

PROJECT AGREEMENT

by and among

**NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY**

and

THE HEARST CORPORATION

and

HEARST COMMUNICATIONS, INC.

Dated as of June 1, 2003

New York City Industrial Development Agency
The Hearst Corporation Project

WINSTON & STRAWN
File No. 90570.119

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PROJECT AGREEMENT

PROJECT AGREEMENT (the "Agreement"), made and entered into as of June 1, 2003, by and among NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and THE HEARST CORPORATION, a corporation organized and existing under the laws of the State of Delaware (the "Parent") having its principal office at 959 Eighth Avenue, New York, New York 10019, and HEARST COMMUNICATIONS, INC., a corporation organized and existing under the laws of the State of New York, having an office at 959 Eighth Avenue, New York, New York 10019 (the "Company", together with the Parent, being the "Obligors" and each an "Obligor"), parties of the second part (capitalized terms used but not defined in the recitals to this Agreement shall have the respective meanings assigned such terms in Appendix E hereto):

WITNESSETH:

WHEREAS, (i) by deed delivered on the Lease Commencement Date from the Company to the Agency, the Agency has acquired title to the Agency Owned Facility Realty, (ii) pursuant to the Lease Agreement (959 Eighth Avenue—PILOT Premises), the Agency has leased the Agency Owned Facility Realty to the Obligors and (iii) pursuant to the PILOT Agreement among the Agency, the Obligors and the PILOT Trustee, the Company has agreed to make certain payments in lieu of real estate taxes ("PILOT Payments") with respect to the Agency Owned Facility Realty;

WHEREAS, pursuant to the Company Lease from the Hearst Group to the Agency, the Hearst Group has (i) as of the Lease Commencement Date, leased to the Agency the Company—Project Premises described in Exhibit A-1 thereto, and (ii) as of the PILOT Termination Date, leased to the Agency the Company—Project Premises described in Exhibit A-2 thereto; and

WHEREAS, pursuant to the Lease Agreement (959 Eighth Avenue), the Agency has leased the Company Owned Facility Realty to the Obligors; and

WHEREAS, pursuant to the Lease Agreement (959 Eighth Avenue—PILOT Premises), the Agency has leased the Agency Owned Facility Realty to the Obligors; and

WHEREAS, pursuant to the Lease Agreement (Company—Project Premises), the Agency has leased the Company—Project Premises to the Hearst Group; and

WHEREAS, pursuant to the Equipment Lease Agreement, the Agency has leased the Project Property (Facility Equipment) to the Obligors; and

WHEREAS, the Agency and the Obligors have agreed that the Obligors and the Eligible Affiliates will receive the benefit of certain Energy Costs Savings, Sales Tax Savings, Mortgage Recording Tax Savings and Real Property Tax Savings in connection with the Project from time to time as and to the extent provided herein; and

WHEREAS, the Obligors and the Agency wish to set forth certain agreements between them;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 **Definitions.** Terms used herein, unless otherwise defined herein, shall have the meanings assigned to them in the Lease Agreement or in Appendix E hereto.

Section 1.02 **Construction.** In this Agreement, unless the context otherwise requires:

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

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

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

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

(e) Except as otherwise provided in this Agreement, all approvals, consents and acceptances required to be given or made by any Person or party hereunder shall be at the sole discretion of the Person or party whose approval, consent or acceptance is required.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.01 **Representations and Warranties by the Obligors.** In order to induce the Agency to enter into those of the Project Documents to which the Agency is to be a party, including this Agreement, the Obligors hereby represents and warrants to the Agency as follows:

(a) The Obligors were considering relocating certain of its operations to a location outside of the City, with the resultant loss of employment in the City; and the availability of Agency financing assistance and related Agency benefits for the Project was critical in

narrowing the cost gap between remaining in the City and relocating outside of the City, thereby inducing the Obligor to decide to retain its employees and related operations within the City and to proceed with the Project.

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

(c) Each representation or warranty made by or on behalf of such Obligor in the application and related materials submitted to the Agency for approval of the Project, or by the Obligor in this Agreement and in any other Project Document to which such Obligor is a party, is true, correct and complete in all material respects as of the date made, to the best knowledge of the person providing such information. Each representation or warranty made by the Obligor in any report, certificate, financial statement or other instrument furnished pursuant to this Agreement and any other Project Document shall be true, correct and complete in all material respects as of the date made.

(d) The Project will be designed, and the operation of the Project Property will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

(e) The Obligor intends to operate the Project Property or cause the Project Property to be operated in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

(f) The transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs and undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State

(g) As of November 13, 2001, the number of Eligible Employees employed by the Obligor within the City was 1790. As of May 31, 2003, the number of Eligible Employees within the City was 1,824, consisting of 1,829 Full-time Employees and one (1) Full-time Equivalent Employee.

(h) The Obligor represents that the existing building located at 959 Eighth Avenue, New York, New York contains 204,638 gross square feet. In order to provide a Benefit that is equivalent to the ICIP renovation benefit, if the ICIP Benefit is not available as-of-right, the Agency Owned Facility Realty shall be comprised of 130% of such area, or 266,029 gross square feet. The Obligor represents that based on current construction plans, the 266,029 gross square feet would comprise the entire gross floor area of the Building from its basement to a portion of the 14th floor, to a height of 178.50 feet. The Obligor acknowledges that PILOT benefits shall neither extend to any area in the Building above a height of 178.50 feet, nor to any area of the Building in excess of 266,029 gross square feet.

(i) The aggregate total square footage of the Agency Owned Facility Realty and the Company Owned Facility Realty will be approximately 850,000 gross square feet.

(j) There is no existing violation against the Project Premises filed by any court or administrative agency that may prohibit the use or operation of the Project Premises for its intended purposes which an Obligor has not agreed to remove or made arrangements to have removed and satisfied of record.

(k) Except as otherwise provided in Section 4.01 hereof or Section 9.2 of the Lease Agreement, no Person other than the Obligors and/or the Eligible Affiliates will be in occupancy or possession of any portion of the Project Property.

(l) Neither Obligor nor any Affiliate thereof is a Prohibited Person.

Section 2.02 **Representations and Warranties by the Parent.** In order to induce the Agency to enter into those of the Project Documents to which the Agency is to be a party, including this Agreement, the Parent hereby represents and warrants to the Agency as follows:

(a) The Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of incorporation or by-laws, and has the corporate power and authority to own its property and assets, to carry on its business as now being conducted by it, and to execute, deliver and perform this Agreement and each other Project Document to which it is a party.

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

(c) Assuming due and proper execution by the Agency, this Agreement and each of the other Project Documents to which the Parent is a party constitute the legal, valid and binding obligations of the Parent enforceable against the Parent in accordance with their respective terms, except as such enforceability may be limited by (and subject to) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights from time to time in effect and by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) There is no action or proceeding pending or, to the best knowledge of the Parent and its directors and officers having reason to be familiar with any such action or proceeding, threatened by or against the Parent by or before any court or administrative agency that might adversely affect its ability to perform its obligations under this Agreement and under the Project Documents; and all authorizations, consents and approvals of governmental bodies or agencies

required to be obtained by the Parent as of the Lease Commencement Date in connection with the execution and delivery of this Agreement and the Project Documents to which it is party or in connection with the performance of its obligations hereunder or thereunder have been obtained.

Section 2.03 **Representations and Warranties by the Company.** In order to induce the Agency to enter into those of the Project Documents to which the Agency is to be a party, including this Agreement, the Company hereby represents and warrants to the Agency as follows:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, is duly qualified to do business and in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of incorporation or by-laws, and has the corporate power and authority to own its property and assets, to carry on its business as now being conducted by it, and to execute, deliver and perform this Agreement and each other Project Document to which it is a party.

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

(c) Assuming due and proper execution by the Agency, this Agreement and each of the other Project Documents to which the Company is a party constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by (and subject to) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights from time to time in effect and by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) There is no action or proceeding pending or, to the best knowledge of the Company and its directors and officers having reason to be familiar with any such action or proceeding, threatened by or against the Company by or before any court or administrative agency that might adversely affect its ability to perform its obligations under this Agreement and under the Project Documents; and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Company as of the Lease Commencement Date in connection with the execution and delivery of this Agreement and the Project Documents to which it is party or in connection with the performance of its obligations hereunder or thereunder have been obtained.

Section 2.04 **Representations and Warranties by Agency.** In order to induce the Obligors to enter into the Project Documents the Agency represents and warrants that:

(a) It is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and validly existing under the laws of the State, and it is authorized and empowered to enter into the transactions contemplated in this Agreement and has taken all requisite corporate action to carry out its obligations hereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement and the performance by the Agency of all of its obligations under this Agreement.

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

(c) Assuming due and proper execution by the Obligors, this Agreement and each other Project Document to which the Agency is a party constitute the legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) There is no action or proceeding pending or, to the best knowledge of the Agency and of its directors and officers having reason to be familiar with any such action or proceeding, threatened by or against the Agency by or before any court or administrative agency that might adversely affect its ability to perform its obligations under this Agreement and under the Project Documents; and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Agency as of the date hereof in connection with the execution and delivery of this Agreement and the Project Documents to which it is party or in connection with the performance of its obligations hereunder or thereunder have been obtained.

Section 2.05 **Acknowledgement of Consideration.** It is acknowledged by the Obligors that the Agency will be providing the Benefits specified in the Project Documents principally upon the assumption and expectation that, subject to the terms and conditions set forth herein and in the other Project Documents, during the Term of this Agreement the Obligors will (i) occupy the Project Premises (Facility Improvements), (ii) maintain its occupancy of the Project Building until the Project Termination Date, subject to the Obligors' right to sublet, leave vacant or otherwise not occupy up to thirty percent (30%) of the rentable square footage (thereof, (iii) maintain employment or caused to be maintained of at least 1,790 Eligible Employee in the City (iv) maintain the Headquarters and Designated Operations and Facilities in the City and (v) comply with its other covenants and agreements contained herein, and the Obligors and the Agency acknowledge and agree that all such obligations, covenants and agreements set forth in clauses (i) through (v) above are of essential importance to the Agency and are the principal basis upon which the Agency is providing and will hereafter provide the above-mentioned benefits.

**ARTICLE III
SALES TAX EXEMPTIONS**

Section 3.01 **The Project.** (a) As promptly as reasonably practicable after the Lease Commencement Date, the Obligors shall proceed on behalf of and as agent for the Agency (y) with the making of Facility Improvements to the Project Premises (Facility Improvements), and (z) with the leasing, subleasing, licensing, sublicensing, maintenance, repair and replacement of the Facility Equipment, and the Leased Personalty at the Approved Company Locations, all from time to time and in the ordinary course of its respective businesses, and all to constitute part of the Project. The Agency and the Obligors collectively acknowledge and agree that the nature of the Facility Equipment, the Facility Improvements, the Maintenance Contracts and the Leased Personalty may change (and be replaced and repaired) from time to time over the term of this Agreement to reflect amendments, modifications, replacements, accessions to and supplements made thereto. All alterations, substitutions, replacements or repairs of (or additions to) any item of Project Property shall be deemed to constitute a part of the Project Property, subject to the provisions of the applicable Lease Agreement, and title to all such alterations, substitutions, replacements, additions and repairs (and title to all items of Project Property purchased or leased by the Obligors as agent for the Agency) during the term of this Agreement shall automatically vest in the Agency upon payment therefor.

(b) Each lease or license (or sublease or sublicense) of Leased Personalty shall be a Qualified Personalty Lease, and each Maintenance Contract shall only be for Qualified Maintenance.

Section 3.02 **Special Provisions, Contracts, Leases and Purchase Orders.**

(a) The Obligors covenant and agree that each lease, sublease, license, sublicense, contract, invoice, bill or purchase order entered into by an Obligor as agent for the Agency in connection with the Project shall include the following language (the "Requisite Contract Language"), through an attached rider, by incorporation by reference or otherwise, in substantially the below form (provided, however, that to the extent that the preparation of any bill or invoice shall not be within the reasonable control of such Obligor, such Obligor shall use its reasonable good faith efforts (including, at a minimum, provision of the Requisite Contract Language to the vendor, lessor or contractor, as the case may be) to cause the inclusion therein of the Requisite Contract Language):

[IF WITH RESPECT TO FACILITY IMPROVEMENTS]

"This [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] is being entered into by or on behalf of [The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and/or certain of its affiliates] and/or [Hearst Communications, Inc., a corporation organized and existing under the laws of the State of New York, and/or certain of its affiliates] (collectively the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the

Agency for the Agent consisting of the acquisition from time to time of construction materials and tangible personal property to be used by the Agent to make capital improvements to and to renovate and upgrade from time to time the Project Premises described in the attached Letter of Authorization for Sales Tax Exemption (the above being part of the "Project").

[OR, IF WITH RESPECT TO FACILITY EQUIPMENT]

"This [purchase order, bill of sale, invoice, contract, lease, is being entered into by or on behalf of [The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and/or certain of its affiliates] and/or [Hearst Communications, Inc., a corporation organized and existing under the laws of the State of New York, and/or certain of its affiliates], as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting of the acquisition of machinery, equipment, furniture, fixtures and other tangible personal property (including computer hardware and software, but excluding ordinary office supplies such as pencils, paper clips and paper) to be used exclusively at Approved Company Locations (as referred to in the attached Letter of Authorization for Sales Tax Exemption) (the above being part of the "Project").

[AND, IN EITHER CASE, ALL OF THE FOLLOWING]

The sales tax exemption provided with respect to this [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] shall only be available for the Project, and the vendor, lessor or contractor so acknowledges and covenants to the same.

This [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. The Agency may assign its interest in this [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] to the Agent without the consent of any other person (but not prior to the termination of the Project).

The vendor, lessor or contractor represents and warrants that such party is not a Prohibited Person.

The term "Prohibited Person", as used hereinabove, means: (i) any person (A) that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material

written agreement with the City or the Agency, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a person that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, unless such default or breach has been waived in writing by the City or the Agency, respectively; (ii) any person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure; (iii) any government, or any person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof~ or (iv) any government, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended).”

(b) If an Obligor shall fail to include or incorporate by reference the Requisite Contract Language in substantially the above form in any such lease, sublease, license, sublicense, contract, invoice, bill or purchase order (subject to the proviso set forth in the first sentence of this Section 3.02), such lease, sublease, license, sublicense, contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the Benefits able to be conferred by the Agency, and the Obligors shall not claim any Sales Tax Savings with respect thereto. Reference is made to the provisions of Section 3.07 hereof in the event that any Obligor shall enjoy any such Sales Tax Savings but shall have failed to include or attach or incorporate by reference the Requisite Contract Language in substantially the above form or shall have failed to use good faith efforts to cause inclusion of the Requisite Contract Language as and when provided in the first sentence of this Section 3.02.

Section 3.03 **Delivery of Sales Tax Letter.** Concurrently with the execution of this Agreement, the Agency shall make available to the Obligors the Sales Tax Letter.

Section 3.04 Effectiveness of and Renewal Sales Tax Letter.

(a) The Sales Tax Letter shall be dated the Lease Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the Project Termination Date, (3) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof, (4) the termination of the Lease Agreements, or (5) such time as the amount of Sales Tax Savings availed of by the Obligors pursuant to the Sales Tax Letter, shall in the aggregate exceed the Maximum Sales Tax Savings Amount; subject, however, to an annual confirmation of the effectiveness of the Sales Tax Letter by an Authorized Representative of the Agency as provided below. The Agency shall, as of the commencement date of the next scheduled Annual Period as set forth in Exhibit B to the Sales Tax Letter, execute the annual confirmation of the Sales Tax Letter, provided that the Obligors shall have surrendered the Sales Tax Letter to the Agency for such confirmation not sooner than thirty (30) days nor later than five (5) Business Days prior to such commencement date, and, if so timely surrendered, the Agency shall provide such annual confirmation of the Sales Tax Letter unless:

(i) (A) the Agency shall no longer have a leasehold interest in the Project Premises (Facility Improvements) or the Company Lease, or the Lease Agreements shall have terminated (in either of which events the Sales Tax Letter shall no longer be available for Facility Improvements with respect to the Project Premises (Facility Improvements) and will be modified accordingly);

(B) the Agency shall not longer have any ownership or leasehold interest of the Agency in any property constituting Facility Equipment or Leased Personalty, or the Equipment Lease Agreement shall have terminated, in either of which events the Sales Tax Letter shall be (1) terminated and surrendered for cancellation, or (2) if the Agency shall then retain a leasehold or fee interest in any Project Property (Facility Improvements), the Sales Tax Letter will be modified accordingly, or

(ii) an Obligor shall be in default of any obligation hereunder, which defaults shall not have been cured within thirty (30) days after the receipt by such Obligor from the Agency of a written notice specifying the nature of such default (or if by reason of the nature of such default the same can be remedied, but not within said thirty (30) days, such Obligor fails to proceed with reasonable diligence after receipt of such notice to commence to cure the same or fails to continue with reasonable diligence their efforts to cure the same and fails to cure the same within one hundred eighty days (180)), or

(iii) an Obligor shall be in default of any obligation under;

(A) the Lease Agreement, which default shall not have been cured within thirty (30) days after the receipt by such Obligor from the Agency of a written notice specifying such default (or if by reason of the nature of such default the same can be remedied, but not within said thirty (30) days, such Obligor fails to proceed with reasonable diligence after receipt of such notice to commence to cure the same or fails to continue with reasonable diligence in its efforts to cure the same), or

(B) an Obligor shall be in default of any obligation under the Equipment Lease Agreement or the PILOT Agreement, which default shall not have been cured within thirty (30) days after the receipt by such Obligor from the Agency of a written notice specifying such default (or if by reason of the nature of such default the same can be remedied, but not within said thirty (30) days, such Obligor fails to proceed with reasonable diligence after receipt of such notice to commence to cure the same or fails to continue with reasonable diligence in its efforts to cure the same and fails to cure the same within one hundred eighty days (180)), or

(iv) the Lease Agreements or this Agreement shall have been terminated;

provided, however, if the Obligors, shall dispute the occurrence of any of the events described in clauses (i) through (vi), inclusive, above, and no other Event of Default shall exist under any of the other Project Documents, the Agency shall continue to provide such annual confirmation of the Sales Tax Letter until the resolution of such dispute, but only if the Obligors shall proceed with due diligence in good faith to resolve such dispute and shall deposit in escrow in an interest-bearing account with a Person reasonably acceptable to the Agency an amount equal to all such Sales Tax Savings thereafter received by the Obligors promptly after the receipt thereof (or deposit other security reasonably satisfactory to the Agency) until the earlier of (1) the resolution of such dispute (upon which resolution such escrowee shall pay over such amounts, together with the interest earned thereon, to the Obligors or the Tax Collecting Entity, as applicable), or (2) the termination of this Agreement (upon which termination, if such dispute shall not have been resolved, such escrow shall be held by such escrowee until resolution of the dispute).

Section 3.05 Automatic Suspension of Sales Tax Letter.

The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Obligors that any of the events described in clauses (i) through (iv), inclusive, of Section 3.04(a) hereof shall exist which, in the case of Section 3.04(a)(ii) or (iii) above, shall not have been cured (or cure shall not have been commenced) within the thirty (30) day (or longer) periods referred to therein, unless (1) the Obligors shall pay any amounts due and perform such other of its obligations with respect to the events described in such clauses 3.04(a)(ii) or (iii) above, or (2) the Obligors shall comply with the escrow provisions of Section 3.04 hereof

Section 3.06 Restrictions Relating to Sales Tax Savings.

The Sales Tax Savings to be provided pursuant to the Sales Tax Letter:

(a) shall only be available for Facility Improvements, Facility Equipment, Leased Personalty and Maintenance Contracts which are identified with reasonable specificity in the Project Property Registry by no later than February 1, 2004 and on August 1 and February 1 of each year thereafter during the Term of this Agreement,

(b) shall only be utilized (1) for Facility Equipment, or Leased Personally which shall be purchased, leased, subleased, licensed, sublicensed, completed or installed for use only by the Obligors and the Eligible Affiliates in the Company Business and only at Approved Company

Locations until the Maximum Sales Tax Savings Amount is actually received (and not with any intention to sell, transfer or otherwise dispose of any such Facility Equipment or Leased Personalty to a Person as shall not constitute an Obligor or an Eligible Affiliate except as provided in the Lease Agreements), it being the intention of the Agency and the Obligors that the Sales Tax Savings shall not be made available with respect to any item of Facility Equipment or Leased Personally unless such item is used solely by the Obligors or an Eligible Affiliate at an Approved Company Location in connection with the Company Business, and (2) for Facility Improvements which shall be purchased and installed at the Project Premises (Facility Improvements) for use only by Obligors and the Eligible Affiliates in the Company Business at the Project Premises (Facility Improvements) until the Maximum Sales Tax Savings Amount is actually received (and not with any intention to sell, transfer or otherwise dispose of any such Facility Improvements to a Person as shall not constitute the Obligors or an Eligible Affiliate), it being the intention of the Agency and the Obligors that the Sales Tax Savings shall not be made available with respect to any item of Facility Improvements unless such item is used solely by the Obligors or an Eligible Affiliate at the Project Premises (Facility Improvements) in connection with the Company Business,

(c) shall not be available for any item of (i) rolling stock, (ii) office supplies, (iii) artwork, (iv) plants, (v) labor, installation or freight costs, (vi) design fee or interior office design fee, or (vii) computer software unless the computer software is of a type that is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure,

(d) shall not be available for any item or cost subsequent to the conferral of the Maximum Sales Tax Savings Amount,

(e) shall not be available for use on any date subsequent to which the Sales Tax Letter shall not have been annually reconfirmed for reasons permitted in Section 3.04(a) hereof (except as provided in the provisos contained in Section 3.04(a)(i) hereof), or shall have been suspended as provided in Section 3.04(a)(ii) or (iii) hereof, provided, however, that in the event that an Obligor shall thereafter pay any amounts due with respect to payment defaults described in clause 3.04(a)(ii), or (iii), inclusive, of Section 3.04(a) hereof, or an Obligor shall establish and continue the escrow deposits (or substitute security) referred to in Section 3.04 or the Agency shall thereafter provide such annual confirmation of the Sales Tax Letter or waive such suspension, as applicable, the Sales Tax Savings shall again continue from the date of such annual confirmation of the Sales Tax Letter or such waiver,

(f) shall not be available for or with respect to any tangible personal property having a useful life of less than one year,

(g) shall not be available for any Qualified Personalty Lease the rental payments under which shall have been structured for the purpose of accelerating Sales Tax Savings,

(h) shall not be available for any cost of utilities, cleaning service or supplies,

(i) shall only be available for those costs set forth in Exhibit A to the Sales Tax Letter; and

(j) notwithstanding the foregoing provisions restricting the use of the Sales Tax Letter, the Sales Tax Letter may be utilized for Base Building Improvements notwithstanding the fact that such Base Building Improvements will be utilized by persons other than the Obligor and Eligible Affiliates.

