

performed at Licensee's sole risk, cost, and expense. Pursuant to the Escrow Agreement, Licensee shall pay the reasonable fees, costs, and expenses already incurred by Lessor (including those incurred by Lessor) in engaging attorneys, engineers and architects to (i) negotiate the Agreement and review the Protection Plans; and (ii) enforce Lessor's rights under this Agreement; and (iii) review any amendments or changes to the Protection Plans or this Agreement, and (iv) evaluate damage to the Adjacent Premises caused by Licensee in connection with the Project, including the remediation of such damage. Licensee shall reimburse Lessor for such costs, expenses, and fees incurred prior to the execution of this Agreement at the same time the Agreement is executed, and for fees incurred thereafter, pursuant to the Escrow Agreement between the parties. Licensee to pay such fees and expenses, including legal fees and engineering costs, pursuant to the Escrow Agreement between the parties.

4. TERMINATION. In the event that Licensee materially breaches this Agreement, which shall include, without limitation, (i) Licensee's failure to comply with any material provision in this Agreement requiring a payment to Lessor; (ii) Licensee's failure to timely cure any damages pursuant to Paragraph 11; (iii) the installation and maintenance by Licensee of any of Protections in violation of this Agreement; (iv) the lapse of time for any period of time of any insurance coverage required hereunder; (v) Licensee's failure to pay directly or reimburse Lessor pursuant to Paragraph 7 above and/or (vi) any access by Licensee to the **Charles Henry Building** which is not contemplated by this Agreement and not agreed to by the Parties, the licenses provided by Lessor in this Agreement may be revoked upon ten (10) business days' written notice of such material breach by Lessor to Licensee unless Licensee cures such material breach within the notice period, or, in the event such breach cannot reasonably be cured within such notice period, Licensee commences the cure of such material breach within such notice period and diligently prosecutes such cure until completion thereof and cures such material breach no later than ten (10) business days after the expiration of the notice period. In the event that Lessor terminates this Agreement pursuant to this paragraph, Lessor shall, upon three (3) business days additional written notice, be entitled to remove any of the Licensee's Protections if Licensee fails to do so within fifteen (15) days after expiration of the cure period, and Licensee shall reimburse Lessor for all of its reasonable costs, fees and expenses relating to such removal of the Protections.

5. COMPLIANCE WITH LAW. The setting in place, maintenance and removal of the Protections shall be performed in accordance with all applicable laws, ordinances and building code provisions.

6. INSURANCE. Prior to Licensee's Contractor entering the **Charles Henry Building**, Licensee shall furnish Lessor with certificates of insurance evidencing: (i) Licensee's Contractor's current insurance coverage, for commercial general liability insurance in amounts no less than \$5,000,000 per occurrence for a single event, \$5,000,000 per occurrence in the aggregate, excess or umbrella liability coverage of \$15,000,000 per occurrence and in the aggregate, and Worker's Compensation and Disability insurance as required by law, which names Lessor as an additional insured, and (ii) **X11 FIRST AVE LLC**'s current insurance coverage, for commercial general liability insurance in amounts no less than \$5,000,000 per occurrence for a single event, \$5,000,000 per occurrence in the aggregate, and excess or umbrella liability coverage of \$15,000,000 per occurrence and in the aggregate, which names

Licensor as an additional insured. Licensee shall cause all such coverage to remain in full force and effect for the entire period during which access to the **Charles Henry Building** is exercised under this Agreement, and for the entire period during which the Protections are installed, remain on, and removed from the **Charles Henry Building**. Each of Licensee's subcontractors shall be required to carry commercial general liability insurance in amounts no less than \$5,000,000 per occurrence for a single event, \$5,000,000 per occurrence in the aggregate, excess or umbrella liability coverage of \$15,000,000 per occurrence and in the aggregate, and Worker's Compensation and Disability insurance as required by law, which names Licensor as an additional insured. Prior to any of Licensee's subcontractors entering the **Charles Henry Building**, Licensee shall furnish to Licensor a copy of such subcontractor's certificates of insurance as required hereunder. Failure to provide Licensor with any insurance certificates shall not relieve Licensee of its obligation to provide insurance in accordance with this Agreement. Rejected certificates of subcontractors shall be corrected as necessary and shall be resubmitted until approved. Licensor shall act in good faith to promptly review any certificates of subcontractors submitted by Licensee and to promptly acknowledge in writing its acceptance or the need for correction, specifying the correction needed.

