next to the name of such person.

5. That the Lessee has paid the amounts set forth in the column headed "Amount to be Paid to Contractor" on the Schedule A attached to the Payment Certificate immediately preceding this Payment Certificate to the persons specified in the column headed "Contractor" next to each such amount in the Schedule A attached to such immediately preceding Payment Certificate.

6. That attached hereto are reproduction copies or duplicate originals of the invoices of each of the persons specified in the Schedule A attached to such immediately preceding Payment Certificate relating to the amounts set forth in the column headed "Amount to be Paid to Contractor" on said Schedule A marked by such persons to indicate their receipt of such amounts.

7. That the amount of the total cumulative payments made by the Lessee in connection with the design and performance of the Construction Work from the commencement of the Construction Work to the date of this certificate is \$ \_\_\_\_\_ and that the amount of the total cumulative payments made by the Lessee in connection with the design and performance of the CATT Work from the commencement of the CATT Work to the date of this certificate is \$ \_\_\_\_\_.

8. That each portion of the CATT Work covered by this certificate has been performed in accordance with the terms of the Lease and the plans and specifications referred to therein.

The undersigned hereby request that the Escrow Agent pay (a) to the Lessee by check delivered to the Lessee and

payable to the Lessee the total amount set forth in the column entitled "Amount to be Reimbursed" on Schedule A and (b) pay to each of the persons set forth in the column headed "Contractor" on Schedule A next to an amount in the column headed "Amount to be Paid to Contractor" by check delivered to the Lessee and jointly payable to the Lessee and such person the amount set forth in the column headed "Amount to be Paid to Contractor" next to such person's name, all such amounts to be withdrawn from the CATT Fund and the Library Fund (as respectively defined in the Escrow Agreement) as follows: (1) from the CATT Fund, until only amounts reserved pursuant to paragraph (c) of Section 5 of the Escrow Agreement remain in the CATT Fund or, if there are no such amounts, until the CATT Fund is depleted, the total amount, if any, set forth in the column entitled "Cost of the CATT Work" on Schedule A and (2) from the Library Fund, until the Library Fund is depleted, the total amount set forth in the column entitled "Cost of the Library Work" on Schedule A, all as set forth in paragraph (a) of Section 5 of the Escrow Agreement, provided, that the aggregate amount of all checks issued by the Escrow Agent pursuant to this Payment Certificate shall not exceed the sum of the amounts available for withdrawal from each of the CATT Fund and the Library Fund for payment to the Lessee or to such persons pursuant to this Payment Certificate.

The undersigned acknowledge that the foregoing certifications and statements will become a part of the records of the Port Authority and that the Port Authority will rely on their truth and accuracy in exercising its rights and performing its obligations under the Escrow Agreement and the Lease. The undersigned also understand that knowingly providing a false certification or statement may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.).

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as \_\_\_\_\_ (Title) \_\_\_\_\_ of the Lessee and as (Title) \_\_\_\_\_ of the (name of the Lessee's general contractor or construction manager) this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

\_\_\_\_\_

\_\_\_\_\_

SCHEDULE A  
OF PAYMENT CERTIFICATE

<u>Contractor</u>	<u>Cost of the CATT Work</u>	<u>Cost of the Library Work</u>	<u>Amount to be Paid to Contractor</u>	<u>Amount to be Reimbursed</u>	<u>Total</u>
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
<b>Totals</b>	_____	_____		_____	_____

EXHIBIT E-3  
TO ESCROW AGREEMENT

FINAL WITHDRAWAL CERTIFICATE  
(Pursuant to Section 7 of the within-described  
Escrow Agreement)

THE UNDERSIGNED, The Port Authority of New York and New Jersey (hereinafter referred to as "the Port Authority") HEREBY CERTIFIES, pursuant to the Escrow Agreement, dated as of \_\_\_\_\_, 1988 (hereinafter referred to as "the Escrow Agreement"), among the Port Authority, Polytechnic University (hereinafter referred to as "the Lessee") and \_\_\_\_\_ (hereinafter referred to as "the Escrow Agent"), THAT

[include one of the following]

the Cost of the CATT Work, as defined in the Agreement, dated as of September 30, 1988, between the Port Authority and the Lessee (hereinafter referred to as "the Lease"), has been finally determined as provided in the Lease and any payments required pursuant to subparagraph (4) of paragraph (b) of Section 3 of the Lease have been made.