Section 3.07 **Reimbursement For Unauthorized Use.** In the event that it shall come to the attention of any Obligor or the Agency that any Obligor has utilized the sales tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 3.06 hereof, or such Obligor shall have erroneously claimed any Sales Tax Saving through the Agency and shall have failed to include, incorporate by reference or otherwise cause any lease, sublease, license, sublicense, contract, bill, invoice or purchase order to contain the Requisite Contract Language (subject to the proviso set forth in Section 3.02(a) hereof), then, such Obligor shall promptly deliver notice of same to the Agency (or, if the Agency has actual knowledge of any of the above, the Agency shall notify the Obligor of the same), and the Obligor shall cure such violation or failure within thirty (30) days of delivery of such notice. If the Obligor shall fail to remedy the default (or violation) within thirty (30) days of delivery of such notice, the Obligor shall, upon demand of the Agency, undertake the payment of the Sales Tax Penalty Amount as herein defined.

Section 3.08 **Semi-Annual Certification and Project Registries.** (a) The Obligor shall, on or before August 1 (with respect to expenditures made for the immediately preceding January 1 through June 30 and February 1 (with respect to expenditures made for the immediately preceding July 1 to December 31) of each year commencing February 1, 2004, and ending on the August 1 or February 1 immediately following the termination of this Agreement, deliver to the Agency a certificate in the form of Appendix B to this Agreement, together with a certificate of an Authorized Representative of the Obligor certifying the deletions and other updates that should be made to the Project Property Registry so that such registry shall constitute (taking into consideration such additions and deletions and all previously certified additions and deletions) an accurate and complete description of the property comprising the Project Property.

(b) All Facility Equipment, Leased Personalty, Facility Improvements and Maintenance Contracts shall be enumerated in sufficient detail for accurate identification (as to date of payment, vendor, location, physical description, serial number (if applicable and to the extent available), price and the amount of Sales Tax Savings afforded to the Obligor in connection therewith) in the Project Property Registry, which Project Property Registry shall be substantially in the form of Schedule I to the Annual Certificate attached hereto as Appendix B. The Agency shall maintain the Project Property Registry. The Project Property Registry shall be available for inspection during Agency regular business hours upon reasonable request therefor by any Obligor.

Section 3.09 **Accountants Report.** The Obligor shall, on August 1, 2006, August 1, 2009, August 1, 2011, August 1, 2014, August 1, 2017, August 1, 2020, August 1, 2023 and August 1, 2026, and at any other time that the Agency shall otherwise have a good faith reason to believe that the information and certifications delivered to the Agency with respect to Sales Tax Savings is inaccurate, false or misleading in any material respect, upon written notice by the Agency to the Obligor, deliver a report of an Independent Accountant in

substantially the form set forth in Schedule D attached hereto as "Form of Report of Independent Accountant".

Section 3.10 **Examination of Books and Records.** Upon request of the Agency and upon reasonable prior notice to the Obligors, the Obligors shall make available at reasonable times to the Agency and the Independent Accountant all relevant books and records of the Obligors and require an appropriate officer of the Parent or the Company to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary to indicate in reasonable detail those costs for which the Obligors shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

Section 3.11 **Annual Certification.** On the Lease Commencement Date and on or before August 1 after the end of each Annual Period, commencing August 1, 2004, and ending on August 1 as shall next follow the termination of this Agreement, deliver to the Agency a certificate in the form of Appendix F to this Agreement.

Section 3.12 **Subtenant Survey.** The Obligors shall file with the Agency by January 1, 2004 and each January 1 thereafter during the Term of this Agreement, a certificate of an Authorized Representative of the Obligors with respect to all subtenancies with respect to Project Premises (Facility Improvements), in the form attached hereto as Schedule B.

Section 3.13 **Annual Filing Regarding Sales Tax Exemption.** The Obligors shall, on February 28, 2004 and each February 28 thereafter during the Term of this Agreement, file a statement (Form ST-340 or any successor or additional mandated form in the form attached hereto as Schedule C) with the New York State Department of Taxation and Finance, on a form and in a manner as is prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Obligors including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to the Sales Tax Letter and/or this Agreement. Concurrently with the filing of such statement, the Obligors shall cause a copy of same to be delivered to the Agency. Should the Obligors fail to comply with the foregoing requirement to the extent required and at the times prescribed by applicable rules and regulations (in each case beyond any applicable grace or cure provisions promulgated by the New York State Department of Taxation and Finance), each Obligor shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties.

Section 3.14 **Reserved.**

Section 3.15 **Limited Lessee/Agents; Appointment of Limited Lessee/Agents.** (a) From time to time during the term of this Agreement, and provided that no Event of Default shall exist hereunder or under any other Project Documents, the Obligors shall have the right upon ten (10) days' prior written notice to the Agency (except that no such prior notice shall be required if effected on the Lease Commencement Date), to cause one or more Eligible Affiliates to become a Limited Lessee/Agent under this Agreement, the Lease Agreements and the Sales Tax Letter by executing an "Assumption of Limited Lessee/Agent" in substantially the form attached as Appendix A to this Agreement.

Upon the execution and delivery to the Agency of the above-referenced Assumption by an Eligible Affiliate:

(i) such Eligible Affiliate shall be deemed a Limited Lessee/Agent for purposes of this Agreement, the Lease Agreements and the Sales Tax Letter,

(ii) all Project Property shall be deemed leased by the Agency to such Limited Lessee/Agent (as well as to the Obligors) as and to the same extent and on the same terms and conditions as are provided therefor in Section 3.1 of each Lease Agreements, and

(iii) such Limited Lessee/Agent shall be deemed an agent of the Agency for all purposes as the Agency shall have deemed the Obligors as the Agency's agents under this Agreement, the Lease Agreements and the Sales Tax Letter, except that no Limited Lessee/Agent is empowered to act under the Sales Tax Letter other than by and through the Obligors as agent of the Obligors (and thereby also as agent of the Agency as provided in the Sales Tax Letter).

(b) In the event that any Limited Lessee/Agent shall cease to be an Eligible Affiliate engaged in the Company Business, (i) the Obligors shall deliver written notice thereof to the Agency promptly after having notice that such Limited Lessee/Agent has ceased to be an Eligible Affiliate engaged in the Company Business, (ii) such Limited Lessee/Agent shall no longer be a lessee of the Project Property, all of its estate, right, title and interest under the respective Lease Agreements shall be terminated and the Limited Lessee/Agent shall be deemed automatically released from the respective Lease Agreements, and (iii) such Limited Lessee/Agent shall no longer be deemed a party under this Agreement nor a Limited Lessee/Agent of the Agency (for the purposes above set forth) under this Agreement, the respective Lease Agreements and the Sales Tax Letter.

(c) The Obligors reserve the right, upon ten (10) days prior written notice by the Obligors to the Agency, to cause any Limited Lessee/Agent to be released under this Agreement, the respective Lease Agreements and the Sales Tax Letter with the effect as set forth in Section 3.15(b) above.

(d) The Obligors acknowledge, covenant and agree:

(i) that nothing contained in this Section 3.15 nor any action taken or omitted to be taken by any Limited Lessee/Agent shall be deemed to modify, diminish or impair any of the payments, obligations, covenants and agreements of the Obligors under any of the Project Documents, and all actions taken or failed or suffered to be taken with respect to the Project Property or the Sales Tax Letter by any Limited Lessee/Agent shall be deemed an action taken or failed or suffered to be taken by the Obligors,

(ii) that the Obligors shall cause the Limited Lessee/Agents to comply with all obligations, covenants and agreements assumed by them in the executed "Assumption of Limited Lessee/Agent",

(iii) that any notice delivered by the Agency to the Obligors shall be deemed delivered to the Limited Lessee/Agents,

(iv) that any consent delivered by the Obligors (including, without limitation, any consent to amendment, modification or supplement to any Project Documents) or action otherwise taken by the Obligors or any of them shall be deemed binding upon the Limited Lessee/Agents to the same extent as if such consent was so delivered, or such action so taken, by the Limited Lessee/Agents,

(v) that nothing contained in this Section 3.15 shall be deemed to limit or condition the rights and remedies of the Agency under any Project Documents, and such rights may be exercised and such remedies pursued, in all cases as if the Limited Lessee/Agents were never parties to any Project Documents, and

(vi) all Property acquired by the Obligors on behalf of the Limited Lessee/Agent shall, for all purposes of this Agreement, the respective Lease Agreements and the Sales Tax Letter, be deemed Project Property acquired by the Obligors or an Eligible Affiliate on its own behalf as agent of the Agency.

ARTICLE IV NON-MERGER, INSURANCE AND CERTAIN OTHER COVENANTS

Section 4.01 **Dissolution or Merger.** Each Obligor hereby covenants and agrees that, at all times during the term of this Agreement, it will (i) maintain its existence, (ii) continue to be subject to service of process in the State of New York and either be organized under the laws of the State of New York or the laws of any other state of the United States and duly qualified to do business as a foreign corporation in the State of New York, (iii) not liquidate, wind-up, dissolve or otherwise dispose of all or substantially all of its property, business or assets, and (iv) not consolidate with or merge into another corporation or other legal entity or permit one or more corporations or other legal entities to consolidate with or merge into it. Notwithstanding the provisions of the immediately preceding sentence, the Parent or the Company may, however, without violating the foregoing, upon prompt written notice to the Agency after the initial public disclosure concerning such transaction, consolidate with or merge into another corporation or other legal entity, or permit one or more corporations or other legal entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such corporation or other legal entity (and thereafter liquidate, wind-up or dissolve or not, as the Parent or the Company may elect) if (i) the Parent or the Company is the surviving, resulting or transferee corporation or other legal entity, as the case may be, or (ii) in the event that the Parent or the Company is not the surviving, resulting or transferee corporation or other legal entity, as the case may be, such corporation or other legal entity (A) is solvent and subject to service of process in the State and duly qualified to do business in the State, (B) is not, nor is it an Affiliate of, a Prohibited Person, (C) is engaged in the Company Business, (D) assumes in writing all of the obligations of such Obligor contained in this Agreement and in each other Project Documents to which the such Obligor shall be a party, and, in the Opinion of Counsel delivered to the Agency, such corporation or other legal entity shall be bound by all of the terms of this Agreement and of each other Project Documents to which such Obligor shall be a party, and (E) in the opinion of an Independent Accountant (which may take the form of a published financial statement) delivered to the Agency, has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to \$200,000,000.

Section 4.02 **Agency Fees.** The Obligors agree to pay to the Agency (i) a project Fee of \$995,000 (less an application fee of \$7,500) of which \$497,500 of such project fee will be payable on the Lease Commencement Date and the balance of \$490,000 will be due on the first anniversary of the Lease Commencement Date, (ii) Agency Counsel fees of \$25,000 which will be payable on the Lease Commencement Date and (iii) an annual administrative servicing fee of \$25,000 to the Agency payable initially on the Lease Commencement Date and on each anniversary of the Lease Commencement Date until the termination of this Agreement.

The Obligors and the Agency agree that unless it is expressly provided in any Project Documents that a fee, cost, expense or other pecuniary obligation shall be that of the Obligors, the Obligors shall be obligated to pay the Agency's Extraordinary Costs of Administration but shall not be obligated to pay the Agency's Ordinary Costs of Administration.

Section 4.03 **Removal of Project Property.** (a) The Obligors hereby represent, warrant and covenant to and with the Agency that none of the Facility Improvements or machinery, equipment or other property constituting part of the Project Property (the "Current Project Property") will ever be acquired, leased or licensed for any purpose other than for installation and use at an Approved Company Location (and except for Facility Improvements Constituting Base Building Improvements) for use in the Company Business nor, except as permitted below in this Section 4.03, will any of the Current Project Property ever be removed from an Approved Company Location to a location not constituting an Approved Company Location (either on a temporary or permanent basis) prior to the expiration of one (1) year with respect to computer hardware, software or telecommunications equipment and with respect to all other Current Project Property three (3) years after the installation or location of such respective item of Current Project Property at an Approved Company Location (the "Retention Period"), unless such removal is to another Approved Company Location or unless simultaneously with such removal either (i) an amount equal to the Sales Tax that would have been payable at the original time of such purchase with respect to the purchase of such item (but based upon its fair market value at the time of its removal), but for the Sales Tax Letter, shall be paid by the Obligors to the Tax Collecting Entity with respect to the item or items being removed; or (ii) unless the provisions of Section 4.03(b) or (c) below shall apply and have been complied with by the Obligors, there shall be delivered to the Agency a certificate of an Authorized Representative of the Obligors stating that such item of the Current Project Property is obsolete or useless, or an Obligor has a good faith operational or business reason for such removal, in relation to the conduct of the Company Business within the City (in which event the provisions of Section 4.03(b) and (c) below shall be inapplicable). After the expiration of the Facility Equipment Retention Period, the Obligors may remove, transfer, sell or dispose of any item of Current Project Property from Approved Company Locations. In no event, however, following the expiration of the Retention Period for the Current Project Property will the Obligors cause the removal, transfer, sale or disposition of all of the Facility Equipment constituting Current Project Property from Approved Company Locations.

(b) Prior to the expiration of the Facility Equipment Retention Period as to any item of Current Project Property, the Obligors may remove such item from Approved Company Locations on a temporary basis ("Temporary Removals"); provided, that no such Temporary Removal shall be effected if:

(i) an Approved Company Location ceases to be the “permanent location” to which the item of Project Property is to be returned after its temporary off-location use or repair,

(ii) the Temporary Removal is not effected for a good faith business purpose consistent with the Company Business conducted by an Obligor at an Approved Company Location, and

(iii) the item of Project Property Equipment is to be absent from an Approved Company Location for a period in excess of ninety (90) days, subject, however, to any delays as a result of Force Majeure.

Notwithstanding the limitations set forth in paragraph (iii) above, upon the occurrence of an unforeseen event or of any circumstance that, in the good faith business judgment of an Obligor, has precipitated an emergency condition necessitating the extension of the 90-day Temporary Removal period referred to in clause (iii) above, such Temporary Removal period may be extended for the period of, but not longer than, such emergency condition; provided, that an Obligor delivers written notice to the Agency of the event or circumstance precipitating such emergency condition, and use good faith diligent efforts to effect the return of the item of Current Project Property to an Approved Company Location as expeditiously as possible under the circumstances.

(c) Prior to the expiration of the Facility Equipment Retention Period as to any item of Current Project Property, the Obligors may remove, transfer, sell or otherwise dispose of such items from an Approved Company Location on a permanent basis (“Permanent Removals”) and thereby acquire such item of Current Project Property from the Agency; provided that

(i) An Obligor shall acquire for installation at or location in an Approved Company Location a substitute or replacement item of property (the “Substitute Property”) having equal or greater utility and capability (or having a comparable lesser utility or capability if the business needs of an Obligor have diminished) as the item of Current Project Property being permanently removed from an Approved Company Location (the “Removed Property”), in which case title to such substitute or replacement item of property shall automatically belong to the Agency as part of the Project Property; provided, however, the Substitute Property shall not be acquired through the use of the Sales Tax Letter (and the utilization of Sales Tax Savings) if the Removed Property shall have been removed for use at a facility of any Obligor or any Affiliate thereof outside of the City; or

(ii) if an Obligor shall seek to effect a Permanent Removal of Current Project Property for reasons other than as permitted in Section 4.03(c)(i) above, and the Permanent Removal is effected in accordance with a good faith business purpose on the part of an Obligor and not as part of any systematic or programmatic transfer of Current Project Property from an Approved Company Location, such Obligor may on an occasional and immaterial basis effect such Permanent Removal; provided, that prior to any such Permanent Removal such Obligor shall deliver (y) to the Agency, a certificate of an Authorized Representative of such Obligor confirming that such Permanent

Removal is being effected in a manner and for a purpose consistent with the conditions permitting such Permanent Removal as provided above in this Section 4.3(c)(ii) and not in violation of any other covenant, condition or agreement on the part of the Obligors hereunder, and (z) to the Tax Collecting Entity an amount, certified as correct by an Authorized Representative of such Obligors, of the sales tax that would have been payable at the time of original purchase based upon the fair market value of such removed Current Project Property at the time of its removal (but only to the extent, if any, that the aggregate value of Current Project Property removed pursuant to Permanent Removals during the same calendar year shall exceed \$250,000).

(d) Notwithstanding the foregoing,

(i) the Obligors shall not effect Temporary Removals or Permanent Removals of Current Project Property from an Approved Company Location if any such removal would change the nature of the Project Property as a commercial facility and as a qualified "project" as defined in and as contemplated by the Act, and

(ii) the title to each item of Current Project Property shall be deemed automatically conveyed by the Agency to the Obligors (or to such other Eligible Affiliate as the Obligors shall direct the Agency in writing), and such item of property shall no longer constitute Project Property, on the earliest of (x) the date upon which such item shall have been removed from Approved Company Locations in compliance with the terms of this Agreement, (y) the day following (A) the anniversary of the date upon which an item of computer hardware, software or telecommunications equipment shall have been paid for or installed at an Approved Company Location, whichever is earlier or (B) the third anniversary of that date upon which the item of any other Facility Equipment shall have been paid for or installed at an Approved Company Location, whichever is earlier or (z) that day upon which the item of Facility Equipment shall have been removed from an Approved Company Location in violation of the provisions of this Section 4.03 (and in which latter event, the Obligors shall be obligated to make payments to the Agency as provided herein); provided, however, no such automatic conveyance shall be deemed to have occurred (A) if such conveyance would cause the Obligors to be in violation of the provisions of the last sentence of Section 4.03(a) hereof, or (B) with respect to any item of Current Project Property for so long as a Maintenance Contract shall be in effect with respect thereto.

(e) The removal from an Approved Company Location of any Current Project Property pursuant to the provisions of this Section 4.03 shall not entitle the Obligors to any abatement or reduction in the amounts payable by such the Obligors under this Agreement or any other Project Documents.

Section 4.04 **Insurance.** (a) At all times throughout the term of this Agreement, including without limitation during any period of improvement, construction, reconstruction or renovation of the Project Property, the Obligors shall maintain or cause to be maintained insurance with respect to the Project Property, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and

for such amounts as are customarily insured against by other enterprises of like size and type as that of the Obligors, including, without limitation:

(i) During any period of construction, renovation, improvement or reconstruction and to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Obligors and the Agency in a minimum amount of \$15,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) (A) Property damage insurance and (B) during any period of construction, reconstruction or substantial renovation (to the extent not otherwise covered by property damage insurance), Builders' All Risk insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Project Property, and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the improvements and betterment, facilities, fixtures and other property constituting a part of the Project Property against loss or damage to the Project Property by all risk of physical loss at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Obligors or the Agency from becoming a coinsurer of any loss under the insurance policies but in any event in amounts equal to 80% of the actual replacement value of the Project Property as determined by a qualified insurance appraiser or insurer (selected by the Obligors and approved by the Agency) not less often than once every year, at the expense of the Obligors; any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Obligors, but if the net worth of the Obligors shall be less than \$200,000,000 then such deductible shall not exceed \$100,000;

(iii) General Liability insurance and/or Umbrella Liability insurance, including contractual liability coverage, in accordance with customary insurance practices for similar operations with respect to the Project Property and the business conducted by the Obligors in the minimum amount of \$20,000,000 per occurrence per aggregate, which insurance (A) will provide coverage of the Obligors' obligations of indemnity under Section 6.02 hereof (other than under Section 6.02(c) hereof to the extent not commercially reasonably available to the Obligors), and (B) may be effected under overall blanket or excess coverage policies of the Obligors or any Eligible Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy; any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Obligors, but if the net worth of the Obligors shall be less than \$200,000,000 then such deductible shall not exceed \$100,000;

(iv) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Obligors, or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the

Obligors or any contractor or subcontractor performing work with respect to the Project Property; the Obligors shall require that all said contractors and subcontractors shall maintain all forms or types of insurance required by law with respect to their respective employees; and

(v) Such other customary insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require provided the same is reasonably available at commercially reasonable premiums and are of the types on level of coverage typically maintained by similar businesses and buildings in the City.

(b) All insurance required by Section 4.04(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, either (i) rated "A-TX" or better by AM. Best & Co., or (ii) approved by the Agency. The Agency may change such rating requirements if reasonably required by substantial changes in insurance industry premiums, risks or coverage provided that such change does not impose a substantial hardship of financial burden on the Obligors in comparison to the ratings of carriers typically providing average for similar business and buildings in the City.

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

(i) designate (except in the case of workers' compensation, Builder All Risks, and property damage insurance) the Obligors and the Agency as additional insureds as their respective interests may appear, and, with respect to Builders All Risks Insurance designate the Agency as its interest may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the Project Property be endorsed and made payable to the Obligors and shall name the Obligors as the loss payee under the standard loss payee clause, which insurance proceeds shall be paid over to the Obligors and applied as provided in Section 5.1 of the Lease Agreement;

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

(iv) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Obligors or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding: (w) any act or negligence, including any breach of any condition, declaration or warranty contained in any such policy of insurance by the Agency, the Obligors or any other Person; (x) the operation or use of the Project Property for purposes more hazardous than permitted by the terms of the policy; (y) any foreclosure or other proceeding or notice of sale relating to the Project Property; or (z) any change in the title to or ownership of all or any portion of the Project Property;

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

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

(vii) waive any right of subrogation of the insurers thereunder against the Agency, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Agency; and

(viii) contain such other terms and provisions as any owner or operator of facilities similar to the Project Property would, in the prudent management of properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project Property owned or operated by them or their Affiliates.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Project Property shall be paid to the Obligors and applied in accordance with Section 5.1 of the Lease Agreement.

(e) On the Lease Commencement Date, the Obligors shall deliver or cause to be delivered to the Agency a broker's certificate of coverage, certificate of liability insurance, evidence of property insurance and certificates or other evidence of other required insurance, and as soon as practicable thereafter, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.04. At least seven (7) Business Days prior to the expiration of any such policy, the Obligors shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Obligors shall, at their own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.04. The Obligors shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.04 would or might be suspended or impaired.