g. Where applicable, the aforesaid insurance policies shall: (i) include a per project aggregate endorsement; (ii) waive any rights of subrogation against the "Additional Insureds" (defined herein), and the policy terms shall not exclude or limit coverage due to the waiver of subrogation; (iii) be deemed primary and non-contributory vis-à-vis any insurance maintained by the Additional Insureds and/or self-insurance carried by them, including any deductibles or retentions in policies carried by the additional insureds; (iv) not contain a "co-employee exclusion" that excludes coverage for injury to any employee caused by the actions of any other employee; (v) be endorsed so that the policies cannot be cancelled, non-renewed, changed/materially altered, or allowed to expire until at least thirty (30) days prior written notice has been given to the Additional Insureds; and (vi) not contain a third-party oversuit exclusion or otherwise limit coverage for claims relating to violation of the New York Labor Law including but not limited to New York Labor Law § 240 and §241. It is the intention of the Parties that any insurance obtained by the Additional Insureds shall be excess to all insurance obtained by Licensee and the Licensee Parties.

h. Where applicable, the insurance policies maintained by Licensee in accordance with Agreement shall not contain the following exclusions or policy limitations: (i) third party action over general liability exclusion (also known as action over exclusion or injury to employees exclusion); (ii) Labor Law exclusions, including but not limited to New York Labor Law §§ 240 and 241; (ii) **INSURANCE**. Prior to Licensee's Contractor entering the **Charles Henry Building**, Licensee shall furnish Licensor with certificates of insurance evidencing: (i) Licensee's Contractor's current insurance coverage, for commercial general liability insurance in amounts no less than \$5,000,000 per occurrence for a single event, \$5,000,000 per occurrence in the aggregate, excess or umbrella liability coverage of \$15,000,000 per occurrence and in the aggregate, and Worker's Compensation and Disability insurance as required by law, which names Licensor as an additional insured, and (ii) **X11 FIRST AVE LLC**'s current insurance coverage, for commercial general liability insurance in amounts no less than \$5,000,000 per occurrence for a single event, \$5,000,000 per occurrence in the aggregate, and excess or umbrella liability coverage of \$15,000,000 per occurrence and in the aggregate, which

names Lessor as an additional insured. Licensee shall cause all such coverage to remain in full force and effect for the entire period during which access to the **Charles Henry Building** is exercised under this Agreement, and for the entire period during which the Protections are installed, remain on, and removed from the **Charles Henry Building**. Each of Licensee's subcontractors shall be required to carry commercial general liability insurance in amounts no less than \$5,000,000 per occurrence for a single event, \$5,000,000 per occurrence in the aggregate, excess or umbrella liability coverage of \$15,000,000 per occurrence and in the aggregate, and Worker's Compensation and Disability insurance as required by law, which names Lessor as an additional insured. Prior to any of Licensee's subcontractors entering the **Charles Henry Building**, Licensee shall furnish to Lessor a copy of such subcontractor's certificates of insurance as required hereunder. Failure to provide Lessor with any insurance certificates shall not relieve Licensee of its obligation to provide insurance in accordance with this Agreement. Rejected certificates of subcontractors shall be corrected as necessary and shall be resubmitted until approved. Lessor shall act in good faith to promptly review any certificates of subcontractors submitted by Licensee and to promptly acknowledge in writing its acceptance or the need for correction, specifying the correction needed.