[or]

the letting under the Agreement, dated as of September 30, 1988, between the Port Authority and the Lessee has been terminated pursuant to its terms.

The undersigned hereby directs that the Escrow Agent pay the entire amount remaining in the CATT Fund (as defined in the Escrow Agreement) to the Port Authority and pay the entire amount remaining in the Library Fund (as also defined in the Escrow Agreement) to the Lessee, all as set forth in Section 7 of the Escrow Agreement.

IN WITNESS WHEREOF, the undersigned has executed these presents this \_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

By \_\_\_\_\_

(Title) \_\_\_\_\_

EXHIBIT L

Form of Letter of Credit  
(Letterhead of Issuing Bank)  
Irrevocable Letter of Credit

To: [Escrow Agent]

Our Letter of  
Credit No.: \_\_\_\_\_

Gentlemen:

We hereby establish our irrevocable Letter of Credit for the account of Polytechnic University for a sum not to exceed Three Million (\$3,000,000.00) Dollars available by your draft or drafts made from time to time at sight on us each such draft to be accompanied by the original of this Letter of Credit.

Our obligation under this Letter of Credit shall be that of a primary obligor and not that of a surety, guarantor or accommodation maker.

Drafts must be presented at this office not later than \_\_\_\_\_, 19\_\_\_\_, unless extended as herein provided. This Letter of Credit shall be automatically extended without further action for an additional twelve months from the expiration date hereof (either present or future, as the case may be) unless sixty (60) days prior to such expiration date we shall notify you, in writing, via registered mail, return receipt requested, that we elect not to renew this Letter of Credit for such additional period. In such event, this Letter of Credit may be drawn upon prior to its expiration date by your draft on us accompanied by the original of this Letter of Credit.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS OF DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED ON DUE PRESENTATION TO THE DRAWEE.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED, THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1974 REVISION) OF THE INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 290.

Dated:

Very truly yours,

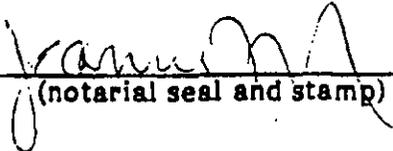
By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

(Port Authority Acknowledgement)

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

On the 19th day of October, 1988, before me personally came Frank Garcia, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is the Deputy Director, World Trade and Economic Development Department of The Port Authority of New York and New Jersey, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Commissioners of said corporation; and that he signed his name thereto by like order.

  
\_\_\_\_\_  
(notarial seal and stamp)

JEANNE MURPHY  
Notary Public, State of New York  
No. 4782487  
Qualified in Westchester County  
Commission Expires April 30, 1990

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

On the 19<sup>th</sup> day of October, 1989, before me personally came Seymour Scher to me known, who, being by me duly sworn, did depose and say that he resides at

that he is the Senior Vice President of Polytechnic University, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Barbara Trejo  
(notarial seal and stamp)

BARBARA TREJO  
Notary Public, State of New York  
No. 24-4754243  
Qualified in Kings County  
Commission Expires January 31, 1990

Effective Date 4/1/92

Amortization Table for Polytechnic  
 Annual Interest Rate 7.20%  
 Quarterly Interest Rate 1.80%  
 Original Principal Amount 2,982,049  
 Month of First Pmt 5  
 Year of First Pmt 92  
 BOM Payment Amount