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTERESTS OF THE OBLIGORS OR ANY OTHER PERSONS.

ARTICLE V
REDUCTION OR RECAPTURE OF BENEFITS

Section 5.01 Certain Acknowledgments. The Obligors acknowledge that during the term of this Agreement, neither the City nor the Agency shall offer the Parent, the Company or any Eligible Affiliates any additional or other discretionary economic development benefits or incentives in consideration of maintaining or increasing within the City either the number of Eligible Employees or the business operations conducted directly by such Eligible Employees.

Section 5.02 Maximum Sales Tax Savings Amount Limitation. The Obligors and the Agency covenant and agree that, notwithstanding the provisions of any other Project Documents to the contrary, the maximum aggregate amount of the Sales Tax Savings that the Obligors shall be entitled to receive under the Sales Tax Letter and/or this Agreement shall not in the aggregate exceed the Maximum Sales Tax Savings Amount. If any Obligor shall have knowledge that Obligors received Sales Tax Savings which in the aggregate shall exceed the Maximum Sales Tax Savings Amount, such Obligor shall promptly deliver written notice of such fact to the Agency (which written notice shall include specific details of each such excess amount), and the Obligors shall, upon demand by the Agency undertake the payment of the Sales Tax Penalty Amount.

If the Obligors shall fail to realize any portion of the Maximum Sales Tax Savings Amount, in each case in whole or in part, prior to the termination of this Agreement or the termination or surrender of the Sales Tax Letter, all unused Sales Tax Savings shall be forfeited, and the Obligors shall have no right to receive compensation for such unused Sales Tax Savings.

Section 5.03 Prohibition on Additional Benefits. It is not the intention of the Agency that the Parent, the Company or any Eligible Affiliate receive any additional monetary benefits other than the Maximum Energy Cost Savings Amount, that Maximum Mortgage Recording Tax Savings Amount, the Maximum Sales Tax Savings Amount and the Real Property Tax Savings solely to the extent permitted hereunder, and, to the extent that any such additional monetary benefit shall inure to the account of the Parent, the Company or any Eligible Affiliate solely by reason of the Agency's participation in the Project, the Obligors hereby agree to waive such benefit to the extent they may lawfully do so, or, lacking such capacity to waive such benefit or cause such Benefits to be waived, such additional benefit shall be included in the "Benefits" for purposes of this Agreement and in the definition of Maximum Sales Tax Savings Amount for purposes of calculating when the Maximum Sales Tax Savings Amount has been received or, if the Maximum Sales Tax Savings Amount shall have been attained.

Section 5.04 Calculation of Eligible Employees. The Average Employment Number for an Annual Period shall be calculated by the Obligors on the basis of the aggregate sum of the numbers of Eligible Employees (including Growth Employees) employed as of the last payroll date for each of the months (including any partial month) during such Annual Period divided by twelve (except that in the first and last Annual Periods the divisor will be the number of months, including any partial month, contained in such Annual Period), based upon the certificate set forth in Section 3.11 hereof

Section 5.05 **Prior Notice of Reductions.** At least three (3) Business Days prior to any public announcement or disclosure by the Parent, the Company or any Eligible Affiliate of any corporate decision that would result in a Reduction or the transfer or establishment by the Parent or the Company of the Headquarters, Designated Operations and Facilities or any part thereof to a location outside of the City, the Obligors covenant and agree to deliver written notice thereof to the Agency, including all reasonable non-confidential details of the number of Eligible Employees affected, the operations, facilities, Headquarters, Designated Operations and Facilities or executive offices to be transferred or established, and the new location of such operations, facilities, Headquarters, Designated Operations and Facilities or executive offices and the Agency agrees to keep all such information confidential until such public announcement or disclosure by the Obligors, subject however to the obligation to the Agency to disclose such information pursuant to Article 6 -Freedom of Information Law, of the Public Officers Law of the State of New York.

Section 5.06 **Non-Relocation Reduction of Eligible Employees.**

(a) If there shall occur, or continue (from a prior Annual Period), in any Annual Period a Non-Relocation Reduction such that the Base Employment Reduction Percentage for such Annual Period is less than or equal to four percent (4%), the Obligors will not be subject to any reduction in Benefits notwithstanding such Non-Relocation Reduction.

(b) If there shall occur, or continue (from a prior Annual Period), in any Annual Period, a Non-Relocation Reduction such that the Base Employment Reduction Percentage for such Annual Period is greater than four percent (4%) but less than or equal to twenty percent (20%), then,

(i) the Obligors will be subject to a permanent reduction in the dollar amount of each of the Remaining Mortgage Recording Tax Savings, the Remaining Sales Tax Benefit and the Remaining Energy Cost Savings Benefit, computed as follows:

(A) with respect to Sales Tax Savings Benefit, to the extent there is a Remaining Sales Tax Benefit, such Remaining Sales Tax Benefit shall be permanently reduced by an amount equal to the product of (y) the Base Employment Reduction Percentage, and (z) the quotient of (A) the Maximum Sales Tax Savings Amount (exclusive of Growth Credits) divided by (B) the total number of Annual Periods in the Term, which final amount when so calculated shall then be subtracted from the Remaining Sales Tax Benefit (exclusive of Growth Credits), provided that if the amount calculated pursuant to this clause (A) exceeds the Remaining Sales Tax Benefit available to the Obligors, the Obligors shall immediately pay such excess amount to the Agency; and

(B) with respect to Mortgage Recording Tax Benefits, to the extent there is a Remaining Mortgage Recording Tax Benefit, such Remaining Mortgage Recording Tax Benefit shall be permanently reduced by an amount equal to the product of (y) the Base Employment Reduction Percentage, and (z) the quotient of (A) the Maximum Mortgage Recording Amount divided by (B) the total number of Annual Periods in the Term, which final amount when so calculated

shall then be subtracted from the Remaining Mortgage Recording Tax Benefit, provided that if the amount calculated pursuant to this clause (B) exceeds the Remaining Mortgage Recording Tax Benefit available to the Obligors, the Obligors shall immediately pay such excess amount to the Agency; and

(C) with respect to Energy Cost Savings, and to the extent there is a Remaining Energy Cost Savings Benefit, such Remaining Energy Cost Savings Benefit shall be permanently reduced by an amount equal to the product of (y) the Base Employment Reduction Percentage, and (z) the quotient of (A) the Maximum Energy Cost Savings Amount divided by (B) the total number of Annual Periods in the Term, which final amount when so calculated shall then be subtracted from the Remaining Energy Cost Savings Benefit, provided that if the amount calculated pursuant to this clause (C) exceeds the Remaining Energy Cost Savings Benefit available to the Obligors, the Obligors shall immediately pay such excess amount to the Agency.

(ii) the Obligors shall pay to the Agency a Recapture Payment equal to the product of the Real Property Tax Savings received during such Annual Period times the Base Employment Reduction Percentage.

(c) In addition to, and without limiting the application of the provisions of Section 5.06(b) above, in the event that by reason of a Non-Relocation Reduction occurring in the Reported Annual Period or continuing from a prior Annual Period, the Base Employment Reduction Percentage for the Reported Annual Period shall be greater than twenty percent (20%), all future Benefits (including Energy Cost Savings, Mortgage Recording Tax Savings, Real Property Tax Savings and Sales Tax Savings, shall terminate and permanently cease to be available, and the Agency may in its sole discretion take or require any or all of the following actions: (i) terminate any or all of the Project Documents including this Agreement (subject in each case to the survival of those provisions herein and therein stated to survive termination) and any Remaining Benefits thereunder, (ii) require the Obligors to surrender the Sales Tax Letter to the Agency for cancellation, (iii) convey to the Obligors all of the Agency's right, title and interest in the Project Premises (Facility Improvements), (iv) convey to the Company, the Parent, or to any Eligible Affiliate, as the case may be, all of the Agency's remaining right, title and interest in the Project Property, and/or (v) direct the New York City Economic Development Corporation to cause the termination of availability of BIR Energy; provided, however, that no such action taken by the Agency shall have the effect of reducing or eliminating the obligations of the Obligors under Section 5.07 or 5.11 hereof, all of which shall continue undiminished and in full force and effect.

(d) The provisions of this Section 5.06 relating to the obligation of the Obligors shall survive and continue until the Project Termination Date notwithstanding the cessation of all Benefits or the termination of any or all of the Project Documents including this Agreement.

Section 5.07 **Relocation Reduction.**

(a) In the event that, by reason of the occurrence of an event in an Annual Period resulting in a Relocation Reduction occurring in such Annual Period, the Base Employment Reduction Percentage:

(i) is less than or equal to three percent (3%), then there shall be no reduction in Benefits;

(ii) is greater than three percent (3%) but less than or equal to ten percent (10%) then:

(A) the Obligors will be subject to a permanent reduction in Remaining Sales Tax Benefit, Remaining Mortgage Recording Tax Benefit, and Remaining Energy Costs Savings Benefit calculated as follows:

(1) with respect to Sales Tax Savings, and to the extent there are Remaining Sales Tax Benefits, such Remaining Sales Tax Benefits (exclusive of growth credits) shall be permanently reduced by an amount equal to the product of (w) the Base Employment Reduction Percentage (x) the Multiplier Factor applicable to such Annual Period, (y) the Recapture Percentage applicable to such Annual Period, and (z) the dollar amount of all Remaining Sales Tax Benefits; and

(2) with respect to Mortgage Recording Tax Savings, and to the extent there is Remaining Mortgage Recording Tax Benefit, such Remaining Mortgage Recording Tax Benefit shall be permanently reduced by an amount equal to the product of (w) the Base Employment Reduction Percentage, (x) the Multiplier Factor applicable to such Annual Period (y) the Recapture Percentage applicable to such Annual Period, and (z) the dollar amount of Remaining Mortgage Recording Tax Benefit; and

(3) with respect to Energy Cost Savings, and to the extent there is Remaining Energy Costs Savings Benefit, such Remaining Energy Cost Savings Benefit shall be permanently reduced by an amount equal to the product of (w) the Base Employment Reduction Percentage, (x) the Multiplier Factor applicable to such Annual Period, (y) the Recapture Percentage applicable to such Annual Period, and (z) the dollar amount of Remaining Energy Cost Savings Benefit; and

(B) The Obligors shall pay to the Agency a Recapture Payment with respect to the Annual Period during which such Relocation Reduction shall have

occurred and for each Annual Period thereafter until the completion of the Term of this Agreement (regardless of whether such Relocation Reduction is remedied at a later date) equal to the product of the Real Property Tax Savings received during such Annual Period (and for future Annual Periods, the Real Property Tax Savings received during such future Annual Periods) times the Base Employment Reduction Percentage.

(C) The Obligors shall immediately pay to the Agency a Recapture Amount equal to the product of (1) the Base Employment Reduction Percentage; (2) the Multiplier Factor applicable to such Annual Period; (3) the Recapture Percentage applicable to such Annual Period; and (4) the Recapture Amount.

For example, if in the Annual Period that commenced July 1, 2015 and ended June 30, 2017, (y) there occurred an event giving rise to a Relocation Reduction of nine percent (9%) of the Base Employment Number, and (z) the nominal dollar amount of the Recapture Amount was \$2,000,000, then:

(a) The Obligors will be subject to a permanent reduction in future Benefits as calculated above,

(b) The Obligors will promptly pay to the Agency a recapture payment relating to Real Property Tax Savings as described in 5.07(a)(ii)(B) above, and

(c) The Obligors will promptly pay to the Agency an amount equal to the product of

a. the applicable Multiplier Factor or 1.9,

b. \$2,000,000,

c. the Base Employment Reduction Percentage or 9%, and

d. the applicable Recapture Percentage or 90%, with a total amount payable to the Agency equal therefore to \$307,800.

(b) In the event that, by reason of the occurrence of an event in an Annual Period resulting in a Relocation Reduction occurring in such Annual Period, the Base Employment Reduction Percentage shall be greater than ten percent (10%) of the Base Employment Number, then, (i) all Benefits including all Remaining Sales Tax Benefit, all Remaining Mortgage Recording Tax Benefit, all Remaining Energy Cost Savings Benefit and all future Real Property Tax Savings shall permanently be forfeited, and (ii) the Obligors shall promptly pay to the Agency a Recapture Payment in an amount equal to the product of (x) the Multiplier Factor applicable to such Annual period; (y) the Recapture Percentage applicable to such Annual Period, and (z) the Recapture Amount, and (iii) at the unlimited discretion of the Agency, the Agency may take or require any or all of the following actions: (1) terminate any or all of the Project Documents including this Agreement (subject in each case to the survival of those provisions herein and therein stated to survive termination), (2) require the Obligors to surrender

the Sales Tax Letter to the Agency for cancellation, (3) convey to the Company (or the Parent, as directed in writing by the Obligor) all of the Agency's right, title and interest in the Project Premises (Facility Improvements), (4) convey to the Company (or the Parent, as directed in writing by the Obligor) all of the Agency's remaining right, title and interest in the Project Property, and/or (5) direct the New York City Economic Development Corporation to cause the termination of availability of BIR Energy.

(c) The provisions of this Section 5.07 relating to the obligation of the Obligor to pay a Recapture Payment in the amount and on the circumstances set forth herein shall survive and continue until the Project Termination Date notwithstanding the cessation of all Benefits or the termination of any or all of the Project Documents including this Agreement.

Section 5.08 Acquisitions and Mergers.

(a) Within sixty (60) days following the occurrence of an Acquisition or Merger (unless such Acquisition or Merger shall occur at any time during the month of June in which event the certificate referred to below shall be delivered on the August 1 next following together with the certificate referred to in Section 3.11 hereof), the Obligor shall deliver prompt written notice thereof to the Agency accompanied by a certificate of an Authorized Representative of the Parent or the Company, as the case may be, certifying as to (v) the identity of the Obligor and the Foreign Entity involved in the Merger or Acquisition and the reasonable (non-confidential) details thereof, including, without limitation, the resulting changes in ownership, employment and operational structure of the Obligor, and an estimate of the number of Eligible Employees and Ineligible Employees resulting therefrom, (w) whether the Foreign Entity constitutes a Principal Foreign Entity (as defined in Section 5.08(b) below), (x) whether the transaction was an Acquisition or Merger, (y) an estimate of the number of employees of such Foreign Entity within the City (calculated in the same manner as Eligible Employees) as of the date of the Merger or Acquisition, and (z) an estimate of the number of employees of the Obligor as shall constitute Eligible Employees and Ineligible Employees in accordance with the applicable provisions of this Agreement.

(b) If the Acquisition or Merger is with a Foreign Entity that is (y) receiving discretionary economic development benefits from the City, the Agency and/or any other public entity similar to the Benefits granted herein (the "Public Benefits"), and (z) the principal entity (or one of the principal entities) with respect to which determinations of eligibility for Public Benefits and included entities under the relevant Public Benefits agreements for such Foreign Entity are based (the "Principal Foreign Entity"), such that, as a result thereof, the Principal Foreign Entity and its affiliates (hereinafter, the "Foreign Entity Group") would become Eligible Affiliates with respect to the Obligor, then:

(i) if, as determined by the Agency in its sole but reasonable discretion, the nature of the operations and the level of employment of the Obligor and the Foreign Entity Group, respectively, and the ownership relationships between the Obligor and the Foreign Entity Group, respectively, remain substantially the same as prior to the Merger or Acquisition, then:

(A) the entities within the Foreign Entity Group shall be deemed not to be an "Eligible Affiliate" under the Project Documents notwithstanding that by the definition of such term hereunder, such entities would otherwise qualify as an Eligible Affiliate, and

(B) the calculation of entitlement to Public Benefits and employment levels shall continue but remain separate for the Obligors (without including the Foreign Entity Group) and the Foreign Entity Group as if the Merger or Acquisition had not occurred,

or

(ii) if, as determined by the Agency in its sole discretion, the nature of the operations and the level of employment of the Foreign Entity Group and the Obligors, and the ownership relationship between the Obligors and the Foreign Entity Group, respectively, do not remain substantially the same as prior to the Merger or Acquisition (e.g., if the employees of each merging entity are combined within the surviving entity after the Merger, and the Principal Foreign Entity's operations and employees cease to have a clearly separate distinguishable identity), then, it is the intention of the Agency and the Obligors that with respect to the Obligors and the Foreign Entity as so combined (hereinafter the "Expanded Group") that:

(A) the Expanded Group receive Public Benefits which are, in the aggregate, neither more nor less but equivalent, on a per eligible employee basis, to the sum of the unrealized Benefits which were to be received by the Obligors prior to the Merger or Acquisition and the unrealized Public Benefits which were to be received by the Principal Foreign Entity Group prior to the Merger or Acquisition,

(B) under no circumstances shall the Expanded Group be eligible to receive duplicate Public Benefits for a single employee,

(C) the Merger or Acquisition shall not diminish the Public Benefits enjoyed by the Obligors and the Foreign Entity Group prior to the Merger or Acquisition,

(D) the calculation of employment levels with respect to the Public Benefits agreements existing with respect to the Foreign Entity Group and the Obligors shall be effected by allocating current employment and future employment growth of the Expanded Group on a pro rata basis based on the relative levels of eligible employees for the respective Public Benefits of the Foreign Entity Group and the Obligors at the time of the Merger or Acquisition,

(E) the Expanded Group shall, in any event, be subject to (and be the beneficiary of) all provisions relating to the transferability of Public Benefits in those agreements of the Agency, the City and/or such other public entity granting the Public Benefits to the Obligors and the Foreign Entity Group, respectively, and

(F) the Agency and the Obligors shall use its best efforts to implement in good faith the intentions of the parties set forth above.

Section 5.09 **Growth Credit.** (a) Pursuant to Section 3.11 hereof, the Obligors shall certify to the Agency, among other matters, on August 1, 2004 and on August 1 of each year thereafter during the Term of the Agreement the Annual Average Employment Number (calculated in accordance with Section 5.04 hereof), during such immediately preceding Annual Period. For so long as no default shall exist under this Agreement or any other Project Documents beyond any applicable grace or cure period during which the Obligors is diligently pursuing such cure, the Obligors shall be entitled to receive an annual credit in the amount of \$2,800 in nominal value (a "Growth Credit") for each of five (5) Annual Periods for each Growth Employee hired by the Obligors from and after the first payroll date after the date hereof. The Growth Credits shall be computed as follows: to the extent the Annual Average Employment Number for an Annual Period shall exceed the Base Employment Number, the Obligors will receive a Growth Credit of \$2,800 for each such Growth Employee, provided, however, (i) a Growth Employee shall be deemed to refer to a filled employment position and not to any specific individual who may be filling such position, (w) each Growth Credit will cease to the extent such Growth Employee or another Growth Employee (i.e., the job slot) is eliminated and not replaced, (ii) in no event will the Obligors be entitled to more than five (5) Growth Credits (in the aggregate) for each Growth Employee (whether due to fluctuations in the number of Growth Employees or otherwise), and (iii) in no event shall the Obligors receive a Growth Credit for an Ineligible Employee. The amount of Growth Credits that can be earned hereunder shall be limited to the Maximum Growth Credit Amount.

(b) The Growth Credits earned by the Obligors shall increase Sales Tax Savings by an equivalent nominal dollar amount (subject to the Maximum Growth Credit Amount), thereby allowing the Obligors to realize Sales Tax Savings on Project Costs incurred during the Term; provided, that the dollar amount of any Growth Credit earned shall not be increased based on an NPV calculation whether or not utilized in a subsequent Certification Period. Growth Credits shall be applied only against the Obligors' obligation to pay Sales Taxes incurred on Project Costs and any Growth Credit not realized (in whole or part) during the Term shall be forfeited.

For example, if the number of Eligible Employees increases to 1793 Eligible Employees for three (3) consecutive Annual Periods, the Obligors will receive Growth Credits of \$8,400 (\$2,800 for each of the three (3) Growth Employees over the Base Employment Number) each Annual Period for the three (3) Annual Periods as shall immediately follow each such Annual Period. If the number of Eligible Employees then falls to 1789 for an Annual Period, the Obligors will not be entitled to any Growth Credit with respect to such Annual Period. Thereafter, if the number of Eligible Employees grows to 1799 with respect to the next three (3) Annual Periods, the Obligors will be entitled to a Growth Credit of \$2,800 per Growth Employee for the first two of such next following Annual Periods for the first three (3) Growth Employees over the Base Employment Number (since it had previously received a Growth Credit for three (3) Annual Periods for the first three (3) Growth Employees over the Base Employment Number) and the Obligors will also be entitled to a Growth for each of the five (5) next following Annual Periods (inclusive of such first two (2) Annual Periods referred to above) for the next six (6) Growth Employees over the Base Employment Number (i.e., the 1794th and 1799th Growth Employees).

A further example of the method of calculation of Growth Credits is set forth below:

Base Employment Number ("BEN") of 1790 Eligible Employees

<u>Annual Period Ending June 30,</u>	<u>Annual Period Eligible Employees ("APEE")</u>	<u>Growth Credit Employees= APEE-BEN</u>	<u>Growth Credit</u>
2003	1795	5	\$14,000
2004	1787	--	0
2005	1890	100	280,000
2006	1794	4	11,200
2007	1795	5	14,000
2008	1890	100	280,000
2009	1794	0	0(1)
2010	1795	1	2,800(2)
TOTAL			\$602,000

(1) Because \$14,000 in benefits were realized for each of jobs 1791, 1792, 1793 and 1794 in the Annual Periods ending June 30, 2003, 2005, 2006, 2007 and 2008, no further Growth Credits are available with respect to such jobs.

(2) This ends the Growth Credits available for job number 1795.

Notwithstanding anything to the contrary contained herein, if the Obligors shall be entitled to receive one or more Growth Credits with respect to a particular Annual Period, but the Obligors shall not incur any Project Costs during such Annual Period, and therefore the Obligors shall not be able to realize Sales Tax Savings for such Annual Period, the Obligors shall, nonetheless, be entitled to accrue any such Growth Credits earned during such Annual Period and utilize the same to increase Sales Tax Savings in any subsequent Annual Period during which (x) the Obligors incurs Project Costs, and (y) the Obligors would otherwise be entitled to utilize Growth Credits in accordance with the provisions of this Section 5.09.

Any Growth Credit not realized (in whole or in part) prior to the expiration of the term of this Agreement will be forfeited.

Section 5.10 **Reserved.**

Section 5.11 **Relocation of Headquarters or Designated Operations and Facilities.**

(a) The Obligors covenant and agree that, until the Project Termination Date, Headquarters and the Designated Operations and Facilities shall be maintained within the City.