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a. Where applicable, the aforesaid insurance policies shall: (i) include a per project aggregate endorsement; (ii) waive any rights of subrogation against the "Additional Insureds" (defined herein), and the policy terms shall not exclude or limit coverage due to the waiver of subrogation; (iii) be deemed primary and non-contributory vis-à-vis any insurance maintained by the Additional Insureds and/or self-insurance carried by them, including any deductibles or retentions in policies carried by the additional insureds; (iv) not contain a "co-employee exclusion" that excludes coverage for injury to any employee caused by the actions of any other employee; (v) be endorsed so that the policies cannot be cancelled, non-renewed, changed/materially altered, or allowed to expire until at least thirty (30) days prior written notice has been given to the Additional Insureds; and (vi) not contain a third-party oversuit exclusion or otherwise limit coverage for claims relating to violation of the New York Labor Law including but not limited to New York Labor Law § 240 and §241. It is the intention of the Parties that any insurance obtained by the Additional Insureds shall be excess to all insurance obtained by Licensee and the Licensee Parties. Where a) cross-suit liability exclusions for claims between named insured and additional insureds; (iv) exclusions and/or limitations for the work of the contractor's subcontractor (also known as subcontractor's warranty provision) or independent contractors; (v) New York Operations and Work Exclusion and/or Specified Operations Exclusion (policy must include coverage in the City and State where the Work is performed); (vi) contractual liability exclusions or limitations; (vii) fellow employee exclusions or employers liability exclusions; (viii) physical abuse and/or molestation exclusion; (ix) height or exterior height limitations or exclusion; (x) gravity related injuries; (xi) and any other exclusion or policy limitation that would otherwise void the coverage for the Additional Insureds in connection with the Project.

b. Simultaneously upon the execution of this Agreement, the Licensee and Licensee Parties shall deliver to Lessor (i) a Certificate of Insurance and the New York Construction Addendum thereto for the above coverages in form and substance satisfactory to Lessor; and (ii) copies of the policies referenced above, and (iii) scheduled policy

endorsements specifically naming the Additional Insureds, using policy forms reasonably acceptable to Lessor.

c. Licensee and the Licensee Parties shall immediately notify Lessor of (i) any termination, modification, or expiration of the aforementioned insurance policies and (ii) of any notice of potential or pending termination, modification or expiration of any policy upon receipt of notice from the insurer; however, nothing contained herein shall be deemed to waive the Additional Insureds' right to timely notice of a policy modification, termination or expiration directly from an insurer under the terms of the policy at issue. Further, the Lessor's silence regarding the non-compliance of insurance required by this Agreement shall not constitute acquiescence to such terms or a waiver of these insurance requirements.

d. All of the aforesaid primary and umbrella policies shall name Lessor as additional insured (the "Additional Insured").

7. **DAMAGE AND INJURY.** Licensee shall perform the Work with all reasonable care and shall be responsible for any damage, loss or injury to any real or personal property and for injury to any person arising out of or in connection to the placement, maintenance and removal of the Protections, unless such damage or loss is caused exclusively by the gross negligence or willful misconduct of Lessor, Lessor's Related Parties or Lessor's Designee. Any alleged damage, loss or injury shall be promptly and specifically identified by Lessor in writing to Licensee.

3. **INDEMNITY.** To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless Lessor from and against any and all claims, losses, demands, suits, actions, causes of action, judgments, damages, liabilities, violations, fines, penalties, costs, expenses and fees, including, without limitation, reasonable attorneys' fees and disbursements, arising out of, relating to, or resulting from (i) the performance of the Project or the Protective Measures; (ii) access to the Adjacent Premises by Licensee and/or the Licensee Parties; (iii) the repair, replacement or restoration of the Adjacent Premises, including, without limitation, land, landscaping, plants, foliage, etc., due to any damage caused by the Project; (iv) Licensee's breach of this Agreement; (v) the negligence or willful misconduct Licensee or the Licensee Parties; or (vi) any failure by Owner or the Licensee Parties to comply with any Applicable Laws. The instant indemnification extends to both first party and third-party claims and covers personal injury and property damage claims, as well as breach of contract claims. Licensee is liable for any interference by the Licensee Parties with the use or enjoyment of the Lessor's property by the Lessor, its tenants or other occupants (this includes, without limitation, loss of rents, tenants withholding rental payments, or other claims including related legal fees by tenants). The obligations set forth in this Paragraph shall survive the expiration or earlier termination of the Agreement. Licensee shall be obligated to reimburse Lessor for any cost, fees and expenses incurred in enforcing Licensee's obligations hereunder, including reasonable attorneys' fees incurred.

8. **CLEAN-UP.** Licensee shall keep the **Charles Henry Building** reasonably free from accumulation of rubbish or debris caused by the Licensee's Work. At the completion of