40.00/yr  
 10.00/qr  
 3,333.33/No

Pmt #	Mo	Yr	Pmt Amount	Interest	Principal	Remaining Principal	YTD Interest
				2-47128-454	0-78013-2vd		
				Interest	Principal	Principal	Interest
Fy 92	5	92	10,000	53,677	(43,677)	2,982,049	53,677
	2	92	10,000	54,463	(44,463)	3,025,726	108,140
	3	92	10,000	55,263	(45,263)	3,070,189	163,403
Fy 93	4	93	10,000	56,078	(46,078)	3,115,452	219,481
	5	93	10,000	56,908	(46,908)	3,161,530	276,389
	6	93	10,000	57,752	(47,752)	3,208,438	334,141
	7	93	10,000	58,611	(48,611)	3,256,190	392,752
Fy 94	8	94	10,000	59,486	(49,486)	3,304,801	452,239
	9	94	10,000	60,377	(50,377)	3,354,288	512,616
	10	94	10,000	61,284	(51,284)	3,404,665	573,900
	11	94	10,000	62,207	(52,207)	3,455,949	636,107
	12	95	10,000	63,147	(53,147)	3,508,156	699,254
	13	95	10,000	64,103	(54,103)	3,561,303	763,357
	14	95	10,000	65,077	(55,077)	3,615,406	828,435
	15	95	10,000	66,069	(56,069)	3,670,483	894,503
	16	96	10,000	67,078	(57,078)	3,726,552	961,561
	17	96	10,000	68,105	(58,105)	3,783,630	1,029,686
	18	96	10,000	69,151	(59,151)	3,841,735	1,098,838
Fy 97	19	96	10,000	70,216	(60,216)	3,900,887	1,169,054
	20	97	10,000	71,300	(61,300)	3,961,102	1,240,354
	21	97	37,500	72,403	(34,903)	4,022,402	1,312,757
	22	97	37,500	73,052	(35,532)	4,085,737	1,385,798
Fy 98	23	97	37,500	73,671	(36,171)	4,150,008	1,459,459
	24	98	37,500	74,322	(36,822)	4,216,830	1,533,781
	25	98	37,500	74,985	(37,485)	4,285,315	1,608,766
	26	98	37,500	75,660	(38,160)	4,355,475	1,684,426
	27	98	37,500	76,347	(38,847)	4,427,321	1,760,773
Fy 99	28	99	37,500	77,046	(39,546)	4,500,867	1,837,818
	29	99	37,500	77,758	(40,258)	4,575,125	1,915,576
	30	99	37,500	78,482	(40,982)	4,650,107	1,994,058
Fy 2000	31	99	37,500	79,220	(41,720)	4,725,827	2,073,278
	32	0	37,500	79,971	(42,471)	4,802,298	2,153,249
	33	0	37,500	80,735	(43,235)	4,879,533	2,233,964
	34	0	37,500	81,514	(44,014)	4,957,547	2,315,498
	35	0	37,500	82,306	(44,806)	5,036,353	2,397,804
	36	1	37,500	83,112	(45,612)	5,115,965	2,480,916
	37	1	37,500	83,933	(46,433)	5,196,398	2,564,850
	38	1	37,500	84,769	(47,269)	5,277,668	2,649,619

TD-DATE

Fy 2000

1.727,30

I = 2,564,850

CSH = 837,50

875,000  
 7,649,618  
 Page 1  
 (1,774,618)