(b) In the event that at any time during the term of this Agreement, the Headquarters and the Designated Operations and Facilities, or any part thereof are or will be transferred to a location outside of the City, then, from the earliest of the date on which (x) such transfer is publicly announced, (y) any Obligor informs the Agency, the New York City Economic Development Corporation ("EDC") or the City of such transfer, or (z) such transfer is commenced, (i) all future Benefits (including all Remaining Sales Tax Benefits, (including all Growth Credits) and all Remaining Energy Cost Savings) will permanently cease to be available, (ii) the Obligors shall promptly pay to the Agency a Recapture Payment in an amount equal to the product of (1) the Multiplier Factor applicable to the Annual Period in which such transfer occurs, (2) the Recapture Amount, and (3) the Recapture Percentage applicable to the Annual Period of such transfer, (iii) at the unlimited discretion of the Agency, the Agency may take or require any or all of the following actions: (1) terminate any or all of the Project Documents including this Agreement (subject in each case to the survival of those provisions herein and therein stated to survive termination), (2) require the Obligors to promptly surrender the Sales Tax Letter to the Agency for cancellation, (3) convey to the Company or the Parent, as the case may be, all of the Agency's right, title and interest in and to the Project Premises (Facility Improvements), (4) convey to the Company or the Parent (or to such of the Eligible Affiliates as the Obligors shall promptly designate in writing to the Agency) all of the Agency's remaining right, title and interest in the Project Property, and (5) direct the New York City Economic Development Corporation to cause the termination of availability of BIR Energy.

(c) The provisions of this Section 5.11 relating to the obligation of the Obligors to pay a Recapture Payment in the amount and in the circumstances set forth herein shall survive and continue until the Project Termination Date notwithstanding the cessation of all Benefits or the termination of any of the Project Documents including this Agreement.

Section 5.12 Termination of Agency Interest in Project Property Subletting.

(a) In the event (x) the Agency shall cease to have any interest in the Project Premises (Facility Improvements) (subject to the provisions of Section 5.14 or 5.16 hereof), (y) the Agency shall cease to have any interest in any Additional Approved Company Location (as defined in Section 5.16 hereof), and (z) the Obligors shall cease to use Facility Equipment at Approved Company Locations (subject to any subletting of the Project Premises (Facility Improvements) permitted hereunder or under the Lease Agreement), then, (1) all future Benefits (including all Sales Tax Savings, all Real Property Tax Savings, all Mortgage Recording Tax Savings and Energy Cost Savings) will permanently cease to be available, (2) the Agency will terminate any or all of the Project Documents including this Agreement (subject in each case to the survival of those provisions herein and therein stated to survive termination), (3) the Obligors shall promptly surrender the Sales Tax Letter to the Agency for cancellation, (4) the Agency will convey to the Company (or the Parent, as directed in writing by the Obligors) all of the Agency's right, title and interest in and to the Project Premises (Facility Improvements), (5) the Agency will convey to the Company (or the Parent, as directed in writing by the Obligors) all of the Agency's remaining right, title and interest in the Project Property, (6) the Agency will direct the New York City Economic Development Corporation to cause the termination of availability of BIR Energy, and (7) if and to the extent any of the events described in clauses (x), (y) and/or (z) above shall arise in connection with a Relocation Reduction, or a relocation of Headquarters or Designated Operations and Facilities or any part thereof, the Obligors shall make a Recapture

Payment to the Agency in accordance with Sections 5.07 or 5.11 hereof respectively, as applicable.

(b) The Obligors shall have the right to sublease or assign thirty percent (30%) or less of the Project Building without any loss of Benefits hereunder. In the event that (i) more than thirty percent (30%) of the aggregate rentable square feet of the Project Building shall be used or occupied (whether by lease, license or otherwise) by Non-Qualified Users or (ii) the Obligors and Eligible Affiliates shall in the aggregate occupy less than 595,000 rentable square feet in the City, then all future Benefits (including all Sales Tax Savings, all Real Property Tax Savings, all Mortgage Recording Tax Savings and all Energy Cost Savings) will permanently reduced on a pro rata basis equal to the percentage of the aggregate rentable square feet of the Project Building occupied or used by Non-Qualified users or not occupied by the Obligors and Eligible Affiliates over the aggregate rentable square feet of the entire Project Building. If, and to the extent any such use or occupancy by Non-Qualified Users shall arise in connection with a Relocation Reduction, or a relocation of the Headquarters and Designated Operations and Facilities, or any part thereof, the provisions of Sections 5.7 and 5.11 shall be applicable. The Obligors shall not be responsible for repayment of any Sales Tax Savings taken in connection with the construction of Base Building Improvements as a result of subletting to Non-Qualified Users in excess of the Sublet Space Limitation as described below.

(c) Subject to the provisions of Section 9.2 of the Lease Agreement (Company-Project Premises), the Obligors shall have the right to have up to thirty percent (30%) of the aggregate rentable square feet of the Company-Project Premises subleased to Persons constituting Non-Qualified Users (the "Sublet Space Limitation"), provided that no such use or occupancy would violate Agency Requirements. In the event that more than thirty percent (30%) of the aggregate rentable square feet of the Company-Project Premises shall be subleased to Persons constituting Non-Qualified Users, the Obligors shall, not less than thirty (30) days prior to the effective date of any such sublease which would result in the subletting in the aggregate by the Obligors in excess of thirty percent (30%) of the Company-Project Premises, deliver written notice thereof to the Agency. Thereupon, at the sole cost and expense of the Obligors, the Company Lease and the Lease Agreement (Company-Project Premises) shall terminate with respect to all of the Company-Project Premises as shall be so subleased to Persons constituting Non-Qualified Users (including such portion of the Company-Project Premises which is not in excess of the Sublet Space Limitation) as if the term of the Lease Agreement (Company-Project Premises) and of the Company Lease with respect to such portions of the Company-Project Premises had expired, and the Agency and the Obligors shall release from the Company-Project Premises all such portions thereof as shall be used or occupied by a Non-Qualified User. The Obligors shall, at their sole cost and expense, take such action to effectuate such termination as the Agency may reasonably request, including, without limitation, the entering into of such amendments to the Lease Agreement (Company-Project Premises) and the Company Lease as the Agency may reasonably require to effect such termination.

Section 5.13 **Loss Events.** In the event that the Obligors shall be permanently unable (i.e, for a period in excess of one (1) year) to occupy all or substantially all of any of the Project Premises (Facility Improvements) by reason of a Loss Event (as defined in the related Lease Agreement) occurring with respect to any of such premises, and the Obligors submit to the Agency an application (on the Agency's then standard project application form) for approval of

Project Premises (Facility Improvements) on an alternate City site proposed by the Obligor, the Agency shall accept and review such application as expeditiously as possible and use best efforts within then existing Agency Requirements to obtain approval permitting the Sales Tax Savings to be made available for such alternate site, subject (if approved) to the Agency's then existing project and applicable statutory requirements. In the case of such Loss Event, if the Agency does not approve the making available of Sales Tax Savings for such alternate site, no Reduction of Eligible Employees in the City as a result of such Loss Event shall be considered a Relocation Reduction, but shall instead be deemed a Non-Relocation Reduction (except that there shall be no repayment of Benefits pursuant to Section 5.06 above. In any event, the Obligor shall have the right, subject to their covenants and agreements contained in this Agreement and the other Project Documents, to continue to realize Benefits after a Loss Event, unless such Reduction of Eligible Employees falls within the parameters set forth in Section 5.06(b) hereof

Section 5.14 **Employment Information; Equal Employment Opportunities.**

(a) The Obligor shall ensure that all employees and applicants for employment are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed by the Obligor with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-3 00) in which the Project Premises (Facility Improvements) is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Obligor agree, where practicable, to first consider persons eligible to participate in the Federal Job Training Partnership Act (P.L. No. 97-3 00) programs who shall be referred by administrative entities of service delivery areas created pursuant to such Act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(b) Annually, by August 1 of each year commencing August 1, 2004 until the termination of this Agreement, the Obligor shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule A hereto, certified as to accuracy by the chief financial or accounting officers of the Obligor.

(c) To the extent that the New York City Economic Development Corporation (together with any successor, "EDC") is obligated by law or contract with the City or other governmental entity, the Obligor shall furnish to EDC on request any and all information relating to categories of employment and numbers of employees within the City so requested to enable EDC to comply with applicable legal and contractual reporting requirements. This authorization shall remain in effect until the Project Termination Date.

(d) Nothing herein shall be construed to require the Obligor to violate any existing collective bargaining agreement with respect to the hiring of new employees.

(e) The Obligor agree to fulfill all standard Agency Requirements, including reporting requirements relating to Benefits received, and employment opportunities created, in connection with the Project; provided, however, the Obligor shall only be obligated to fulfill

those standard Agency Requirements (i) the non-compliance with which by the Obligors would adversely affect the ability of the Agency to fulfill its public mandate under the IDA General Act or the IDA Special Act (as such terms are defined in Section 5.15 hereof), and (ii) compliance by the Obligors with which would not (y) adversely affect the business or operations of the Obligors nor cause a substantial administrative burden to the Obligors, nor impair or reduce or affect the timing of the receipt of the Benefits to be enjoyed by the Obligors as contemplated by this Agreement, or (z) impose a material cost upon the Obligors (which cost the Agency shall not have reimbursed the Obligors nor otherwise provided additional Benefits equal to such cost), nor, in the case of a requirement to provide additional information, reports or documentation to the Agency or another entity, require the Obligors to provide proprietary information or trade secrets.

Section 5.15 **Amendments to the Agency Act.** Effect of Future Amendments to the New York State Industrial Development Agency Act and/or to Section 917 of the New York General Municipal Law. The term "Act" within each of the Lease Agreements has been defined as follows:

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

In the event that either the New York State Industrial Development Agency Act (the "IDA General Act") and/or Section 917 of the New York General Municipal Law relating to the creation of the Agency (the "IDA Special Act") shall be amended such as to require that the Obligors provide certain additional information, reports or documentation to either the Agency or another governmental entity or take or refrain from taking any particular action (the "Additional Statutory Requirement"), then, (i) if non-compliance with the Additional Statutory Requirement by the Obligors would adversely affect the ability of the Agency to fulfill its public mandate under the IDA General Act or the IDA Special Act, and (ii) compliance by the Obligors with the Additional Statutory Requirement would not (y) adversely affect the business or operations of the Obligors nor cause a substantial administrative burden to the Obligors, nor impair or reduce or affect the timing of the receipt of the Benefits to be enjoyed by the Obligors as contemplated by this Agreement, or (z) impose a material cost upon the Obligors (which cost the Agency shall not have reimbursed the Obligors nor otherwise provided additional Benefits equal to such cost), nor, in the case of a requirement to provide additional information, reports or documentation to the Agency or another entity, required the Obligors to provide proprietary information or trade secrets, then, the Obligors shall comply with such Additional Statutory Requirement.

Section 5.16 **Future Approved Company Locations.** The Obligors have advised the Agency that the Obligors may need to expand and/or consolidate, and the Agency, in light of the foregoing, has agreed that the Obligors shall have the right, at any time during the term of this Agreement, to submit for approval by the Agency one or more new locations within the City to constitute a further Approved Company Location (an "Additional Approved Company Location") at which location the Agency shall be requested to (i) accept a leasehold interest in the related realty, (ii) own Facility Equipment to be located and used thereat, and/or

(iii) lease Leased Personalty to be located and used thereat. The approval by the Agency of the Additional Approved Company Location shall be (A) contingent upon the receipt by the Agency of all applications, reports and other documents as may be required by the Agency in connection therewith, (B) subject to satisfaction by the Agency with the environmental condition of the Additional Approved Company Location and the Agency having no objection to the environmental impact of the inclusion within the Project of the Additional Approved Company Location, and (C) discretionary on the part of the Agency and subject to the Agency's then existing project and applicable statutory requirements. Upon receipt of all documentation as provided above with respect to the Additional Approved Company Location, the Agency shall expeditiously present the requested Additional Approved Company Location to the Agency's Board of Directors for approval including all necessary determinations under the New York State Environmental Quality Review Act and all other applicable statutory requirements, and, if so approved, such Additional Approved Company Location shall constitute an Approved Company Location.

Section 5.17 **Suspension of Benefits.** If at any time during the term of this Agreement, the number of Eligible Employees decreases below the Base Employment Number and such decrease would constitute a Non-Relocation Reduction or a Relocation Reduction that would result in the forfeiture of all remaining Benefits and/or recapture of Benefits if such Reduction continued at the same level for the remainder of the then current Annual Period, then the Obligors shall immediately (i) notify the Agency of such reduction in employment, and (ii) at the Agency's request, cease using and receiving the Benefits (including all Sales Tax Savings and Energy Cost Savings) and surrender to the Agency the Sales Tax Letter until (y) such time during such Annual Period as the number of Eligible Employees shall be equal to or exceed (1) at least 80% of the Base Employment Number in the case of a Non-Relocation Reduction, or (2) at least 90% of the Base Employment Number in the case of a Relocation Reduction, whereupon in either case the Agency shall return the Sales Tax Letter to the Obligors and notify the Obligors that they may again avail themselves of Remaining Energy Cost Savings and Remaining Sales Tax Benefits, or (z) the end of such Annual Period in which event the Obligors shall be subject to the application of the provisions of Section 5.06, 5.07 or 5.11 hereof, as applicable.

Section 5.18 **Confidentiality.** Unless required to disclose by law or judicial compulsion, the Agency and the Obligors mutually covenant and agree, to the maximum extent permitted by applicable law (or, as to the Agency, to the extent permitted under generally applicable Agency policies), to maintain, and to cause each of its officers, directors, employees, agents, attorneys and advisors to maintain, the strict confidentiality of this Agreement, the Lease Agreements, or other Project Documents and the Term Sheet dated November 1, 2001 with respect to the transactions contemplated by this Agreement and the underlying Benefits and minimum Eligible Employee counts contemplated hereunder, and all other non-public discussions, transmissions, communications, negotiations, instruments, documents and memoranda connected with the transactions contemplated hereunder and thereunder (the "Project Materials"), other than the Sales Tax Letter which may be exhibited to others for the purposes therein stated; provided, however, that (i) after the Lease Commencement Date, the Agency shall have the option to disclose any and all Project Materials upon a determination by the Agency in its sole discretion, made following receipt by the Agency of a request for information and/or the Project Documents, that such information is required to be disclosed under applicable law, including but not limited to Article 6 - Freedom of Information Law, of the New York Public

Officers Law; and (ii) to the extent that any information within the Project Materials shall have become part of the public domain through disclosures made by Persons other than (whether directly or indirectly) the Obligor or any Affiliate thereof (or any of their respective officers, directors, employees, agents, attorneys or advisors), neither the Agency nor the Obligor shall be obligated under this Section 5.18 or otherwise to maintain the confidentiality of such disclosed information. Notwithstanding the foregoing, the Agency shall, prior to making the determination referred to in clause (i) above, provide the Obligor ten (10) days written notice of such request and the Obligor may then advise the Agency whether they dispute the release of the information requested and the basis for such dispute.

Section 5.19 **Survival of Obligations.** Notwithstanding any provision of this Agreement, the Sales Tax Letter, the Lease Agreements or any Project Document to the contrary, including without limitation any conveyance by the Agency to the Company (or to the Parent or to such Eligible Affiliates as the Obligor shall promptly direct the Agency in writing) of its interest in the Project Property or any termination of any or all of the Lease Agreements or this Agreement, the obligations of the Obligor under this Article V hereof (including, without limitation, the application of the provisions of Sections 5.06, 5.07 and 5.11 hereof notwithstanding the earlier receipt by the Obligor of the Maximum Sales Tax Savings Amount and all Remaining Energy Cost Savings, or the cessation of future Benefits) shall survive the termination of this Agreement for any reason whatsoever (including, without limitation, the termination of this Agreement), and continue until the later of the Project Termination Date or the date upon which any amounts as shall have accrued hereunder on or prior to the Project Termination Date shall have been paid in full by the Obligor.

Section 5.20 **Provision of BIR Energy.** The BIR Energy Load shall, to the extent permitted by the BIR Program, be a fixed amount, and the Obligor shall be entitled only to the actual Energy Cost Savings realized from usage of BIR Energy subject to the BIR Energy Load, regardless of whether such savings are more or less than the Estimated Energy Cost Savings.

ARTICLE VI INDEMNITY; JOINT AND SEVERAL LIABILITY, REAL PROPERTY BENEFITS

Section 6.01 **Joint and Several Liability of the Obligor.** The Obligor shall be, jointly and severally, liable for all obligations and liabilities of the Company and the Parent under the Project Documents.

Section 6.02 **Indemnity.** (a) The Obligor shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), arising during the term of this Agreement upon, about or in connection with the Project or the Project Premises or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Project, (ii) the planning, design, acquisition, leasing, licensing, equipping, installation,

maintenance, repair or replacement of the Project Premises or the Project or any part thereof or the effecting of any work done with respect to the Project Premises or the Project, (iii) failure by any Obligor (or any other Person operating or using the Project Premises or any part thereof) to comply with any Legal Requirement, (iv) compliance with any Legal Requirement imposed upon any Obligor or the Indemnified Parties, (v) any defects (whether latent or patent) in the Project Premises or the Project or any part of either thereof, (vi) the maintenance, repair, replacement, restoration, renovation, improvement, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting, licensing, sublicensing or operation of the Project Premises or any portion of either thereof, (vii) this Agreement or any other Project Document, or other document or instrument required to be delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby. The foregoing indemnification shall not apply to an Indemnified Party with respect to any losses arising from gross negligence or willful misconduct of such Indemnified Party. No Indemnified Party shall be liable for any damage or injury to the person or property of the Obligors or any Eligible Affiliate or their respective directors, officers, employees, agents or servants or persons under the control or supervision of any Obligor or such Eligible Affiliate or any other Person who may be about the Project Premises or involved with the Project Premises or the Project due to any act or negligence of any Person other than, with respect to any such Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Obligors release each Indemnified Party from, and agree that no Indemnified Party shall be liable for, and agree to indemnify and hold each Indemnified Party harmless against, any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by such Indemnified Party with respect to any of the matters set forth in subdivisions (i) through (vii) of Section 6.02(a) hereof or at the direction of the Obligors or any Eligible Affiliate thereof. The foregoing indemnification shall not apply to an Indemnified Party with respect to any losses arising from gross negligence or willful misconduct of such Indemnified Party. An Indemnified Party shall promptly notify the Obligors in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Obligors pursuant to this Section 6.02; such notice shall be given in sufficient time to allow the Obligors to defend or participate in such claim or action. However, the failure to give such notice in sufficient time shall not constitute a defense hereunder or in any way impair the obligations of the Obligors under this Section 6.02, if (x) the Indemnified Party shall not have had knowledge or notice of such claim or action, or (y) the Obligors' ability to defend such claim or action shall not thereby be materially impaired. In the event, however, that (i) the Indemnified Party shall not have timely notified the Obligors of any such claim or action, (ii) neither the Parent nor the Company shall not have had knowledge or notice of such claim or action, and (iii) the Obligor's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the Indemnified Party, then the Obligors' obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

(i) In addition to and without limitation of all other representations, warranties and covenants made by the Obligors under this Agreement, the Obligors further represent, warrant and covenant that the Obligors have not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Project Premises in any manner which violates Federal, state or local laws, ordinances, rules or regulations

governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the Obligor's knowledge (without independent inspection except for the transaction screen analysis provided by the Obligor to the Agency (the "Environment Report")), the Project Premises do not contain any Hazardous Materials which are or have been used in any manner which violates Federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(ii) Without limiting the foregoing, the Obligor shall not cause or permit the Project Premises or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Legal Requirements, nor shall the Obligor cause or permit, as a result of any intentional or unintentional act or omission on the part of the Obligor, any Eligible Affiliate, or any tenant or subtenant of the Obligor, a release of Hazardous Materials onto the Project Premises or any portion thereof or onto any other property from the Project Premises in violation of any environmental law or regulation thereof

(iii) The Obligor shall

(A) comply with, and ensure compliance by Eligible Affiliates and all tenants or subtenants of the Obligor at the Project Premises with all Legal Requirements as may relate to the Project Premises;

(B) take such action as is necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Project Premises, (y) in accordance with all Legal Requirements, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities (except to the extent contested in good faith and provided the Obligor shall have provided adequate reserves therefor); and

(C) defend, indemnify, and hold harmless the Agency from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or otherwise at the Project Premises; (x) any bodily or personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities made in accordance with environmental laws and regulations, or any requirements of the Agency made in accordance with environmental laws and regulations, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorneys and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

For purposes of this subsection (c), "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Authorization Act of 1994, as amended (49 U.S.C. Sections 5101 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Obligor may have to the Agency at common law, and the indemnifications, releases and hold harmless provisions set forth herein shall survive the termination of this Agreement.

The parties hereto agree that the reference in this Section 6.02 to the transaction screen analysis is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Obligor's obligations to carry out and perform all of the covenants in this Section 6.02, including but not limited to, those covenants wherein the Obligor is obligated to indemnify the Agency and comply with all laws, ordinances, rules and regulations pertaining to Hazardous Materials.

(c) The indemnifications and protections set forth in this Section 6.02 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under such Indemnified Party's control or supervision.

(d) To effectuate the purposes of this Section 6.02, the Obligor will provide for and insure, in the General Liability policies required in Section 4.4 of the Lease Agreements, not only its own liability in respect of the matters therein mentioned but also the liability to the Indemnified Parties pursuant to this Section 6.02 provided that the obligation of the Obligor to provide insurance with respect to its liability under Section 6.02(c) hereof shall be effective only to the extent that such insurance is available on a commercially reasonable basis. Anything to the contrary in this Agreement notwithstanding, the indemnification covenants of the Obligor contained in this Section 6.02 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by any Indemnified Party relating to the enforcement of the provisions herein specified.

(e) For the purposes of this Section 6.02, neither the Obligor nor any Eligible Affiliate thereof shall be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(f) Notwithstanding any provision herein to the contrary, the indemnifications and protections set forth in this Section 6.02 shall not extend (y) to an Indemnified Party if and to the extent that the loss, damage, injury or liability arises or shall have arisen from the gross negligence or willful misconduct of such Indemnified Party or (z) to the Agency, if (and to the extent that) the loss, damage, injury or liability occurs on, in or about or relates in any way to any portion of the Project Building other than the Project Premises in which the Agency shall have an interest (for reasons other than the Project).

