

premises or any part thereof or upon Lessor's interest in the premises, other than the Mortgage (except that portion, if any, of the lien thereof for which any insurer shall be legally subrogated under any policy of insurance required under Section 7.1), the Assignment and Permitted Encumbrances.

12.3. *Permitted Contests.* Notwithstanding the foregoing, Lessee at its expense may contest (in the case of any item of substantial importance after prior written notice to Lessor and the Mortgagee) by appropriate legal proceedings conducted in good faith and with due diligence the amount or validity or application, in whole or in part, of any lien, encumbrance or charge referred to in Section 12.2, or any requirement referred to in Section 12.1 and in the event of such contest may defer compliance with any of the foregoing, *provided*, that (a) neither the Property affected nor any part thereof would be in any danger of being forfeited or lost, (b) in the case of a requirement referred to in Section 12.1, neither Lessor, Lessee nor the Mortgagees would be in any danger of civil (except Lessee's liability for interest) or criminal liability for failure to comply therewith and (c) Lessee shall have furnished such security, if any, as may be required in the proceedings.

12.4. *Utility Charges, etc.* Lessee will pay or cause to be paid all charges imposed on Lessor or Lessee for all public or private utility services and all sprinkler-system and protective services at any time rendered to or in connection with the premises or any part thereof.

12.5. *No Counterclaim, Abatement, etc.* This Lease shall not terminate (except, with respect to the particular Property or Properties involved, as provided in Sections 6.3, 9.2, 10.1, 12.6, 14.2, 17.1, 17.2, 17.3 and 17.4), the fixed rent and the additional rent hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and without abatement, suspension, deferment, diminution or reduction (except as provided in Section 3.2), and the obligations and liabilities of Lessee under this Lease shall not be affected for any reason whatsoever, including, without limiting in any way the generality of the foregoing, (a) any damage to or destruction of the premises or any part thereof, (b) any restriction or prohibition or prevention of or interference with any use of the premises or any

part thereof or any forfeiture or other loss of the premises or any part thereof, (c) any Taking or prospective Taking of the premises or any part thereof or any change of grade affecting the same, (d) any eviction or prospective eviction from the premises or any part thereof by title paramount or by termination of any of the Ground Leases or in consequence of the act of any governmental authority, the discontinuance of the possession or use of any appurtenances to any Property or the improvements thereon, such as street vaults, outside of the boundaries of such Property, or (e) any failure by Lessor to perform any of its covenants herein, and Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease or the premises or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of fixed rent or such additional rent on account of any such occurrence. Lessee is fully familiar with, and accepts the physical condition of the premises and the buildings, improvements and building service equipment thereof. Subject to Article 8, Lessee accepts the present title to the premises, subject to any easements, encroachments, claims, liens, charges or encumbrances, whether or not stated herein and whether now or hereafter attaching thereto. Lessor has made no representations of whatever nature in connection with the condition or title of the premises or of the buildings, improvements or building service equipment thereof, and Lessor shall not be liable for any latent or patent defect therein.

12.6. *Lessee's Obligations In Respect of Diminution of Fixed Rent; Purchase of Property.* Anything in this Lease to the contrary notwithstanding, if for any reason the fixed rent under this Lease shall be diminished or subject to diminution through attachment, encumbrance, claim, demand, lien, levy, order, charge, process or other cause, or shall be subject to withholding or diminution at the source, by reason of any income or other taxes, assessments, expenses, indebtedness, obligations or liabilities of any character, whether or not valid, or if the payment of the fixed rent when due and payable or the use or application of the rentals by the Lessor or the Mortgagee shall be delayed, hindered, prevented or adversely affected, or if the Mortgagee or the Noteholders shall be subject to any liability or obligation to refund or pay over the fixed rent, or the Installment Payments