Fy 01

LEASE Scenario 2

*Handwritten:* Mark  
F-1000

INT. PRINCIPAL

Year	Month	Day	Amount	INT.	PRINCIPAL	Balance	Balance
			37,500	55,620	(48,120)	4,804,788	2,735,239
			37,500	55,486	(48,986)	4,853,774	2,821,725
			62,500	57,366	(24,866)	4,676,642	2,909,093
			62,500	57,816	(25,316)	4,903,957	2,996,908
			62,500	55,271	(25,771)	4,929,729	3,085,180
			62,500	55,735	(26,235)	4,955,964	3,173,915
			62,500	55,207	(26,707)	4,982,671	3,263,122
			62,500	55,688	(27,188)	5,009,659	3,352,810
			62,500	90,177	(27,677)	5,037,537	3,442,988
			62,500	90,676	(28,176)	5,065,712	3,533,663
			62,500	91,183	(28,683)	5,094,395	3,624,846
			62,500	51,699	(29,199)	5,123,594	3,716,545
			62,500	52,225	(29,725)	5,153,319	3,808,770
			62,500	52,760	(30,260)	5,183,579	3,901,530
			62,500	53,304	(30,804)	5,214,393	3,994,834
			62,500	53,859	(31,359)	5,245,742	4,088,693
			62,500	54,423	(31,923)	5,277,665	4,183,116
			62,500	54,993	(32,498)	5,310,163	4,278,114
			62,500	55,583	(33,083)	5,343,246	4,373,697
			62,500	56,173	(33,678)	5,376,925	4,469,876
			62,500	56,785	(34,285)	5,411,209	4,566,660
			62,500	57,402	(34,902)	5,446,111	4,664,062
			75,000	58,030	(23,030)	5,469,141	4,762,092
			75,000	58,445	(23,445)	5,492,585	4,860,537
			75,000	58,867	(23,867)	5,516,452	4,959,403
			75,000	99,296	(24,296)	5,540,748	5,058,699
			75,000	99,733	(24,733)	5,565,432	5,158,433
			75,000	100,179	(25,179)	5,590,660	5,258,611
			75,000	100,632	(25,632)	5,616,292	5,359,243
			75,000	101,093	(26,093)	5,642,325	5,460,337
			75,000	101,563	(26,563)	5,668,948	5,561,900
			75,000	102,041	(27,041)	5,695,989	5,663,941
			75,000	102,528	(27,528)	5,723,517	5,766,468
			75,000	103,023	(28,023)	5,751,541	5,869,492
			75,000	103,528	(28,528)	5,780,068	5,973,019
			75,000	104,041	(29,041)	5,809,109	6,077,061
			75,000	104,564	(29,564)	5,838,673	6,181,625
			75,000	105,096	(30,096)	5,868,770	6,286,721
			75,000	105,638	(30,638)	5,899,407	6,392,359
			75,000	106,189	(31,189)	5,930,597	6,498,548
			75,000	106,751	(31,751)	5,962,348	6,605,299
			75,000	107,322	(32,322)	5,994,670	6,712,621
			100,000	107,904	(7,904)	6,002,574	6,820,525
			100,000	108,046	(6,046)	6,010,620	6,928,571
			100,000	108,191	(8,191)	6,018,811	7,036,763
			100,000	108,339	(8,339)	6,027,150	7,145,101
			100,000	108,489	(8,489)	6,035,639	7,253,590
			100,000	108,641	(8,641)	6,044,280	7,362,231
			100,000	108,797	(8,797)	6,053,077	7,471,028