(g) In the event any claim, action, suit or proceeding shall be brought against an Indemnified Party within the protections provided by the Obligors under this Section 6.02, the Obligors shall, promptly after being so requested by such Indemnified Party, at the sole cost and expense of the Obligors, assume and direct the defense thereof, with counsel reasonably satisfactory to such Indemnified Party (counsel selected by the Obligor's insurance carrier being deemed to be so acceptable), and in such event the Obligors shall not be liable to such Indemnified Party for any legal or other expenses incurred by such Indemnified Party in connection with the defense thereof, provided, however, that unless and until the Obligors assumes the defense of any such action at the request of such Indemnified Party, the Indemnified Party shall have the right to conduct the defense of such action at the Obligor's expense; and provided, further, that if an Indemnified Party reasonably concludes that there may be defenses available to it or them that are different from or in addition to the defenses available to the Obligors (in which case the Obligors will not have the right to direct the defense of such claim, action, suit or proceeding on behalf of such Indemnified Party), reasonable legal and other expenses incurred by such Indemnified Party will be paid by the Obligors. If the Obligors shall not promptly employ counsel to have charge of the defense of any such claim, action, suit or proceeding, reasonable legal and other expenses incurred by such Indemnified Party shall be borne by the Obligors.

ARTICLE VII EVENTS OF DEFAULT

Section 7.01 **Events of Default.** The occurrence of any of the following events shall be an "Event of Default" hereunder:

(a) Failure of the Obligors to pay any amount that has become due and payable by the terms hereof when due, and the continuation of such failure for ten (10) days after the Obligors shall have received written notice of such failure from the Agency;

(b) Failure of the Obligors to observe and perform any covenant, condition or agreement on its part to be performed under Section 4.01 hereof, and the continuation of such failure for thirty (30) days after the Obligors shall have received written notice of such failure from the Agency;

(c) Failure of the Obligors to deliver the certificates required under Section 3.08, 3.11 or 5.15 hereof, and the continuation of such failure for thirty (30) days after the Obligors shall have received written notice of such failure from the Agency;

(d) Failure of the Obligors to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.01(a), (b) or (c) above) and (1) continuance of such failure for a period of sixty (60) days after receipt by the Obligors of written notice specifying the nature of such default from the Agency, or (2) if by reason of the nature of such default the same can be remedied, but not within the said sixty (60) days, the Obligors fail to proceed with reasonable diligence after receipt of said notice to cure the same or fail to continue with reasonable diligence their efforts to cure the same;

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

(f) If a proceeding or case shall be commenced, without the application or consent of any Obligor, in any court of competent jurisdiction, seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts of such Obligor, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of such Obligor or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts of such Obligor, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or such Obligor shall acquiesce in writing to any of the foregoing; or any order for relief against such Obligor shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of such Obligor as used above shall not be construed to prohibit any action otherwise permitted in Sections 4.01 or Article V hereof,

(g) Any representation or warranty made (i) by or on behalf of an Obligor in the application and related materials submitted to the Agency for approval of the Project or in any Project Documents, or (ii) by an Obligor herein, or (iii) by an Obligor in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made; or

(h) An Event of Default under any of the Lease Agreements, or any of the Project Documents shall occur and be continuing.

Section 7.02 **Remedies on Default.** Whenever any Event of Default referred to in Section 7.01 hereof shall have occurred and be continuing, the Agency, may proceed to enforce its rights under this Agreement by (i) terminating any or all of the Project Documents including this Agreement, and/or (ii) suspending and/or terminating or not annually re-confirming the Sales Tax Letter, or requiring the Obligors to surrender the Sales Tax Letter to the Agency for cancellation, and/or (iii) causing the reversion or conveyance of the Project Premises (Facility Improvements) to the Company or the Parent, as the case may be, and/or (iv) conveying all of the Agency's remaining right, title and interest in the remaining Project Property to the Company or the Parent (or to such Eligible Affiliate as the Obligors may promptly direct the Agency in writing), and/or (v) directing the New York City Economic Development Corporation to cause the termination of availability of BIR Energy, and/or (vi) taking whatever action at law or in equity as may appear necessary or desirable to collect payment of amounts due under this Agreement, and/or (vii) enforcing performance or

observance of any obligations, covenants or agreements of the Obligors under this Agreement; provided, however, that notwithstanding any other provision of this Agreement or of any other Project Document, no remedy of specific performance or injunction, stay or restraining order or other equitable remedy may be sought or obtained by the Agency to prevent or delay or impede in any way any action to be taken by the Parent or the Company under Section 4.01 hereof, or a Reduction or a relocation of the Headquarters, and the Agency hereby absolutely and irrevocably waives any right to any such remedy and any right to seek or obtain any such remedy. The remedies of the Agency in this Section 7.02 are the sole and exclusive remedies available to the Agency under this Agreement.

Section 7.03 **Failure to Exercise Remedies.** Failure by the Agency to exercise any rights or remedies upon default by either Obligor hereunder (in accordance with, and subject to the limitations contained in, the provisions of Section 7.02 hereof) shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon any such rights or remedies (in accordance with, and subject to the limitations contained in, the provisions of Section 7.02 hereof), if such default by such Obligor is continued or repeated.

Section 7.04 **No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Agreement should be breached by either Obligor and thereafter waived by the Agency, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the Agency. No course of dealing between the Agency and the Obligors or delay or omission on the part of the Agency in exercising any rights hereunder shall operate as a waiver.

Section 7.05 **Effect of Discontinuance of Proceedings.** In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Agency, then, and in every such case after giving effect to any such adverse ruling, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.06 **Agreement to Pay Attorneys' Fees and Expenses.** If there shall occur an Event of Default hereunder, and if the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Obligors or either of them herein contained (all in accordance with, and subject to the limitations contained in, the provisions of Section 7.02 hereof), the Obligors will promptly after demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.01 **Financial Statements; Annual Certificates.** (a) The Obligors shall, promptly upon request of the Agency, furnish to the Agency, an update of the net worth statement of each Obligor, in the same form previously submitted to the Agency.

(b) Each Obligor shall upon request of the Agency deliver to the Agency, a certificate of an Authorized Representative of such Obligor (i) as to whether or not, as of the close of such preceding fiscal year of such Obligor, and at all times during such fiscal year, such Obligor was in compliance with all the provisions that relate to such Obligor in this Agreement and in each other Project Documents to which such Obligor shall be a party, and if the Authorized Representative or such Obligor shall have obtained knowledge of any default in such compliance or notice of the default, such Authorized Representative shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Obligors with respect thereto, and (ii) that the Obligors has not availed itself of the benefits of the Sales Tax Letter except in conformance with the requirements of the Sales Tax Letter and this Agreement. In addition, upon sixty (60) days' prior written request by the Agency specifically citing one or more sections of this Agreement, the Obligors will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of each Obligor stating that to such Authorized Representative's knowledge no default or breach exists under such sections hereof or describing with specificity each such default or breach of which such Authorized Representative has knowledge.

(c) The Obligors shall promptly notify the Agency of the occurrence and continuance of any Event of Default or any event that, with notice and/or lapse of time, or both would constitute an Event of Default hereunder or under any Project Document of which any Obligor has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the applicable Obligor and shall set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, such Obligor shall state this fact in the notice.

Section 8.02 **Limitations on Liability.** (a) Any covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his or her individual capacity, and no recourse shall be had for the payment of any claim based thereon against any member, director, officer, employee or agent of the Agency.

(b) No obligation or agreement of the Agency contained herein shall constitute or give rise to an obligation or indebtedness of the State or the City, and neither the State nor the City shall be liable thereon or hereunder. Furthermore, no such obligation or agreement shall constitute or give rise to a general obligation or pecuniary liability of the Agency.

(c) Any covenants, stipulations, promises, agreements and obligations of the Company contained in this Agreement shall be deemed to be the covenants, stipulations,

promises, agreements and obligations of the Obligor and not of any partner, member, shareholder, director, officer, employee or agent of the Parent or the Company, in his or her individual capacity, and no recourse shall be had for the payment of any claim based thereon against any partner, member, shareholder, director, officer, employee or agent of the Parent or the Company.

Section 8.03 **Employment Information.** The Obligors agrees that, upon request of the Agency, the Obligors shall furnish to the Agency such information as the Agency shall reasonably request (y) as necessary to verify or confirm the information reported by the Obligors to the Agency pursuant to this Agreement, and (z) with respect to past (but not prior to May 2001) and present number of employees of the Obligors both within and, if there shall have occurred and be continuing a Reduction or may have occurred a relocation of the Designated operations and Facilities or the Headquarters, outside the City, including, without limitation, information with respect to the number of Eligible Employees at the Approved Obligors Locations and other locations both within and, outside of the City, and the number of employees of the Obligors as constitute executive personnel and other categories reasonably requested by the Agency at each location. Upon request by the Agency, the Obligors shall submit to the Agency copies of each Form EEO-1 and Form NYS-45 or the equivalent, with respect to the facilities of the Obligors or their Eligible Affiliates within the City, as are required to be prepared and filed with Federal or State authorities pursuant to applicable law.

Section 8.04 **Benefit of this Agreement.** All covenants and agreements on the part of the Agency and the Obligors as set forth in this Agreement are hereby declared to be for the benefit of the Agency and the Obligors (and for no other Person), and no other Person shall have any right or be deemed a third-party beneficiary hereunder.

Section 8.05 **Amendments.** This Agreement may be amended only with the consent of the Agency and the Obligors and only if the Agency and the Obligors shall assume in writing the obligations of such amended Agreement.

Section 8.06 **Notices.** Any notice, demand, direction, certificate, Opinion of Counsel, request, instrument or other communication authorized or required by this Agreement to be given to or filed with the Agency, the Parent or the Company shall be delivered or sent by hand delivery (receipt acknowledged) or by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier:

(a) If to the Agency, to the General Counsel, New York City Industrial Development Agency, 110 William Street, New York, New York 10038, (Tel) 212-619-5000, (Fax) 212-312-3912, with a copy to the Executive Director of the Agency at the same address.

(b) If to the Parent, The Hearst Corporation, 959 Eighth Avenue, New York, New York 10019, Attention: Senior Manager of Facilities, with a copy of any default notice to the Parent's counsel, Stadtmauer Bailkin LLP, 850 Third Avenue, New York, New York 10022, Attention: Michael Bailkin, Esq.

(c) If to the Company, Hearst Communications, Inc., 959 Eighth Avenue, New York, New York 10019, Attention: Senior Manager of Facilities, with a copy of any default notice to

the Company's counsel, Stadtmauer Bailkin LLP, 850 Third Avenue, New York, New York 10022, Attention: Michael Bailkin, Esq.

The Agency, the Parent and the Company may, by like notice, designate any further or different addresses to which subsequent notices, demands, directions, certificates, Opinions of Counsel, requests, instruments or other communications hereunder shall be sent. Any notice, demand, direction, certificate, Opinions of Counsel, request, instrument or other communication hereunder shall, except as may otherwise expressly be provided herein, be deemed to have been delivered or given as of the date received or as of the date delivery is rejected (as indicated on the return receipt).

Section 8.07 **Prior Agreements Superseded.** This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and any Obligor relating to the subject matter hereof (other than any Project Documents or other document being executed contemporaneously herewith or therewith).

Section 8.08 **Severability.** If any clause, provision or Section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

Section 8.09 **Effective Date; Counterparts.** This Agreement shall become effective upon its delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.10 **Binding Effect.** This Agreement shall be binding upon the Agency and the Obligors and their respective successors and permitted assigns.

Section 8.11 **Law Governing.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE SPECIFICALLY EXCLUDING ITS CONFLICTS OF LAWS PROVISIONS.

Section 8.12 **Waiver of Trial by Jury.** THE PARTIES DO HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. THIS SECTION 8.12 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Section 8.13 **Term of Agreement.** The term of this Agreement shall commence on the Lease Commencement Date and shall terminate on the Project Termination Date or such earlier date as this Agreement shall be terminated in accordance with the terms hereof.

Section 8.14 **Date of Agreement for Reference Purposes Only.** The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the Lease Commencement Date.

IN WITNESS WHEREOF, each of the undersigned by its officers duly authorized has executed and delivered this Agreement as of the date hereof

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Kei Hayashi
Deputy Executive Director

THE HEARST CORPORATION

By: _____
Ronald J. Doerfler
Senior Vice President and
Chief Financial Officer

HEARST COMMUNICATIONS, INC.

By: _____
Ronald J. Doerfler
Senior Vice President and
Chief Financial Officer

IN WITNESS WHEREOF, the Obligors have caused their names to be subscribed hereto by their respective Authorized Representatives, and the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairperson, Vice Chairperson, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, all being done as of the year and day first above written.

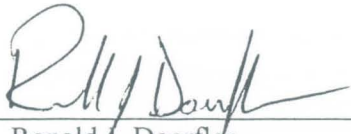
ATTEST:

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

Assistant Secretary


By: _____
Kei Hayashi
Deputy Executive Director

THE HEARST CORPORATION

By: 

Ronald J. Doerfler
Senior Vice President and
Chief Financial Officer

HEARST COMMUNICATIONS, INC.

By: 

Ronald J. Doerfler
Senior Vice President and
Chief Financial Officer

FORM OF ASSUMPTION OF LIMITED LESSEE/AGENT

In consideration for the appointment by the New York City Industrial Development Agency (the "Agency") of the undersigned as a "Limited Lessee/Agent" under:

(i) a certain Lease Agreement (959 Eighth Avenue), dated as of June 1, 2003, between the Agency and The Hearst Corporation (the "Parent") and Hearst Communications, Inc. (the "Company", together with the Parent, the "Obligors"),

(ii) a certain Lease Agreement (959 Eighth Avenue-PILOT Premises), dated as of June 1, 2003, between the Agency and the Obligors;

(iii) a certain Lease Agreement (Company - Project Premise), dated as of June 1, 2003, between the Agency and the Obligors (the Agreements describe in this clause (iii), together with those describe in clause (i) and (ii) above, being the "Lease Agreements").

(iv) an Equipment Lease Agreement, dated as of June 1, 2003 (as the same has been and may hereafter be amended and supplemented, the "Equipment Lease Agreement"), between the Agency and the Obligors,

(v) a certain Project Agreement, dated as of June 1, 2003 (as the same has been and may hereafter be amended and supplemented, the "Project Agreement"), between the Agency and the Obligors, and

(vi) a certain Letter of Authorization for Sales Tax Exemption dated June 12, 2003 (as the same has been and may hereafter be amended, restated and supplemented, the "Sales Tax Letter") from the Agency to the Obligors

(capitalized terms used but not defined herein shall have respective meanings assigned to such terms in the Lease Agreements referred to above or the Project Agreement),

the undersigned DOES HEREBY (for the benefit of the Agency, in the case of the Lease Agreements, the Project Agreement and the Sales Tax Letter),

1. CERTIFIES THAT it is an Eligible Affiliate, and that it is of the type of legal entity organized under that jurisdiction as is set forth in the signature block below,

2. ASSUMES all rights, obligations, covenants and agreements under each of the Lease Agreements, the Project Agreement and the Sales Tax Letter as shall be expressly set forth in each of those agreements as applicable to Limited Lessee/Agents,

3. COVENANTS AND AGREES to take no action with respect to the Project Property or any part thereof which the Obligors could not take under any of the Lease Agreements, the Project Agreement or the Sales Tax Letter,

4. ASSUMES (jointly and severally with the Obligors and with all other Limited Lessee/Agents) UNDER THE Lease Agreement the obligations, covenants and agreements (but not the payments) of the Obligors under the Lease Agreement,

5. ASSUMES (jointly and severally with the Obligors and with all other Limited Lessee/Agents) UNDER THE Equipment Lease Agreement the obligations, covenants and agreements (but not the payments) of the Obligors under the Equipment Lease Agreement, and

6. ASSUMES (jointly and severally with the Obligors and with all other Limited Lessee/Agents) tender THE Project Agreement the obligations, covenants and agreements (but not the payments) of the Obligors under the Project Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto executed this instrument this day of _____

[NAME OF ENTITY]

a _____ organized under the laws of the State of _____

By: _____

Name:

Title:

SEMIANNUAL CERTIFICATE OF THE OBLIGORS

The undersigned DO HEREBY CERTIFY THAT he/she is an Authorized Representative (as defined in the Project Agreement referred to below) of THE HEARST CORPORATION, a Delaware corporation (the "Parent"), and HEARST COMMUNICATIONS, INC., a New York corporation (the "Company", together with the Parent, the "Obligors") and has knowledge or access to that knowledge necessary to deliver this certificate, and this certificate is being delivered in accordance with the provisions of Section 3.8 of that certain Project Agreement dated as of June 1, 2003 (the "Project Agreement") by and between the New York City Industrial Development Agency and the Obligors (all capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Project Agreement or in the Lease Agreements referred to in the Project Agreement):

1. For the immediately preceding six-month period ending December 31 [June 30], _____ (or for the immediately prior period, if this certificate relates to the period from July 1, _____ through December 31, _____), Schedule I attached hereto sets forth for such preceding six-month (or such other) period each Sales Tax Saving availed of by the Obligors pursuant to the Sales Tax Letter and/or the Project Agreement, the dollar amount of same, the date availed of, meaning the date of payment (although with respect to each item of Leased Personally, the Sales Tax Saving shall be deemed availed of on each lease payment date under the related Qualified Personally Lease), the NPV of such dollar amounts, and the specific items of Project Costs to which each shall relate.

2. All of the Sales Tax Savings described in Schedule I were availed of by the Obligors in compliance with the provisions of the Sales Tax Letter and the Project Agreement, and no Person other than the Obligors and the Limited Lessee/Agents realized any such Sales Tax Savings.

3. The NPV dollar amount of all Sales Tax Savings availed of by the Obligors from and after _____ to the end of the immediately preceding six-month (or such other) calendar period (including Sales Tax Savings availed of as a result of there being Leased Personalty during such immediately preceding period) is \$ _____.

4. Attached hereto as Schedule II are all deletions and additions necessary to cause the Project Property Registry to be an accurate and complete description of the property comprising the Facility Improvements, the Facility Equipment, the Leased Personalty and the Maintenance Contracts.

5. As of the end of the immediately preceding six-month (or other) calendar period, the amount of Remaining Sales Tax Benefits is \$ _____ NPV.

6. As of the end of the immediately preceding six-month (or other) calendar period and at all times during such six-month (or other) calendar period, the Obligors was not in default under any of the provisions of the Project Documents. [To the extent that the Authorized Representative of and Obligor shall have obtained knowledge or notice of any such default, the

certificate shall disclose such default(s) or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default under any of the Project Documents, and the action proposed to be taken by the Obligor with respect thereto.]

7. No item of Facility Equipment or Leased Personally has been removed from an Approved Company Location, except in accordance with Section 4.03 of the Project Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____.

THE HEARST CORPORATION

By: _____
Name:
Title:

HEARST COMMUNICATIONS, INC.

By: _____
Name:
Title:

Schedule I

Description of Item (incl. serial #, if applicable)	<u>Location of Item</u>	<u>Dollar Amount</u>	<u>Vendor</u>	<u>Date of Payment</u>	<u>Sales Tax Saving</u>	<u>Total Savings</u>
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Schedule II

Deletions and Additions to Project Property Registry

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

June 12, 2003

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(The Hearst Corporation Project)_____

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to resolutions adopted by the Agency on December 11, 2001, November 12, 2002 and January 14, 2003, the Agency has authorized and pursuant to the terms hereof and the terms of the Project Agreement (herein defined) the Agency does hereby authorize The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Parent"), and Hearst Communications, Inc., a corporation organized and existing under the laws of the State of New York (the "Company", together with the Parent, being the "Obligors"), to act as its agent for and on behalf of the Agency in connection with (y) the acquisition by the Obligors of machinery, equipment, furniture, fixtures, and other items of tangible personal property ("Facility Equipment"), all as generally described in and limited as to scope as set forth in Exhibit A attached hereto, and all for use at the Equipment Project Premises, as described in Exhibit C hereto, and (z) the acquisition from time to time of construction materials and tangible personal property to be used by the Obligors (the "Facility Improvement Materials") to make capital improvements at, and to renovate and upgrade the Facility Improvement Project Premises, as described in Exhibit D hereto. All such actions in clauses (y) and (z) are collectively referred to herein as the "Project". The Agency authorizes the Obligors to use and the Obligors shall use this letter only for the payment of costs incurred in connection with the Project.

3. As agent for the Agency, the Obligors agree that each contract, invoice, bill or purchase order entered into by an Obligor as agent for the Agency in connection with the Project shall include language in substantially the following form:

[IF WITH RESPECT TO FACILITY IMPROVEMENTS]

“This [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] is being entered into by or on behalf of [The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and/or certain of its affiliates] and/or [Hearst Communications, Inc., a corporation organized and existing under the laws of the State of New York, and/or certain of its affiliates] (collectively the “Agent”), as agent for and on behalf of the New York City Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for the Agent consisting of the acquisition from time to time of construction materials and tangible personal property to be used by the Agent to make capital improvements to and to renovate and upgrade from time to time the Project Premises described in the attached Letter of Authorization for Sales Tax Exemption (the above being part of the “Project”).

[OR, IF WITH RESPECT TO FACILITY EQUIPMENT]

“This [purchase order, bill of sale, invoice, contract, lease, is being entered into by or on behalf of [The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and/or certain of its affiliates] and/or [Hearst Communications, Inc., a corporation organized and existing under the laws of the State of New York, and/or certain of its affiliates], as agent for and on behalf of the New York City Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for the Agent consisting of the acquisition of machinery, equipment, furniture, fixtures and other tangible personal property (including computer hardware and software, but excluding ordinary office supplies such as pencils, paper clips and paper) to be used exclusively at the Equipment Project Premises (as referred to in the attached Letter of Authorization for Sales Tax Exemption) (the above being part of the “Project”).

[AND, IN EITHER CASE, ALL OF THE FOLLOWING]

The sales tax exemption provided with respect to this [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] shall only be available for the Project, and the vendor, lessor or contractor so acknowledges and covenants to the same.

This [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently

liable or obligated hereunder in any manner or to any extent whatsoever. The Agency may assign its interest in this [purchase order, bill of sale, invoice, contract, lease, sublease, license or sublicense] to the Agent without the consent of any other person (but not prior to the termination of the Project).

The vendor, lessor or contractor represents and warrants that such party is not a Prohibited Person.

The term "Prohibited Person", as used hereinabove, means: (i) any person (A) that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a person that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, unless such default or breach has been waived in writing by the City or the Agency, respectively; (ii) any person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure; (iii) any government, or any person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof; or (iv) any government, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended)."

3. The acquisition, renovation, improving, leasing, subleasing, licensing, sublicensing, maintenance, repair and replacement from time to time of facilities, capital improvements, systems, trade fixtures, tangible personal property, equipment and machinery constituting a part of the Project shall be exempt from the sales and use tax levied by the State of

New York and The City of New York on the condition that (i) any machinery, equipment or other tangible personal property shall have a useful life of one year or more, and shall solely be for the use of the Obligors and/or Eligible Affiliates at any Approved Company Location (as defined in the Project Agreement herein defined), and for no other entity and at no other location, (ii) in the case of rental arrangements, such arrangements either (y) provide for a purchase option on the part of the Obligors, or (z) constitute a capital lease, and (iii) any maintenance contracts shall only be with respect to Project property having a useful life of one year or more, the replacement of parts (other than parts that contain materials or substances that are consumed in the operation of such property where such parts must be replaced whenever the substance is consumed) or the making of repairs but shall not include maintenance of the type as shall constitute janitorial services.

4. Pursuant to the Project Agreement dated as of June 1, 2003 among the Agency, the Parent and the Company (the "Project Agreement") the Agency may appoint, and may further appoint from time to time, Eligible Affiliates, who shall have executed the "Assumption of Limited Lessee/Agent" form attached to the Project Agreement and who shall continue to be such, to act as the Agency's limited agent in connection with the acquisition, renovation, equipping, furnishing, installation, leasing, subleasing, licensing, sublicensing, repair, replacement and maintenance of the Project, except that such agents (the "Limited Lessee/Agents") shall only act as such through their appointment of an Obligor as their agent for the above purposes. The Limited Lessee/Agents (if any) shall be enumerated or otherwise identified by an attachment hereto.

5. The Agency shall not be liable, either directly or indirectly or contingently, in any manner or to any extent whatsoever, and the Obligors shall be the sole party liable, under any lease, sublease, license, sublicense, contract, agreement, invoice, bill or purchase order entered into by the Obligors, as agent for the Agency hereunder.

6. Accordingly, until the earlier of (i) June 30, 2027, or (ii) the actual realization of the Maximum Sales Tax Savings Amount (as defined in the Project Agreement), and subject to the continued annual confirmation by the Agency as to the effectiveness of this letter as provided in Exhibit B attached hereto and made a part hereof, all vendors, lessors, contractors and subcontractors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that purchases and leases of, and improvement, installation and maintenance contracts relating to, the Project property, to the extent effected by the Obligors as agent for the Agency, are exempt from all New York State and New York City sales and use taxes.

7. By executing this letter, the Obligors agree to accept the terms hereof and represent and warrant to the Agency that the use of this letter by the Obligors is strictly for the purposes above stated. This letter may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Kei Hayashi
Deputy Executive Director

ACCEPTED AND AGREED TO BY:

THE HEARST CORPORATION

By: _____
Ronald J. Doerfler
Senior Vice President and
Chief Financial Officer

HEARST COMMUNICATIONS, INC.

By: _____
Ronald J. Doerfler
Senior Vice President and
Chief Financial Officer

EXHIBIT A

Exemptions from sales or use tax relate to the following categories:

1. the acquisition, maintenance, replacement and installation of machinery, equipment, furniture, furnishings, trade fixtures, and other tangible items of personal property for use at the Project Premises (Facility Equipment), including mainframe computers (and peripherals), personal or other computers, telecommunication equipment, business machines and software, but excluding art, plants, objets d'art and other similar decorative items, rolling stock and ordinary office supplies such as pencils, paper clips and paper;
2. the leasing, subleasing, licensing and sublicensing of machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property (including the maintenance, and additions with respect to such items) for use at the Project Premises (Facility Equipment), including mainframe computers (and peripherals), personal or other computers, telecommunications equipment, business machines and software;
3. maintenance and repair constituting Qualified Maintenance (herein defined) and service contracts for the maintenance, service or repair constituting Qualified Maintenance (herein defined) of machinery, equipment, computer, software, telecommunications equipment and other personal property used at the Project Premises (Facility Equipment);
4. The acquisition of building and construction materials and the making of improvements and renovations at the Project Premises (Facility Improvements);

provided, however, that (i) the purchase of any software under the above categories may only be effected if such software shall be capitalized or capable of being capitalized under generally accepted accounting principles and (ii) any maintenance or repairs shall only be for "Qualified Maintenance". "Qualified Maintenance" shall mean, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (other than parts that contain materials or substances that are consumed in the operation of such property (e.g., a toner cartridge) where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

EXHIBIT B
ANNUAL CONFIRMATION BY AGENCY OF
EFFECTIVENESS OF SALES TAX LETTER

Annual Period
(but not later than that date
determined in accordance with
paragraph 8 of this letter)

Confirming Agency Signature

June 12, 2003 through June 30, 2004	_____
July 1, 2004 through June 30, 2005	_____
July 1, 2005 through June 30, 2006	_____
July 1, 2006 through June 30, 2007	_____
July 1, 2007 through June 30, 2008	_____
July 1, 2008 through June 30, 2009	_____
July 1, 2009 through June 30, 2010	_____
July 1, 2010 through June 30, 2011	_____
July 1, 2011 through June 30, 2012	_____
July 1, 2012 through June 30, 2013	_____
July 1, 2013 through June 30, 2014	_____
July 1, 2014 through June 30, 2015	_____
July 1, 2015 through June 30, 2016	_____
July 1, 2016 through June 30, 2017	_____
July 1, 2017 through June 30, 2018	_____
July 1, 2018 through June 30, 2019	_____
July 1, 2019 through June 30, 2020	_____
July 1, 2020 through June 30, 2021	_____
July 1, 2021 through June 30, 2022	_____
July 1, 2023 through June 30, 2024	_____
July 1, 2024 through June 30, 2025	_____
July 1, 2025 through June 30, 2026	_____
July 1, 2026 through June 30, 2027	_____

EXHIBIT C

DESCRIPTION OF PROJECT PREMISES (FACILITY EQUIPMENT)

<i>Street Address</i>	<i>Block/Lot</i>	<i>Floors</i>	<i>Approximate square feet</i>
959 Eighth Avenue New York, New York	1047/1601 and 1047/1602	Subbasement, 1-14 and 14-42	850,000
250 West 55th Street New York, New York	1026/55	Sub concourse level and 1-13	113,288
1345 Sixth Avenue New York, New York	1007/29	10 and 42	78,494
1790 Broadway New York, New York	1029/53	3-6, 11-14 and 18	74,783
1700 Broadway New York, New York	1025/25	20, 28, 29, 30, 36- 38 and 42	90,010
1755 Broadway New York, New York	1028/1001-1003	2	30,875
224 West 57th Street, New York, New York	1028/47	Concourse Level and 1-10	126,272
235 East 45th Street New York, New York	1319/16	2 and 3	30,572
810 7th Avenue New York, New York	1024/38	6	20,500
888 7th Avenue New York, New York	1028/29	2, 4, 6, 13 and 27	51,475
387 Southern Blvd. Bronx, New York	2575/65	1	80,000

EXHIBIT D

DESCRIPTION OF PROJECT PREMISES (FACILITY IMPROVEMENTS)

<i>Street Address</i>	<i>Block/Lot</i>	<i>Floors</i>	<i>Approximate square feet</i>
959 Eighth Avenue New York, New York	1047/1601 Unit A	Subbasement 1-14	204,200
959 Eighth Avenue New York, New York	1047/1602 Unit B	14-42	645,800
250 West 55th Street New York, New York	1026/55	Sub concourse level and 1-13	113,288
1345 Sixth Avenue New York, New York	1007/29	10 and 42	78,494
1790 Broadway New York, New York	1029/53	3-6, 11-14 and 18	74,783

DESCRIPTION OF PROJECT PREMISES (FACILITY IMPROVEMENTS)

<i>Street Address</i>	<i>Block/Lot</i>	<i>Floors</i>	<i>Approximate square feet</i>
959 Eighth Avenue New York, New York	1047/1601 and 1047/1602	Subbasement, 1-14 and 14-42	850,000
250 West 55th Street New York, New York	1026/55	Sub concourse level and 1-13	113,288
1345 Sixth Avenue New York, New York	1007/29	10 and 42	78,494
1790 Broadway New York, New York	1029/53	3-6, 11-14 and 18	74,783

DESCRIPTION OF PROJECT PREMISES (FACILITY EQUIPMENT)

<i>Street Address</i>	<i>Block/Lot</i>	<i>Floors</i>	<i>Approximate square feet</i>
959 Eighth Avenue New York, New York	1047-1602 and 1047/1601	Subbasement, 1-14 and 14-42	850,000
250 West 55th Street New York, New York	1026/55	Sub concourse level and 1-13	113,288
1345 Sixth Avenue New York, New York	1007/29	10 and 42	78,494
1790 Broadway New York, New York	1029/53	3-6, 11-14 and 18	74,783
1700 Broadway New York, New York	1025/25	20, 28, 29, 30, 36-38 and 42	90,010
1755 Broadway New York, New York	1028/1001-1003	2	30,875
224 West 57th Street, New York, New York	1028/47	Concourse Level and 1-10	126,272
235 East 45th Street New York, New York	1319/16	2 and 3	30,572
810 7th Avenue New York, New York	1024/38	6	20,500
888 7th Avenue New York, New York	1028/29	2, 4, 6, 13 and 27	51,475
387 Southern Blvd. Bronx, New York	2575/65	1	80,000

DEFINITIONS

Act means Article 18-A of the General Municipal Law, also known as the "New York State Industrial Development Agency Act."

Acquisition shall mean any acquisition or series of acquisitions (whether by stock or asset purchase, hiring or otherwise, but excluding Mergers) by an Obligor from a Foreign Entity (or group of Foreign Entities affiliated with each other) in the City, directly or indirectly, during any period of six (6) consecutive months, which results directly in an increase in the City in employment by such Obligor of an aggregate of forty (40) or more Employees.

Actual Real Property Taxes means, for any Tax Year, the Real Property Taxes which would have been due and payable with respect to the Agency Owned Facility Realty but for the Agency's title to the Agency Owned Facility Realty, calculated on the basis of then Current Assessed value and then current Real Property Tax rate subject to any abatements, exemptions or reductions which the property would be subject if it were not owned by the Agency.

Affiliate of a Person shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. "Control" (including the related terms "controlled by" and "under common control with") shall exist only when all three of the following criteria are met: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person (whether through the ownership of voting securities or other ownership interest, by contract or otherwise), (ii) the ownership, either directly or indirectly, of at least 51% or more of the voting stock or other equity interest of such Person, and (iii) the possession, directly or indirectly, of the power to make decisions regarding the hiring, firing, compensating and promoting of the employees of such Person.

Agency Owned Facility Realty or Agency Owned Unit shall mean, to the extent the Agency has fee title thereto, those premises occupied by the Company comprising Commercial Unit A in the Project Building, containing an aggregate of not more than 266,029 gross square feet and as shall be subject to the provisions of the Lease Agreement (959 Eighth Avenue-Pilot Premises), and as described in the Description of Agency Owned Facility Realty in the Appendices to the Lease Agreement (959 Eighth Avenue-Pilot Premises), together with the Common Elements, if any, appurtenant to such Agency Owned Unit, and all rights or interests of the Agency therein or appertaining thereto, including the allocable interest of the Agency Owned Unit in the land and other Common Elements relating thereto, together with all fixtures (other than trade fixtures) and improvements now or at any time made or situated thereon (including the Physical Improvements made with respect thereto pursuant to Section 2.1 of the Lease Agreement (959 Eighth Avenue-Pilot Premises), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto, subject, however, to the provisions of Sections 5.1, 6.13, 7.2 and 9.3 of the Lease Agreement (959 Eighth Avenue-Pilot Premises). The Agency Owned Unit shall include Physical Improvements made with respect thereto and not

include Excluded Property. This definition is based upon the following assumptions: (i) that the existing Project Building contains 204,638 gross square feet, (ii) that in order to provide a Real Property Tax Benefit that is equivalent to the ICIP renovation benefit, the Agency Owned Facility Units (959 Eighth Avenue) shall be comprised of 130% of the square footage of the existing Project Building, i.e., 266,029 gross square feet and (iii) that 266,029 gross square feet will comprise the entire gross floor area of the completed Project Building from its basement to a portion of the 14th floor to a height of 178.50 feet.

Agency Requirements shall mean all rules, regulations or policies adopted by the Agency and all federal, state and local laws, rules and regulations affecting the Agency or any activities of the Agency (to the extent that the Agency has informed the Obligor of such policies and compliance with such requirements shall not impose unreasonable costs on the Obligor or impair the ability of the Obligor to receive Benefits), including, but not limited to, laws, rules and regulations governing the Agency.

Aggregate Benefits shall mean the aggregate amount of Benefits (expressed in nominal dollars) actually received in the aggregate by the Obligor for the period commencing from the Inducement Date through the date of computation thereof (or, if so stated, the date of the most recently completed Annual Period).

Annual Period shall mean (i) the period commencing on the Inducement Date and ending on the March 31, 2003, (ii) the period commencing on June 12, 2003 and ending on June 30, 2004, and (iii) thereafter, each Fiscal Year and (iii) the final Annual Period being the Fiscal Year, or portion thereof, ending on the last day of the Term.

Annual Period Benefits shall mean, for any Annual Period, the aggregate amount of Benefits actually received during such Annual Period.

Annual Average Employment Number shall mean, for any Annual Period, the average number (on a monthly basis) of Eligible Employees in the City determined by dividing (a) the sum of the average number of Eligible Employees employed as of the last payroll date for each month during such Annual Period, by (b) the number of months in such Annual Period, as calculated in accordance with Section 5.04 hereof

Approved Company Location(s) shall mean any or all of the following locations within the City (to the extent that such locations shall be occupied by the Parent, the Company or Eligible Affiliates engaged in the conduct of the Company Business): (i) the premises described in Appendix D-2 (ii) such other locations within the City as the Agency shall, upon written request by an Authorized Representative of the Company, approve in accordance with the requirements of the Act, such approval by the Agency to be evidenced by a writing to such effect delivered by the Agency to the Company.

Assessed Value shall mean, for any Tax Year, the lesser of the taxable transitional or the taxable actual assessed value of the Physical Improvements and the land constituting the Agency Owned Facility Realty for such Tax Year, as computed pursuant to Section 1805(3) of the Real Property Tax Law.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director or Deputy Executive Director of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Company, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, and (iii) in the case of the Parent, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President; *provided, however*, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Base Building Improvements shall mean those improvements which are made by or on behalf of the Company in connection with the construction of the Project Building including the core and shell of the building, which are part of the Building and have not been customized for the particular use by the Company, its Eligible Affiliates, or for any third party.

Base Employment Number shall mean 1,790 Eligible Employees; provided, however, that for the purpose of calculating the Base Employment Reduction and Base Employment Reduction Percentage in connection with a Relocation Reduction, the Base Employment Number for such Annual Period shall be reduced by any Base Employment Reduction then existing that resulted from a Non-Relocation Reduction.

Base Employment Reduction shall mean, for any Annual Period, the difference, if any (but not less than 0), derived from subtracting the Annual Average Employment Number for such Annual Period from the Base Employment Number.

Base Employment Reduction Percentage shall mean the percentage derived by dividing the Base Employment Reduction by the Base Employment Number.

Benefits shall mean, collectively (but subject to the respective maximum amounts, if any, permitted therefor under this Agreement), (i) all Sales Tax Savings including such savings availed of or to be availed of through application of Growth Credits, (ii) all Real Property Tax Savings, (iii) all Mortgage Recording Tax Savings and (iv) all Energy Costs Savings (each individually, a "Benefit"), availed of and to be availed of by the Obligors pursuant to this Agreement, the Lease Agreements, and/or the Sales Tax Letter and not repaid pursuant to Article V of this Agreement.

BIR Energy shall mean energy made available (whether metered, submetered or on a rent-inclusion basis or otherwise) to the BIR Premises by Con Ed at a reduced rate pursuant to Con Ed's Business Incentive Rate Program.

BIR Energy Load shall mean a fixed amount of 5.665 megawatts of BIR Energy, which shall be the maximum BIR Energy demand commitment made by Con Ed to the Company for the Project Building provided that if the Project Building does not have a monthly peak demand of 5.655 megawatts or more on a consistent basis during the first 12 months of fully occupancy, the Agency will request that Con Ed allow the Company to assign up to half of the BIR Energy Loan

allocation to another location occupied by the Company (the foregoing locations, collectively, the BIR Premises).

BIR Premises shall mean the Project Building.

BIR Program shall mean Con Ed's Business Incentive Rate Program to provide electric power to certain eligible customers at the rates set forth in Service Classification Rider J to Service Classification Nos. 4 and 9, effective April 9, 1995, and any amendments thereof

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

Certification Date means, for the first Annual Period, the Lease Commencement Date, and thereafter, with respect to each subsequent Annual Period, no later than the next August 1 following the date on which such Annual Period ends (or the 30th day following the last day of the Term, if applicable).

City shall mean, The City of New York, State of New York.

Company shall mean Hearst Communications, Inc., a corporation organized and existing under the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.14 and 8.2 of the Lease Agreement (including any surviving, resulting or transferee corporation or other legal entity as provided in Section 4.01 thereof) and each Eligible Affiliate that has Employees in the City.

Company Business shall mean the operations, functions and businesses of the Parent, the Company and any Eligible Affiliates in the City.

Company Lease shall mean the Amended and Restated Company Lease dated as of June 1, 2003 among the Company, the Parent, Communication Data Services, Inc., Smart Money, Hearst Holdings, Inc. and the Agency and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Company Owned Facility Realty means to the extent the Agency has leasehold title thereto, the premises described in Appendix B to the Amended and Restated Company Lease Agreement.

Company—Project Premises means (a) for the period commencing on the Lease Commencement Date and ending on the PILOT Termination Date, those premises described as the Company—Project Premises described in Exhibit A Schedule I to the Amended and Restated Company Lease, to the extent the Agency has leasehold title thereto, and (b) for the period commencing on the PILOT Termination Date and ending on the Project Termination Date, those premises described in Exhibit A Schedule II to the Amended and Restated Company Lease (Company—Project Premises), to the extent the Agency has leasehold title thereto.

Con Ed shall mean the Consolidated Edison Company of New York, Inc., a New York corporation, and its successors.

Contract Employee means an individual who is, or is employed by, an independent contractor who directly contracts with the Company or the Parent to provide services to the Company at the Project Premises, which services would otherwise be performed by Full-Time Employees or Full Time-Equivalent Employees, and who, but for their status as independent contractors, or as employees of an independent contractor, would otherwise fall within the definition of a Full-Time Employee or Full-Time Equivalent Employee (i.e., for part-time Contract Employees), but specifically excluding contract employees who devote more than ten percent (10%) of their time providing services to entities other than the Company, the Parent or an Eligible Affiliate.

Current Project Property shall have the set forth in Section 4.03 hereof

Designated Operations and Facilities means the primary business operations of the Hearst Magazine Division of the Hearst Magazine International Division, and the operation of the Home Office Division located in the City in November 2001.

Eligible Affiliate shall mean, collectively, (a) any Person controlled by the Parent, and (b) for so long as the Parent controls the Company, any Person controlled by the Company. "Control" (including the related terms "controlled by" and "under common control with") of a Person shall exist only when all three (3) of the following criteria are met: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; (ii) the ownership, either directly or indirectly, of 50% of the voting stock or other equity or ownership interest of such Person; and (iii) the possession, directly or indirectly, of the power to make decisions regarding the hiring, firing, compensating and promoting of the employees of such Person, but excluding Hearst Eagle, Inc.

Eligible Employee shall mean an Employee of an Obligor or an Eligible Affiliate (i) located and employed exclusively in New York City, (ii) whose principal base of operations is New York City, (iii) whose income is paid exclusively from such Obligor's or Eligible Affiliate's New York City-based payroll and (iv) with respect to whom such Obligor or Eligible Affiliate is responsible for payment of unemployment insurance premiums and for reporting to the New York State Department of Employment on Form NYS-45 or its equivalent, but excluding any Ineligible Employee and *provided that*, in no event shall an individual be deemed to be an Eligible Employee of more than one Obligor or Eligible Affiliate.

Eligible Personalty means qualified machinery, equipment, furniture, fixtures and other tangible personal property, having a useful life of one year or more, to be used by the Obligors and Eligible Affiliates at an Approved Company Location, but excluding rolling stock, ordinary office supplies such as pencils, paper clips and paper and decorative items such as fine art, plants and objets d'art.

Employee shall mean any of the following: (i) a Full-time Employee, (ii) a Contract Employee or (iii) a Full-time Equivalent Employee.

Energy Cost Savings shall mean the positive difference, if any, between (i) the costs that would have been incurred by the Company on account of energy usage at the BIR Premises, but for the provision to it of BIR Energy, and (ii) the costs actually incurred by the Company on

account of BIR Energy usage at the BIR Premises in each event whether any such costs are incurred on a direct meter, submeter, rent-inclusion or other basis.

Equipment Lease Agreement shall mean the Equipment Lease Agreement of even date herewith between the Agency and the Obligors, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Equipment Project shall mean the acquisition, leasing and maintaining from time to time by the Company of Facility Equipment.

Estimated Energy Cost Savings shall mean the amount of Energy Cost Savings, estimated as of the Lease Commencement Date to be \$3,900,000, anticipated to be realized in the aggregate by the Company during the term of this Agreement, such amount to be subject to reduction as provided in Sections 5.06, 5.07, 5.11, 5.12, 5.17 hereof

Extraordinary Costs of Administration shall mean any fees, costs or expenses that shall be paid or are payable by the Agency in its administration of the provisions of the Project Documents and which are not reasonably foreseeable on the Lease Commencement Date; it also being agreed that (i) any fees, costs or expenses as arise by reason of any additions to or releases from the Project Premises (Facility Improvements), pursuant to Section 6.13 or 6.14 of the Lease Agreements (B) any additions to or releases from the Project Premises (Feasibility Equipment) and (ii) the fees and disbursements of the Agency's Project Counsel and General Counsel in performing services for the Agency (which services are not in the ordinary course) in connection with any of the Project Documents, shall in each case be deemed "Extraordinary Costs of Administration".