*Handwritten:* P/L 896.09  
I 3,909.09  
C/L 1,012.09

*Handwritten:* 2)07  
16,500.00  
- 2,075.00  
14,425.00  
owe

LEASE Scenario 2

*Handwritten:* Paid 20-10-16

				INT.	PRINCIPAL		
	39	11	1	37,500	85,620	(48,120)	4,804,788
	40	2	2	37,500	86,486	(48,986)	4,853,774
	41	5	2	62,500	87,368	(24,868)	4,878,642
	42	8	2	62,500	87,816	(25,316)	4,903,957
	43	11	2	62,500	88,271	(25,771)	4,929,729
F403	44	2	3	62,500	88,735	(26,235)	4,955,964
	45	5	3	62,500	89,207	(26,707)	4,982,671
	46	8	3	62,500	89,688	(27,168)	5,009,859
F404	47	11	3	62,500	90,177	(27,677)	5,037,537
	48	2	4	62,500	90,676	(28,176)	5,065,712
	49	5	4	62,500	91,183	(28,683)	5,094,395
	50	8	4	62,500	91,699	(29,199)	5,123,594
F405	51	11	4	62,500	92,225	(29,725)	5,153,319
	52	2	5	62,500	92,760	(30,260)	5,183,579
	53	5	5	62,500	93,304	(30,804)	5,214,393
	54	8	5	62,500	93,859	(31,359)	5,245,742
F406	55	11	5	62,500	94,423	(31,923)	5,277,665
	56	2	6	62,500	94,993	(32,498)	5,310,163
	57	5	6	62,500	95,583	(33,083)	5,343,246
	58	8	6	62,500	96,179	(33,678)	5,376,925
F407	59	11	6	62,500	96,785	(34,285)	5,411,209
	60	2	7	62,500	97,402	(34,902)	5,446,111
	61	5	7	75,000	98,030	(23,030)	5,469,141
	62	8	7	75,000	98,445	(23,445)	5,492,585
F408	63	11	7	75,000	98,867	(23,867)	5,516,452
	64	2	8	75,000	99,296	(24,296)	5,540,748
	65	5	8	75,000	99,733	(24,733)	5,565,482
	66	8	8	75,000	100,179	(25,179)	5,590,660
F409	67	11	8	75,000	100,632	(25,632)	5,616,292
	68	2	9	75,000	101,093	(26,093)	5,642,385
	69	5	9	75,000	101,563	(26,563)	5,668,948
	70	8	9	75,000	102,041	(27,041)	5,695,989
F410	71	11	9	75,000	102,528	(27,528)	5,723,517
	72	2	10	75,000	103,023	(28,023)	5,751,541
	73	5	10	75,000	103,528	(28,528)	5,780,068
	74	8	10	75,000	104,041	(29,041)	5,809,109
F411	75	11	10	75,000	104,564	(29,564)	5,838,673
	76	2	11	75,000	105,096	(30,096)	5,868,770
	77	5	11	75,000	105,638	(30,638)	5,899,407
	78	8	11	75,000	106,189	(31,189)	5,930,597
F412	79	11	11	75,000	106,751	(31,751)	5,962,348
	80	2	12	75,000	107,322	(32,322)	5,994,670
	81	5	12	100,000	107,904	(7,904)	6,002,574
F413	82	8	12	100,000	108,046	(8,046)	6,010,620
	83	11	12	100,000	108,191	(8,191)	6,018,811
	84	2	13	100,000	108,339	(8,339)	6,027,150
	85	5	13	100,000	108,489	(8,489)	6,035,639
	86	8	13	100,000	108,641	(8,641)	6,044,280
F414	87	11	13	100,000	108,797	(8,797)	6,053,077