Facility Equipment shall mean qualified machinery, equipment, furniture, fixtures and other tangible personal property, having a useful life of one year or more, to be used by the Obligors at the Project Premises (Facility Equipment), but excluding rolling stock, ordinary office supplies such as pencils, paper clips and paper and decorative items such as fine art, plants and objects d'art.

Facility Improvements shall mean improvements constructed at the Project Premises (Facility Improvements) and Facility Improvement Materials installed at the Project Premises (Facility Improvements) pursuant to Section 2.1 of the Lease Agreement and described in the Project Property Registry (Facility Improvements).

Facility Improvement Materials shall mean construction materials and tangible personal property to be used by the Company to make capital improvements at, and to renovate and upgrade, the Project Premises (Facility Improvements).

Facility Improvement Project shall mean the acquisitions by the Company of Facility Improvements.

Fiscal Year shall mean an annual period beginning on July 1 and continuing through and including the following June 30.

Foreign Entity shall mean any Person not included within the definition of the Parent, the Company or the Eligible Affiliates.

Full-time Employee shall mean, with respect to an Annual Period, a natural person on the payroll of, receiving standard benefits from, and directly employed during such Annual Period by, an Obligor or any Eligible Affiliate (and excluding any persons employed by or through temporary employment or similar agencies) and working within the City for such Obligor or any Eligible Affiliate during such Annual Period on a “full-time basis” (i.e., working at least a 35-hour week, subject to customary vacation, holiday and sick leave).

Full-time Equivalent Employee shall mean, with respect to an Annual Period,

(i) two (2) natural persons each of whom (x) is on the payroll of and is directly employed in the City during such Annual Period by an Obligor or Eligible Affiliate, (y) receives benefits customarily conferred by such Obligor or Eligible Affiliate for persons working similar hourly work weeks, and (z) works on a “part-time basis” (i.e., working less than a 35-hour week), and

(ii) two (2) natural persons each of whom (x) is on the payroll of and is directly employed in the City during such Annual Period by an Obligor or Eligible Affiliate, (y) may or may not receive standard benefits, and (z) receives compensation based on the actual number of hours worked,

(iii) it being understood and agreed that, for purposes of arriving at a “headcount” of Eligible Employees for purposes of this Agreement, two (2) such persons described in paragraph (i) or (ii) above working (subject to customary vacation, holiday and sick leave) an aggregate of at least forty (40) hours per week (and each of whom shall work at least a 20-hour work week, but less than a 35-hour work week) shall be counted as one (1) Eligible Employee.

Government Penalty Amounts shall mean any applicable interest, fines, fees, penalties or other charges as may be imposed by the Tax Collecting Entity with respect to the improper or unauthorized taking of Sales Tax Savings, but expressly excluding from such charges amounts payable as a direct return of claimed Sales Tax Savings.

Growth Credit means a credit provided to the Obligors for each Growth Employee in an amount equal to \$2,800 per year (for a maximum of five (5) years per Growth Employee) provided, however, that no Growth Credit shall be provided to the Obligors if the provision of such would violate Agency Requirements.

Growth Employee means each Eligible Employee of the number of Eligible Employees included in the positive difference between the Annual Average Employment Number and the Base Employment Number.

Headquarters shall mean, collectively, (i) the executive offices that are most closely associated with the principal decision-making with respect to the business operations of the Parent, the Company, Hearst Broadcasting, Inc., Hearst Newspapers, Inc., Hearst Holdings, Inc., Hearst Entertainment, Inc., and Hearst-Argyle Television, Inc. (the “Headquarters Entities”), and their respective successors, (ii) those Employees who make the principal decisions concerning the business operations of the Headquarters Entities and its respective successors and (iii) the executive offices of the Headquarters Entities.

Hearst Group shall mean, collectively, the Obligors, Communication Data Services, Inc., a corporation organized and existing under the laws of the State of New York, having an office at 959 Eighth Avenue, New York, New York 10019, Smart Money, a joint venture of the Parent and Dow-Jones & Company, Inc., do the Company, at 959 Eighth Avenue, New York, New York 10019, and Hearst Holdings, Inc., a corporation organized and existing under the laws of the State of New York, having an office at 959 Eighth Avenue, New York, New York 10019; and any of the foregoing may be singly referred to as "Hearst Group Entity".

Independent Accountant shall mean Deloitte & Touche or any other independent certified public accountant or firm of independent certified public accountants selected by the Company and approved in writing by the Agency (such approval not to be unreasonably withheld or delayed).

Ineligible Employee shall mean (i) an Employee employed by an Obligor or Eligible Affiliate as a result of an Acquisition or Merger occurring at any time during the term of this Agreement if such Employee was employed in New York City by the Foreign Entity (or group of Foreign Entities affiliated with each other) involved in such Acquisition or Merger at any time during the twelve (12) month period prior to and including the date on which such Acquisition or Merger occurred (ii) for any Annual Period, any Contract Employee and/or Full-Time Equipment Employee included in that number of Contract Employees or Full-Time Equivalent Employees which exceed ten percent (10%) of the total Annual Average Employment Number for such Annual Period, and (iii) with respect to any Eligible Affiliate in which an Obligor owns 50% of the voting stock or other equity interest of such Eligible Affiliate, 50% of the Employees of such Eligible Affiliate shall be deemed to be Ineligible Employees and shall not be included in the total Annual Average Employment Number for any Annual Period, however, if an Obligor owns more than 50% of such interests, 100% of such Employees shall be deemed Eligible Employees, if so qualified in accordance with the terms hereof

Inducement Date shall mean November 13, 2001, the date on which the Agency's Board of Directors adopted a resolution authorizing the Project.

Lease Agreement shall collectively mean:

(a) for the period commencing on the Lease Commencement Date and ending on the PILOT Termination Date, the Lease Agreement (959 Eighth Avenue), the Lease Agreement (959 Eighth Avenue—PILOT Premises) and the Lease Agreement (Company—Project Premises); and

(b) for the period commencing on the PILOT Termination Date and ending on the Project Termination Date, the Lease Agreement (959 Eighth Avenue) and the Lease Agreement (Company—Project Premises).

Lease Agreement (Company—Project Premises) shall mean the Lease Agreement (Company—Project Premises) of even date herewith between the Agency and the Hearst Group relating to the Company—Project Premises.

Lease Agreement (959 Eighth Avenue) shall mean the Lease Agreement (959 Eighth Avenue) of even date herewith between the Agency and the Obligors relating to the Company Owned Facility Realty.

Lease Agreement (959 Eighth Avenue—PILOT Premises) shall mean the Lease Agreement (959 Eighth Avenue—PILOT Premises) of even date herewith between the Agency and the Obligors relating to the Agency Owned Facility Realty.

Lease Agreements shall mean, collectively, the Company Lease, the Lease Agreement and the Equipment Lease Agreement.

Lease Commencement Date shall mean, June 12, 2003, the date upon which the Agency shall issue its Sales Tax Letter.

Leased Personalty shall mean one or more items of tangible personal property, including, without limitation, mainframes (and peripherals), computers, telecommunications equipment, personal computers, business machines, equipment relating to the operation of the three foregoing categories, and software, in which the Agency shall acquire a leasehold interest under a Qualified Personalty Lease in accordance with Section 2.1 of the Equipment Lease, to be used by the Obligors or an Eligible Affiliate in furtherance of the Company Business at any Approved Company Location as part of the Equipment Project. Leased Personalty shall not include rolling stock.

Legal Requirements shall mean the Constitutions of the United States and of the State of New York all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements (including but not limited to zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Obligors, (ii) the Project Property or any part thereof, or (iii) any use or condition of the Project Property or any part thereof.

Liens shall have the meaning specified in Section 6.6 of the Lease Agreement.

Limited Lessee/Agent shall mean an Eligible Affiliate appointed by the Agency as its agent for the purposes and on the conditions as set forth in Section 3.15 hereof, and acting as a lessee of the Project Property under each of the Lease Agreements and as an assuming party under each of this Agreement, each of the Lease Agreements and the Sales Tax Letter, all as set forth in Section 3.15 hereof

Loss Event shall have the meaning specified in Section 5.1 of the Lease Agreement.

Maintenance Contracts shall mean contracts entered into by the Company as agent for the Agency for the maintenance, service or repair of Eligible Personalty or Leased Personalty used by the Obligors or an Eligible Affiliate at any Approved Company Location, to the extent such contracts only encompass Qualified Maintenance.

Maximum Energy Cost Savings Amount means Energy Cost Savings available to the Company during the Term in an amount not to exceed \$3,900,000 NPV.

Maximum Growth Credit Amount means \$8,000,000 NPV.

Maximum Mortgage Recording Tax Savings Amount means \$7,500,000 NPV in Mortgage Recording Tax Savings to be made available to the Company during the Term, subject to reduction to the extent that the aggregate amount of Mortgage Tax Savings and Sales Tax Savings (excluding Sales Tax savings attributable to Growth Credits) would exceed, if realized \$12,000,000 (NPV).

Maximum Sales Tax Savings Amount means, with respect to any Sales Tax Savings attributable to Project Costs, an amount not to exceed, in the aggregate, the sum of (a) (i) \$12,000,000 (NPV) minus (ii) the realized Mortgage Recording Tax Savings (NPV), and (b) the aggregate nominal dollar amount of Growth Credits earned by the Company in accordance herewith, subject to the Maximum Growth Credit Amount. The aggregate of Mortgage Recording Tax Savings and Sales Tax Savings (excluding Sales Tax Savings attributable to Growth Credits) shall not exceed \$12,000,000 (NPV).

Merger shall mean a merger between the Parent, the Company or and Eligible Affiliate and a Foreign Entity.

Mortgage Recording Tax means the tax imposed under Article 11 at the New York State Tax Law, as the same may be amended from time to time.

Mortgage Recording Tax Savings means the amount of Mortgage Recording Tax that would have been required to be paid in connection with financing for the Project but was not required to be paid as a result of the Agency's leasehold interest or ownership of the Project Premises (Facility Improvements).

Multiplier Factor shall mean the following multiplying factors for the purpose of determining a Recapture Payment for the respective Annual Periods indicated below:

<u>Annual Period</u> (both dates inclusive)	<u>Multiplier Factor</u>
Inducement Date - 6/30/15	2.0
7/1/15 - 6/30/17	1.9
7/1/17 - 6/30/19	1.8
7/1/19 - 6/30/20	1.7
7/1/20 - 6/30/22	1.6
7/1/22 - 6/30/23	1.5
7/1/23 - 6/30/24	1.4
7/1/24 - 6/30/25	1.3
7/1/25 - 6/30/26	1.2
7/1/26 - End of Term	1.1

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

Non-Qualified User shall mean any Person other than (i) the Obligors and the Eligible Affiliates and (ii) any corporation, partnership, joint venture, association, joint stock company or limited liability company; provided that at least 75% of such entity's gross revenues are derived by or from the services and/or products such entity provided to the Obligors.

Non-Relocation Reduction shall mean any Base Employment Reduction for any reason other than a Relocation Reduction.

Non-Relocation Reduction Annual Period shall mean the Reported Annual Period with respect to and during which a Non-Relocation Reduction shall have occurred.

NPV shall mean net present value determined as follows: when following a specified or ascertainable dollar amount, the value as of the Lease Commencement Date of a future dollar amount(s) discounted from December 31 of the Fiscal Year in which such amount is paid, taken, incurred or realized, as the case may be, at the rate of 7.75% compounded annually.

Opinion of Counsel shall mean a written opinion of counsel who may (except as otherwise expressly provided in this Agreement) be counsel for the Parent, the Company or the Agency, as the case may be, and who shall be reasonably acceptable to the Agency.

Ordinary Costs of Administration shall mean those fees, costs or expenses that the Agency shall reasonably be expected to pay or incur in its day-to-day administration of the provisions of the Project Documents and which are reasonably foreseeable on the Lease Commencement Date.

Owner shall mean:

- (i) with respect to the 1700 Broadway premises, 1700 Broadway Co.;
- (ii) with respect to the 1775 Broadway premises, Broadway & 56th Street Associates;
- (iii) with respect to the 1790 Broadway premises: 1790 Broadway Associates;
- (iv) with respect to the 1345 Sixth Avenue premises, 1345 Leasehold LLC;
- (v) with respect to the 810 7th Avenue premises, 810 7th Avenue, LLC; and
- (vi) with respect to the 888 7th Avenue premises, 888 Seventh Avenue LLC.

Parent means The Hearst Corporation, a corporation organized and existing under the laws of Delaware, and its permitted successors and assigns pursuant to Sections 6.14 and 8.2 of the Lease Agreement (including any surviving, resulting or transferee corporation or other legal entity as provided in Section 4.01 thereof) and each Eligible Affiliate that has Employees in the City.

Permitted Encumbrances shall mean, as of any particular time,

- (i) the Company Lease, the Lease Agreement and this Agreement;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges and impositions, and any liens for water and sewer rents and taxes, each to the extent not yet due and payable or to the extent being contested in accordance with the Project Documents;
- (iii) utility access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not materially interfere with or impair the use of the Project Premises as contemplated by the Project Documents;
- (iv) such defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Project Premises and as do not, either singly or in the aggregate, materially impair the use of the property affected thereby for the purpose for which it was acquired and held by the Company under the Project Documents;
- (v) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable or if payment is being contested by the Company, all if and to the extent permitted by Section 6.06 hereof;
- (vi) all title exceptions to which the Project Premises and the Project Building are subject;
- (vii) any mechanic's lien imposed on the Project Building and which arises from work performed for any tenant of the Project Building other than the Obligor, or any judgment lien imposed on the Project Building and which arises from a judgment against any tenant of the Project Building other than the Obligor, or any lien of any nature whatsoever which is imposed on the Project Building and which is not the responsibility of the Obligor to remove, bond or dispose of, and
- (viii) any mortgage, lien, security interest or other encumbrance created by the Project Documents or created by the Agency or an Obligor as provided in for in the Project Documents

Person shall mean any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company or corporation, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

Physical Improvements shall mean those improvements made by or on behalf of the Company with respect to the Agency Owned Facility Realty subsequent (i) to the Lease Commencement Date, or (ii) to the issuance of a Preliminary Certificate of Eligibility under the ICIP Regulations, if one is issued, and which improvements are described in the eligibility application submitted to the Department of Finance and accepted for filing on February 3, 2003.

PILOT means payments in lieu of Real Property Taxes payable with respect to the Agency Owned Facility Realty to the extent title is held by the Agency.

PILOT Agreement means the PILOT Agreement executed and delivered on the Lease Commencement Date among the Agency and the Obligors relating to the Agency Owned Facility Realty.

PILOT Commencement Date means July 1, 2004.

PILOT Termination Date shall mean the date on which the PILOT Agreement shall expire as provided in Section 26 of the PILOT Agreement

Prime Lease shall mean:

(i) with respect to the 1700 Broadway premises, that certain Agreement of Lease, dated November 12, 1999, between 1700 Broadway Co. and Hearst Communications, Inc.;

(ii) with respect to the 1775 Broadway premises, that certain Agreement of Lease, dated December 10, 1997, between Broadway & 56th Street Associates and Smart Money, a Joint Venture of The Hearst Corporation and Dow-Jones & Company, Inc. (2nd Floor);

(iii) with respect to the 1790 Broadway premises: that certain Agreement of Lease, dated June 10, 1997, between 1790 Broadway Associates and The Hearst Corporation (3rd Floor); that certain Agreement of Lease, dated January 1, 2000, between 1790 Broadway Associates and The Hearst Corporation (5th Floor); that certain Agreement of Lease, dated May 18, 1994, between 1790 Broadway Associates and The Hearst Corporation (6th Floor); that certain Agreement of Lease, dated September 1, 1998, between 1790 Broadway Associates and Smart Money, a Joint Venture of The Hearst Corporation and Dow-Jones & Company, Inc. (11th and 12th Floors); that certain Agreement of Lease, dated July 1, 2002, between 1790 Broadway Associates and Hearst Communications, Inc. (13th Floor); that certain Agreement of Lease, dated January 1, 2001, between 1790 Broadway Associates and Hearst Communications, Inc. (14th Floor); and that certain Agreement of Lease, dated June 6, 2000, between 1790 Broadway Associates and The Hearst Corporation (18th and 19th Floors);

(iv) with respect to the 1345 Sixth Avenue premises: that certain Agreement of Lease, dated January 1, 2003, between 1345 Leasehold LLC and Hearst Communications, Inc. (10th Floor); and that certain Agreement of Lease, dated January 1, 2003, between 1345 Leasehold LLC (the prime landlord), Medpointe Healthcare, Inc. (the sublandlord) and Hearst Communications, Inc. (42nd Floor);

(v) with respect to the 810 7th Avenue premises, that certain Agreement of Lease, dated July 1, 2000, between 810 7th Avenue, LLC and Hearst Communications, Inc. (6th Floor); and

(vi) with respect to the 888 7th Avenue premises: that certain Agreement of Lease, dated February 22, 2001, between 888 Seventh Avenue LLC and Hearst Holdings, Inc. (2nd and 7th Floors); that certain Agreement of Lease, dated February 14, 2001, between 888 Seventh Avenue LLC and Hearst Communications, Inc. (4th Floor); and that certain Agreement of Lease, dated September 15, 1999, between 888 Seventh Avenue LLC and Hearst Holdings, Inc. (14th and 27th Floors).

Prohibited Person shall mean:

(i) any Person (A) that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a Person that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, unless such default or breach has been waived in writing by the City or the Agency, respectively;

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

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

(iv) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended).

Project shall mean collectively, the Facility Improvement Project and the Equipment Project.

Project Building shall mean the building located at 959 Eighth Avenue, New York, New York any improvements made thereto.

Project Costs means (a) to the extent permitted to be made in accordance with Agency Requirements, any costs incurred by the Obligor, as agent for the Agency, for (i) the acquisition or leasing (provided that such lease is a capital lease as determined in accordance with generally accepted accounting principles or contains a purchase option) of Facility Equipment to be installed and used by the Company at the Project Premises (Facility Equipment) and (ii) the acquisition of Facility Improvement Materials to be installed and used by the Company at the Project Premises (Facility Improvements) and (b) costs incurred by the Company, as agent of the Agency, for Qualified Maintenance Contracts entered into solely in connection with the Project.

Project Documents shall mean, collectively, the Company Lease, the Lease Agreements, the Project Documents (Facility Equipment) and the PILOT Agreement.

Project Documents (Facility Equipment) shall mean, collectively, this Agreement, the Equipment Lease Agreement and the Sales Tax Letter.

Project Premises shall mean, collectively, the Project Premises (Facility Improvements) and the Project Premises (Facility Equipment).

Project Premises (Facility Equipment) shall mean, to the extent the Agency has fee or leasehold title thereto, those premises at which the Company shall be permitted to incur Project Costs for the purpose of acquiring or leasing Facility Equipment for use by the Company at such premises, consisting of, to the extent leased or owned and occupied by the Company, the premises described in Appendix D-2 hereto, and subject to the Company's compliance with all Agency Requirements then in effect with respect thereto, the Agency's Board of Directors approval, and the execution of all necessary agreements in a form reasonably satisfactory to the Agency, such additional or substitute space in buildings located in the City, hereafter leased or owned and occupied by the Company.

Project Premises (Facility Improvements) shall mean to the extent the Agency has fee or leasehold title thereto, those premises at which the Company shall be permitted to incur Project Costs for the purpose of acquiring or leasing Facility Improvement Materials for use by the Company at such premises, and described in Appendix D-1 hereto.

Project Property means the realty, including capital improvements, comprising the Project Premises and the Facility Equipment.

Project Property (Personalty) means, as the context requires, Facility Improvement Materials and Facility Equipment.

Project Property Registry means collectively the Project Property Registry (Facility Improvements) and the Project Property Registry (Facility Equipment).

Project Property Registry (Facility Equipment) shall mean the registry maintained by the Agency at its office of all the Facility Equipment as such registry shall be modified, amended or supplemented from time to time.

Project Property Registry (Facility Improvements) shall mean the registry maintained by the Agency at its office of all the Facility Improvements made to the Project Premises (Facility Improvements) as such registry shall be modified, amended or supplemented from time to time.

Project Termination Date shall mean June 30, 2027.

Qualified Maintenance shall mean, with respect to any item of Eligible Personally or Leased Personally having a useful life of one year or more, the replacement of parts (other than parts that contain materials or substances that are consumed in the operation of such property (e.g., a toner cartridge) where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

Qualified Personalty Lease shall mean a lease of one or more items of Leased Personally to the Company on behalf of and as agent for the Agency, (1) which lease would be characterized

(whether or not so characterized by the Obligor) in accordance with Accounting Standards of the Financial Accounting Standards Board as a “capital lease”, or (2) pursuant to which an option to purchase the subject property of such lease is granted thereunder by the lessor.

Real Property Taxes means the real property taxes payable pursuant to the New York State Real Property Tax Law and Title 11 of the Administrative Code and Charter of The City of New York, as the same may be amended from time to time.

Real Property Tax Savings means the positive difference, if any, during any Annual Period between (i) the amount of Real Property Taxes which the Company would have been required to pay for the Agency Owned Facility Realty, but for the Agency’s ownership thereof, and (ii) the sum of Real Property Taxes, if any, and PILOT, paid by the Company for the Agency Owned Facility Realty. Real Property Tax Savings shall not include any ICIP Benefits pertaining to the Agency Owned Facility Realty which are obtained as-of-right directly from the Department of Finance.

Recapture Amount shall mean the Aggregate Benefits not previously recaptured, excluding from such calculation of Benefits not previously recaptured any amounts paid as penalties by reason of the application of the Multiplier Factor.

Recapture Payment shall mean any amount as shall be due and owing by the Obligor pursuant to Section 5.06, 5.07, 5.11 or 5.12 hereof

Recapture Percentage shall mean, for the following Annual Periods, the applicable percentage to be used for multiplying Recapture Amounts:

<u>Annual Period</u> <u>(both dates inclusive)</u>	<u>Recapture</u> <u>Percentages</u>
Inducement Date - 6/30/15	100%
7/1/15 - 6/30/17	90%
7/1/17 - 6/30/19	80%
7/1/19 - 6/30/20	70%
7/1/20 - 6/30/22	60%
7/1/22 - 6/30/23	50%
7/1/23 - 6/30/24	40%
7/1/24 - 6/30/25	30%
7/1/25 - 6/30/26	20%
7/1/26 - End of Term	10%

Reduction shall mean a Relocation Reduction or a Non Relocation Reduction, as the context indicates.

Relocation Reduction shall mean a Base Employment Reduction resulting from (i) any transfer or relocation of Eligible Employees to a location outside of the City, (ii) any replacement or substitution of Eligible Employees with other employees located at a location outside of the City, or (iii) any transfer, relocation or establishment of operations, facilities, or employees including, but not limited to, the Headquarters, to a location outside of the City.

Relocation Reduction Annual Period shall mean the Reported Annual Period with respect to and during which a Relocation Reduction shall have occurred.

Remaining Benefits shall mean, collectively, the Remaining Energy Costs Savings Benefit, the Remaining Mortgage Recording Tax Benefit, the Remaining Real Property Tax Benefit and the Remaining Sales Tax Benefits.

Remaining Energy Cost Savings Benefit shall mean the amount of Energy Cost Savings remaining and unutilized and calculated as equal to the positive difference derived by subtracting the Energy Cost Savings made available to the Obligor during the Term as of the end of the most recent Annual Period from the Maximum Energy Cost Savings Amount.

Remaining Mortgage Recording Tax Benefit shall mean the amount of Mortgage Recording Tax Savings remaining and unutilized and calculated as equal to the positive difference derived by subtracting the Mortgage Recording Tax Savings made available to the Obligor during the Term as of the end of the most recent Annual Period from the Maximum Mortgage Recording Tax Savings Amount.

Remaining Sales Tax Benefit shall mean the amount of Sales Tax Savings remaining and unutilized and calculated as equal to the positive difference derived by subtracting the Sales Tax Savings enjoyed by the Obligor as of the end of the most recent Annual Period from the Maximum Sales Tax Savings Amount.

Requisite Contract Language shall have the meaning assigned to such term in Section 3.02(a) hereof

Resolutions shall mean, collectively, the resolutions of the Agency adopted on December 11, 2001, November 11, 2002 and January 14, 2003, authorizing, among other things, the execution hereof and the grant of Benefits herein contemplated.

Sales and Use Taxes shall mean New York City and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

Sales Tax Letter shall mean, collectively the Preliminary Sales Tax Letter, the First Amended and Restated Sales Tax Letter, the Second Amended and Restated Sales Tax Letter, the Third Amended and Restated Sales Tax Letter and the Letter of Authorization for Sales Tax Exemption, which the Agency shall make available to the Company in accordance with and substantially in the form set forth in the appendices to this Agreement, and shall include any and all amendments or restatements thereof.

Sales Tax Penalty Amount shall be an amount payable by the Obligor which at the Obligor's option shall be satisfied either (A) (1) by payment to the N.Y.S. Department of Taxation and Finance in an amount equal to the Sales Tax Savings together with any applicable Government Penalty Amounts, (2) by delivery of evidence reasonably satisfactory to the Agency of such payment, and (3) by payment to the Agency an amount equal to the excess, if any, of (i) an amount equal to twelve percent (12%) per annum (or, if the Company have acted in bad faith

or engaged in willful misconduct with respect to such unauthorized use, eighteen percent (18%) per annum) multiplied by the Sales Tax Savings resulting from each such unauthorized Sales and Use Tax Exemption, calculated from each date on which such Sales Tax Savings were realized by the Company, over (ii) the Government Penalty Amount or (B) by payment to the Agency or the N.Y.S. Department of Taxation and Finance an amount equal to the Sales Tax Savings resulting from each unauthorized Sales and Use Tax Exemption together with interest thereon at the rate of twelve percent (12%) per annum (or 18% per annum, in the event of bad faith or willful misconduct of the Company as described above) calculated from each date on which such Sales Tax Savings were realized by the Company.

Sales Tax Savings shall mean all exemptions of Sales and Use Taxes actually realized by in the Obligors pursuant to this Agreement, any of the Lease Agreements and/or the Sales Tax Letter by reason of the Agency's interest in the Project Property or any part thereof Sales Tax Savings are subject to the Maximum Sales Tax Savings Amount.

State shall mean the State of New York.

Tax Collecting Entity shall mean the New York State Department of Taxation and Finance or other appropriate governmental authority having jurisdiction with respect to the collection or payments of Sales and Use Taxes.

Temporary Removals shall have the meaning specified in Section 4.03 hereof

Term or Term of this Agreement, when such phrase is used herein, shall mean that period commencing on the Lease Commencement Date and ending on June 30, 2027.

ANNUAL CERTIFICATE OF THE OBLIGORS

The undersigned DO HEREBY CERTIFY THAT he/she is an Authorized Representative (as defined in the Project Agreement referred to below) of THE HEARST CORPORATION, a Delaware corporation (the "Parent"), and HEARST COMMUNICATIONS, INC., a New York corporation (the "Company", together with the Parent, the "Obligors") and has knowledge or access to that knowledge necessary to deliver this certificate, and this certificate is being delivered in accordance with the provisions of Section 3.11 of that certain Project Agreement dated as of June 1, 2003 (the "Project Agreement") by and between the New York City Industrial Development Agency and the Obligors (all capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Project Agreement or in the Lease Agreements referred to in the Project Agreement):

1. For the immediately preceding twelve-month period ending June 30, _____:
 - (a) The Annual Period Benefits was \$_____ which are comprised of the sum of \$_____ Sales Tax Savings, \$_____ Real Property Tax Savings, \$_____ Mortgage Recording Tax Savings and \$_____ Energy Costs Savings for such Annual Period.
 - (b) The Annual Average Employment Number was _____ and the respective number of Eligible Employees employed during such Annual Period as constitute Full-time Employees was _____ and Full-time Equivalent Employees was _____.
 - (c) The number of Ineligible Employees was _____.
 - (d) The Annual Average Employment Number [increased decreased or remained the same] as compared to the Annual Period immediately preceding the Annual Period being reported on hereby.
 - (e) The Energy Cost Savings realized was \$_____ and the aggregate Energy Costs Savings realized to date is \$_____.
 - (f) The Sales Tax Savings realized was \$_____ and the aggregate Sales Tax Savings realized to date is \$_____.
 - (g) The Real Property Savings realized was \$_____ and the aggregate Real Property Savings realized to date is \$_____.
 - (h) The Mortgage Recording Tax Savings realized was \$_____ and the aggregate Mortgage Recording Tax Savings realized to date is \$_____.
 - (i) The aggregate dollar amount of expenditures for Project Costs made for which Sales Tax Savings were realized was \$_____.

(j) The aggregate amount of rentable square feet of each of the Project Premises (Facility Improvements) leased during such Annual Period to Non-Qualified Users, the name and business operation of each such tenant, the term of each such lease, the percentage of aggregate rentable square feet of the Project Premises (Facility Improvements) so leased to Non-Qualified Users are as follows:

2. If a Base Employment Reduction occurred in the Annual Period, please describe the same and please describe the reasonable non-confidential details thereof (including, without limitation) whether such Reduction was a Non-Relocation Reduction or a Relocation Reduction, and provide appropriate supporting non-confidential information regarding the operations and employment of the obligors and provide the calculation of any amount to be repaid or reduction in future Benefits, in accordance with the Project Agreement:

3. If a Base Employment Reduction has occurred in the Annual Period, please describe the same and please describe whether the Obligors have transferred or established any operations, facilities and/or Eligible Employees outside of the City, and, if so provide the reasonable non-confidential details thereof as it relates to reductions of Eligible Employees.

4. If the Obligors transferred or established any part of its Headquarters and Designated Operations and Facilities to a location outside of the City, please describe the same and if so please provide the reasonable non-confidential details thereof, including the number of Eligible Employees so transferred and the employment categories and exclusive personnel so established or transferred and the locations outside the City of such headquarters.

5. Only the Obligors or Eligible Affiliates constituting Limited Lessee Agents realized Sales Tax Savings under the Project Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____.

THE HEARST CORPORATION

By: _____

Name:

Title:

HEARST COMMUNICATIONS, INC.

By: _____

Name:

Title:

Annual Employment Report

For the Year Ending June 30, ____

In order to comply with Local and State employment reporting requirements, the New York City Industrial Development Agency must require all of its project companies to complete and return the Report to the Agency no later than August 1, ____.

The Hearst Corporation
959 Eighth Avenue
New York, New York 10019

Hearst Communications, Inc.
959 Eighth Avenue
New York, New York 10019

Telephone # _____

Tax ID # _____

Please provide information as of June 30th of jobs at the Project Location(s). Do not include any subcontractors and consultants. Include only employees and owners/principals on your payroll at the Project Location.

Number of existing FULL TIME JOBS _____

Number of existing PART TIME JOBS _____

Certification: I, the undersigned, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete, and that I understand it is submitted pursuant to agreement. The Company hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the New York City Industrial Development Agency (the "Agency") and/or to the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under DOL's control which is pertinent to the Company and the Company's employees. In addition, upon the Agency's request, the Company shall provide to the Agency any employment information in the Company's possession which is pertinent to the Company and the Company's employees. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company itself, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this transaction.

Principal/Owner/Chief Financial Officer _____
(Please Print)

Signature _____ Date _____

QUESTIONS: Please call the IDA Compliance Helpline at (212) 312-3968.

PLEASE FAX YOUR RESPONSE TO 212-312-3918

20 -- subtenant survey

The Hearst Corporation
 959 Eighth Avenue
 New York, New York 10019

Hearst Communications, Inc.
 959 Eighth Avenue
 New York, New York 10019

In order to verify compliance with your IDA transaction documents, please complete the information requested below for each and every subtenant occupying space in your facility of **January 1, 200** ____.

Total Square Footage of Building(s): _____ s.f.

Subtenant	Floor	Square Footage Leased	Lease Begins	Lease Ends

I, the undersigned, hereby certify to the best of my knowledge and belief that the information reported above is true, correct and complete. I understand that this information is submitted pursuant to the requirements of the IDA Transaction Documents.

Name: _____ Title: _____

Signature: _____ Date: _____

Phone Number: _____

Name: _____ Title: _____

Signature: _____ Date: _____

Phone Number: _____

Please **fax** the **completed form** to:
 New York City Industrial Development Agency
 Compliance Unit
212-312-3918
 HelpLine: 212-312-3968

New York State Department of Taxation and Finance
**Annual Report of Sales and Use Tax Exemption
 Claimed by Agent/Project Operator of
 Industrial Development Agency/Authority (IDA)**

For Period Ending December 31, _____ (enter year)

Project Information

Name of IDA agent/project operator		Federal employer identification number (EIN)	
Street address		Telephone number	
City	State	Zip code	
Name of IDA agent/project operator's authorized representative, if any		Title	
Street address		Telephone number	
City	State	Zip code	
Name of IDA			
Street Address			
City	State	Zip code	
Name of project		Project number	
Street address of project site			
City	State	Zip code	

1. Project purpose:
- Services Construction Agriculture, forestry, fishing
 - Wholesale trade Retail trade Finance, insurance or real estate
 - Transportation, communication, electric, gas or sanitary services
 - Manufacturing Other (specify) _____

2. Date project began: _____ / _____ / _____
MM DD YY
3. Beginning date of construction or installation (actual or expected): _____ / _____ / _____
MM DD YY
4. Completion date of construction phase of project (actual or expected): _____ / _____ / _____
MM DD YY
5. Completion date of project (actual or expected): _____ / _____ / _____
MM DD YY
6. Duration of project (years/months; actual or expected): _____ / _____ / _____
MM DD YY

7. Total sales and use tax exemptions (actual tax savings; NOT total purchases)	7	\$	
Print name of officer, employee, or authorized representative signing for the IDA agent/project operator			
Signature			Date

Failure to file a complete report annually may result in the removal of authority to act as an IDA agent/project operator.
 Mail completed report to: NYS TAX DEPARTMENT, IDA UNIT, BLDG 8 RM 658, W A HARRIMAN CAMPUS, ALBANY NY 12227.

General Information

Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as project occupant) of an Industrial Development Agency or Authority (IDA) to file an annual report with the New York State Department of Taxation and Finance. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) are not required to file Form ST-340.

What must be reported?

The report must show the total value of all state and local sales and use taxes exempted during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator, and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA

The report requires only the total combined exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

Project Information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator

Enter the name, address, federal employer identification number (EIN), and telephone number of the IDA agent/project operator.

Name of IDA agent/project operator's authorized representative

Enter the name, address, title, and telephone number of the individual (attorney or accountant) authorized by the IDA agent/project operator to submit the report.

Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for each IDA. Tax exemptions attributable to each IDA.

Name of Project

Enter the name of the project and the address of the project site. If the IDA is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

Line Instructions

Line 1 – Project purpose – Check the box that identifies the purpose of the project. If you check Other, please be specific in identifying its purpose.

Line 2 – Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or the date of issuance). Include month, day, and year.

Line 3 – Enter the date on which you, or your general contractor or subcontractor, actually began or expect to begin construction or installation of the project. If the project does not involve any construction, enter Does not apply.

Line 4 – Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

Line 5 – Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project is not completed by the end of the reporting period, enter the date the project is expected to be completed.

Line 6 – Enter the total number of years and months from the beginning of the project to its completion or expected completion.

Line 7 – Enter the total amount of New York State and local sales and use taxes exempted during the reporting period (if none, enter 0). This amount includes the receipt of IDA financial assistance. This amount includes the value of exemptions obtained at the time of the report.

Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: NYS Tax Department, IDA Unit, Box 658, W.A. Harriman Campus, Albany, NY 12227

Form of Report of Independent Accountant

Report of Independent Accountants

[Date]

The Hearst Corporation
959 Eighth Avenue
New York, New York 10019

Hearst Communications, Inc.
959 Eighth Avenue
New York, New York 10019

New York City Industrial
Development Agency
110 William Street
New York, New York

We have performed the procedures enumerated below, which were agreed to by THE HEARST CORPORATION, a Delaware corporation (the "Parent"), HEARST COMMUNICATIONS, INC. (the "Company"), together with the Parent, the "Obligors") and the New York City Industrial Development Agency (the "Agency"), to the data set forth in that certain Certificate(s) of the Obligors dated [February 1] [August 1] _____ (the "Sales Tax Certificate"), and attached Sales Tax Schedule (the "Sales Tax Schedule") solely to assist the Company in complying with Sections 3.8 and 3.11 of the Project Agreement dated as of June 1, 2003, as amended (the "Project Agreement"), between the Agency and the Obligors. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We inquired of officials and other personnel of the Obligors who have responsibility for accounting and financial matters about:

- (a) the nature of expenditures and whether such expenditures are of the types as permitted by the Project Agreement;
- (b) whether leases, subleases, licenses, sublicenses, contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 3.2 of the Project Agreement; and

- (c) whether the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Such officials and other personnel of the Obligor who have responsibility for accounting and financial matters informed us that:

- (a) the expenditures are of the types allowed by the Project Agreement;
- (b) all leases, subleases, licenses, sublicenses, contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 3.2 of the Project Agreement, and
- (c) the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Our procedures with respect to the data in the Sales Tax Certificate and Sales Tax Schedule were as follows:

- (a) We have performed the procedures described below to the accompanying Sales Tax Certificate and Sales Tax Schedule pursuant to Section 3.9 of the Project Agreement.
- (b) We were informed by officials and other personnel of the Obligor who have responsibility for accounting and financial matters that the accompanying Certificate and Sales Tax Schedule of the Obligor as required by Section 3.8 of the Project Agreement, and attached Sales Tax Schedule are presented on the basis prescribed by the Project Agreement.
- (c) We reviewed the leases, subleases, licenses, sublicenses, contracts, invoices, bills and purchase orders related to each expenditure selected for review in accordance with the sampling procedure described below for the wording required by Section 3.2 of the Project Agreement.
- (d) We recalculated the sales tax exemption set forth in the Sales Tax Schedule by multiplying the expenditure amount per the Sales Tax Schedule by 8.25%.
- (e) We recomputed the NPV (as defined in the Project Agreement) amounts per the Sales Tax Schedule for the sample of purchase orders and contracts listed below.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the Obligor. Consequently, we make no representations regarding the sufficiency of the following specified procedures for the purpose for which this report has been requested or for any other purpose.

All purchase orders over \$100,000 and a random sample of twenty-five (25) additional purchase orders were selected from the Sales Tax Schedule for which the procedures described in steps 1 - 11 below were performed as applicable. The following purchase orders were selected:

<u>Purchase Order Number</u>	<u>Amount</u>
------------------------------	---------------

Form of Report of Independent Accountant

[Date]

The Hearst Corporation
959 Eighth Avenue
New York, New York 10019

Hearst Communications, Inc.
959 Eighth Avenue
New York, New York 10019

New York City Industrial
Development Agency
110 William Street
New York, New York

We have performed the procedures enumerated below, which were agreed to by THE HEARST CORPORATION, a Delaware corporation (the "Parent"), HEARST COMMUNICATIONS, INC. (the "Company"), together with the Parent, the "Obligors") and the New York City Industrial Development Agency (the "Agency"), to the data set forth in that certain Certificate(s) of the Obligors dated [February 1] [August 1] _____ (the "Sales Tax Certificate"), and attached Sales Tax Schedule (the "Sales Tax Schedule") solely to assist the Company in complying with Sections 3.8 and 3.11 of the Project Agreement dated as of June 1, 2003, as amended (the "Project Agreement"), between the Agency and the Obligors. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We inquired of officials and other personnel of the Obligors who have responsibility for accounting and financial matters about:

- (a) the nature of expenditures and whether such expenditures are of the types as permitted by the Project Agreement;
- (b) whether leases, subleases, licenses, sublicenses, contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 3.2 of the Project Agreement; and
- (c) whether the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Such officials and other personnel of the Obligors who have responsibility for accounting and financial matters informed us that:

- (a) the expenditures are of the types allowed by the Project Agreement;
- (b) all leases, subleases, licenses, sublicenses, contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 3.2 of the Project Agreement, and
- (c) the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Our procedures with respect to the data in the Sales Tax Certificate and Sales Tax Schedule were as follows:

- (a) We have performed the procedures described below to the accompanying Sales Tax Certificate and Sales Tax Schedule pursuant to Section 3.9 of the Project Agreement.
- (b) We were informed by officials and other personnel of the Obligors who have responsibility for accounting and financial matters that the accompanying Certificate and Sales Tax Schedule of the Obligors as required by Section 3.8 of the Project Agreement, and attached Sales Tax Schedule are presented on the basis prescribed by the Project Agreement.
- (c) We reviewed the leases, subleases, licenses, sublicenses, contracts, invoices, bills and purchase orders related to each expenditure selected for review in accordance with the sampling procedure described below for the wording required by Section 3.2 of the Project Agreement.
- (d) We recalculated the sales tax exemption set forth in the Sales Tax Schedule by multiplying the expenditure amount per the Sales Tax Schedule by 8.25%.
- (e) We recomputed the NPV (as defined in the Project Agreement) amounts per the Sales Tax Schedule for the sample of purchase orders and contracts listed below.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the Obligors. Consequently, we make no representations regarding the sufficiency of the following specified procedures for the purpose for which this report has been requested or for any other purpose.

All purchase orders over \$100,000 and a random sample of twenty-five (25) additional purchase orders were selected from the Sales Tax Schedule for which the procedures described in steps 1 - 11 below were performed as applicable. The following purchase orders were selected:

<u>Purchase Order Number</u>	<u>Amount</u>
[List]	

1. We compared the purchase order number, year of purchase, vendor, and amount per the Sales Tax Schedule to a photocopy of the purchase order for the sample of purchase orders listed above. We compared the year of purchase, vendor, and amount per the Sales Tax Schedule to a photocopy of the invoice for the contracts included in the sample listed above.
2. For each line description listed on the purchase order or contract for the sample of purchase orders and contracts listed above, we read the item description appearing on a photocopy of the purchase order or invoice to determine that the purchase was indicated as being for the acquisition, maintenance, repair, replacement and installation; or the leasing, subleasing or licensing; or the maintenance, repair and service contracts for: machinery, equipment, furniture, furnishings, fixtures and other tangible personal property including: computers and peripherals, personal computers, telecommunications equipment, business machines and software.
3. For the sample of purchase orders and contracts listed above, we read the "deliver to" or "ship to" address appearing on a photocopy of the purchase order, invoice copy or the passive receipt verification notice used by the Company as the receiving document to determine that the purchase was indicated as delivered to an Approved Company Location.
4. For the sample of purchase orders and contracts listed above, we obtained the photocopy of the purchase order or contract or the photocopy of the file copy of the letter sent to the vendor which included the language substantially in the form required in Section 3.2 of the Project Agreement.
5. For the sample of purchase orders and contracts listed above, we read the item description on the photocopy of the purchase order, contract or the invoice to determine that the capital machinery, equipment or tangible personal property was indicated to have a useful life of one year or more in accordance with generally accepted accounting principles for each item listed on the purchase order, contract or invoice for the same of purchase orders and contracts listed above.
6. For the sample of purchase orders and contracts listed above, we read the item description on the photocopy of the purchase order, contract or invoice for the sample of purchase orders and contracts listed above to determine if it was indicated as a rental arrangement.
7. For the sample of purchase orders and contracts listed above, we read the item description on the photocopy of the purchase order or contract to determine if it was indicated as a maintenance contract. For maintenance contracts, we read the contract agreement to determine if it was indicated that the contract was for property having a useful life of one year or more in accordance with generally accepted accounting principles and was not for janitorial services.
8. For the sample of purchase orders and contracts listed above, we read the item description on the photocopy of the purchase order or contract to determine if it was indicated as being for computer software. For computer software, we read the photocopy of the purchase order or contract to determine that the software was capable of being capitalized in accordance with generally accepted accounting principles.

9. We obtained representations from management of the Obligor that the purchased items on the Sales Tax Schedule are solely for the use of the Obligor or any of its Eligible Affiliates at Approved Company Locations and for no other entity and at no other location.
10. We obtained a copy of the Agency's annual confirmation of the Sales Tax Letter through _____.

Our findings were:

- a. The description appearing on the invoice indicated that all expenditures were of the type allowed as per the Project Agreement, except for those items denoted by (*) on the Sales Tax Schedule, and those items denoted by (**) for which we were unable to perform the procedure since no invoice and purchase order were available.
- b. All purchase orders contained wording in substantially the form required as noted above.
- c. The sales tax exemption set forth in the Sales Tax Schedule was recalculated to be 8.25% of the expenditure amount.

We were not engaged to, and did not, perform an audit, the objective of which would be expression of an opinion on the specified elements, accounts or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the Obligor and the Agency and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

Date: _____