*Handwritten:* P. (1,896.89)  
I. 3,909.09  
0.01, 0.12, 0.14

LEASE Scenario 2

				INTEREST	PRINCIPAL			
	88	2	14	100,000	103,955	(8,955)	6,062,033	7,579,984
	89	5	14	100,000	103,117	(9,117)	6,071,149	7,689,100
	90	8	14	100,000	102,281	(9,281)	6,080,430	7,798,381
	91	11	14	100,000	101,448	(9,448)	6,089,878	7,907,829
FY15	92	2	15	100,000	100,618	(9,618)	6,099,495	8,017,447
	93	5	15	100,000	100,791	(9,791)	6,109,286	8,127,237
	94	8	15	100,000	100,967	(9,967)	6,119,253	8,237,205
FY16	95	11	15	100,000	110,147	(10,147)	6,129,400	8,347,351
	96	2	16	100,000	110,329	(10,329)	6,139,729	8,457,680
	97	5	16	100,000	110,515	(10,515)	6,150,244	8,568,196
	98	8	16	100,000	110,704	(10,704)	6,160,949	8,678,900
FY17	99	11	16	100,000	110,897	(10,897)	6,171,846	8,789,797
	100	2	17	100,000	111,093	(11,093)	6,182,939	8,900,890
	101	5	17	131,250	111,293	19,957	6,162,982	9,012,183
	102	8	17	131,250	110,934	20,316	6,142,666	9,123,117
FY18	103	11	17	131,250	110,568	20,682	6,121,984	9,233,685
	104	2	18	131,250	110,196	21,054	6,100,929	9,343,880
	105	5	18	131,250	109,817	21,433	6,079,496	9,453,697
	106	8	18	131,250	109,431	21,819	6,057,677	9,563,128
FY19	107	11	18	131,250	109,038	22,212	6,035,465	9,672,166
	108	2	19	131,250	108,638	22,612	6,012,853	9,780,805
	109	5	19	131,250	108,231	23,019	5,989,835	9,889,036
	110	8	19	131,250	107,817	23,433	5,966,402	9,996,853
FY20	111	11	19	131,250	107,395	23,855	5,942,547	10,104,248
	112	2	20	131,250	106,966	24,284	5,918,263	10,211,214
	113	5	20	131,250	106,529	24,721	5,893,542	10,317,743
	114	8	20	131,250	106,084	25,166	5,868,375	10,425,827
FY21	115	11	20	131,250	105,631	25,619	5,842,756	10,529,457
	116	2	21	131,250	105,170	26,080	5,816,676	10,634,627
	117	5	21	131,250	104,700	26,550	5,790,126	10,739,327
	118	8	21	131,250	104,222	27,028	5,763,098	10,843,549
FY22	119	11	21	131,250	103,736	27,514	5,735,584	10,947,285
	120	2	22	131,250	103,241	28,009	5,707,575	11,050,526
	121	5	22	187,500	102,736	84,764	5,622,811	11,153,262
	122	8	22	187,500	101,211	86,289	5,536,521	11,254,473
FY23	123	11	22	187,500	99,657	87,843	5,448,679	11,354,130
	124	2	23	187,500	98,076	89,424	5,359,255	11,452,206
	125	5	23	187,500	96,467	91,033	5,268,222	11,548,673
	126	8	23	187,500	94,828	92,672	5,175,550	11,643,501
FY24	127	11	23	187,500	93,160	94,340	5,081,210	11,736,661
	128	2	24	187,500	91,462	96,038	4,985,171	11,829,122
	129	5	24	187,500	89,733	97,767	4,887,404	11,917,856
	130	8	24	187,500	87,975	99,527	4,787,878	12,005,829
FY25	131	11	24	187,500	86,182	101,318	4,686,559	12,092,011
	132	2	25	187,500	84,358	103,142	4,583,418	12,176,369
	133	5	25	187,500	82,502	104,998	4,478,419	12,258,870
	134	8	25	187,500	80,612	106,888	4,371,531	12,339,482
FY26	135	11	25	187,500	78,688	108,812	4,262,718	12,418,169
	136	2	26	187,500	76,729	110,771	4,151,947	12,494,898

LEASE Scenario 2

			INTEREST	PRINCIPAL			
137	5	26	187,500	74,735	310,764	112,765	4,039,182
138	8	26	187,500	72,705		114,795	3,924,387
139	11	26	187,500	70,639		116,861	3,807,526
140	2	27	187,500	68,535	279,273	118,965	3,688,562
141	5	27	221,250	66,394		154,856	3,533,706
142	8	27	221,250	63,607		157,643	3,376,063
143	11	27	221,250	60,769		160,481	3,215,582
144	2	28	221,250	57,880	237,196	163,370	3,052,212
145	5	28	221,250	54,940		166,310	2,885,902
146	8	28	221,250	51,946		169,304	2,716,598
147	11	28	221,250	48,899		172,351	2,544,247
148	2	29	221,250	45,796	142,479	175,454	2,368,794
149	5	29	221,250	42,638		178,612	2,190,182
150	8	29	221,250	39,423		181,827	2,008,355
151	11	29	221,250	36,150		185,100	1,823,255
152	2	30	221,250	32,819	137,815	188,431	1,634,824
153	5	30	221,250	29,427		191,823	1,443,001
154	8	30	221,250	25,974		195,276	1,247,725
155	11	30	221,250	22,459		198,791	1,048,934
156	2	31	221,250	18,881	42,552	202,369	846,565
157	5	31	221,250	15,238		206,012	640,553
158	8	31	221,250	11,530		209,720	430,833
159	11	31	221,250	7,755	235	213,495	217,338
160	2	32	221,250	3,912		217,338	0

total 16,500,000 13,517,951 2,982,049

Current capital payment 0  
 Non Current capital payment 2,982,049  
 Total capital payment 2,982,049